

# **EXPLANATORY MEMORANDUM TO THE LOCAL AUTHORITIES (ALTERATION OF REQUISITE CALCULATIONS) (WALES) REGULATIONS 2012**

This Explanatory Memorandum has been prepared by the Local Government Finance and Public Service Performance Division and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

## **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Local Authorities (Alteration of Requisite Calculations) (Wales) Regulations 2012. I am satisfied that the benefits outweigh any costs.

*Carl Sargeant AM*

**Minister for Local Government and Communities**

22 February 2012

## **Description**

1. These Regulations amend the components of calculations set out in the Local Government Finance Act 1992 (“the 1992 Act”) which make provision as to how local authorities and major precepting authorities are to calculate their budget requirements and council tax.
2. Sections 32 and 43 of the Local Government Finance Act 1992 (“the 1992 Act”) set out respectively how a billing authority (county or county borough council) and a major precepting authority (police authority) are to calculate their budget requirements for a financial year. Sections 33 and 44 of the 1992 Act set out respectively how a billing authority (county or county borough council) and a major precepting authority (police authority) are to calculate the basic amount of their council tax.
3. Similar regulations are made each year following the approval by the House of Commons of the annual Police Grant Report and the approval by the National Assembly for Wales of the annual Local Government Finance Report (No. 2) (Final Settlement – Police Authorities).

## **Matters of special interest to the Constitutional and Legislative Affairs Committee**

4. These Regulations can not be made until after the Police Grant Report (England and Wales) 2012-2013 (“the Police Grant Report”), which is referred to in the Regulations, has been approved by the House of Commons and the Local Government Finance Report (No. 2) 2012-2013 (Final Settlement – Police Authorities), which is referred to in these Regulations, has been approved by the National Assembly for Wales. Due to the nature of police funding in England and Wales (where the settlement for the Welsh police authorities comprises three elements - Revenue Support Grant provided by the Welsh Government; Police Grant; and, Floor Funding provided by the Home Office) the Police Grant Report, has to be approved before the Local Government Finance Report can be laid before the National Assembly for Wales. The Police Grant Report was approved by the House of Commons on 8<sup>th</sup> February 2012 and the Local Government Finance Report (No. 2) 2012-2013 (Final Settlement – Police Authorities) by the National Assembly for Wales on 21<sup>st</sup> February 2012.
5. As soon as the Police Grant Report and the Local Government Finance Report (No. 2) 2012-2013 (Final Settlement – Police Authorities) have been approved and any levies have been issued to them, local authorities are able to calculate their budget requirements and set their council taxes.
6. Billing authorities must calculate their budget requirements and set their council taxes before 11<sup>th</sup> March and major precepting authorities must issue their precepts to billing authorities by 1<sup>st</sup> March. As such it is necessary for the Instrument to breach the 21 day rule to allow authorities time to make the necessary calculations within these statutory limits. The Presiding Officer has been notified of the breach by letter.

## **Legislative Background**

7. The powers enabling these Regulations to be made are contained in sections 32(9), 33(4), 43(7), 44(4) and 113(2) of the Local Government Finance Act 1992. These powers were transferred to the Assembly under the National Assembly for Wales (Transfer of Functions) Order 1999 and are now vested in the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006. These Regulations follow the Negative Resolution procedures.

## **Purpose and intended effect of the legislation**

8. These Regulations omit references to "relevant special grant" from sections 32, 33, 43 and 44 of the Local Government Finance Act 1992 for the financial year beginning 1<sup>st</sup> April 2011 since no special grants are being defined as relevant special grants for that financial year.
9. They also insert, for the financial year beginning 1<sup>st</sup> April 2012 for billing (in Wales, county and county borough councils) and major precepting authorities (in Wales, county and county borough councils and police authorities), the definitions of sums payable in respect of redistributed non-domestic rates and revenue support grant in sections 32 and 43 of the 1992 Act. This is to ensure that the amounts of redistributed non-domestic rates and revenue support grant excluded from the budget requirement calculation in those sections relate only to such amounts payable under the respective Local Government Finance Reports for the financial year beginning 1<sup>st</sup> April 2012. The same definitions also apply to sections 33 and 44 of the 1992 Act.
10. In addition, the Regulations define "floor funding" in section 43 of the 1992 Act by inserting subsection (6F) for the financial year beginning 1<sup>st</sup> April 2012 and further amend sections 43 and 44 of the 1992 Act, such that major precepting authorities in Wales must take into account any floor funding received from the Home Secretary for the financial year beginning on 1<sup>st</sup> April 2012 when making the required calculation for that year. The floor funding is added to ensure that the overall reduction in central funding for the Police Authorities compared to the last year is 6.7%. This is paid under section 31 of the Local Government Act 2003.
11. Finally, the Regulations (regulation 6) rectify a minor error by Parliamentary Counsel in the drafting of the Localism Act 2011, by substituting "Welsh Ministers" for "Secretary of State" in section 32(5)(b) of the 1992 Act.
12. By way of background to this amendment, in relation to England, the Localism Act 2011 makes a number of changes in relation to council tax, which include changes to the requisite calculations which authorities in England must make to determine their basic amounts of council tax for a financial year. Schedule 7 to that Act makes minor and consequential amendments to sections 32, 33, 43 and 44 of the Local Government Finance Act 1992 as a consequence of those changes, so that sections 32, 33, 43 and 44 continue to apply in relation to Wales only. Whitehall colleagues have contacted us to say that Parliamentary Counsel has noticed a minor error in the drafting of paragraph 10 of Schedule 7 to the Localism Act 2011, ie. a reference to the Secretary of State in section 32(5) of the Local Government Finance Act 1992 which should have been changed, but in

error was not, to the Welsh Ministers, and to request that the Welsh Ministers exercise the power in section 32(9) of the 1992 Act to modify section 32(5) in these Regulations.

13. Substituting a reference to Welsh Ministers for the Secretary of State in section 32(5) falls within what can be done in regulations under section 32(9)(b). The amendment is made at the request of Whitehall counterparts by whom it is accepted as uncontroversial. It does not make any substantive change to the Welsh Ministers' or Assembly competence.

## Implementation

14. It is proposed that this Instrument come into force on 28<sup>th</sup> February 2012. If this legislation is not implemented then the references above would be out of date. In addition, we could not ensure that all the central funding provided by the Home Office in the police settlement is taken into account by police authorities in setting their budget requirement and council tax for 2012-2013. The Local Authorities (Alteration of Requisite Calculations) (Wales) Regulations 2012 ensure that the police grant is taken into account in calculating the budget requirement, but not the additional "floor funding".

## Consultation

15. Although there has been no formal consultation on these Regulations, drafts of the provisions contained in the Local Authorities (Alteration of Requisite Calculations) (Wales) Regulations 2012 were sent to all Welsh local authorities and police authorities in Wales on 10<sup>th</sup> January 2012) notifying them of the proposed changes. Further all authorities affected will be issued a copy of the final Regulations after they are made by Welsh Ministers. No comments have been received from any of the Welsh local authorities.

## Regulatory Impact Assessment

### a. Options

16. Details of the proposed changes are set out in the purpose and intended effect of the legislation section. The options of making or not making the Regulations are:
  - **Do Nothing** - If the Regulations were not amended then the references to "relevant special grant" would be out of date, as would the definitions of sums payable in respect of redistributed non-domestic rates and revenue support grant in sections 32 and 43 of the 1992 Act. Further, we could not ensure that all the central funding provided by the Home Office in the police settlement is taken into account by police authorities in setting their budget requirement and council tax for 2012-2013.
  - **Make the Legislation** – Implementing the Regulations will ensure that the budget requirement is calculated correctly and consistently for 2012-2013 and for police authorities this will ensure consistency of approach with police authorities in England.

**b. Benefits**

17. The main benefits are that the Local Government Finance Act 1992 will be updated to ensure that the calculation of the budget requirement for 2012-2013 is undertaken consistently and correctly.

**c. Costs**

18. There are no financial implications to the Welsh Government as a result of these Regulations. The proposed allocations of revenue support grant to local authorities and police authorities are set out in the local government finance report each year, which falls to be approved by the National Assembly for Wales.
19. There are no financial implications to local authorities or any other sector arising from these Regulations.

**d. Competition Assessment**

20. The making of these Regulations has no impact on businesses, charities and/or the voluntary sector.

**e. Post implementation review**

21. There is an annual review of these Regulations