EXPLANATORY MEMORANDUM TO

THE LOCAL AUTHORITIES (CALCULATION OF COUNCIL TAX BASE) (ENGLAND) REGULATIONS 2012

2012 No. 2914

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 To ensure the calculation of the taxable capacity of billing and major precepting authority areas takes into account the new local council tax reduction schemes which local authorities will be required to implement under the Local Government Finance Act 2012 (the 2012 Act). These schemes will replace nationally administered council tax benefits from 1 April 2013.

2.2 These Regulations also consolidate the various amendments to the Local Authorities (Calculation of Council Tax Base) Regulations 1992 and make consequential amendments.

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

3.1 The Department has considered very carefully whether it should breach the 21 day rule and has regretfully concluded that it should.

3.2 The power under which the Regulations are made in the Local Government Finance Act 1992 had to be expanded via an amendment to that Act to accommodate one of the consultation options. This has been achieved through an amending provision in the 2012 Act. Royal Assent was not obtained until 31st October 2012.

3.2 We also had to wait for Royal Assent for the changes introducing the empty homes premium in the 2012 Act, as these Regulations take those changes into account.

3.3 The decision on whether to apply the changes required as a result of localising council tax support for a billing authority area to a local precepting authority area was the subject of consultation. This closed on 9th October and the Government needed to fully consider the responses to make its decision.

3.4 Whilst we accept that both Parliament and those with an interest in the Regulations should be given sufficient time in which to consider their effect we cannot delay the coming into force date for the Regulations because in order for billing authorities to undertake the process of calculating the council

tax base to the usual timeframe the Regulations must be in force by 30th November 2012.

4. Legislative Context

4.1 These Regulations contain rules for the calculation of the council tax base which is an amount used for the purpose of calculating council tax for an area. They replace (in consolidated form) the Local Authorities (Calculation of Council Tax Base) Regulations 1992 and subsequent amendments in relation to financial years beginning on or after 1 April 2013.

4.2 The council tax base is, for the purposes of calculating a billing authority's and a major precepting authority's council tax, the taxable capacity of an area or part of an area. The provisions on how council tax base should be calculated are to be found in sections 31B, 34, 35, 42B, 45 and 46 of the Local Government Finance Act 1992.

4.3 For each financial year starting on 1 April, a billing authority (a district council, a London borough council, 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) and a major precepting authority (county councils in areas where there is a county council and a district council, police authorities, metropolitan county fire and civil defence authorities, combined fire and rescue authorities and the Greater London Authority) must calculate the relevant basic amount of council tax by dividing their council tax requirement for a year by its council tax base. In brief, the council tax base is the aggregate of the relevant amounts calculated for each valuation band multiplied by the authority's estimated collection rate for the year. The estimated collection rate is the percentage of council tax payable which the authority actually expects to be paid i.e. the difference between what it ought to be paid in council tax and certain fund transfers and what it is likely to be paid.

4.4 The basis of liability for Council Tax is the valuation band to which a dwelling has been assigned. Valuation bands range from A to H, and the relative liabilities of each band are expressed in terms of Band D. Thus a Band A dwelling gives rise to a liability of 6/9ths that of a Band D, a Band E to 11/9ths, and a Band H to 18/9ths. The overall tax base of an area (amount 'T' in the legislation) is expressed in terms of the number of "equivalent Band D dwellings in the area", calculated by using these ratios. Amount 'TP' in the legislation is the authority's council tax base for part of an area

4.5 The regulations consolidated in these Regulations contain rules for billing authorities, major precepting authorities and local precepting authorities (parish, town or community councils, the chairman of a parish meeting where not formally constituted as a council, charter trustees, the sub-treasurer of the Inner Temple and the sub-treasurer of the Middle Temple) on how to calculate their council tax base.

4.6 A major precepting authority's council tax base for the year is the aggregate of the council tax bases calculated for that year by the billing authorities to which it issues its precepts. A billing authority must notify major precepting authorities which have the power to issue precepts to it and (since the Localism Act 2011) local precepting authorities of the amount calculated as its tax base within a period which is prescribed in regulation 8 of these Regulations. Regulations 9 and 10 provide for the calculations to be made by a major precepting authority where a billing authority fails to notify its calculation to them within the prescribed period. Regulation 11 does the same for local precepting authorities where a billing authority fails to notify its calculation to them within the prescribed period.

4.7 Billing authorities are required by section 89 of the Local Government Finance Act 1988 to establish and maintain a collection fund for the purpose of collecting council tax. All council tax must be paid into a billing authority's collection fund and payments made to a major precepting authority are made from that fund.

4.8 The changes in the Regulations are in response to the new provisions introducing council tax reduction schemes in the Local Government Finance Act 2012, which inserts a new section 13A into the Local Government Finance Act 1992. These provisions mean that the council tax base should be reduced to reflect the reductions in their council tax bills which will be received by households under local authorities' council tax reduction schemes. The Regulations are also in response to the new provisions in the Local Government Finance Act 2012 to allow local authorities to set a higher amount of council tax for long-term empty dwellings, which was inserted into the Local Government Finance Act 1992 in a new section 11B.

5. Territorial Extent and Application

This instrument applies to England.

6. European Convention on Human Rights

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

7. Policy background

Billing and major precepting authorities

7.1 The council tax base is, for the purpose of calculating a billing authority's and a major precepting authority's council tax, the taxable capacity of an area or part of an area. The amounts are calculated for each financial year and represent the estimated number of chargeable dwellings after allowing for reductions and discounts and adjusted to take account of the authority's estimated collection rate.

7.2 These Regulations change the formula in regulation 4 for calculating the council tax base so as to take into account any reductions which will be made under the new local council tax reduction schemes or increases for local premiums for long-term empty dwellings.

7.3 Under the existing council tax benefit system, billing authorities receive payment to cover 100% of the cost of council tax benefit paid. The council tax base is therefore unaffected by changes in council tax benefit granted because the billing authority does not forgo any council tax income from dwellings in receipt of council tax benefit.

7.4 However, under the new local council tax reduction schemes, the council tax base will be affected by whether a dwelling is in receipt of a council tax reduction awarded under the scheme, as the billing authority will be foregoing council tax income from those dwellings.

7.5 Local council tax support reductions need to be reflected in the calculation of the council tax base, in order to calculate the correct amount of band D council tax for the billing or major precepting authority area. If the council tax base did not reduce, authorities would set their council tax bills based on an incorrect level of taxable capacity. The outcome would be that those dwellings where an occupier was eligible to receive a reduction under the local authority's council tax reduction scheme would not be required to pay the full amount of council tax, the authority would not be able to collect the correct amount of council tax to meet its council tax requirement, and a deficit would be created on the collection fund.

Local precepting authorities

7.6 The Government set out in "Funding Arrangements Consultation", published 17 May 2012 that billing and local precepting authorities, such as parish and town councils, should work together to manage the impacts on local precepting authorities' Band D levels, as there is no mechanism to provide funding directly to local precepting authorities.

7.7 Billing authorities will instead receive the funding attributable to the local precepting authority element of council tax benefit. Billing authorities could pass down funding to the local precepting authority so the funding is taken into account when calculating the local precepting authority's council tax requirement.

7.8 However, as there would not be a statutory duty on billing authorities to pass on funding to local precepting authorities the Government issued a second consultation proposal that would provide greater certainty for the funding of parish and town councils. The second consultation proposed that the reduction in the council tax base, as a result of the introduction of council tax reduction schemes, should not be applied to the calculation of a local precepting authority's council tax base and special expenses.

7.9 It is clear from the responses to the second consultation that, whilst the proposal could provide parish councils with greater certainty of funding, there is concern that it could, over time, increase the financial pressures on billing authorities. In particular that excluding localised council tax support reductions from the council tax base for all specials items could impact on the calculation of the 'relevant basic amount of tax' as only some special items are included in that calculation.

7.10 The Government also considers that taking action centrally on the basis of an assumption that billing authorities will not pass down funding that is properly attributable to parish councils is contrary to the spirit of localism. Given the views of the respondents, the Government considers that greater weight should be given to the potential for the proposal to increase the financial burden on billing authorities and to ensure consistency with the spirit of the localism agenda. The Government is clear that the funding attributable to the parish precept has been provided to the billing authority and expects them to work with local parish and town councils to provide certainty over their funding. The Government will not, therefore, apply an unadjusted council tax base to the local precepting authority or to other special items.

Empty homes premium

7.11 The Local Government Finance Act 2012 supports the Government's commitment to delivering economic growth, decentralising control over finance and reducing the deficit. The Act includes provisions that will allow a billing authority to charge an empty homes premium of up to 50% of the council tax on property left unoccupied and unfurnished for two years or more.

7.12 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

8.1 Initially there was a 10 week public consultation on localising council tax support from 2 August 2011 to 14 October 2011. On 16 December 2011 the Government published its response to this consultation. The consultation paper is available at:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/8463/19510253.pdf

8.2 Chapter 5 of the Government response to the consultation on localising council tax support explained that, as a result of the funding proposals, the council tax base will be reduced. The Government response is available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/8467/2053712.pdf.

8.3 Secondly, there was an 8 week public consultation on the funding arrangements for localised council tax support from 17 May to 12 July. This is available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/8358/2146648.pdf.The Government response is available at: https://www.gov.uk/government/consultations/localising-support-for-council-tax-funding-arrangements.

8.4 The Government issued a further 6 week public consultation on the proposals to apply localised council tax support reductions to the council tax base for billing and major precepting authorities but to disapply the reductions for local precepting authorities. The consultation also sought views on whether billing authorities should be directed by the Secretary of State to transfer an estimate of the costs of reductions attributable to the parish area from the billing authority's general fund to its collection fund, and on how the council tax base should be calculated for other special items such as waste and transport levies.

8.5 The consultation ran from 28 August 2012 to 9 October 2012 and is available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/8337/2206075.pdf.

8.6 Although a public consultation, the subject matter was of a technical nature related to the calculation of council tax bases so it was primarily aimed at billing authorities and local precepting authorities. The amended regulations must be in force by 30 November to allow billing authorities to undertake the process of calculating the council tax base to the usual timeframe.

8.7 As the consultation built upon the previous funding arrangements consultation, is of a technical nature, and to allow for the responses to the consultation to be fully considered and the changes to legislation implemented by 30 November, the Government undertook a 6 week consultation period.

8.8 There were 266 responses to the consultation with 91% of respondents (97% of parish and town councils and 76% of billing authorities) that responded to the consultation question on whether council tax base for local precepting authorities should be calculated excluding localised council tax support reductions in favour, with only 7% of billing authorities against.

8.9 Those against felt that the proposal would unfairly protect parish councils from the 10% reduction in funding and the burden of funding the reduction would fall on the billing authority.

8.10 The majority (69%) of billing authorities that responded were not in favour of a transfer of the cost of the reductions from the general fund to the collection fund as they felt it would place an unfair financial burden on the billing authority. One billing authority highlighted a concern that excluding localised council tax support reductions from the council tax base for all specials items could impact on the calculation of the 'relevant basic amount of tax' as only some special items are included in that calculation.

8.11 The Government's response to the consultation is available at: https://www.gov.uk/government/consultations/localising-support-for-council-tax-council-tax-base.

8.12 The Government's consultation document on the *Technical Reforms to Council Tax, Empty Homes Premium: Calculation of Council Tax Base* was published on 11 September 2012 and closed on 22 October 2012. The document set out the Government's proposal on how the empty homes premium is to be included in the council tax base and the implication for its council tax requirement.

8.13 The consultation received 32 responses, 28 of which were from major precepting bodies. 88% of respondents agreed with the Government's proposed treatment of the empty homes premium in the calculation of the council tax base. Consequently, the Government's summary of responses report confirmed its intention to continue with its proposal as set out in the consultation document. The response is available at: https://www.gov.uk/government/publications.

9. Guidance

9.1 Chapter 5 of the Government's Statement of Intent set out the proposal for how the Council Tax Base Regulations will be amended and how to calculate the reduction required as a result of localising council tax support. The Statement of Intent is available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6091/2146581.pdf. No further guidance is necessary.

10. Impact

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

10.2 The impact on billing, major and local precepting authorities will be that the council tax base used to calculate band D council tax bills can be adjusted. This adjustment is necessary to reflect the fact that those in receipt of reductions will not be making payments of council tax and therefore do not form part of the taxable capacity of an area.

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

10.4 An impact assessment is available in relation to the proposals for the *Technical Reforms to Council Tax* at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/8435/2053909.pdf. The Impact Assessment sets out that the flexibilities on council tax introduced via the Local Government Finance Act 2012 have the potential to reduce or hold down council tax by an average of £20 a year on a Band D home.

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 this regulation as part of the ongoing maintenance of the system.

13. Contact

13.1 Relwyn Reffell at the Communities and Local Government Tel: 030 344 41249 or email: Relwyn.Reffell@Communities.gsi.gov.uk can answer any queries regarding the instrument.