

EXPLANATORY MEMORANDUM TO THE COUNCIL TAX (ALTERATION OF LISTS AND APPEALS) (AMENDMENT) (WALES) REGULATIONS 2010

This Explanatory Memorandum has been prepared by the Local Government Finance Division and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 24.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Council Tax (Alteration of Lists and Appeals) (Amendment) (Wales) Regulations 2010. I am satisfied that the benefits outweigh any costs.

Carl Sargeant

Carl Sargeant, AM
Minister for Social Justice and Local Government

14 January 2010

Description

These Regulations amend Regulation 14 of the Council Tax (Alteration of Lists and Appeals) Regulations 1993, with the purpose of providing a limit of six years to the amount of time that an alteration to a valuation banding can be backdated. The purpose of this is to reduce the resource cost to local authorities of adjusting bills for many years as is currently the case, and will allow local authorities to place retention schedules on their files, in line with other government and public bodies. This will allow them to comply with the requirements of the Data Protection Act 1998 and the Freedom of Information Act 2000, and to not hold information on individual taxpayers for longer than necessary.

Matters of special interest to the Subordinate Legislation Committee

There are no matters of special interest to the Subordinate Legislation Committee.

Legislative Background

The proposed regulations are made under section 24 (alteration of lists) and 113 (orders and regulations) of the Local Government Finance Act 1992. Section 24 of the Local Government Finance Act 1992 permits the Welsh Ministers to make regulations related to the alteration by listing offices of valuation lists which have been compiled under Chapter II (Valuation Lists) of Part 1 of the 1992 Act and may therefore make provision to specify a date from which an alteration may take effect.

The Regulations will follow the negative procedure and therefore will be subject to annulment.

Purpose & intended effect of legislation

Currently, when the band of a property is reviewed and it is considered that there was an error in the compiled list as at 1st April 2005, then if it is decided that the property should have been included in a lower band, the reduction in council tax liability will be backdated to 1st April 2005. Increases take effect from the date the Valuation Office Agency (VOA) amends the list and are not backdated.

In a very small number of cases, it transpires that the property had been in the wrong band in the previous valuation list, which took effect on 1st April 1993, with a valuation date of 1991. In such cases the Valuation Office Agency (VOA) has been backdating the amendment to 1st April 1993 and local authorities are obliged to refund any overpayment of council tax; they

cannot claim any underpayment as increases only take effect from the date the list is amended. This is causing increasing problems for local authorities who have to adjust bills going back many years when several occupiers may be involved, and where Council Tax Benefit may have been claimed. This imposes significant resource costs on local authorities.

The draft regulations amend Regulation 14 of the Council Tax (Alteration for Lists and Appeals) Regulations 1993, which deals with the day from which an alteration has effect. The draft Regulations provide that where an alteration to the list is made to correct an inaccuracy and the inaccuracy is that the original list showed the valuation band as being too high, then the alteration has effect from the later of the day on which the alteration is entered in the list. This would be in line with other taxation regimes and is a reasonable length of time to require local authorities to keep records on individual properties and to make a backdated payment. This will reduce the amount of resources required to locate and contact all occupants of the property within the set period, allowing for efficiency savings, where such resources can be concentrated on more pressing matters. It would also mean a reduction in the cost faced by local authorities in terms of reducing the amount of excess council tax revenue to be paid back. The proposed regulation change would further allow local authorities to place retention schedules on their files, in line with other government and public bodies, so that they do not hold information on individual taxpayers for longer than necessary. They will help them comply with the requirements of the Data Protection Act 1998 and the Freedom of Information Act 2000.

Consultation

The proposal to alter the date from which a change to the valuation band takes effect was issued for public consultation on 1st September 2009 for a 9 week period. Over 200 recipients were issued with the consultation document, including local authority revenue officers, Welsh Housing Associations, various voluntary organisations and all Assembly Members. The document was also made available on the Welsh Assembly Government web site.

Responses to this consultation broadly supported the proposal, with no responses being received in opposition. A more detailed account of this consultation exercise and the responses received can be viewed in the Consultation Summary Document, at appendix B.

APPENDIX A

REGULATORY IMPACT ASSESSMENT

Regulatory Impact Assessment for the Council Tax (Alteration of Lists and Appeals) (Amendment) (Wales) Regulations 2010

OPTIONS

- I. To make no amendment to the Council Tax (Alteration of Lists and Appeals) Regulations 1993, and maintain the status quo. This would not allow any of the benefits identified below to be realised, and would continue to be a costly and inefficient process for local authorities.
- II. Make the amendments to the regulations as drafted in order to achieve the benefits realised below.

COSTS & BENEFITS

Benefits

The amended regulations would reduce the costs that local authorities face in cases where a property was noted to have been in too high a band previously. The backdated refund of the additional council tax paid would be limited to six years, reducing the expense the local authority would face, where in some cases it may be as large as 16 years additional refund that would have to be met. There is an opportunity cost associated with such financial obligations, and the reduction in expenses having to be made by local authorities will allow these funds to be used by the authority in other areas, where there may be greater urgency.

Not only are there financial benefits, but there are also further resource savings that the authority will benefit from. Local authorities are obliged to refund all the additional council tax that had been paid previously. It is possible that a property may change owners or occupants many times during this period, and so therefore did the liability for the council tax. In such cases each person liable must be identified and located in order to refund the additional council tax paid. This requires complex calculations (especially where Council Tax Benefit has also been awarded) and staff are required to dedicate a

large amount of time to do so. In reducing the time to which the alteration to banding takes effect, this will reduce the time commitment required from revenue staff within the authority, allowing them to concentrate their efforts on more pressing or urgent matters that may be of greater benefit to local taxpayers.

Revenue staff within Local Authorities would also receive the benefit of a more streamlined records management system. The current regulations require that authorities hold records for individual properties and taxpayers for the duration of the properties existence. In allowing council tax alterations to be restricted to six years, local authorities may destroy such personal files after six years of existence, which would provide the added benefit of ensuring revenue staff within local authorities adhere to the Data Protection Act 1998 and the Freedom of Information Act 2000.

In having sensible retention periods being applied to such records, the general public receive the benefit of not having personal information about themselves being held on record for an undetermined future period. Taxpayers could have the peace of mind of knowing such information about them will be securely destroyed or deleted after 6 years. This is of particular benefit in the current climate where there is a real public concern about the security of personal information.

Costs

There are inevitable costs in the form of foregone financial benefits, to those who were eligible for the repayment of additional council tax to be paid. It is difficult to quantify such costs as each individual case would be different, depending on the valuation band the property was assigned to, the local authority (and therefore the total council tax liability) in which the property was located, the length of time of the placement in the wrong banding and individual circumstances such as whether the person liable was in receipt of Council Tax Benefit. All of these individual factors will affect the amount of the backdated council tax that would otherwise have been reimbursed.

It must also be considered, that such cases are few in occurrence and the number of people to incur these costs would therefore be minimal. As the number of properties that are reviewed and find that they have been allocated to too high a valuation band is always being reduced, the number of cases in which these costs would have to be paid are also diminishing over time.

This alteration to legislation would generate no costs to businesses, local authorities, the voluntary sector or to the Welsh Assembly Government.

CONSULTATION

The proposed amendment was issued for public consultation on 1st September 2009 for a 9 week period. The responses and conclusions of this consultation can be viewed in the consultation summary document at Appendix B of the Explanatory Memorandum.

SUMMARY

The benefits to be derived from limiting the amendment of the backdating of council tax to 6 years from the date of alteration, as outlined above, support the introduction of the Council Tax (Alteration of Lists and Appeals)(Amendment) (Wales) Regulations 2010.

POST IMPLEMENTATION REVIEW

The impact of the Council Tax (Alteration of Lists and Appeals) (Amendment) (Wales) Regulations 2010, will be reviewed periodically at the Local Taxation Working Group. This group, which is a discussion forum attended by Revenue Officers, the Valuation Office Agency and other parties with an involvement in local taxation issues, will allow any issues surrounding the proposal to be brought forward and reviewed.

As the number of cases are minimal, it is not expected that a formal review process other than discussion at this forum will be required. The small number of cases would generate minimal evidence to justify a formal review, and as such allowing issues to be discussed informally at the working group would prove the more practical and efficient review method. On the basis of any issue arising, a decision could then be made at the working group as to whether a more formal or in-depth investigation and review would be required.

APPENDIX B

Consultation Summary Paper

Welsh Assembly Government

Proposal to amend the date from which a change to a Council Tax Valuation Band takes effect – Consultation Paper Summary of Responses

This document presents a factual analysis of the responses received to the Welsh Assembly Government Consultation Paper on a proposal to amend the date from which a change to a Council Tax Valuation Band takes place.

Introduction

On 1st September 2009, Social Justice and Local Government published a consultation paper seeking views on the proposal to amend the date from which a change to a Council Tax Valuation Band takes effect. In specific this proposal is to amend Regulation 14 of The Council Tax (Alteration of Lists and Appeals) Regulations 1993, to provide that where an alteration to the Valuation List is made to correct an inaccuracy and the inaccuracy is that the original list showed the valuation band as being too high, then the alteration has effect from the day 6 years earlier than the date when the alteration to the list was made.

This proposal would therefore result in an alteration to valuation banding to be backdated for no more than 6 years, and would bring this into line with other taxation regimes.

For situations in which an increase in valuation band takes effect, the Welsh Assembly Government proposes no change to the date from which it will take effect and it will continue to be the date at which the alteration was made to the list. The Welsh Assembly Government wishes to ensure that taxpayers remain protected from unexpected backdated demands for unpaid council tax.

The Consultation Document was sent to over 200 recipients including different interested organisations, key stakeholders and individuals. These included all 22 Welsh Local Authorities (to both Chief Executives and Revenues Officers), various Welsh Housing Associations, other organisations with a key interest and several voluntary organisations including Citizens Advice Cymru and Shelter Cymru. The document was also publicly made available on the Welsh Assembly Government web site, and all Assembly Members were informed of its release. A full recipient list can be viewed at Annex A.

A total of ten responses to the consultation were received. Seven of these responses were from Welsh Local Authorities and three from other organisations. All respondents were asked if they were content for their views to be made public, and a full set of these responses is available by e-mailing Gemma Smith. A summary of each individual response is available at Annex B.

We are grateful for all responses received. Each has been considered in full. This paper aims to reflect the views offered by respondents.

Overview

Nine of the ten respondents fully supported the proposal to amend the change to the effective date. The remaining respondent, a software supplier, neither agreed nor disagreed with the proposed alteration but raised a concern regarding the administration of the effective change if the proposal should come into practice. This is not a query that impacts on the consultation proposal.

Supporting Issues

A common theme of the responses was that in limiting the amendment of the list to 6 years from the change, resource costs to Local Authorities would be reduced. Not only would this reduce the amount of backdated council tax to be reimbursed, but it would also reduce the time and effort the Local Authority has to invest in identifying and locating the occupants of the dwelling for that time period. Under the current Regulations, for the very small number of cases where it becomes apparent that the dwelling has been in the wrong band in the previous valuation list, the Valuation Office Agency has a duty to backdate the amendment to as far back as 1st April 1993. Local authorities are therefore, in turn obliged to refund any overpayment of council tax. This requires a significant use of resources as past occupants of the dwelling may have to be traced and contacted. A dwelling may change hands a significant number of times in such a period. Further the alteration of banding may have an impact on benefit awarded etc, all of which may require complex calculation and a disproportionate amount of revenue staff time.

The limit to six years for the amendment for band reductions would prevent a significant allocation of resources to so few cases. The Valuation Office Agency would now have a duty to backdate the amendment to a maximum of 6 years from the date of the alteration (or since the actual change occurred which caused the property to move bands if less than 6 years previous). Local Authorities consequently would not be faced with considerable sums of council tax to be refunded and as suggested by one respondent, this would 'allow Billing Authorities to concentrate efforts on more relevant matters'.

Another dominant argument given to support the proposal is that it would also allow local authorities to operate a sensible file management system and place retention schedules on their files that they have been unable to do under the current Regulations. In limiting the backdating of amendment to 6 years, files and personal records on individual properties and taxpayers can be destroyed after 6 years. This will prevent information being held on any individual for longer than necessary and help local authorities to comply with the requirements of the Data Protection Act 1998 and the Freedom of Information Act 2000.

There was no opposition to the proposal. No responses or opinions were received from voluntary organisations or housing associations that may have given a view from the taxpayer's perspective.

Issues Raised

A query was raised from a Local authority regarding the inclusion of 'new entries' to the list under the proposal. 'New entries' are those properties which are newly included on the valuation list and should not be confused with newly built properties. It is a scarce occurrence, but in some instances, the Valuation Office Agency becomes aware of properties that were in existence but not included in the Valuation List. These properties are then added to the list and the local authority has the discretion to collect the outstanding council tax liability for these properties. It was queried in the consultation response whether the 6 year limit for backdating the alteration could be imposed on such 'new entries'.

Following legal advice, it was confirmed that Regulation 14(1) as currently in the 1993 Act provides that for any property missed off the list, the backdating of the council tax for that property will be to the date of when the property came into existence. However, it is at the discretion of the individual local authority in question, as to how long the council tax for that property should be backdated in these circumstances. If the Welsh Assembly Government was to include such properties in the amended regulations, it would be taking away this discretion from local authorities. Therefore, the proposal is decided not to include an amendment to the Regulations that would allow for a limit of the backdating of council tax to 6 years for such missed properties.

APPENDIX A

Recipient List

The Consultation Document was also made available on the Welsh Assembly Government web site

Local Authorities

Isle of Anglesey County Council	Merthyr Tydfil County Borough Council
Blaenau Gwent County Borough Council	Monmouthshire County Council
Bridgend County Council	Neath Port Talbot Council
Caerphilly County Borough Council	Newport City Council
Cardiff City Council	Pembrokeshire County Borough Council
Carmarthenshire Council	Powys County Council
Ceredigion County Council	Rhondda Cynon Taff County Borough Council
Conwy County Council	City of Swansea Council
Denbighshire County Council	Torfaen County Borough Council
Flintshire County Council	Vale of Glamorgan County Borough Council
Gwynedd Council	Wrexham County Council

Assembly Members

Leighton Andrews, AM	Mohammad Asghar, AM
Lorraine Barrett AM	Mick Bates AM
Peter Black AM	Nick Bourne AM
Eleanor Burnham AM	Angela Burns AM
Rosemary Butler AM	Alun Cairns AM
Christine Chapman AM	Jeff Cuthbert AM
Jane Davidson AM	Alun Davies AM
Andrew Davies AM	Andrew R T Davies AM
Jocelyn Davies AM	Paul Davies AM
Dafydd Elis-Thomas AM	Nerys Evans AM
Christopher Franks AM	Mike German AM
Brian Gibbons AM	William Graham AM
Janice Gregory AM	John Griffiths AM
Lesley Griffiths AM	Edwina Hart AM
Jane Hutt AM	Mark Isherwood AM
Irene James AM	Bethan Jenkins AM
Alun Ffred Jones AM	Ann Jones AM
Carwyn Jones AM	Elin Jones AM

Gareth Jones AM	Helen Mary Jones AM
Ieuan Wyn Jones AM	Trish Law AM
Huw Lewis AM	Dai Lloyd AM
Val Lloyd AM	David Melding AM
Sandy Mewies AM	Darren Millar AM
Jonathan Morgan AM	Rhodri Morgan AM
Lynne Neagle AM	Nick Ramsay AM
Jenny Randerson AM	Janet Ryder AM
Carl Sargeant AM	Karen Sinclair AM
Gwenda Thomas AM	Rhodri Glyn Thomas AM
Joyce Watson AM	Brynle Williams AM
Kirsty Williams AM	Leanne Wood AM

Other Organisations

Royal Institute of Chartered Surveyors (RICS Wales)	Welsh Audit Office
Institute of Revenues, Rating & Valuation (IRRV)	Rent Officers
Valuation Office Agency (VOA)	One Voice Wales
Department for Communities and Local Government	Information Commissioners Office (Wales)
Association for Public Service Excellence (APSE)	Public Service Ombudsman for Wales
Association of Retained Council Housing (ARCH)	Chartered Institute of Housing Cymru (CIH Cymru)
Welsh Local Government Association (WLGA)	Valuation Tribunals Service Wales (VTSW)
Chartered Institute of Public Finance Association (CIPFA)	One Voice Wales

Voluntary Sector

Age Concern Cymru	Bridgend Association of Voluntary Organisation (BAVO)
Citizens Advice Cymru	Communication Workers Union – South Wales
Community Regeneration Unit	Community Services, Vale of Glamorgan
Friends & Neighbours	Help the Aged
Shelter Cymru	Supporting Others through Voluntary Action
Wales Council for Voluntary Action	

Housing Associations

Aelwyd Housing Association Ltd	Cymdeithas Tai Dewi Sant
Baneswell Housing Association Ltd	Cymdeithas Tai Eryi Cyf
Bro Myrddin Housing Association Ltd	Family Housing Association (Wales) Ltd
Cymdeithas Taf Cantref Cyf	First Choice Housing Association Ltd
Cardiff Community Housing Association Ltd	Gwalia Housing Group Ltd
Cadwyn Housing Association Ltd	Cymdeithas Tai Hafan Cyf
Charter Housing Association (1973) Ltd	Hafod Housing Association Ltd
Cymdeithas Tai Clwyd Cydf	Linc-Cymru Housing Association Ltd
Clwyd Alyn Housing Association Ltd	Melin Homes Ltd
Cynon-Taf Housing Association Group	Merthyr Tydfil Housing Association Ltd
Mid-Wales Housing Association Ltd	Newport Housing Trust
Newydd Housing Association (1974) Ltd	North Wales Housing Association Ltd
Pembrokeshire Housing Association Ltd	Rhondda Housing Association Ltd
Seren Group Ltd	Swansea Housing Association Ltd
Taff Housing Association Ltd	United Welsh Housing Association Ltd
Valleys to Coast Housing Limited (V2C)	Wales and West Housing Association Ltd
Community Housing Cymru	

APPENDIX B

Individual Response Summary

The aim of this summary is to set out the views as expressed by the respondents as accurately as possible. It does not offer any opinion on those views. We are grateful for all responses received. Each has been considered in full.

Welsh Assembly Government consultation on a proposal to amend the date from which a change to a council tax valuation band takes effect

No	Respondent	Date	Comments
1	<p>Graeme Maychell, Revenues Product Consultant, Northgate Public Services</p> <p><i>Northgate Public Services is a provider of software to Local Authorities in Wales. England and Scotland for the administration of Council Tax and Business Rates.</i></p>	03/09/09	<p>Schedules of alterations containing changes to Council Tax bands are automatically uploaded onto the Northgate application. The upload process makes the necessary change to the property valuation record and rebills any affected accounts. Any change to the format of the electronic schedule of alterations will result in changes to the software. Therefore we would request, if this proposal is accepted, that the format of the electronic schedule of alterations is not changed and the effective date of change is simply specified as the date the band should be changed from.</p>
2	<p>Steve Merritt Group Director (Corporate Services)</p> <p>Rhondda Cynon Taf County Borough Council</p>	08/09/09	<p>Rhondda Cynon Taf CBC fully supports this development. At present, alterations made to the 1993 list, while relatively few in number, require significant levels of resources to complete. The alterations can result in accessing archived records, recalculation of benefit claims and refunds of overpaid council tax stretching back sixteen years (in the extreme cases).</p> <p>The imposition of a six year limit will eliminate much of this work and allow Billing Authorities to concentrate efforts on more relevant matters.</p>
3	<p>Mr Eryl Rowlands</p> <p>Conwy County Borough Council</p>	11/09/09	<p>Conwy County Borough Council fully support the proposal to limit to six years the amount of time that the effect of an alteration to a council tax valuation band can be backdated for the reasons outlined in the consultation paper at</p>

			<p>pt. 7 and 8. However, the main reason why the change is supported is covered at pt.8 of the consultation paper. As local authorities at present are failing to comply with the requirements of the Data Protection Act 1998:-</p> <p>Personal data held for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes.</p>
4	<p>Gary Watkins Revenue Services Manager</p> <p>Cardiff Council</p>	25/09/09	<p>Cardiff Council would like to thank you for giving it the opportunity to comment on the Consultation Paper and would like to confirm that it fully supports the proposal outlined in the paper of restricting the effective date of a banding reduction to a maximum of six years from the date the list is altered.</p>
5	<p>Deb Smith Deputy Head of Revenues & Benefits</p> <p>Torfaen County Borough Council</p>	25/09/09	<p>In respect of the proposed legislative change to Council Tax Effective Dates, this is a very welcomed proposal. You have clearly identified all the issues and difficulties that we have encountered with the current legislation on effective dates.</p> <p>We fully support this proposal.</p>
6	<p>Phillip Round</p> <p>Wrexham Council</p>	26/10/09	<p>Thank you for the consultation paper on the Proposal to amend the date from which a change to a council tax valuation band takes effect.</p> <p>Wrexham would support the proposals.</p> <p>I note that the examples just relate to reductions in Bands going back to 1993, however there has been a case where the band was missed on a property in a remote country location and this also went back to 1.4.93 raising considerable charges.</p> <p>I assume that this amendment to Act will cover such cases as well.</p>
7	<p>David Barns Revenues & Cash Collection Manager</p> <p>Flintshire County Council</p>	08/10/09	<p>At a recent meeting of the Flintshire Executive, members agreed to support the proposed changes.</p>

8	<p>Nigel T Smith Revenue & Benefit Manager</p> <p>Vale of Glamorgan Council</p>	22/10/09	<p>The Vale of Glamorgan Council is in favour of the proposed amendment to the legislation as set out by the consultation document.</p> <p>As increases in banding cannot be taken further back than the date at which the alteration was made to the list then in fairness the backdating of reductions to 6 years is an equitable and reasonable amendment. Increases take effect from the date the VOA amends the list and are not backdated. This protects the taxpayer from the possibility of receiving an unexpected backdated demand for council tax.</p> <p>I would also agree that information should not be kept on individual taxpayers for longer than necessary to comply with the requirements of the Data Protection Act 1998 and the Freedom of Information Act 2000. As stated in the consultation this measure would be in line with other taxation regimes and is considered a reasonable length of time to require local authorities to keep records on individual properties and to make a backdated payment.</p>
9.	<p>Dave Chapman Chairman, IRRV Local Taxation and Revenues Faculty Board</p> <p>Institute of Revenues Rating & Valuation</p> <p><i>The IRRV is the professional body concerned with all aspects of local taxation in the United Kingdom and has members within both the private and public sectors.</i></p>	03/11/09	<p>We are in support of the proposals outlined in the paper. It would appear that this is a pragmatic solution to the problem faced by some billing authorities in adjusting bills and tracing council taxpayers in respect of the council tax bills in question, going back over many years.</p>
10	<p>John C. Harper FRICS Policy Officer</p> <p>RICS Wales</p>	03/11/09	<p>We note the proposal to amend regulation 14 of the Council Tax (Alteration of Lists and Appeals) Regulations 1993 which will effectively reduce overpayment of Council Tax caused by inaccurate banding to a period of 6</p>

<p>RICS Wales is the principal body representing professionals employed in the land, property and construction sector and represents some 4000 members. As part of our Royal Charter we have a commitment to provide advice to the Government of the day and in doing so we have an obligation to bear in mind the public interest as well as the interest of members.</p>		<p>years earlier than the date when the alteration to the list is made.</p> <p>RICS Wales has discussed this matter with rating members and there is a consensus that the proposal is fair and reasonable in that it frees local authorities from holding records over extended periods of time when a property may have changed hands several times to accommodate “ a very small number of cases”. It is also noted that this would be “in line with other taxation regimes”. It is presumed that this is a reference to the Limitation Act.</p> <p>The overall proposal is supported as a sensible step.</p>
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