

2003 No. 3011

COUNCIL TAX, ENGLAND

**The Council Tax (Prescribed Classes of Dwellings) (England)
Regulations 2003**

<i>Made</i> - - - -	<i>24th November 2003</i>
<i>Laid before Parliament</i>	<i>27th November 2003</i>
<i>Coming into force</i> - -	<i>18th December 2003</i>

The First Secretary of State, in exercise of the powers conferred upon him by section 11A of the Local Government Finance Act 1992(a) hereby makes the following Regulations:

Citation, commencement and application

1.—(1) These Regulations may be cited as the Council Tax (Prescribed Classes of Dwellings) (England) Regulations 2003 and shall come into force on 18th December 2003.

(2) These Regulations apply to dwellings in England only.

Interpretation

2. In these Regulations—

“the Act” means the Local Government Finance Act 1992;

“caravan” shall be construed in accordance with Part I of the Caravan Sites and Control of Development Act 1960(b);

“Class A” means the class of dwellings described in regulation 4;

“Class B” means the class of dwellings described in regulation 5;

“Class C” means the class of dwellings described in regulation 7;

“qualifying person” means a person who is liable for the council tax in respect of a dwelling on a particular day, whether or not jointly with any other person, or who would be liable for the council tax in respect of a dwelling on a particular day if that dwelling did not fall within Class O of the Council Tax (Exempt Dwellings) Order 1992(c);

“the relevant year” means the financial year for which a billing authority makes a determination under section 11A of the Act;

an “unoccupied dwelling” means a dwelling in which no one lives.”

(a) 1992 (c. 14). Section 11A was inserted by s.75(1) of the Local Government Act 2003 (c.26). Section 75(2) of that Act inserted similar provision in relation to Wales in substitution of section 12 of the Local Government Finance Act 1992.

(b) 1960 (c. 62).

(c) S.I. 1992/558 as amended by the Council Tax (Exempt Dwellings) (Amendment) Order 1992 (S.I. 1992/2941).

Prescribed classes

3.—(1) Class A and Class B are prescribed as classes of dwellings for the purposes of section 11A(3) of the Act for each financial year beginning on or after 1st April 2004.

(2) Class C is prescribed as a class of dwellings for the purposes of section 11A(4) of the Act for each financial year beginning on or after 1st April 2004.

Class A

4. The class of dwellings described in this regulation (“Class A”) comprises every chargeable dwelling in England —

- (a) which is not the sole or main residence of an individual;
- (b) which is furnished; and
- (c) the occupation of which is restricted by a planning condition preventing occupancy for a continuous period of at least 28 days in the relevant year;

except that the class of dwellings described in this regulation shall not include any dwelling which is excluded from that class by virtue of regulation 6 below.

Class B

5. The class of dwellings described in this regulation (“Class B”) comprises every chargeable dwelling in England —

- (a) which is not the sole or main residence of an individual;
- (b) which is furnished; and
- (c) the occupation of which is not restricted by a planning condition preventing occupancy for a continuous period of at least 28 days in the relevant year;

except that the class of dwellings described in this regulation shall not include any dwelling which is excluded from that class by virtue of regulation 6 below.

Exceptions

6.—(1) Class A and Class B shall not include any dwelling which consists of a pitch occupied by a caravan, or a mooring occupied by a boat.

(2) Class A and Class B shall not include any dwelling—

- (a) where a qualifying person in relation to that dwelling is a qualifying person in relation to another dwelling which for him is job-related; or
- (b) which for a qualifying person is job-related where that person is a qualifying person in relation to another dwelling.

(3) For the purposes of paragraph (2), a dwelling is job-related if it falls within the description set out in paragraph 1 or 2 of the Schedule to these Regulations.

Class C

7. The class of dwellings described in this regulation (“Class C”) comprises every chargeable dwelling in England —

- (a) which is unoccupied; and
- (b) which is substantially unfurnished.

Signed by authority of the First Secretary of State

24th November 2003

Phil Hope
Parliamentary Under Secretary of State
Office of the Deputy Prime Minister

SCHEDULE

JOB-RELATED DWELLINGS

1.—(1) Subject to sub-paragraph (2), a dwelling is job-related for a person if it is provided for him by reason of his employment or for his spouse by reason of the spouse's employment, in any of the following cases—

- (a) where it is necessary for the proper performance of the duties of the employment that the employee should reside in that dwelling;
- (b) where the dwelling is provided for the better performance of the duties of the employment, and it is one of the kinds of employment in the case of which it is customary for employers to provide dwellings to employees;
- (c) where, there being a special threat to the employee's security, special security arrangements are in force and the employee resides in the dwelling as part of those arrangements.

(2) If the dwelling is provided by a company and the employee is a director of that or an associated company, paragraph (a) or (b) of sub-paragraph (1) shall not apply unless either—

- (a) the employment is as a full-time working director,
- (b) the company is non-profit making, that is to say, it does not carry on a trade nor do its functions consist wholly or mainly in the holding of investments or other property, or
- (c) the company is established for charitable purposes only.

2.—(1) Subject to sub-paragraph (2), a dwelling is job-related for a person if he or his spouse is required, under a contract to which this sub-paragraph applies, to live in that dwelling.

(2) Sub-paragraph (1) does not apply if the dwelling concerned is in whole or in part provided by any other person or persons together with whom the person or spouse carries on a trade or business in partnership.

(3) A contract to which sub-paragraph (1) applies is a contract entered into at arm's length and requiring the person concerned or his spouse (as the case may be) to carry on a particular trade, profession or vocation in a property provided by another person and to live in a dwelling provided by that other person.

3. In this Schedule—

a company is an associated company of another person if one of them has control of the other or both are under the control of the same person;

“director”, “full-time working director” and “control”, in relation to a body corporate have the same meanings as they have in sections 67 and 69 of the Income Tax (Earnings and Pensions) Act 2003^(a) in relation to the benefits code;

“provided” means provided under a tenancy or otherwise; and

references to the spouse of a person shall be taken to include references to a person of the opposite sex who is living with the other as that person's husband or wife.

^(a) 2003 (c.1); for the meaning of benefits code, *see* section 63.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations relate to England. They prescribe three classes of dwellings for the purposes of section 11A of the Local Government Finance Act 1992 (“the Act”). Section 11A was inserted into the Act by the Local Government Act 2003.

In relation to dwellings of any class prescribed by the Secretary of State for the purposes of section 11A(3) of the Act, an English billing authority (a district council, London borough council, the Common Council of the City of London, the Council of the Isles of Scilly or a county council with the functions of a district council) may determine that the council tax discounts applicable where there is no resident of the dwelling (two discounts of 25 per cent each under section 11(2)(a) of the Act) shall be replaced by a lower discount (with a minimum discount of 10 per cent).

Class A is prescribed by regulation 4 of these Regulations for the purposes of section 11A(3). Billing authorities in England will be able to reduce the council tax discount, to a minimum of 10%, for chargeable dwellings which are unoccupied and furnished, and the occupation of which is restricted by a planning condition preventing occupancy for a continuous period of at least 28 days in the relevant year and therefore fall within Class A. Purpose built holiday homes or chalets subject to a planning condition restricting year round occupancy would fall within Class A.

Class B is prescribed by regulation 5 of these Regulations for the purposes of section 11A(3). Billing authorities in England will be able to reduce the council tax discount, to a minimum of 10%, for chargeable dwellings which are unoccupied and furnished, and the occupation of which is not restricted by a planning condition preventing occupancy for a continuous period of at least 28 days in the relevant year and therefore fall within Class B.

Regulation 6 and the Schedule to these regulations prevent a billing authority from reducing the discount for a second home owned by a council tax payer who is also liable for council tax for another dwelling (or who would be liable if that other dwelling were not exempt within Class O of the Council Tax (Exempt Dwellings) Order 1992 (S.I. 1992/558) as amended by the Council Tax (Exempt Dwellings) (Amendment) Order 1992 (S.I. 1992/2941)) provided to him or his spouse by reason of their employment. The definition of “qualifying person” in regulation 2 of these regulations, combined with regulation 6 and the Schedule, means that billing authorities cannot reduce the discount for second homes owned by service personnel who live in accommodation provided by the Ministry of Defence.

Regulation 6 and the Schedule also prevent billing authorities from reducing the discount in respect of a second home owned by a council tax payer who is also liable for council tax for another chargeable dwelling which he or his spouse is required to occupy under a contract requiring him to carry on a trade, profession or vocation in a property provided by another person and to live in a dwelling provided by that person. This means that second homes owned by e.g. publicans who are required to live in the licensed premises of which they are tenant, would continue to be subject to the 50% discount.

Regulation 6 and the Schedule makes similar provision preventing billing authorities from reducing the discount in respect of a second home where that second home is provided to the council tax payer by reason of his employment and he is also liable for council tax for another dwelling which is his sole or main residence.

In relation to dwellings of any class prescribed by the Secretary of State for the purposes of section 11A(4) of the Act, an English billing authority may determine that the council tax discounts applicable where there is no resident of the dwelling shall be replaced by a lower discount or by no discount at all.

Class C is prescribed by regulation 6 of these Regulations for the purposes of section 11A(4). Billing authorities in England will be able to reduce or end the council tax discount for chargeable dwellings which are unoccupied and substantially unfurnished and therefore fall within Class C.

The dwellings falling within Class C will be long term empty homes, since for a shorter period, unoccupied and substantially unfurnished dwellings are exempt from council tax.

Class C of the Council Tax (Exempt Dwellings) Order 1992 (S.I. 1992/558) as amended by the Council Tax (Exempt Dwellings) (Amendment) Order 1993 (S.I. 1993/150), provides that a dwelling which is unoccupied and substantially unfurnished is exempt from council tax for up to six months. After that six month period of exemption, a dwelling which remains unoccupied and substantially unfurnished is currently subject to the 50 per cent discount under section 11(2)(a) of the Act. Dwellings falling within Class C of these Regulations will therefore be dwellings which are not exempt from council tax under Class C of the Council Tax (Exempt Dwellings) Order 1992 (i.e. which have been substantially unfurnished and unoccupied for more than six months).

Class A of the Council Tax (Exempt Dwellings) Order 1992, as substituted by the Council Tax (Exempt Dwellings) Order 2000 (S.I. 2000/424) provides that a dwelling which is unoccupied, substantially unfurnished and either requires, is undergoing or has undergone within the last six months, major repair work to render it habitable, or is undergoing, or has undergone within the last six months, structural alteration, shall be exempt. Such dwellings are exempt for up to 12 months. Class C of these Regulations will also include dwellings which have ceased to be exempt under class A of the Council Tax (Exempt Dwellings) Order 1992 e.g. if the repair works were completed more than 6 months ago and the dwelling is still unoccupied and substantially unfurnished, or the dwelling has remained unoccupied, substantially unfurnished and undergoing major repair work for more than 12 months.

Any determination of the billing authority under section 11A of the Act will apply in respect of all the dwellings of that class in the whole, or only in a part of its area, as the authority may specify.

STATUTORY INSTRUMENTS

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