EXPLANATORY MEMORANDUM TO

THE COUNCIL TAX (CHARGEABLE DWELLINGS AND LIABILITY FOR OWNERS) (AMENDMENT) (ENGLAND) REGULATIONS 2023

2023 No. 1175

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Levelling Up, Housing and Communities and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments

2. Purpose of the instrument

2.1 This instrument will ensure that a House in Multiple Occupation (HMO) is always treated as a single dwelling for the purposes of council tax in England and ensures that the owner of such HMOs will be the person liable for council tax.

3. Matters of special interest to Parliament

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England only.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 The Valuation Office Agency (VOA) is responsible for banding homes for the purposes of council tax. In undertaking their valuation work, listing officers at the VOA apply legislation and case law to determine whether a property should be considered as a single chargeable dwelling, or multiple separate dwellings.

6.2 Section 3 of the Local Government Finance Act 1992 defines a "dwelling" for the purposes of council tax in England and Wales. The Council Tax (Chargeable Dwellings) Order 1992 (S.I. 1992/549) (the "1992 Order") provides for cases in which properties which would otherwise be treated as multiple dwellings are to be treated as a single dwelling. This instrument amends the 1992 Order to include HMOs.

6.3 The Council Tax (Liability for Owners) Regulations 1992 (S.I. 1992/551) (the "1992 Regulations") set out the circumstances in which the owner of a property, rather than the occupier, is liable for council tax. Class C in the 1992 Regulations covers HMOs and the owner of an HMO as defined in the regulations is liable for council tax on

their HMO property. This instrument amends the 1992 Regulations to align the definition of an HMO with the 1992 Order.

7. Policy background

What is being done and why?

7.1 An HMO is generally considered to be a property rented by at least three tenants who are not from one 'household'[1](for example a family), but who share facilities like a bathroom and kitchen.

7.2 Generally, HMOs tend to be given one council tax band which applies to the whole property. The Government is aware of some cases where, given the particular circumstances that applied, the VOA has given a council tax band to each of the rooms separately occupied within the property. The Government therefore consulted on clarifying the approach to valuing HMOs for the purposes of council tax. This consultation proposed changes to the regulations underpinning the council tax valuation of HMO and sought views on proposed approaches to ensure that HMOs are given one council tax band.

7.3 Respondents to the consultation expressed broad support for the change in the valuation of HMOs to ensure that they are given one council tax band. Although there was no consensus as to how the change should be implemented or how HMOs should be defined, respondents supported the view that HMOs should be defined in a way that was consistent across legislation for council tax, planning and housing.

7.4 This instrument provides that HMOs should be valued as a single property for the purposes of council tax. This will ensure that an HMO has one council tax band and receives only one bill.

7.5 The instrument adopts broadly the same definition of HMOs as those set out in section 254 of the Housing Act 2004 ("2004 Act").

7.6 Schedule 14 of the 2004 Act identifies properties which are not considered to be HMOs. Schedule 14 exists principally to avoid conflicts between different licensing and regulatory regimes. For example, there are existing regulatory regimes for children's homes, which are not relevant for the purposes of council tax. In recognition of the different purpose of the legislation, the Government has not replicated the exemptions set out in schedule 14 of the 2004 Act in the instrument.

7.7 The definition of HMOs in the instrument also excludes self-contained flats covered by section 257 of the 2004 Act, as the Government believes that it is right that self-contained properties should continue to have their own council tax band. This is consistent with views from respondents to the consultation that self-contained properties that have facilities within the unit should have its own council tax band.

7.8 In addition, to ensure consistency for tenants, landlords and councils, the instrument amends the definition of HMO in the 1992 Regulations. This ensures that council tax liability for HMOs continue to rest with the HMO owner rather than the occupier.

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[1]Section 258 of the Housing Act 2004. A household is either a single person or members of the same family who live together. A family includes people who are: a) married or living together – including people in same-sex relationships b) relatives or half-relatives, for example grandparents, aunts, uncles, siblings c) step-parents and step-children.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act

9. Consolidation

9.1 The Department does not plan to undertake a consolidation of the 1992 Order or 1992 Regulations.

10. Consultation outcome

10.1 The Department formally consulted to seek views on the amendment made by this instrument[2]. The consultation considered whether the existing arrangements provide the appropriate certainty and consistency in the way that HMOs are banded for council tax, or whether alternative arrangements should be introduced. The consultation proposed that HMOs should have one council tax band and sought views on how the change should be implemented, and how to define HMOs.

10.2 The consultation ran for six weeks from 17 February until 31 March 2023, generating 563 responses. The great majority of the respondents showed broad support for the Government's proposal that HMOs should have only one council tax band for the whole property. However, there was no consensus as to how this should be implemented.

10.3 There was no clear preference as to how HMOs should be defined. From those who expressed a view, the predominant response was support for a definition that was consistent across council tax, planning, and housing legislation. In response to this, the government will adopt the well-established definition of HMOs as set out in the Housing Act 2004, as this is already used by councils for the licensing of HMOs. Section 257 HMOs (converted blocks of flats that usually consist of self-contained flats) will be excluded from the change as the flat is self-contained and does not have shared facilities in the same way as other types of HMOs covered by the Housing Act 2004[3].

11. Guidance

11.1 The Department will write to billing authorities setting out the changes made by this instrument.

12. Impact

12.1 The impact on business, charities or voluntary bodies is that some HMOs operated by such bodies may be affected by the change. The VOA has estimated that only a small proportion of HMOs have multiple council tax bands (which results in the council tax liability shifting to tenants rather than landlord). The instrument will ensure that HMOs will have one council tax bill, and that the liability will rest with the landlord.

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[2] Council tax valuation of Houses in Multiple Occupation (HMOs): consultation: https://www.gov.uk/government/consultations/council-tax-valuation-of-houses-in-multiple-occupation-hmos/council-tax-valuation-of-houses-in-multiple-occupation-hmos-consultation

[3] Council tax valuation of Houses in Multiple Occupation (HMOs): summary of consultation responses and government response: https://www.gov.uk/government/consultations/council-tax-valuation-of-houses-in-multiple-occupation-hmos/outcome/council-tax-valuation-of-houses-in-multiple-occupation-hmos-summary-of-consultation-responses-and-government-response

12.2 The impact on the public sector is limited. The VOA will carry out the re-banding work, and the Department for Levelling Up, Housing and Communities has agreed, on an exceptional basis, one-off funding for the VOA to help support the cost of implementation of re-banding. Where a re-banding occurs, billing authorities will need to rebill as they would for any material change in circumstances in the usual way.

12.3 Where properties are re-banded, there may be impacts on the local authority taxbase. The extent of this will depend on factors such as the number and characteristics of the residents, the application of any discounts, eligibility for council tax support and the council's collection rate. However, administration is likely to be more straightforward for local authorities as there will be just one council tax bill for the property, payable by the landlord, rather than multiple bills payable by individual tenants who can have a higher level of turnover than occupants of other types of housing.

12.4 A full Impact Assessment has not been prepared for this instrument because it amends a local taxation regime and amendments to any tax are excluded from the definition of a regulatory provision[4].

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 The instrument will ensure consistency in council tax liability for HMOs, helping to ensure a level playing field for small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that the Government continues to keep administration of council tax under review[5].

15. Contact

15.1 Khalid Aly at the Department for Levelling Up, Housing and Communities Telephone: 0303 44 42142 or email: Khalid.Aly@levellingup.gov.uk can be contacted with any queries regarding the instrument.

15.2 Chris Megainey, Deputy Director for Local Taxation, at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.

15.3 Lee Rowley, Parliamentary Under Secretary of State at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.

[4] Section 22(4)(a) of the Small Business, Enterprise, and Employment Act 2015.

[5] The instrument, which is in connection with a local taxation regime, is not subject to the duty to review regulatory provisions in secondary legislation in section 28 of the Small Business, Enterprise, and Employment Act 2015.