EXPLANATORY MEMORANDUM TO

THE COUNCIL TAX (DEMAND NOTICES) (ENGLAND) (AMENDMENT) REGULATIONS 2016

2016 No. 188

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Communities and Local Government (the "Department") and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument amends the Council Tax (Demand Notices) (England) Regulations 2011 ("the 2011 Regulations") (S.I. 2011/3038) which makes provision about matters to be contained in, and information to be supplied with, the council tax demand notices (the "notices") sent to council tax payers. The amendments in this instrument:

- provide for notices for the financial year beginning in 2016 ("2016-17"), to contain additional information about council tax to fund expenditure on adult social care functions (under Part 1 of the Care Act 2014 c.23); and
- require precepting authorities who are adult social care authorities to supply the billing authorities[1] in their areas with information to enable them to meet the requirements under this instrument.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 Regrettably, it has not been possible to comply with the 21 day rule in this case as there is urgency in making this instrument. This instrument provides for additional information, about expenditure on adult social care services, to be included in notices for 2016-17.

3.2 The amendments made by this instrument were contingent upon the approval of the Referendums Relating to Council Tax Increases (Principles) (England) Report 2016-2017[2] ("the Principles Report 2016-17") which contained a referendum principle of 4% (comprising 2% for expenditure on adult social care and 2% for other expenditure), for adult social care authorities. The Principles Report 2016-17 was approved by the House of Commons on 10 February 2016.

3.3 Billing authorities issue notices from mid-March each year (in respect of the financial year starting on 1 April of that year). The effect of the Parliamentary timetable, the need to consider local authority representations (which brought to light technical concerns about the inclusion of complex new information on bills), and the requirement to test changes to the software means that authorities now urgently require certainty about the changes made by this instrument. Postponing the coming

[1] In England these are district councils, London borough councils, the Common Council of the City of London, the Council of the Isles of Scilly and county councils with the functions of a district council.
[2] https://www.gov.uk/government/publications/council-tax-in-2016-to-2017-updated.

into force date to allow the standard time for Parliamentary scrutiny risks councils sending out notices for 2016-17 without the information required by this instrument.

Other matters of interest to the House of Commons

3.4 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 Part 1 of the Local Government Finance Act 1992 ("the 1992 Act") concerns council tax in England and Wales. Under the 1992 Act billing authorities are required to levy and collect council tax in respect of dwellings situated in their areas (see section 1(1) and (2) of that Act).

4.2 There is power in the 1992 Act to require billing authorities to serve a notice on a person before that person becomes liable to pay council tax in respect of a dwelling and a financial year (see paragraph 2(4)(a) and (b) of Schedule 2 to the 1992 Act). The requirement to serve a notice is included in regulation 18 of the Council Tax (Administration and Enforcement) Regulations 1992 (S.I. 1992/613).

4.3 The 2011 Regulations were made using powers in Schedule 2 to the 1992 Act. Those regulations specify the procedures to be followed by billing authorities for the billing of council tax.

4.4 This instrument amends the 2011 Regulations to require for 2016-17, additional information to be contained in notices about council tax charged by adult social care authorities to expend on adult social care functions.

4.5 The Care Act 2014 makes provision to reform the law relating to care and support for adults and carers. Part 1 (care and support) sets out, amongst other matters, the general responsibilities of local authorities and matters relating to meeting and assessing needs, safeguarding, continuity of care, funding and the transition for children to adult care and support.[3]

5. Extent and Territorial Application

5.1 This instrument extends to England and Wales.

5.2 This instrument applies to England only.

6. European Convention on Human Rights

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

7. Policy background

7.1 In recognition of demographic pressures, and consequent demands on local authority services and finances, the Spending Review 2015 and Autumn Statement 2015 announced a number of measures to help local authorities with responsibility for adult social care. This included a specific council tax measure:

[3] Whilst the Care Act 2014 applies in the Isles of Scilly subsequent regulations made under the Act - the Care and Support (Isles of Scilly) Order 2015 (S.I. 2015/642) define the Council of the Isles of Scilly as a "local authority" for the purpose of the care and support functions specified in that Act.

"The Spending Review creates a social care precept to give local authorities who are responsible for social care the ability to raise new funding to spend exclusively on adult social care. The precept will work by giving local authorities the flexibility to raise council tax in their area by up to 2% above the existing threshold. If all local authorities use this to its maximum effect it could help raise nearly £2 billion a year by 2019-20. From 2017 the Spending Review makes available social care funds for local government, rising to £1.5 billion by 2019-20, to be included in an improved Better Care Fund."[4]

7.2 On 17 December 2015, the Secretary of State confirmed his intention to allow adult social care authorities to charge a precept of up to 2% on their council tax each year up to and including the financial year beginning in 2019 without being required to hold a referendum. This is subject to the annual approval of the House of Commons. He also announced that he would take steps to ensure that the amounts charged in respect of the adult social care precept would appear on demand notices from financial year 2016 onwards[5].

7.3 The effect of the approval of the Principles Report 2016-17 is that a referendum is required to be held by an adult social care authority if its relevant basic amount of council tax for 2016-17 is 4% higher (comprising 2% for expenditure on adult social care services and 2% for other expenditure), or more than 4% higher, compared to the financial year beginning in 2015.

7.4 The notices issued by billing authorities from mid-March each year must include a range of matters specified by the 2011 Regulations. The matters include the authorities charging council tax in the area, the amount being charged, and the percentage increase from the preceding year. The notice must be supplied in hard copy unless the recipient and authority agree to electronic billing. There are also requirements to supply additional information about the expenditure and council tax requirement of billing, precepting and levying bodies. This additional information may be supplied electronically unless the recipient requests it in hard copy.

7.5 The Secretary of State's policy is to require that information about the precept to support adult social care functions is displayed as a separate amount or percentage change on the notice, with an indication of the name of the authority setting the charge.

7.6 In relation to any authority that is charging the adult social care precept, if the notice does not contain two separate council tax amounts (one expressed in pounds for the adult social care precept and one for council tax to fund other functions), it must contain two separate amounts showing the percentage change in the bill attributable to these amounts (see regulation 2(4)(g) of this instrument)[6]. Billing authorities are required to include an explanatory statement about the purpose of the 2% adult social care precept in the information supplied with notices (see regulation 2(5) of this instrument). Precepting authorities are required to provide billing authorities with information about their use of the precept in order for this to be included in notices (see regulation 2(3) of this instrument).

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4 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/479749/52229_Blue_Book_PU1865_Web_Accessible.pdf [page 33]

5 Hansard 17 Dec 2015: Column 1722

6 The maximum percentage change attributable to the adult social care precept is 2%, reflecting the announcement made by the Secretary of State on 17 December 2015.

7.7 Although it is intended that the 2% adult social care precept will be available each financial year up to and including the year beginning in 2019, this instrument applies only in respect of 2016-17. This reflects local authority representations about the short time-scales available for billing authorities to make preparations and test the necessary billing software changes. The Secretary of State proposes to seek views from billing authorities about their experiences with notices for 2016-17 and if necessary may make regulations with revised requirements the financial year beginning in 2017.

Consolidation

7.8 There are no plans to undertake a consolidation.

8. Consultation outcome

8.1 On 17 December 2015, the Department wrote to all adult social care and billing authorities outlining the Secretary of State's policy and inviting representations by 15 January 2016. The letter is available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/486499/Council_Tax_Setting_in_2016-17_-_letter_to_Chief_Executives.pdf

8.2 152 authorities responded to indicate whether they were minded to use the 2% adult social care precept in 2016-17. A small number made representations requesting clarity about the changes to the 2011 Regulations, and highlighting the potential costs involved in changing their billing systems. Officials subsequently discussed the proposed changes with a number of local authorities and billing software providers. The requirement for billing authorities to adopt one of two approaches when presenting information on notices about the use of the precept arose as a direct consequence of the representations received.

9. Guidance

9.1 Local authorities have been informed about the effect of the amendments made by this instrument to notices by a letter from the Department, which is available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/501343/ASC_requirement_for_information_final_version.pdf

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is minimal.

10.3 An Impact Assessment has not been produced for this instrument.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 As mentioned in paragraph 7.7, the Government will monitor the impact of the changes made by this instrument in 2016-17.

13. **Contact**

13.1 Nick Littlewood at the Department for Communities and Local Government Telephone: 0303 44 42096 or email: nick.littlewood@communities.gsi.gov.uk can answer any queries regarding the instrument.