EXPLANATORY MEMORANDUM TO

THE COUNCIL TAX AND NON-DOMESTIC RATING (POWERS OF ENTRY: SAFEGUARDS) (ENGLAND) ORDER 2015

2015 No. [XXXX]

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

2.1 This instrument amends the statutory powers of entry contained in the Local Government Finance Act 1988 ("the 1988 Act") and the Local Government Finance Act 1992 ("the 1992 Act") to insert a requirement to obtain authorisation from the First-tier Tribunal prior to exercising the powers. In addition, it makes amendments to the notice period in the 1988 Act and the fine level in the 1992 Act.

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

3.1 None

4. Legislative Context

4.1 Section 42 of the Protection of Freedoms Act 2012 ("the 2012 Act") imposes a duty on Cabinet Ministers to review powers of entry for which they are responsible within two years of the passing of that Act. This review is required to be undertaken with a view to Ministers deciding whether to make an Order under section 39(1), 40 or 41 of that Act repealing, rewriting or adding safeguards to those powers.

4.2 The Department for Communities and Local Government conducted the required review of its powers of entry and published it on 27 November 2014[1]. As part of the review, two powers were identified in relation to which it was proposed that safeguards be added under sections 40 and 41 of the 2012 Act. Those powers are contained in paragraph 7 of Schedule 9 to the 1988 Act and section 26 of the 1992 Act.

4.3 Paragraph 7 of Schedule 9 to the 1988 Act confers a power for a valuation officer of the Valuation Office Agency to enter on, survey and value a hereditament on giving 24 hours' notice in writing for the purpose of valuing a property for non-domestic rating. A person wilfully delaying or obstructing an officer in the use of the power is liable on summary conviction to a fine not exceeding level 1 on the standard scale.

4.4 Section 26 of the 1992 Act contains a similar power in relation to domestic properties for the purpose of council tax banding. However, the required notice period

[1] https://www.gov.uk/government/publications/powers-of-entry-review-dclg

in that case is 3 working days, and the fine for obstructing an officer in the exercise of the power is set at level 2 on the standard scale.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

6.1 The Parliamentary Under-Secretary, Kris Hopkins MP has made the following statement regarding Human Rights:

6.2 In my view the provisions of the Council Tax and Non-Domestic Rating (Powers of Entry: Safeguards) (England) Order 2015 are compatible with the Convention rights.

7. Policy background

- What is being done and why

7.1 The Government is committed to protecting individuals and businesses from unnecessary intrusion into their homes and business premises by public bodies.

7.2 The Statutory Powers of Entry Review demonstrates the Government's commitment to ensuring that private and family life is respected at all times, ensuring that the privacy of citizens' homes and businesses is protected. The purpose of the Powers of Entry Review has been to ensure greater consistency in the exercise of powers of entry and greater clarity for those affected by them while upholding effective enforcement.

7.3 The intention of Government is that public authorities should have fewer powers to enter people's homes and that the privacy and rights of homeowners and businesses should be protected and strengthened wherever possible. It is essential that powers of entry, as with any enforcement power, achieve the right balance between the need to enforce the law and ensure public protection and to provide sufficient safeguards and rights to the individual.

7.4 The Valuation Office Agency is a Government agency of HM Revenue and Customs responsible for assessing domestic property and assigning council tax bands and for assessing non-domestic properties and assigning a rateable value.

7.5 Paragraph 7 of Schedule 9 to the 1988 Act and Section 26 of the 1992 Act are being amended to provide for the following:

a. That where consent to enter is not given, the Valuation Office Agency's Listing Officers and Valuation Officers will be required to seek the authority of the First-tier Tribunal to exercise their statutory entry power, under which the property's occupier can be fined if successfully prosecuted for obstructing a Valuation Office Agency Officer in the exercise of the power.

b. That the fine level for council tax is reduced and is aligned with business rates to level 1 of the standard scale (currently £200).

c. That the written notice period sent by the Listing Officers and Valuation Officers in advance of a visit to council taxpayers and business ratepayers following First Tier Tribunal authorisation is three working days.

8. Consultation outcome

8.1 The Department for Communities and Local Government published a four-week consultation aimed at the general public on 23 January 2015 with a deadline of 20 February 2015.

8.2 The Department for Communities and Local Government received 23 general responses to the consultation, 17 of which are from local authorities, the rest are from the Valuation Tribunal for England, Institute of Revenues, Rating and Valuation, Big Brother Watch (civil liberties and privacy campaign group), a personal opinion from a Partner at a firm of Surveyors and Valuers (who is also member of the Royal Institution of Chartered Surveyors and Rating Surveyors Association) and two personal views from members of the public.

a. Seven respondents agreed with all of the proposals set out in the consultation document as they thought it would enhance the powers of the Valuation Office Agency whilst protecting the occupiers.

b. Ten respondents agreed that Listing Officers and Valuation Officers should be made to seek, if consent is not given by the occupier for them to enter the property, the authority of the tribunal before exercising their power of entry. Of those ten, one respondent in particular noted that this would increase the level of transparency and would protect taxpayers and officials from claims of wrongful entry. Twelve respondents thought that this would add another stage in the process which would cause delays in issuing timely council tax and business rates bills. Of those twelve, one respondent suggested the power of entry should be repealed. One respondent did not provide a response to this question.

c. There were mixed views on whether to reduce the fine level for council tax and align it with business rates to level 1 of the standard scale. Ten respondents thought that at £200, a level 1 fine was proposed as a reasonable amount to ensure that homeowners do not needlessly block entry and is severe enough to provide a deterrent, but not so large as to be needlessly harsh. Ten respondents suggested a higher fine level at level 2 to be of proper consequence and to act as deterrent to a refusal of entry/inspection. Of those ten, one respondent emphasised that it needs to balance with the fact that other law abiding taxpayers subsidise those that do not comply with this provision through increased administrative costs. Three respondents did not provide a response to this question.

d. Sixteen respondents agreed with aligning the written notice period sent by the Listing Officers and Valuation Officers in advance of a visit given to council taxpayers and business ratepayers, to three working days. However, five respondents

suggested a longer notice period (e.g. two or three weeks to allow for people being on holiday). Two respondents did not provide a response to this question.

e. Thirteen respondents agreed that the proposals set out in the consultation paper sufficiently protect the privacy and rights of homeowners and businesses. Six respondents thought that sufficient protections already exist for taxpayers. Four respondents did not provide a response to this question.

8.3 The Government's view is that these amendments to the legislation will provide the correct balance between the rights of individuals and businesses with the need for maintaining accurate lists which underpins the local taxation systems.

9. Guidance

9.1 The Valuation Office Agency and local authorities will be informed by letter of changes in relation to these provisions.

10. Impact

10.1 These regulations have no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is that it may create additional administrative work for the Valuation Office Agency.

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 The Government will monitor the impact of these Regulations as part of the on-going maintenance of the system and regular bilateral meetings with the Valuation Office Agency.

13. Contact

Please contact Catherine Marsh at the Department for Communities and Local Government on telephone number 0303 444 2638 or by email to catherine.marsh@communities.gsi.gov.uk who can answer any queries regarding the instrument.