



Proposed amendments to the Council Tax discount
disregards order 1992

Summary of responses to consultation



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1. Introduction

- 1.1 On 4 August 2010, the Government launched a six-week public consultation inviting comments on proposals to amend the provisions in the Council Tax (Discount Disregard) Order 1992 ('the 1992 Order') relating to students. This paper sets out a summary of responses and the Government's decisions.
- 1.2 The intention of the proposed changes was to extend the scope of the present disregard in order to allow those students studying with educational establishments situated in EU member states to be disregarded for the purposes of council tax.
- 1.3 The consultation acknowledges the potential effects of the proposal. In particular, local authorities' may face difficulties when verifying the status of establishments situated outside the UK. The 1992 Order places a statutory duty on establishments, situated within the UK, to provide a certificate, if requested, confirming a person's student status. The UK Government has no powers to extend this duty to those establishments situated outside the UK. The consultation included a draft amending order and guidance.
- 1.4 The proposed changes apply to both England and Wales. However, since Council Tax is a devolved matter, the responses relevant to Wales are handled directly by the Welsh Assembly Government. Details on the outcome of the consultation for Wales can be found on their website at www.wales.gov.uk

2. Background

- 2.1 Council tax treats students differently from other persons in three main ways. Each of these is considered briefly in turn below.

EXEMPT DWELLINGS

- 2.2 In summary, by virtue of Class M and N of article 3 of the Council Tax (Exempt Dwellings) Order 1992 ('the Exempt Dwellings Order') a hall of residence and a dwelling which is solely occupied by relevant persons is an exempt dwelling for the purposes of council tax.
- 2.3 "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 of the Local Government Finance Act 1992.

If a property is wholly occupied by “relevant person(s)” no council tax is payable by that household.

DISCOUNT DISREGARDS

2.4 Certain persons are disregarded for the purposes of council tax discounts. 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

2.5 The term “student” for these purposes has the meaning assigned to it by order made by the Secretary of State in relation to England or Welsh Ministers in relation to Wales (see paragraph 4(2) of Schedule 1 to the 1992 Act).

ENFORCEMENT AGAINST STUDENTS

2.6 If two or more persons are liable for council tax in respect of a chargeable dwelling, they are each jointly and severally liable to pay council tax in respect of the dwelling. However, this principle does not apply to a person who falls to be disregarded for the purposes of discount by virtue of paragraph 4 (students etc.) of Schedule 1 to the 1992 Act (see section 6(4) of the 1992 Act). In other words, if a student is resident in a chargeable dwelling that person cannot be pursued in respect of the liability of any other resident to pay council tax in respect of the dwelling.

2.7 In summary, if a person is a “student” for council tax purposes, that person will not be liable to pay council tax and enforcement action cannot be taken against that person in respect of any other person’s liability to council tax.

3. Proposed changes

3.1 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
- greater numbers of students are attending courses of higher education at establishments in other Member States of the European Union (‘Member States’)

3.2 In short, the legislation is now having effects which it either did not have at all in 1993, or only in respect of much smaller numbers of people. The Government therefore proposes to amend the Discount Disregards Order so that those 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 Member States (including England and Wales) can be treated as full-time students for council tax purposes, provided they meet the relevant tests in the Discount Disregards Order.

4. Summary

4.1 DCLG received 28 responses to the consultation. The main issue covered was whether the proposed changes to the 1992 Order would fulfil the Government's intention to allow students undertaking studies with establishments in European member states to be disregarded for the purposes of council tax. In preparing the final amending order and guidance, the Government has taken account of comments received. Most respondents just answered the questions put to them, but others provided more general comments.

4.2 The majority of respondents agreed that the changes would meet the intention, agreed that the verification process would be difficult, but agreed that the guidance document would be welcome.

RESPONSES TO THE CONSULTATION QUESTIONS

1. Will the proposed legislative changes meet the Government's intention to allow those who have a sole or main residence in England or Wales and who are undertaking a full-time course of education with an educational establishment situated in another Member State to be treated as students for council tax purposes?

Number of respondents who directly answered this question: 16 (out of 28 respondents)

Of the 16 respondents, 15 agreed that the Government's proposed intention would be met. However, the following specific concerns were raised:

- How would local authorities verify the legitimacy of an establishment situated outside the UK.
- How to determine a person's sole or main residence where students undertake studies in an EU member state that may not in themselves meet disregard/exemption criteria, but forms part of the full time course at their home university.

- How to take account of new members who join the European Union and whether members of the European Economic Area such as Norway and Iceland are to be included.
- How to clarify “distance learning”.

Government response

The administration of council tax, including decisions regarding discounts or exemptions, has always been for local authorities, not central government. However, the Government recognises the proposed changes may raise issues and will therefore publish guidance as per the consultation document.

2. Would billing authorities welcome a change to paragraph 4 of Schedule 1 to the Discounts Disregards Order to clarify the status of distance learning students?

Number of respondents who directly answered this question: 21 (out of 28 respondents)

Nineteen respondents agreed clarification on distance learners was required. Only two disagreed. The following comments highlight some of the concerns:

Of those who answered yes:

“The definition of a qualifying student will need to be amended. We have always refused to grant a discount disregard for distance learning on the basis of the requirement to attend-the Fayad case backed this up.”

Canterbury City Council

“The status needs to be clarified as the issue is arising on a regular basis. In Bristol we have always interpreted ‘attendance’ as physical attendance, however we recognise that the internet, whiteboard learning and other interactive methods are now used more frequently by some colleges, and the use of these types of learning tools is likely to increase in the future.”

Bristol City Council

“Considering PHD students, distance learning (e.g. Open University) and member state students, paragraph 4 must be amended to enable qualification since the Fayad ruling.”

Northampton Borough Council

“In particular, we would urge CLG and the WAG to ensure that this clarity is explicitly extended to the situation of research postgraduate students.”

National Union of Students

And those who said no:

“There are inherent problems with allowing distance learning students to qualify for council tax discount or exemption, or with relaxing the attendance requirement. For example, a lot of distance learning courses simply provide suggested study times, but these may not be strictly enforced.”

Leeds City Council

“There would be a danger in amending the definition that all kinds of lightweight courses would become eligible (unless of course the definition of “further education” were to be significantly restricted).”

Exeter City Council

Government response

The Government agrees that clarification is required and will make the necessary legislative changes as per the consultation document.

3. Have the correct consequential legislative amendments been identified?

Number of respondents who directly answered this question: 15 (out of 28 respondents)

Of 15 respondents, 11 agreed the correct consequential amendments had been identified. However, one respondent suggested a consequential change should be made to the definition of those educational establishments required to issue certificates. The suggestion was:

“Paragraph 5 (2) of the Draft Order needs to say “For the purposes of paragraph 5(1) of Schedule 1 to the Act”, rather than 5(4).”

Government response

The suggested amendment is not correct - the power to prescribe matters by way of an order is included in paragraph 5(4). In light of this, the Government agrees with the majority of respondents' and has no further consequential amendments to make.

4. Does the use of the term 'situated in a member state' provide enough clarity about the location of educational establishments within the European Union? (a) Are there any other potential effects of the proposed changes that have not been identified? (b)

Number of respondents who directly answered question 4a: 16 (out of 28 respondents) and 4b: 14 (out of 28 respondents)

The majority (14) agreed the term 'situated in a member state' is clear enough. Of the 14 that answered part b of this question, 12 agreed there were other potential effects. Some raised concerns in relation to part b. These included:

“Scam establishments could appear on the internet.”

Uttlesford District Council

“Confusion could arise when a new country joins the EU where someone is already on a qualifying course.”

Tendring District Council

“We would seek clarity about whether a student who goes abroad as part of a UK-based course for less than a year – one term is not uncommon – would be covered by this change in policy, or whether the current regulations include this situation.”

National Union of Students

Government response

As mentioned above the Government will publish guidance on these issues.

5. Does the guidance document address the key issues for local authorities that are raised by these changes?

Number of respondents who directly answered this question: 15 (out of 28 respondents)

Of 15 respondents, 12 did not agree that guidance addressed key issues. The key issues respondents wanted addressed have already been mentioned (in questions 2 and 3 above). They included:

- identifying a clear process of verifying establishments (not on the ERASMUS list)
- identifying a clear pathway of determining a student’s sole or main residence

Government response

The Government believes most of the concerns raised are in common with those raised under the present student disregard system and believes the guidance document will go some way in helping local authorities administer the proposed changes.

6. Is the ERASMUS list likely to provide a useful source of information when considering an application for student discount?

Number of respondents who directly answered this question: 18 (out of 28 respondents)

The majority of respondents (14) found the ERASMUS list useful, with the following comments:

“any list that can verify that an educational establishment is considered to be a prescribed establishment in accordance with the legislation is a great asset and a useful tool for all local authorities.”

London Borough of Harrow

“Yes, this would be needed to aid administration.”

East Lindsey District Council

Some comments (see below) also questioned the robustness of the ERASMUS list and handling cases that were not on this list.

“It is a very large, unwieldy document.”

Exeter City Council

“For a number of universities, yes but there are many colleges and other educational establishments that are not included in the ERASMUS list and therefore it would not provide us with a definitive way of validating an application.”

Bristol City Council

Government response

The Government accepts that the ERASMUS list is not definitive but recognises it as a key tool and will include a link to the list in the guidance document.

7. Regulatory authorities with sole or primary responsibility for higher education in member states and possible sources of information for further education authorities in EU member states have not been identified. Are there other sources of information that local authority’s access in order to establish the legitimacy of a further and/or higher education establishment?

Number of respondents who directly answered this question: 16 (out of 28 respondents)

The key suggestion put forward for verifying the legitimacy of establishments was to use a variety of relevant sources, for example websites, direct contact with establishments and other local authorities. Here are some of the suggestions made:

“We would generally check the website of the establishment itself. We can then email any questions we have regarding the student and/or the course.”

Exeter City Council

“UK Border Agency and the Charities Commission would need to be referred to as the relevant regulatory authorities that LAs may seek information from regarding the legitimacy of a HE Body.”

Department for Business, Innovation and Skills

- *“Check Home Office listing (EU and non EU)*
- *Check accreditation agency listings such as ASIC, BAC, British Council, Independent Schools Council*
- *Liaise with Home Office for status of foreign students and their dependents”*

London Borough of Harrow

Government response

The Government will amend the guidance to reflect the suggestions provided by respondents.

8. Do you think the guidance should include indicative best practice in considering applications from students studying overseas? If so what relevant measures are already in place from which authorities might learn?

Number of respondents who directly answered this question: 16 (out of 28 respondents)

Of 16 that responded, all thought best practice should be included in guidance. Respondents suggested five relevant measures as helpful to authorities. These included:

- case law
- tribunal decisions
- case studies/examples
- establishment contact details i.e. website, liaison officer
- local authority networks

Government response

The Government will amend the guidance to reflect the suggestions provided by respondents.

5. Conclusion

5.1 After due consideration of all responses to the consultation the Government sees no reason not to go ahead and make the legislative changes as per the consultation document. In addition, the Government recognises some of the concerns raised and will publish guidance on these issues. However, the administration of council tax, including decisions about discounts and exemptions, are determined by individual local authorities.

6. Next steps

6.1 Subject to the parliamentary timetable the Government aims to introduce the revised amendment order and guidance for England in due course. Simultaneously the Welsh Assembly Government aim to do the same regarding the order relevant to Wales.

Annex A

List of respondents

There were 28 responses to the August 2010 consultation document, broken down as follows:

- Twenty-three local authorities
- Three representative organisations
- One professional organisation
- One Government department

Full list of organisations which submitted responses to the consultation:

Blaby District Council
Bristol City Council
British Council
Cambridge Council
Canterbury City Council
City of Bradford Metropolitan District Council
City of York Council
Department for Business, Innovation and Skills
East Lindsey District Council
Epping Forest District Council
Exeter City Council
Institute of Revenues Rating & Valuation
Kirklees Council
Lancaster Council
Leeds City Council
London Borough of Greenwich
London Borough of Harrow
London Borough of Redbridge
National Union of Students
Northampton Borough Council
Norwich City Council
Reading Council
South Holland District Council
Tendring District Council
Uttlesford District Council
UK Council for International Student Affairs
Welwyn Hatfield Borough Council
Westminster City Council

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