

EXPLANATORY MEMORANDUM TO
THE COUNCIL TAX (DISCOUNT DISREGARDS) (AMENDMENT) ORDER
2011

2011 No. 948

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.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

2.1 The purpose of this Order is to allow persons who have a sole or main residence in England or Wales and are undertaking a full-time course of education with an educational establishment situated in another Member State of the European Union to be treated as full-time students under the Council Tax (Discount Disregards) Order 1992 (the Discount Disregards Order). This Order also clarifies the status of distance-learning students so that it is clear they are capable of being considered persons undertaking a full-time course of education for the purposes of the Discount Disregards Order. Provided certain other conditions are satisfied this will enable such persons to benefit from the differential treatment that students receive for council tax purposes.

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

3.1 None

4. **Legislative Context**

4.1 Council tax is payable in respect of any dwelling which is not an exempt dwelling. These dwellings are referred to as 'chargeable dwellings' in Part 1 of the Local Government Finance Act 1992 (the 1992 Act). The person who is liable to pay council tax in respect of any chargeable dwelling is generally determined in accordance with section 6 of the 1992 Act. In essence, if there is a resident of a chargeable dwelling that person will be liable for council tax, but otherwise liability will fall on the owner of the dwelling.

4.2 Section 11 of the Local Government Finance Act 1992 provides certain council tax discounts. In determining the number of residents of a dwelling for these purposes certain persons are not counted, or in the words of the 1992 Act certain persons are 'disregarded'. Schedule 1 to the 1992 Act has effect for determining who must be disregarded for the purposes of discount. In respect of students, paragraph 4 (1) of Schedule 1 to the 1992 Act provides (in

particular) that a person must be disregarded for the purposes of discount on a particular day if on the day the person is a student and such conditions as may be prescribed by order made by the Secretary of State are fulfilled.

4.3 If two or more persons are liable for council tax in respect of a chargeable dwelling, they are jointly and severally liable for council tax in respect of the dwelling (see section 6(3) of the 1992 Act). In addition, by virtue of section 9 of the 1992 Act spouses, civil partners and persons living together as husband and wife or civil partners are jointly and severally liable to pay council tax in certain circumstances. Section 74 of the Local Government Act 2003 made amendments to sections 6(4) and 9(2) of the 1992 Act so that this principle does not apply where a person falls to be disregarded for the purposes of discount by virtue of paragraph 4 (students etc.) of Schedule 1 to the 1992 Act.

4.4 The meaning of student in paragraph 4 of Schedule 1 to the 1992 Act is also relevant for determining whether a dwelling is exempt under the Council Tax (Exempt Dwellings) Order 1992 ('the Exempt Dwellings Order'). In summary, by virtue of Class M and N of article 3 of the Exempt Dwellings Order a hall of residence and a dwelling which is occupied by relevant persons is an exempt dwelling for the purposes of council tax. "Relevant person" for these purposes includes a student and a student's spouse, civil partner or dependent being in each case a person who is not a British citizen (and is prevented, by the terms of their leave to enter or remain in the United Kingdom, from taking paid employment or from claiming benefits), and "student" means a person falling within the definition of student in paragraph 4 of Schedule 1 to the Act.

4.5 The meaning of student for the purposes of paragraph 4 of Schedule 1 of the 1992 Act is prescribed in article 4 of the Discount Disregards Order. This Order amends the definition of 'student' in the Discount Disregards Order so that it extends to a person undertaking a full-time course of education in a Member State in certain circumstances and to clarify the status of distance-learning students.

5. Territorial Extent and Application

5.1 This instrument extends to England and Wales.

6. European Convention on Human Rights

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

7. Policy background

- What is being done and why

7.1 Since council tax was introduced in 1993 the provision of higher and further education has changed greatly, in particular:

- greater numbers of students are undertaking courses of further and higher education;
- distance learning has increased and the advent of the internet has changed the way in which many distance learning courses are being offered; and
- greater numbers of students are attending courses of higher education at establishments in other Member States of the European Union ('Member States').

7.2 The amendments are intended to ensure the legislation reflects the original policy intention of allowing those undertaking a full time course of education to be treated as students for council tax purposes and to reflect the changes in the way in which higher and further education is provided. The amendments are also necessary to ensure the UK complies with EU obligations. Details of the amendments to the Discount Disregards Order are provided below:

Distance Learning Students

7.3 Distance-learning students are those students who do not physically attend an educational establishment for the relevant periods specified in paragraph 4 of Schedule 1 to the Discount Disregards Order, but who are otherwise required to undertake periods of study, tuition or work experience which in practice means they are full-time students. To clarify the status of distance learning students, paragraphs 3 and 4 of Schedule 1 to the Discount Disregards Order have been amended to replace references to attending a course with references to undertaking the course. This is so it is clear that a person is not required to physically attend an educational establishment to be considered to be undertaking a full-time course of education and they are therefore capable of being considered a student for council tax purposes.

Students undertaking a full-time course of education with an establishment situated in another Member State

7.4 One of the conditions for a person to be considered to be undertaking a full-time course of education on a particular day under the Discount Disregards Order is that on that day he is enrolled for the purpose of attending such a course with a prescribed educational establishment within Part 1 of Schedule 2 to the Order. With some exceptions, the "prescribed educational establishments" referred to in Schedule 2 are defined by reference to their location in one of the countries of the United Kingdom. In particular, the 'catch-all' categories for institutions established wholly or mainly for the purposes of providing courses of further or higher education are defined by reference to their situation in England, Scotland, Wales or Northern Ireland (see, in particular, paragraph (1) (f) and (g) of Schedule 2 to the Discount Disregards Order).

7.5 The amendments made to the Discount Disregards Order are intended to ensure that a person undertaking a full-time course of education within an establishment situated in another Member State is also capable of being considered a student for council tax purposes (provided certain other conditions are satisfied). To achieve this the definition of “prescribed educational establishment” in paragraph 1 of Part 1 of Schedule 2 to the Discount Disregards Order is amended so that establishments are defined by their purpose (solely or mainly to provide courses of further or higher education) and their situation in a Member State. As a result it has also been necessary to amend paragraph 2 of Part 1 of Schedule 2 to the Discount Disregards Order to include new definitions of the terms ‘further education’, ‘higher education’ and ‘relevant authority’.

7.6 The definition of “further education” is based on the definition in section 2(3) of the Education Act 1996, amended to refer to the compulsory school age in the relevant Member State. The definition of “higher education” is based on the definition in Schedule 6 to the Education Reform Act 1988. However, it has not been possible to use that definition in full, since it contains references (such as references to the Higher National Diploma and Higher National Certificate) which are purely domestic and so have no general application to other Member States. Instead, paragraph (c) is provided which defines these other qualifications in a more generic way.

7.7 The test adopted is that the qualification is one which is regarded by the relevant authority as being equivalent to a qualification (or part of a qualification) mentioned in paragraph (a) or (b). The ultimate arbiter of whether a course is equivalent to a first or higher degree for these purposes is the “relevant authority” which is defined as the authority which in relation to the Member State has sole or primary responsibility for the regulation of higher education. Separate guidance on how local authorities will determine this is available in the House of Commons library.

Consolidation

7.8 The amendments contained in the Order are minor changes, mainly to definitions and conditions. The Department does not consider it necessary to consolidate the Order being amended

8. Consultation outcome

8.1 On 4 August 2010, the Government launched a 6-week public consultation inviting comments on the proposed amendments. Given the need to make rapid progress the Government decided that a period of six weeks should be adopted. Ministers considered that this time-period would be sufficient to enable local authorities to comment in a meaningful way both on the changes which are proposed and the supporting draft guidance.

8.2 The consultation was issued to over 300 recipients, including the Local Government Association, the Chartered Institute of Public Accountancy and Finance, the National Union of Students, the Department for Business,

Innovation and Skills and local authorities. The consultation closed on 14 September 2010.

8.3 The Department received 28 responses to the consultation. The low number of responses was expected given that amendments are unlikely to affect significant proportions of students in individual local authority areas. Most respondents (94 percent) agreed with the amendments in this Order and associated guidance. The consultation document and a detailed analysis of the responses can be found at the following link:

<http://www.communities.gov.uk/localgovernment/publications/consultations/>

9. Guidance

9.1 The Department has published informal guidance via a Council Tax Information Letter (CTIL), including notification of the published summary of consultation responses and when amendments are laid. The CTIL is available at the following link:

<http://www.communities.gov.uk/localgovernment/localgovernmentfinance/counciltax/informationletters>

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is nil.

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

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring and review

The Department for Communities and Local Government will monitor the impact of these changes through informal consultation with key business partners such as the Local Government Association (LGA), the Institute of Revenues Rating and Valuation (IRRV), the Chartered Institute of Public Finance and Accountancy (CIPFA) and the National Union of Students (NUS).

13. Contact

Mumuna Mumuni at the Department for Communities and Local Government Tel: 0303 444 2093 or email: mumuna.mumuni@communities.gsi.gov.uk can answer any queries regarding the instrument.