EXPLANATORY MEMORANDUM TO

THE COUNCIL TAX (PRESCRIBED CLASSES OF DWELLINGS) (ENGLAND) (AMENDMENT) REGULATIONS 2012

2012 No.2964

And

THE COUNCIL TAX (EXEMPT DWELLINGS) (ENGLAND) (AMENDMENT) ORDER 2012

2012 No. 2965

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

2. Purpose of the instrument

The Council Tax (Prescribed Classes of Dwellings) (England) (Amendment) Regulations 2012

2.1 To prescribe certain classes of empty home which would normally benefit from a 50% discount under section 11(2)(a) of the Local Government Finance Act 1992 (the 1992 Act) in relation to which billing authorities can choose what level of discount to set.

2.2 To prescribe exemptions from the new empty homes premium introduced in the Local Government Finance Act 2012 i.e. certain classes of dwelling in relation to which billing authorities cannot charge an empty homes premium of up to 150% of council tax.

The Council Tax (Exempt Dwellings) (Amendment) (England) Order 2012

2.3 To abolish Classes A and C relating to empty homes in the Council Tax (Exempt Dwellings) Order 1992 so that homes in these classes are no longer exempt from council tax.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

The Council Tax (Prescribed Classes of Dwellings) (England) (Amendment) Regulations 2012

Empty Homes Discounts

4.1 Section 11(2)(a) of the 1992 Act provides a council tax discount for empty homes which is twice the percentage set for the single person's discount of 25% i.e. a 50% discount. However, this is subject to the special provision for England in section 11A of the 1992 Act. Section 11A gives billing authorities in England (district councils, London borough councils, the Common Council of the City of London, the

Council of the Isles of Scilly or a county council with the functions of a district council) the discretion to reduce the discount for certain classes of dwelling prescribed in regulations, either between 10% and 49% (for dwellings prescribed for the purposes of section 11A(3)) or between 0 and 49% (for dwellings prescribed for the purposes of section 11A(4)).

4.2 The Local Government Finance Act 2012 added a new subsection (4A) to section 11A of the 1992 Act to increase the discretion of billing authorities in relation to discounts for empty homes. The new subsection (4A) gives billing authorities the discretion to either determine that the empty homes discount under section 11(2)(a) of the 1992 Act should not apply at all or should be set at any percentage up to 100% as the authority may specify (for classes of empty home prescribed for the purposes of section 11A(4A) by the Secretary of State in regulations).

4.3 These Regulations amend the Council Tax (Prescribed Classes of Dwellings) (England) Regulations 2003 and prescribe Classes A and B for the purposes of 11A(4). These Regulations also prescribe Class C and a new Class D for the purposes of new subsection 11A(4A).

4.4 Linked to these Regulations is another instrument, which amends the Council Tax (Exempt Dwellings) Order 1992 made under section 4 of the 1992 Act, in relation to England. This order is **the Council Tax (Exempt Dwellings) (Amendment) (England) Order 2013** and will come into force at the same time as these Regulations. The Council Tax (Exempt Dwellings) Order 1992 prescribes certain classes of dwelling which are exempt from council tax i.e. in respect of which council tax cannot be charged. The 2013 order amending this will abolish two classes of dwelling – Classes A and C – which relate to empty homes. This is because from now on the council tax charged in relation to empty homes will be determined at the discretion of billing authorities under section 11A of the 1992 Act instead of by automatic exemptions for empty homes under the Council Tax (Exempt Dwellings) Order 1992.

Empty Homes Premium

4.5 The Local Government Finance Act 2012 also inserted a new section 11B into the 1992 Act. This introduced an empty homes premium which billing authorities may charge in relation to empty homes which have been empty and substantially unfurnished for two years or more of up to 150% of council tax payable in relation to that home. However, billing authorities may not charge an empty homes premium in relation to certain classes prescribed by the Secretary of State for the purposes of section 11B(2) of the 1992 Act. These Regulations prescribe two new classes (E and F) of empty homes for the purposes of section 11B(2) of the 1992 Act.

The Council Tax (Exempt Dwellings) (Amendment) (England) Order 2012

4.6 Section 4(1) of the Local Government Finance Act 2012 provides that council tax is payable in respect of any dwelling which is not an exempt dwelling and subsection (2) defines an exempt dwelling as any dwelling of a class prescribed by the Secretary of State. The Council Tax (Exempt Dwellings) Order 1992 prescribes classes of dwelling exempt from council tax. This amendment removes the exemption from council tax for certain classes of empty home thereby making them liable for council tax.

5. Territorial Extent and Application

5.1 These instruments apply to England only.

6. European Convention on Human Rights

As these instruments are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

7.1 In *The Coalition – our programme for government* (20th May 2010), the Government committed to explore a range of measures to bring empty homes back into use. Empty homes are often a blight on the local community, harming the local amenity of neighbouring properties. They are also wasted assets, so putting empty homes back into productive use as quickly as possible increases housing supply.

7.2 While acknowledging that it is reasonable in certain circumstances for council tax payers to get some relief in respect of vacant dwellings that are, for a period, uninhabitable, the Government observed that there was no scope for billing authorities to use their discretion about this. The Government therefore proposed to pursue a more localist approach of abolishing council tax exemption Classes A & C for empty properties and instead allowing local billing authorities to set the level of council tax, between zero and 100%, on such classes of empty property prescribed by the Secretary of State. The amendment made by the Local Government Finance Act 2012 to section 11A of the Local Government Finance Act 1992 on discounts for empty homes inserted a new paragraph (4A) in that section to allow for this. **The Council Tax (Prescribed Classes of Dwelling) (Amendment) (England) Regulations 2012** prescribes the classes of empty property in relation to which billing authorities in England will have this discretion.

7.3 Councils will continue to be able to use their existing powers to apply discretionary discounts in cases where homes are empty due to special circumstances – e.g. in cases of hardship such as fire and flooding.

Empty Homes Discounts

7.4 The Government thinks that local authorities should decide, given local circumstances, the level of council tax that should be applied to empty homes. From 1st April 2013, billing authorities in England will be able to decide what level of council tax to charge owners of two types of empty property. **The Council Tax (Prescribed Classes of Dwelling) (Amendment) (England) Regulations 2012** prescribe two types of property for this purpose. These are:

- Unoccupied and substantially unfurnished homes (Class C) over which the billing authority will have complete discretion to set the level of discount for whatever period it chooses. It may vary the level of discount over time. For example, it may offer a discount of 100% for the first two months, 50% discount for the next 3 months, and no discount thereafter. Previously billing authorities had some discretion over discounts for homes falling within Class C as they were prescribed for the purposes of section 11A(4) of the 1992 Act. This means that the empty homes discount could be reduced or removed. Now billing authorities will be able to reduce, remove or increase that discount.

- Unoccupied and substantially unfurnished homes undergoing, or having undergone, major repair work or structural alteration (new Class D) for which the billing authority can set whatever level of discount it chooses for a maximum of 12 months

subject to the property meeting the criterion. Once the twelve month period has elapsed, the amount of council tax set will depend on whether the billing authority makes a determination under Section 11A(4A) of the LGF Act 1992 as Class D properties will also fall within Class C.

7.5 These Regulations also prescribe existing Classes A (purpose built holiday homes and chalets subject to planning restrictions preventing year round occupancy) and B (unoccupied but furnished second homes) for the purposes of section 11A(4) of the 1992 Act instead of section 11A(3). This means that although billing authorities will not have maximum discretion in relation to the council tax payable for these classes of empty home they will have a broader discretion over them than they did previously. Billing authorities in England will now be able to determine that the council tax discount in relation to homes falling within Classes A and B as well as C can be replaced by a lower discount or no discount at all i.e. that the council tax payable may be set anywhere between 50 and 100%

Empty Homes Premium

7.6 The Government believes that the Premium will give local authorities the tool to incentivise owners to bring empty properties back into use. The Premium will be able to be levied from 1 April 2013 on properties that have been unoccupied and substantially unfurnished for two years on that day. Periods of no more than six weeks where a property has been occupied, regardless of whether it was furnished or not, and periods of no more than six weeks where a property has been furnished but not occupied, will be disregarded for the purpose of calculating the two years.

7.7 It will be for individual billing authorities to determine which properties in their area will be subject to the Empty Homes Premium. However, the Government believes that there are circumstances where it would be inappropriate for the Premium to apply. A public consultation was therefore undertaken to seek views on proposals for exceptions to the Premium i.e. properties which may otherwise be liable for the Premium, but which are subject to circumstances meaning that it would not be appropriate for it to apply.

7.8 Properties which are exempt from council tax will not be liable to the Premium. In addition, these Regulations will provide that properties in the following circumstances will not be subject to the Premium:

A dwelling which would otherwise be the sole or main residence of a member of the armed forces, who is absent from the property as a result of such service.

7.9 The council tax system already recognises the particular circumstances of members of the armed forces who are absent from their homes as a result of their service. The policy aim is that members of the armed forces should face no disadvantage with the Premium as a result of their service. Therefore the Premium will not be chargeable on a dwelling that is the sole or main residence of a member of the armed forces, where that person is absent from that dwelling as a result of their service.

A dwelling which forms part of a single property which is being treated by a resident of that property as part of the main dwelling

7.10 Parts of a property constructed or adapted for separate occupation (e.g. an annex) are treated as separate dwellings for the purposes of council tax. The Government has committed to undertake a broader review of how annexes for family

homes can be supported. With this policy aim, the Premium will not be chargeable on a substantially unfurnished annex which is being treated by the occupier of the main dwelling as part of that main dwelling.

7.11 The Government intends that authorities should be able to use any revenue, generated through the application of a premium, for whatever purposes authorities choose. The proposed treatment in the council tax base will mean that councils, local and major preceptors, may use the consequent increase in the council tax base to lower council tax bills or use the additional resources to negate the need for increases in council tax bills while raising the council tax requirement to support required local services. In addition, the Government's intention is that a decision to charge an empty homes premium should not make it more likely that an authority will trigger a council tax referendum.

8. Consultation outcome

The Council Tax (Prescribed Classes of Dwellings) (England) (Amendment) Regulations 2012

8.1 This policy was subject to an 8 week consultation, *Technical Reforms to Council Tax*, which was launched on 31st October 2011 and ended on 29th December 2011. The consultation period was shortened in order to meet the legislative timetable of the Local Government Finance Act 2012.

8.2 The Government published its response on 28th May 2012. 399 responses were received. Of the 205 responses which answered the question of whether a premium would have an impact on the number of empty homes, 150 said it would, 53 said it would not, while 2 gave no comment. The consultation document is available at:
www.gov.uk/government/consultations/technical-reforms-of-council-tax

8.3 The summary of responses to this consultation was published on 28 May 2012. The responses concerning the Premium came largely from local authorities. The balance of views tended strongly in support of the proposal. A large majority felt the Premium would help bring long term empty properties back into use. A minority felt that the Premium would be difficult to collect as taxpayers would seek ways to avoid it. However, the Government felt that since authorities will decide whether to apply a Premium, they would assess its collectability taking into account local circumstances. The majority of respondents also felt that two years was the right period of vacancy before a property should give rise to a liability to a Premium. A minority felt that the time period should be for the billing authority to decide. However, the Government felt that two years was sufficient time. This document is available at:
www.gov.uk/government/consultations/technical-reforms-of-council-tax

8.4 A further consultation on proposals, *'Technical Reforms of Council Tax: Determining the circumstances in which dwellings should not be liable to the Empty Homes Premium'* was published on 28 September 2012, with a closing date of 9 November 2012. This document is available at:
www.gov.uk/government/consultations/technical-reforms-to-council-tax-when-dwellings-should-not-be-liable-to-the-empty-homes-premium

8.5 Over 100 responses were received, the large majority of which were from local authorities. The summary of responses to this consultation is available at:

www.gov.uk/government/consultations/technical-reforms-to-council-tax-when-dwellings-should-not-be-liable-to-the-empty-homes-premium

8.6 The consultation sought views on three proposals for exceptions to the Premium and if these should be set out in legislation. These are set out below:

- A dwelling which is the sole or main residence of a member of the armed forces, who is absent from the property as a result of such service
- An annex deemed unoccupied because it is being treated by the occupier of the main dwelling as part of that main dwelling
- A dwelling which is genuinely on the market for sale or letting

8.7 There was broad support for the proposals relating to annexes and dwellings which are the sole or main residence of a member of the armed forces who is absent from the property as a result of such service. The balance of views favoured setting these circumstances in regulations. There were strong concerns about the proposal that a dwelling which is genuinely on the market for sale or letting should not be liable to the Premium. The majority of responses were from local authorities who said it would prove difficult to administer, in particular assessing and monitoring which properties should be liable to the Premium. The Government has carefully considered the concerns raised and has decided not to seek to set this circumstance in regulations but still considers that properties genuinely on the market for sale or letting should not be liable for the Premium and will instead issue guidance to help local authorities reflect the state of the local housing market in their decision making process for administering the Premium.

The Council Tax (Exempt Dwellings) (Amendment) (England) Order 2012

8.8 This policy was subject to the same 8 week consultation, *Technical Reforms to Council Tax,* launched on 31st October 2011 and ended on 29th December 2011.

8.9 The Government published its response on 28th May 2012. 399 responses were received. Of the 278 who answered the question of whether Class A should be abolished, 210 said yes, while 68 said no. Of those 68, 44 were individuals, including landlords. Of the 299 who answered the question whether Class C should be abolished, 207 said yes while 92 said no. Of those 92, 59 were individuals, including landlords.

8.10 The main concern from landlords was that abolishing the Class A& C exemptions would result in them being charged council tax for periods of unoccupation between lettings. However, ministers felt that it, in the spirit of localism, the decision to decide the level of discount in such situations is for billing authorities to make.

8.11 The consultation explored two subsidiary issues which needed to be resolved: that is, the period of time for which this type of discount should be available, and the extent to which billing authorities should be able to give different levels of discount for different cases. The vast majority of responses addressing these questions came from local authorities, or bodies representing them. A recurring theme was that the scope for authorities to exercise discretion about the details of their discount schemes should be maximised. In other words, billing authorities need to have complete discretion over the level of discount over any period of time. Ministers agreed that complete discretion was in keeping within the spirit of localism for properties that are unoccupied and unfurnished. The report states that that any discount set by the local

authority for empty and unfurnished properties undergoing major repair will be for a maximum of 12 months. There will be no discretion to vary the discount for this period on such property.

8.12 The Government's response to the consultation was to confirm its proposal to abolish the Class A and Class C exemptions on empty homes and instead prescribe two types of empty homes for the purposes of Section 11A(4A) of the Local Government Finance Act 1992 (as amended).

9. Guidance

9.1 No guidance is necessary.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies. However, there may be an impact on landlords as mentioned in paragraph 8.10.

10.2 There is no impact on the public sector.

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

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 Information on the operation of the policy will be collected as part of the routine collection of data on local authorities' council tax base. There are no plans for a formal review of the Regulations or the Order.

13. Contact

Peter Reilly at the Department for Communities and Local Government Tel: 0303 44 2092 or email: peter.reilly@communities.gsi.gov.uk can answer queries regarding the instrument.