EXPLANATORY MEMORANDUM TO

THE COUNCIL TAX REDUCTION SCHEMES (DETECTION OF FRAUD AND ENFORCEMENT) (ENGLAND) REGULATIONS 2013

2013 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 The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013 ("the Regulations") make provision in connection with council tax reduction schemes, which are local schemes for providing support for council tax replacing the current system of council tax benefit from 1st April 2013. The Regulations enable billing authorities to authorise individuals to investigate offences committed in relation to council tax reduction schemes. They also create offences and enable penalties to be imposed in connection with the schemes.

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

3.1 None

4. Legislative Context

4.1 The Local Government Finance Act 2012 (the 2012 Act) made amendments to the Local Government Finance Act 1992 (the 1992 Act), in particular, by substituting a new section 13A and inserting a new Schedule 1A. The changes provide for the making of a scheme (a council tax reduction scheme) by each billing authority specifying the reductions which are to apply to amounts of council tax payable, in respect of dwellings situated in its area, by—

(a) persons whom the authority considers to be in financial need, or

(b) persons in classes consisting of persons whom the authority considers to be, in general, in financial need.

4.2 The following local authorities are billing authorities— the council of a district or London borough, the Common Council of the City of London, the Council of the Isles of Scilly, and a county council which has the functions of a district council by virtue of an order under Part 2 of the Local Government Act 1992 making provision for local government changes in England.

4.3 A scheme made under section 13A must include any matters prescribed by the Secretary of State. The Council Tax Reduction Schemes (Prescribed Requirements) (England) Regulations 2012 (S.I. 2012/2885 as amended by S.I. 2012/3085) prescribed

certain matters including a number of procedural matters. A scheme must be made before 31 January 2013 to take effect for the financial year commencing 1st April 2013. If a billing authority fails to make a scheme before this date, the default scheme prescribed by the Secretary of State in the Council Tax Reduction Schemes (Default Scheme) (England) Regulations 2012 (S.I. 2012/2886 as amended by S.I. 2012/3085) has effect. That contains similar procedural provisions as the Prescribed Requirements Regulations.

4.4 The Regulations are made under powers in section 14A to 14C of the 1992 Act, inserted into the 1992 Act by section 14 of the 2012 Act. The Regulations are modelled on existing provisions in Part 6 of the Social Security Administration Act 1992 which makes provision for investigatory powers, offences and penalties in relation to social security benefits including council tax benefit.

4.5 The Local Authorities (Contracting Out of Tax Billing, Collection and Enforcement Functions) (Amendment) (England) Order 2013 amends the Local Authorities (Contracting Out of Tax Billing, Collection and Enforcement Functions) Order 1996 to enable a billing authority to authorise another person, or that person's employees to carry out the function of the collection of penalties which may be imposed under regulation 11 to 13 of the Regulations.

4.6 The Council Tax (Administration and Enforcement) Regulations 1992 (S.I. 1992/613 as amended by S.I. 2012/3086) make provision about the billing, collection and enforcement of council tax. These regulations will be amended in due course to make provision for the collection of penalties which may be imposed under regulations 11 to 13 of the Regulations.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

6.1 Brandon Lewis has made the following statement regarding Human Rights:

In my view the provisions of the Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013 are compatible with the Convention rights.

7. Policy background

7.1 The Welfare Reform Act 2012 provided for the Council Tax Benefit regime to cease from 31 March 2013. The Local Government Finance Act 2012 requires billing authorities to introduce council tax reduction schemes which are to apply from 1 April 2013.

7.2 This instrument provides powers required for billing authorities to investigate and punish offences committed in relation to the new schemes which are equivalent to powers

which are currently available to them in respect of council tax benefit. Rather than simply reintroducing all the powers that local authorities have to tackle council tax benefit fraud, the regulations only make provision for powers, offences, and penalties that are appropriate for the new schemes.

7.3 Regulations 3 to 5 enable authorities to authorise individuals to require relevant information from specified persons and to require electronic access to information relating to particular persons. These powers may be used for the purpose of preventing, detecting and securing evidence of the commission of offences in connection with the making of an application or award of a reduction under a council tax reduction scheme. The powers are necessary to ensure authorities are able to obtain evidence to prosecute offences relating to council tax reduction schemes in the same way as they may currently in relation to council tax benefit. Regulation 6 creates an offence relating to the delay or obstruction of authorised officers in exercising their powers to require information, or a failure or refusal to provide information when required to do so.

7.4 Regulations 7 and 8 create criminal offences related to the making of a false representation for the purpose of obtaining a reduction in council tax, or for failing to notify a billing authority of a relevant change in circumstances which affects a person's entitlement to a reduction under a scheme. These offences are needed to deter and punish attempts to gain an undeserved financial advantage from local authorities, at the expense of other taxpayers. While the level of any falsely claimed tax reduction is likely to be smaller than that obtainable through the welfare benefit or income tax systems, there is a recognised link between detection of more minor fraud and the consequent detection and deterrence of more serious high value fraud by those individuals. The Publication: "Fighting Fraud Locally" - National Fraud Authority, (ISBN: 9781849877305l) makes clear that "criminal prosecutions are an important part of a counter fraud policy and can serve to deter offenders and reinforce a culture of zero tolerance to fraud".

7.5 Billing authorities may offer to impose a financial penalty as an alternative to pursuing a criminal prosecution for an offence using powers under regulation 11. Allowing authorities this discretion will allow a more responsive and flexible approach to tackling criminal offences, reflecting the options open to dealing with offences relating to the welfare benefit system.

7.6 Regulations 12 and 13 provide billing authorities with the ability to impose fixed financial penalties on individuals who are negligent in making an incorrect statement relating to a council tax reduction scheme or who fail to notify them promptly about changes in circumstances. These powers will enable authorities to impose penalties which are of identical value to the penalties which they may currently impose in connection with existing council tax discounts. It is important that applicants for both existing council tax discounts and the new reductions take ownership of their application for a reduction and recognise that they have an ongoing responsibility to keep their details up to date.

8. Consultation outcome

8.1 There has not been a consultation on these Regulations. However, there was a 10 week public consultation on localising council tax support from 2 August 2011 to 14 October 2011.The consultation paper is available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/8463/19510253.pdf

8.2 The Government response is available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/8467/2053712.pdf.

9. Guidance

9.1 The Department is intending to issue a guidance note on administrative matters relating to council tax reduction schemes, including information on the powers provided by this instrument.

10. Impact

10.1 There is no additional impact on business, charities or voluntary bodies, since the powers given to local authorities replace those which are due to be repealed in relation to council tax benefit. Businesses are to be required to assist in the detection and prevention of crime, through provision of relevant information held by them or provision of access to electronic records relating to particular individuals. The powers to require information are reduced in scope in comparison with those which currently may be used in relation to welfare benefits including council tax benefit because such powers may currently be used both for the detection of crime and for more general investigations into benefit entitlement.

10.2 The impact on the public sector is to provide powers for billing authorities to authorise individuals to require information for the purpose of investigating offences and to enable them to impose penalties in connection with council tax reduction schemes. These are being provided in place of powers which are available to them in relation to council tax benefit.

10.3 In both cases these regulations do not represent an impact on costs or savings since they replace powers which are being repealed in relation to council tax benefit. They provide an investigation and enforcement regime which can be carried out by billing authorities in line with existing resources and experience, and with which relevant businesses may already be familiar and have the appropriate systems and protocols in place. An Impact Assessment has not been prepared for this instrument for this reason. An Impact Assessment is available in relation to the proposals for localising council tax support and is available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/8465/2158675.pdf

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the scope of powers to require information from businesses was reviewed.

11.3 Some organisations such as credit providers, money transfer agents and similar may be small businesses, and could be required to provide information under the Regulations. Other small businesses may also be required to provide information, for instance, if they were an employer or employment agent/agency required to provide information about an employee or agency worker for the purpose of preventing, detecting and securing evidence of criminal offences. The provisions currently in place for investigations in relation to council tax benefit and which will continue to apply in relation to other welfare benefits allow authorities to require information which can be used to check someone's entitlement to particular benefits more generally, and not just for the purpose of investigating criminal offences. This ability to require information for purposes beyond those related to criminal offences has not been retained in relation to council tax reduction schemes. All businesses including small businesses will continue to be subject to a requirement to assist with crime prevention and detection. This retention was seen as proportionate and necessary.

12. Monitoring & review

12.1 The Government will monitor the impact of these Regulations as part of the ongoing maintenance of the council tax system.

13. Contact

13.1 Leon Bond at the Department for Communities and Local Government Tel: 030 344 44422 or email: Leon.Bond@communities.gsi.gov.uk can answer any queries regarding the instrument.