

EXPLANATORY MEMORANDUM TO
THE COUNCIL TAX (EXEMPT DWELLINGS) (AMENDMENT)
(ENGLAND) ORDER 2006

2006 No. [2318]

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government (DCLG) and is laid before Parliament by Command of Her Majesty.
2. **Description**
 - 2.1 This Order substitutes Class G of the Council Tax (Exempt Dwellings) Order 1992 (SI 1992/558) ('the 1992 Order') so as to ensure that unoccupied dwellings are exempt from council tax where a 'planning condition' prevents occupancy. 'Planning condition' means a condition which is imposed by any planning permission granted or deemed to be granted under Part 3 of the Town and Country Planning Act 1990.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None
4. **Legislative Background**
 - 4.1 Under section 4 of the Local Government Finance Act 1992 the Secretary of State has powers to prescribe by order classes of dwellings that are exempt from paying council tax in England. The 1992 Order sets out the classes of dwellings that are exempt from the requirement to pay council tax.
 - 4.2 Class G of the 1992 Order currently provides (in part) that a dwelling is exempt if it is unoccupied and its occupation is prohibited by law. The Order amends Class G to ensure that dwellings are exempt from council tax where a planning condition prevents occupancy.
5. **Extent**
 - 5.1 This instrument applies to England only.
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

- 7.1 The Order amends the 1992 Order to ensure that unoccupied dwellings are exempt from council tax where a planning condition prevents occupancy.
- 7.2 Under the 1992 Order there are various classes of dwellings on which no council tax is payable because they are exempt. Class G provides (in part) that a dwelling is exempt if it is unoccupied and its occupation is prohibited by law.
- 7.3 Currently this provision is not applied consistently by local authorities in cases where the occupation of an unoccupied dwelling is prevented by a planning condition. Some authorities grant an exemption under Class G in these circumstances and others do not. This issue is particularly relevant to chalet owners as their chalets are often subject to planning conditions which prevent occupancy for a period each year, usually a set period in the winter.
- 7.4 Although analysis suggests that this only affects a few thousand dwellings, DCLG considers that this situation is unsatisfactory and requires clarification. DCLG's view is that on the grounds of fairness an exemption should apply for the period that a planning condition prevents occupancy. DCLG therefore consulted on an amendment that would ensure that legislation reflected that policy objective. The money lost from granting the exemptions should be substantially less than £1m per year for the whole on England.
- 7.5 The consultation paper, including a draft statutory instrument, was published on 21 December 2005. The paper was sent to the British Holiday and Home Parks Association, the National Park Homes Council, the National Association of Park Home Residents, Independent Park Home, Park Home Resident Action Alliance, Park Home Legal Services, Park Home and Holiday Caravan Magazine, all English local authorities, the Local Government Association, the Association of London Government, the Valuation Office Agency, the Chartered Institute of Public Finance and Accountancy, the Institute of Revenues, Rating and Valuation, and the Citizens Advice Bureau. It was also made available on the ODPM web-site. The paper can currently be found on the DCLG website at the following link:

<http://www.odpm.gov.uk/index.asp?id=1162772>

The consultation period closed on 17 March 2006.

- 7.6 DCLG received 37 representations in response to the consultation paper. The majority of responses were from local authorities, although representations were also received from professional bodies, organizations representing caravan owners, and members of the public.

- 7.8 A clear majority of respondents - 28 - agreed that the legislation should be amended to ensure that an exemption does apply where a planning condition prevents occupancy and the dwelling is unoccupied. The main reason given for supporting the amendment was simply that it was inequitable to charge council tax for the period that the dwelling could not be occupied.
- 7.9 The six respondents that did not support the change made three main points. They were that the banding of a dwelling takes into account planning conditions; that authorities may lose some revenue from granting the exemption; and that case law is clear that Class G does not apply where a planning condition prevents occupancy. However, in the Department's view many (and probably the large majority) of the dwellings would be in the same band even if they didn't have the planning condition, any loss of revenue would be marginal, and other respondents were just as clear that Class G does currently apply where a planning condition prevents occupancy. The responses to the consultation clearly demonstrated that there is no consistency in how the current legislation is interpreted.
- 7.10 In light of the responses, Ministers have decided to substitute Class G in the 1992 Order in order to clarify the position. The new Class G expressly refers to restrictions by planning condition which prevent occupancy. As with Class G generally, the exemption will only apply where the dwelling is unoccupied, and therefore it will not apply where the dwelling is occupied in breach of the relevant planning condition.
- 7.11 The respondents to the consultation were split over whether the proposed change should be made as soon as possible or at the start of the 2007/08 financial year. Those that supported bringing in the change straight away felt that chalets owners should be able to benefit from the exemption in the coming winter. Ministers have decided, however, that on balance it would better for the change to be brought in at the start of a financial year. This allows authorities time to prepare for the change and to notify taxpayers as part of the annual billing round.
- 7.12 A summary of the responses can be found on the DCLG website at the following link:

<http://www.local.communities.gov.uk/finance/ct.htm>

8. Impact

- 8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on businesses, charities or voluntary bodies, nor does it have a significant impact on any public bodies.

9. Contact

- 9.1 David McDonald at the Department for Communities and Local Government - tel: 020 7944 4206 or e-mail: david.mcdonald@communities.gsi.gov.uk - can answer any queries regarding the instrument.