

Explanatory Memorandum to The Council Tax and Non-Domestic Rating (Amendment) (Wales) Regulations 2011

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 and Non-Domestic Rating (Amendment) (Wales) Regulations 2011. I am satisfied that the benefits outweigh any costs.

Carl Sargeant

Minister for Social Justice and Local Government

21 February 2011

1. Description

- 1.1. The Council Tax and Non-Domestic Rating (Amendment) (Wales) Regulations 2011.

2. Matters of special interest to the Constitutional Affairs Committee

- 2.1. There are no matters of special interest.

3. Legislative background

- 3.1. The Welsh Ministers make these Regulations in exercise of the powers conferred on the Secretary of State by:

- (i) sections 143(2) and (3) and 146(6) of, and paragraphs 1 and 3(3) of Schedule 9 to, the Local Government Finance Act 1988, and
- (ii) section 113(2) and (4) of, and paragraphs 1, 2, 3, 17 and 20 of Schedule 4 to, the Local Government Finance Act 1992.

- 3.2. The powers of the Secretary of State were vested in the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999. The functions of the National Assembly for Wales were vested in the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006.

- 3.3. This statutory instrument follows the negative resolution procedure.

4. Purpose & intended effect of the legislation

- 4.1. This statutory instrument will for the first time impose maximum amounts that may be charged to the debtor during the debt recovery process for council tax and non-domestic rates(NDR) at the following stages of debt recovery:

- Initial summons;
- Granting of a Liability Order.

It will also amend the maximum amounts that may be charged to the debtor at the following stages;

- Following application for committal; and
- Following application for an arrest warrant.

Summons/ Liability Order

- 4.2. When council tax payers and non-domestic rates payers fail to make their payments as scheduled in their demand notices, they will receive reminder notices, second reminder notices and final notices. Should they still fail to pay the amount outstanding or come to an agreement with the local authority, a summons may be issued for their appearance at the Magistrates Court. The issue of a summons adds a cost to the debtor's account.
- 4.3. If the debtor is unable to pay the balance in full prior to the court hearing date they are required to attend court. The Council will request that the Magistrates' Court grant a liability order for the debt in question. This procedure will incur a further cost for the debtor.
- 4.4. The Council Tax (Administration and Enforcement) Regulations 1992 (SI 1992/613) and the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 (SI 1989/1058) provide that the costs added to the debtor's account at these two stages should cover the costs that are reasonably incurred by the authority. However, the amount that is charged varies considerably between local authorities in Wales so taxpayers in some authority areas may pay up to twice as much as those in other areas.
- 4.5. These regulations will specify that no more than £70 may be charged to the debtor in total for the issue of a summons and a liability order. This will allow some flexibility for local authorities to set charges at the two stages that are proportionate to the amount of administration required to process the debt while also providing fairness and consistency for individual debtors across Wales.

Committal / Arrest Warrant

- 4.6. Once a liability order has been obtained from the court there are a number of steps open to the local authority for recovery of the debt e.g. attachment of earnings or benefits, charging orders, application for bankruptcy, use of bailiffs to levy distress. When recovery action fails to result in payment of the debt, then the last resort is for the local authority to make an application for Committal, which specifies a court hearing date for the case to be heard by the Magistrates' Court.
- 4.7. The court fees payable by the local authority to the Magistrates' Court, when making a committal application, were increased significantly by the Ministry of Justice in 2009/10. Court fees for committal applications are now:
 - £240 for a committal application (previously £25);
 - £75 for an arrest warrant with bail (previously £25); and
 - £75 for an arrest warrant without bail (previously £40).

- 4.8. Where the case proceeds to court and the Magistrates find the debtor guilty of wilful refusal or culpable neglect to pay their Council Tax or NDR, the court may award costs against the debtor so that the commitment warrant includes an amount to recover the costs incurred by the local authority in making the committal application, plus a reasonable amount for administration costs.
- 4.9. However, in cases where the debtor pays outstanding sums after an application for a warrant for committal has been made but before it has been issued, or when a case is withdrawn for any other reason, regulations prescribe limits on the amount that the local authority can recover from the debtor in respect of costs that the authority has incurred.
- 4.10. In Wales, these limits were set in 1994 (see Table 1 below) and have not increased since then. At the time, they covered the full cost of the court fees and a reasonable amount for the administration costs incurred by the Local Authority.
- 4.11. These regulations will increase the maximum amounts that may be recovered from the debtor to:
- £305 for a committal application (£240 for court fees and £65 to cover administration costs); and
 - £145 for an arrest warrant with or without bail (£75 court fees and £70 to cover administration costs).
- 4.12. This will enable local authorities to recover the costs of court fees and a reasonable amount for administration costs, taking into account the effects of inflation on administration costs since 1994.
- 4.13. If these regulations are not made,
- council tax and NDR debtors will continue to be subject to a wide variation in charges for the first stages of debt recovery, depending on where they live, and
 - local authorities will not be able to recover the costs incurred in taking persistent non-payers to court for a committal hearing.

5. Consultation

- 5.1. A consultation on these proposals took place between 1 July and 23 September 2010. The consultation document was sent to all 22 Welsh Local Authorities (to both Chief Executives and Revenues Officers), the Welsh Local Government Association, the Department for Communities and Local Government, the Ministry of Justice, the Valuation Office Agency and the Valuation Tribunal for Wales, to

consumer organisations including Citizens Advice Cymru and Credit Unions, and to other voluntary organisations. The document was also made publicly available on the Welsh Assembly Government web site and all Assembly Members were informed of its release. Results from the consultation are included below.

PART 2 – REGULATORY IMPACT ASSESSMENT

Options

1. Do nothing:
 - Council tax and NDR debtors will continue to be subject to inconsistency and unfairness because a wide variation in charges for the first stages of debt recovery will continue. Current practice is that the costs added to the debtor's account at these stages is agreed with local magistrates and is intended to cover the costs that are reasonably incurred by the local authority. Currently, the amount that is charged varies significantly between magistrates court areas in Wales so taxpayers in some authority areas may pay as much as twice the amount as those in other areas.
 - Also, local authorities will not be able to recover the costs incurred in taking persistent non-payers to court for a committal hearing, putting pressure on local authority budgets and upward pressure on council tax. Existing legislation specifies the maximum amounts that may be charged to the debtor for committal applications. The sharp increase in court fees means that this maximum is now wholly inadequate to cover the cost incurred by local authorities.

2. Adjust the maximum amounts as proposed so that
 - no debtor pays more than £70 in charges in total for the first two stages of recovery i.e. the issue of a summons and the granting of a liability order by the magistrates court; and
 - the maximum amounts that may be recovered from the debtor for a committal application should be increased to £305 (£240 for court fees and £65 to cover administration costs); and for an arrest warrant with or without bail should be increased to £145 (£75 court fees and £70 to cover administration costs).

This will enable local authorities to recover the costs of court fees and a reasonable amount for administration costs, taking into account the effects of inflation on administration costs since 1994, when the maximum amounts were introduced.

Costs & Benefits

Costs

3. There will be no cost to the Assembly Government, business or the voluntary sector because of this change to legislation.

4. Six local authorities would suffer a reduction in income as a result of the setting of maximum amounts that may be recovered from debtors at the initial stages of debt recovery. These local authorities currently charge more than the average amount across Wales, ranging from £73 to £103. Sixteen local authorities currently charge £70 or less and would not be affected by the changes.
5. In relation to the increased maximum amounts that may be charged at the committal stage, these regulations would lead to an increased cost to debtors relative to the do nothing scenario. Currently debtors are not required to pay the full costs billing authorities incur in pursuing these debtors through the courts. The changes would enable authorities to recover the court fees and reasonable administration costs.
6. The HM Courts Services' Intranet Fees Accounting System (IFAS) captures information on the number of committal applications issued and made. For 2008-09, of 1,084 applications issued in Wales, 40 (3.7%) had committal orders made. Of the remaining 1,044 it is not possible to identify how many relate to either the debtor paying the outstanding sums (in which case authorities would aim to recover their costs from the debtor) or how many were withdrawn by the billing authority (in which case authorities would not recover their costs from the debtor). The maximum number of debtors that would be affected by these regulations, if the number of committal applications remain constant, is therefore 1,044.
7. The amount by which the maximum amount is set to increase is significant, but that is a consequence of the steep rise in court fees, something over which billing authorities or the Assembly Government have no control. The Ministry of Justice consulted on the increase in court fees in 2008-09, and proceeded with their proposals on the basis that the party whose actions resulted in the case coming to court should be responsible for the full costs of court action.
8. Table 1 below shows the maximum costs billing authorities in Wales are currently able to pass on to debtors.

Table 1: Current maximum charges as set in 1994

	Court Fees (based on old fees structure)	Administrative Costs	Maximum Charge
For the committal application i.e. issue of initial warrant	£25	£30	£55
For the issue of an arrest warrant with bail	£25	£30	£55
For the issue of an arrest warrant without bail	£40	£30	£70

9. The Magistrates' Courts Fees (Amendment) Order 2009 (SI 2009/1496) increased the fees for committal in council tax cases. The Magistrates' Court Fees (Amendment) Order 2010 (SI 2010/731) introduced similar increases in fees for committal in business rates. An issue for a warrant (previously £25) is now referred to as an application for a warrant for commitment (£240). The fees for an issue of an arrest warrant with bail (£25) and for the issue of an arrest warrant without bail (£40) are both now referred to as an application for an arrest warrant (£75). Table 2 below shows the fees for these applications under the new schedules. These have been charged to local authorities in council tax cases since July 2009, and in NDR cases since April 2010.

Table 2: New maximum charges

	Court Fees	Administrative Costs	Maximum Charge
An application for a warrant for commitment	£240	£65	£305
An application for an arrest warrant	£75	£70	£145

10. The impact on individual debtors therefore is an increase in charges from £55 to £305 for an application for commitment and an increase from £55 / £70 to £145 for an application for an arrest warrant.

Benefits

11. Individual debtors would be subject to a fairer, more consistent charging regime at the initial stages of recovery. In 2008-09, the last year for which figures are available, 65,349 taxpayers in Wales received Liability Orders for non-payment of council tax or business rates. Figures for individual authorities are not available but taxpayers in six out of the 22 authorities in Wales would have their charges reduced. This represents approximately 30% of taxpayers in Wales.
12. In respect of committal proceedings, these regulations would allow billing authorities to recoup their costs from debtors, and ensure that the increased burden of court costs is not transferred to billing authorities' budgets. The administrative costs for committal proceedings that billing authorities in Wales are allowed to pass on to debtors have not increased since 1994. The increases here are in line with Retail Price Index increases since then and mean that billing authorities in Wales would be able to recoup the same level of administrative costs as those in England.

Recommended Option

13. The recommended option is that:
- (a) in order to provide fairness and consistency, maximum amounts should be set in respect of liability orders for council tax and NDR, and

(b) in order to allow local authorities to recoup their costs in respect of committal applications, taking into account the increase in court fees and the effect of inflation on administrative costs, the maximum amounts should be increased.

Consultation

14. A summary of consultation responses is attached at Annex A. As a result of the consultation a slight change was made to the proposals so that a combined maximum amount of £70 should be charged to the debtor for the issue of a summons and a liability order, rather than a separate maximum amount of £35 for each of these stages. There was strong opposition to the setting of the same maximum amount of £35 for the initial summons stage and on the granting of a liability order. Several local authorities pointed out that the greatest amount of work is incurred before the initial summons is issued and argued that the charge should be higher at this stage. As a result, it was decided that an overall maximum for these two stages would be preferable.

Post implementation review

15. The Welsh Assembly Government will review the maximum charges in 2014 or when the Ministry of Justice next increases relevant court fees, whichever is earlier. The Assembly Government will review using the amount required in court fees and the Retail Price index for increasing the amount that may be charged by billing authorities for administrative costs.