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## **COUNCIL TAX INFORMATION LETTER 1/2004**

Council Tax Information Letter 8/2003 was the last letter in 2003. This is the first Council Tax Information Letter of 2004. The topics covered in this letter are:

- **The Council Tax (Administration And Enforcement) (Amendment) (England) Regulations**
- **Determining which property is the main residence and which the second home**
- **Second homes discount for clergy**
- **Billing authorities' ability to reclaim council tax over 6 years after it becomes due.**

Please note that this information letter should not be considered as a definitive interpretation of the legislation. Authorities should seek their own legal advice, as appropriate.

### **The Council Tax (Administration and Enforcement) (Amendment) (England) Regulations**

The Council Tax (Administration and Enforcement) (Amendment) (England) Regulations are the remaining regulations in the package consulted on last autumn to implement the changes arising out of Part 6 of the Local Government Act 2003.

We are unable to bring these regulations into force by 1 April as originally intended. We now expect to make the regulations shortly and for them to be in force by the end of April. We will provide further information in due course and we will circulate copies of the new regulations as soon as possible.

The Regulations will not include Regulations 7 and 8 (in the consultation draft) which concern the supply of information by bailiffs. We have decided to review these proposals in the light of the responses to the consultation exercise.

## **Determining which property is the main residence and which the second home.**

The new regulations on changing the discount on second homes do not affect the way in which authorities should approach determining which property is the main dwelling and which the second home.

Billing authorities should however be aware of the Court of Appeal judgment in Regina (Williams) v Horsham District Council [2003] EWCH 1862 Admin, as it is relevant to the consideration of which dwelling is the main residence and which the second home. It was held by the Valuation Tribunal at first instance that the cottage that Mr and Mrs Williams owned but did not live at was their sole and main residence, rather than the house provided by Mr Williams' employer. The Court of Appeal found that the Valuation Tribunal had given great weight to the fact that the Williams had security of tenure at the cottage but had failed to give equivalent weight to the fact that they regarded the house provided by his employer as their sole or main residence and that Mrs Williams lived there with Mr Williams and that very little time was spent at the cottage. The case was remitted to the Valuation Tribunal. This does not change the law but reaffirms that every case was a question of fact and degree and that certain factors should not be given greater weight than others.

## **Second homes discount for clergy**

It was, and remains, our policy intention that where clergy have a "job related dwelling" and a second home in England, then the new local discretion to reduce the 50% discount on the second home would not apply.

However, it has become apparent that the wording of the Council Tax (Prescribed Classes of Dwellings) (England) Regulations 2003 (SI 2003/3011) does not achieve this policy because of the interaction of the new regulations with the existing Council Tax (Liability for Owners) Regulations 1992 (SI 1992/551).

Phil Hope, Parliamentary Under Secretary of State, has now signed amending regulations to ensure that clergy do not lose the 50% discount on their job related second homes. We expect the regulations to be in force by the end of April. We will provide further information in due course and we will circulate copies of the new regulations as soon as possible.

## **Billing authorities' ability to reclaim council tax over 6 years after it becomes due.**

Billing authorities may also wish to be aware of the High Court case of Regentford Ltd v Thanet District Council [2004] EWCH 246 Admin which deals with whether an authority can reclaim council tax over 6 years after it becomes due.

In that case a demand notice in respect of council tax for the year 1996-7 was not served until 2 October 2002. It was held that the taxpayer was only under a duty to pay from the date of service of the notice, before that he was liable to pay but under no duty. So the authority could recover the council tax. The clock only started ticking for limitation purposes from the date of service of the notice.

## Contact

If you have any enquiries about anything in this letter, please contact Rai Tind on 020 7944 4187, Brian Entwistle on 020 7944 4186 or David McDonald on 020 7944 4206 or fax to 020 7944 4179. Email: [council.tax@odpm.gsi.gov.uk](mailto:council.tax@odpm.gsi.gov.uk)

A handwritten signature in black ink that reads "Stephen Benton". The signature is written in a cursive style with a large, prominent 'S' and 'B'.

**STEPHEN BENTON**