

Report to the Cabinet

Report Reference: C-043-2011/12.
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**Epping Forest
District Council**

Portfolio: Finance & Economic Development

Subject: Government Consultation – Technical Reforms of Council Tax

Officer contact for further information: Rob Pavey – (01992 – 56 4211)

Democratic Services Officer: Gary Woodhall - (01992 - 56 4470)

Recommendations/Decisions Required:

- (1) That the proposed changes to Council Tax be noted; and**
- (2) That the Cabinet approves and amends where necessary the proposed responses to the consultation set out in Appendix 1.**

Executive Summary:

On 31 October 2011, the Government published its 'Technical Reforms of Council Tax' consultation paper. The review proposes changes to the discounts available for second and empty homes, changing the default number of payments and a number of other technical changes. When the consultation was issued the Secretary of State said that the changes could allow a £20 reduction in council tax for a band D property. Whilst this might be the case for a district with a very large number of second and empty properties it is unlikely to provide a significant benefit to this Council. There is a concern that the impact on cash flow and collection rates in moving from 10 to 12 payments will cost more than any additional income generated from changes to discounts.

The deadline for responses to the consultation is 29 December 2011 with the Government aiming for legislation to be in place for billing for the 2013/14 financial year. The proposed responses to the consultation are being considered by the Overview and Scrutiny Committee on 29 November and an oral update will be provided on.

Reasons for Proposed Decisions:

The consultation contains a number of proposals which will impact on this Council. The broad principals of the changes are to give greater discretion to billing authorities and this should be welcomed.

Other Options for Action:

Members could decide not to respond to the consultation.

Report:

1. On Monday 31 October the Department for Communities and Local Government published its *Technical reforms of council tax* consultation. The consultation will last for 8 weeks and will close on the 29th December. The Government proposes that reforms to the council tax system from 2013-14 will:

- Give billing authorities power to levy up to full council tax on second homes.

- Replace existing Class A and C exemptions for vacant homes with discounts of up to 100%, the amount of which it would be for billing authorities to determine.
- Abolish the Class L exemption, and make mortgagees in possession of empty dwellings liable to council tax in respect of them.
- Allow billing authorities to levy an 'empty homes premium' over and above full council tax liability in respect of dwellings which have been left empty for two years or more.
- Set a default assumption that payment of council tax be by instalments over 12 months rather than 10 as is currently the case.
- Allowing authorities to publish online the 'information to be supplied with demand notices.
- Changes to eliminate potential tax complications from arrangements involving third party suppliers where solar panels are placed on the roof of dwellings without coming into the control of the resident.

Discounts from Council Tax Bills

2. Since council tax was introduced in 1993, taxpayers have in certain circumstances been entitled to pay an amount of council tax which is reduced by a discount. In particular, different discounts are available where:

- only one adult occupies a chargeable dwelling as their sole or main residence.
- no adult occupies a chargeable dwelling as their sole or main residence.

3. The rules on discounts where no adult occupies a dwelling as their sole or main residence have evolved since council tax was introduced in 1993. Originally, the discount was set at 50 per cent but, over the years, that has changed so that, now, four contexts are recognised in practice, as follows:

(a) A furnished dwelling which is not the sole or main residence of any individual (known collectively as 'second homes') attracts a discount which billing authorities can set at between 10 and 50 per cent (but see (c) below);

(b) Any dwelling which consists of a pitch occupied by a caravan, or a mooring occupied by a boat attracts a discount of 50 per cent when unoccupied;

(c) A furnished dwelling which is not the sole or main residence of a council taxpayer attracts a discount of 50 per cent if the person liable for council tax necessarily occupies it and another dwelling, and one or other of the occupations is job related; and

(d) A dwelling which is unoccupied and substantially unfurnished attracts a discount which the billing authority can set at between 0 and 50 per cent, once any period of exemption has passed. Such dwellings are known collectively as 'long term empties'.

Exempt Dwellings

4. In a wide variety of circumstances, dwellings are exempt from council tax either for a period of time, or indefinitely while conditions are met. This consultation addresses possible changes to three of these exemptions: Classes A, C and L.

- Class A exemption is currently available for up to 12 months in respect of a vacant property which requires, is undergoing, or has recently undergone major repair work to render it habitable, or structural alteration.
- Class C exemption is currently available for up to six months after a dwelling becomes vacant.
- The practical effect of Class L exemption is to release mortgagors who have had their homes re-possessed by a bank or building society from any liability to pay council tax.

Proposals on Second Homes

5. On second homes, Government is minded to extend the range of discount available to billing authorities to allow them to levy up to full council tax on second homes, thereby placing them on the same basis as normal homes. A second home owner is taking up a unit of the local housing stock; and the original purpose of giving local authorities discretion over second homes discount was to give them a tool they could use to encourage or discourage second home ownership in their areas. The Government's present proposal will make that tool somewhat more powerful. Moreover, authorities with a high level of second home ownership will be able to levy tax from a base which is not 'damaged' by that fact – they will, if they wish, be levying tax on the same base as an authority for which second home ownership is not a significant issue.

6. For second homes, the rules governing the calculation of an authority's council tax base for formula grant purposes currently require an arbitrary assumption that a discount of 50 per cent is given in all cases. The tax base used for the calculation of council tax in each area, on the other hand, reflects the actual rates of discount that authorities have chosen to adopt. The effect is that any extra council tax revenue which an authority generates by giving a discount of less than 50 per cent on second homes is not set off by any reduction in its formula grant.

7. When the rules on discounts for second homes were revised by the Local Government Act 2003, the minimum 10 per cent discount was retained so that second home owners would still have an incentive to identify their properties as second homes. Without this, it was felt, that there would be no way to identify the additional resources generated by second homes and allow the intended retention of the extra revenue by local authorities. The Government recognises that if authorities choose, as it proposes they might, not to offer a discount on second homes, it will become more difficult in practice to distinguish second homes from other dwellings.

8. The council tax base, as used for the Government's CTB1 return at the start of October, included 247 dwellings currently classified as second homes and receiving a 10% discount. The removal of the 10% discount could increase income to the Council by approximately £4,000 per annum.

Empty Homes

9. The Coalition Government's Programme for Government committed it to exploring a range of measures to bring empty homes into use. Empty homes are often a blight on the local community, harming the local amenity of neighbouring properties. They are wasted assets, so putting empty homes more quickly back into productive use would increase housing supply. The Government is therefore proposing to give councils more flexibility to adjust or, if they think it appropriate, deny relief from council tax in some circumstances which currently entitle owners to short term exemptions. Councils will continue to be able to use their existing powers to apply discretionary discounts in cases where homes are empty due to special circumstances – e.g. hardship, fire, flooding. Councils which removed the empty discount will be encouraged to have an explicit policy on such hardship cases.

10. There are other circumstances in which it would be quite wrong to deny exemption. Several exemptions relate to unoccupied dwellings, but reflect circumstances which fully justify continuing exemption. For example, it would be wrong to interfere with exemption Class F which applies due to the death of the owner of a property, and the Government has no intention of doing so. Similarly, exemption classes E, I and J will all remain intact (they relate to dwellings left empty because the residents have moved into hospital, or to give or receive care).

11. The council tax base currently includes 248 dwellings receiving a 50% discount (down from 282 last year), although some of these dwellings will be in the protected categories, and 460 receiving no discount (up from 398 last year). The removal of the 50% discount could increase income to the Council by approximately £20,000 per annum.

Proposals on Class A Exemption

12. It is reasonable that council tax payers should get some relief in respect of vacant dwellings that are, for a time, uninhabitable for one good reason or another. When council tax was introduced, the system provided for an open-ended period of exemption in such circumstances. It continued while the state of the dwelling warranted it. However, in 2000 the law was changed to limit the period of exemption to a maximum of one year, after which the dwelling (if still vacant) is to be treated as a long term empty property. Billing authorities' discretion over the rate of discount then applies, so such properties do not necessarily attract any discount at all.

13. This limitation has generally encouraged owners to bring dwellings back into use in a reasonable time; and that remains the Government's aim. It is, however, a central prescription. There is no scope for billing authorities to use discretion about what is reasonable in terms of foregoing council tax in respect of such properties. In pursuit of the broader goals of localism, Government is therefore minded to abolish the exemption, but replace it with a discount which billing authorities have discretion to set at 100 per cent, or any lower percentage which seems reasonable to them having regard to local circumstances.

14. If authorities choose to levy council tax in circumstances in which, under the current rules, they could not, Government would wish them to be able to retain the additional revenue locally. Under the present system, in the calculation of council tax bases for formula grant purposes, a discount of 100 per cent would therefore be assumed (following the approach taken to second homes in this context). The Government acknowledges that proposals discussed in the concurrent consultation *Local Government Resource Review: Proposals for Business Rates Retention* may have a bearing on how this objective will be achieved in practice.

Proposals on Class C Exemption

15. In parallel with the abolition of Class A exemption, in the spirit of localism, Government is minded to:

- abolish Class C exemption, replacing it with a discount which billing authorities have discretion to set at 100 per cent, or any lower percentage which seems reasonable to them having regard to local circumstances.
- make provision to ensure that any extra revenue generated if billing authorities set a discount of less than 100 per cent is retained and does not affect the distribution of central government grant.

16. Class C exemption, of course, applies for a shorter time than Class A, and in different circumstances. Government is aware that the potential impact of converting it into a discount will fall on people who have moved home without selling or letting their properties; and, possibly, on developers who have vacant new properties on their books.

17. At the moment, taxpayers are entirely relieved of liability for six months, and (in areas where long term empties attract zero discount) then have to pay the tax in full. There is no compelling reason why the first six months should be treated so generously.

Class L Exemption

18. The Government's position on Class L exemption is somewhat different from that on

Classes A and C. There would be no point in amending the law to provide that owners of dwellings who have had them repossessed by a mortgagee – a bank or building society – should nevertheless be liable for council tax. The tax would very probably be uncollectable. However, these are units of accommodation which, in other hands, would usually generate council tax.

19. One way forward would be to amend council tax legislation so that, in the 'hierarchy of liability', mortgagees in possession rank higher than 'owner' but lower than 'resident' of any description.

20. If such a change were made, Class L exemption would not then be needed. The institutions which have taken possession of such dwellings would become liable for council tax while the properties are empty. This seems fair, since they effectively have control of the properties until they are sold or let, and there is no good reason why other taxpayers should have to make up the shortfall in council tax revenue suffered by the local authorities when properties are repossessed.

Empty Homes Premium

21. At present, billing authorities have discretion to reduce the discount they give when a non-exempt dwelling is unoccupied and substantially unfurnished, or indeed to determine that there shall be no discount at all. If authorities do not exercise their discretion, the discount applicable is 50 per cent. This measure was introduced via the Local Government Act 2003, and affected tax liabilities from 1 April 2004 onwards. The policy aim was to encourage owners to bring empty properties back into use more quickly.

22. However, it remains the case that a distressing number of dwellings are being left empty, at a time when there is an overall housing shortage. There are over 300,000 long-term empty homes across England. As well as being an unused resource when 1.7 million people are on social housing waiting lists, long-term empty properties attract squatters, vandalism and anti-social behaviour, and are a blight on the local community.

23. Government is therefore seeking views on whether the billing authorities should be given the option to levy an 'empty homes premium' on the council tax payable in respect of dwellings that have been left empty for a long time (two years or more, for example). In areas where authorities have already resolved not to discount the council tax payable in respect of empty dwellings, this might mean that they could levy substantially more than 100 per cent of the council tax which would be payable if a dwelling were occupied.

24. There would obviously be concerns that would have to be very carefully addressed before such a change in the council tax regime were implemented. It must be seen to operate fairly, for example, and must make sense in the context of broader local strategies for dealing with empty homes. Issues of collectability, and avoidance, would need to be considered.

Other Technical Changes to Council Tax

- The Definition of 'relevant person'

25. Government is also considering legislation to close a loophole in the provisions of sections 66(2B)(a) and (b), which provide that, if a 'relevant person' intends to let a building or part of a building for short periods totalling 140 day or more per year, it should be subject to non-domestic rates. It achieves this objective by reference to the intentions of the 'relevant person' who is defined by subsection (2C). The loophole arises because the legislation defines a 'relevant person' in terms which fail to cover the case where a freeholder retains part of a building for such purposes.

26. In the Curzon Berkeley case, the Claimant's argument was that they could not be the 'relevant person' in respect of self contained parts of a building where Curzon Berkeley were the freeholders and which they operated as Service Apartments. Accordingly, they did not fall to be assessed to non-domestic rates. In his judgement, James Goudie QC found that this was a plain case of a drafting mistake (there being no explanation as to why, in the circumstances of this case, a long leaseholder was defined as a 'relevant person' but a freeholder was not).

27. The Government now proposes that section 66(2C)(a) should be amended along the following lines:

'Where the property in question is a building or a self contained part of a building and is not subject as a whole to a relevant leasehold interest, the person having the freehold in the whole of the building or self contained part'.

- Payment by instalments

28. A council tax bill can be paid through a lump sum or through instalments. The number of instalments is normally 10, and the majority of the 22 million council tax bills issued each year are paid by this method. Local billing authorities may however agree with the taxpayer to payment in some other manner.

29. The Government believes that council taxpayers should be entitled to pay by 12 month instalments without having to enter into an agreement with the billing authority. However, the current position where payments over 12 months can be offered as a concession where payment by direct debit is agreed is a very useful collection tool. It is a significant concern that making the statutory scheme one of 12 instalments will not only impact on cash flow but is also likely to reduce overall collection rates.

- Information to be Supplied with Demand Notices

30. Council tax demand notices are normally printed and issued on paper. Matters to be contained in demand notices are set out in Regulations, requiring lengthy explanatory notes to form part of the demand notice. The Government does not propose changes to this, but notes that powers already exist for electronic billing and payment by agreement between the taxpayer and the billing authority, and that councils can give a discount if they wish to encourage taxpayers to adopt this approach, to reflect the reduced administration costs.

31. This information is costly to publish on an individual household basis. With the exception of the last item (for which different provision would have to be made), Government is minded to allow billing authorities to publish the information to be published online, but with a duty to provide hard copy for free to any resident who requests it. The demand notice should include a weblink to the online publication and provide details of how a hard copy can be obtained. Relieving authorities of the duty to provide the information in hardcopy may help encourage the take-up of electronic billing, as all parts of the process can be paper-less if the taxpayer so chooses.

- 'Rent a Roof' Solar Photovoltaic Installations on Domestic Properties

32. Currently, domestic scale solar photovoltaic installations on domestic properties – generally the roofs of homes – are treated by the Valuation Office Agency as part of the dwelling and reflected in the council tax band. The Valuation Office Agency considers that these installations have no material impact on value: so they do not lead to any change in council tax bands. Moreover, the council tax system ensures that material improvements to a home never result in any banding re-assessment, unless the home is sold. This ensures that council tax is not a home improvement tax.

33. An alternative practice is now emerging in the renewables industry, under which third party providers take part possession of the roof of homes and install solar photovoltaic at their own cost. The provider receives payments under the Feed-in Tariffs scheme for the electricity generated and the home owner receives the benefit of free electricity generated by the installation. These arrangements are known as 'rent a roof' schemes. However, given the recent reduction in the Feed in Tariff it appears that solar photovoltaic installations on domestic properties will become far less attractive.

- Annexes to Dwellings

34. Generally, if parts of a building are in separate occupations, each part is a separate hereditament; and each is a dwelling liable to council tax (unless its use is non-domestic). It will receive its own banding in the normal way. Where one occupier has paramount control of the whole, which makes the property a single hereditament, self-contained units of accommodation within the property must each be treated as separate dwellings for council tax purposes. The test for a 'self-contained unit' is whether a part is physically constructed or adapted for use as separate living accommodation. This relates entirely to the physical state of the building – not to the intentions of the owner, nor to the actual use to which the accommodation is put. It is not an issue over which the Valuation Office Agency, or the billing authority, has discretion: it all turns on the facts of the case.

35. These rules are applied frequently to define separately banded dwellings in hostels, flatlet houses etc., and the Government has no intention of changing their general application. However, representations have been made that the outcome might be unfair in some circumstances. An example is where part of a house has been physically adapted as a 'granny annexe', and been separately banded for council tax purposes as a consequence, but is no longer occupied as a separate unit of accommodation. The law requires that it should continue to be separately banded for council tax until such time as the physical adaptations are undone.

36. Attached to this report is Appendix 1 which provides responses to the questions asked in the main consultation paper.

Resource Implications:

Budget provision: Some of the changes are likely to have a positive impact on budgets although these may be considerably outweighed by the negative impact of moving to 12 instalments.

Personnel: If the basis for instalments is changed to 12 payments additional staff may be required to maintain existing collection rates.

Legal and Governance Implications:

The changes being proposed will require amendments to existing Council Tax legislation.

Safer, Cleaner, Greener Implications:

There are no environmental implications.

Consultation Undertaken:

The Overview and Scrutiny Committee are considering the draft response on 29 November and an oral update will be provided.

Background Papers:

DCLG consultation document - Technical Reforms of Council Tax.

Impact Assessments:

Risk Management

There is a risk that the proposed changes could leave authorities like Epping Forest worse off as changes to discounts could be out weighed by the negative effects of increasing default instalments from 10 to 12.

Equality and Diversity

Did the initial assessment of the proposals contained in this report for relevance to the Council's general equality duties, reveal any potentially adverse equality implications? No

Where equality implications were identified through the initial assessment process, has a formal Equality Impact Assessment been undertaken? N/A

What equality implications were identified through the Equality Impact Assessment process?
N/A

How have the equality implications identified through the Equality Impact Assessment been addressed in this report in order to avoid discrimination against any particular group?
N/A