



Llywodraeth Cynulliad Cymru
Welsh Assembly Government

Council tax and students: proposed amendments to the Council Tax (Discount Disregards) Order 1992 Consultation



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Consultation

August 2010
Department for Communities and Local Government
Welsh Assembly Government

Department for Communities and Local Government
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About this consultation

Scope of consultation

Topic of consultation	A proposal to allow persons who are undertaking a full-time course of education with an educational establishment situated in any Member State of the European Union to be treated as students resident in the UK for council tax purposes.
Scope of consultation	This consultation seeks views on the proposal, and associated draft guidance
Geographical scope	England and Wales. Although the administration of council tax in Wales is a matter for the Welsh Assembly Government the relevant legislation covers both England and Wales and it has been agreed a joint consultation is the best way forward.
Impact assessment	Not applicable.

Basic information

To	Local authorities. Representative organisations (including, but not limited to, the LGA, London Councils, IRRV, Cipfa, NALC, WLGA).
Body responsible for the consultation	Department for Communities and Local Government and the Welsh Assembly Government
Duration	Six weeks. This is in line with the arrangements agreed under the <i>Framework for Partnership</i> with the Local Government Association.
Enquiries to	For England Mumuna Mumuni Local Government Finance Directorate Department for Communities and Local Government Zone 5/E2 Eland House Bressenden Place London SW1E 5DU Telephone: 030 3444 2093 Email: counciltax.consultations@communities.gsi.gov.uk For Wales Gemma Smith LGF1 Consultations Local Government Finance Division Welsh Assembly Government Cathays Park Cardiff CF10 3NQ Telephone: 0292 0821542 E-mail: LGF1consultations@wales.gsi.gov.uk
How to respond	To either of the addresses above by 14 September 2010.

Additional ways to become involved	Not applicable.
After the consultation	The Government will take into account the responses to this consultation in its preparation of an amending order, to be laid before Parliament through the negative resolution process in the first Parliamentary session.
Compliance with the code of practice on consultation	This consultation complies with the Code.

This consultation document and consultation process have been planned to adhere to the *Code of Practice on Consultation* issued by the Department for Business, Innovation and Skills and is in line with the seven consultation criteria, which are:

1. Formal consultation should take place at a stage when there is scope to influence the policy outcome.
2. Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6. Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

Representative groups are asked to give a summary of the people and organisations they represent and, where relevant, who else they have consulted in reaching their conclusions when they respond.

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOI Act, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this you will need to explain why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full

account of your explanation, but we cannot give an assurance that confidentiality can be maintained. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.

CLG and the Welsh Assembly Government will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties. Individual responses will not be acknowledged unless specifically requested.

The Welsh Assembly Government intends to publish a summary of the responses to this document from respondents in Wales, and may also publish those responses in full. Normally, the name and address (or part of the address) of the person or organisation which sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing, when you send the response. We will then blank them out. Names or addresses we blank out might still get published later (as explained above), though we do not think this would happen very often.

Are you satisfied that this consultation has followed these criteria? If not or you have any other observations about how we can improve the process please contact:

For England

CLG Consultation Co-ordinator
Zone 6/H10
Eland House
London SW1E 5 DU

Or by e-mail to: consultationcoordinator@communities.gsi.gov.uk

For Wales

Policy Manager – Consultation
Welsh Assembly Government
Cathays Park
Cardiff
CF10 3NQ

Or by e-mail to: consultation@wales.gsi.gov.uk

Consultation process

The Department for Communities and Local Government and the Welsh Assembly Government invites comments on the proposals set out in this document.

When responding, please state whether you are responding as an individual or representing the views of an organisation. Responses to this consultation must be received by 14 September 2010.

You can email your response to either:

For England - counciltax.consultations@communities.gsi.gov.uk

For Wales - LGF1consultations@wales.gsi.gov.uk

Or you can respond in writing to:

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Department for Communities and Local Government
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Contents

Introduction	8
The treatment of students for council tax purposes in relation to England and Wales	9
Proposed changes	12
Questions	16
Annex A: Draft statutory order	18
Annex B: Draft guidance document	24

Introduction

1. This paper sets out the changes the Government are proposing in order to allow persons who are undertaking a full-time course of education with an educational establishment situated in any member State of the European Union to be treated as students for council tax purposes in England and Wales.

2. This consultation which is being jointly run by Communities and Local Government (CLG) and the Welsh Assembly Government only relates to England and Wales. Accordingly the reference to “Government” means CLG and Welsh Ministers.

Introduction to council tax

3. Council tax is a local tax which is collected by local authorities referred to as ‘billing authorities’ in the Local Government Finance Act 1992 (‘the 1992 Act’) (see section 1 of that Act). Council tax is payable in respect of any dwelling which is not an exempt dwelling. These dwellings are referred to as ‘chargeable dwellings’ in Part 1 of the 1992 Act (see section 4 of that Act).

4. The person who is liable to pay council tax in respect of any chargeable dwelling is generally determined in accordance with section 6 of the 1992 Act. In essence, if there is a resident of a chargeable dwelling that person will be liable for council tax, but otherwise liability will fall on the owner of the dwelling. 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 (see section 6(3) of the 1992 Act).

5. Certain council tax discounts are provided by section 11 of the 1992 Act. In particular:

- there is a discount of 25 per cent if there is only one resident of a chargeable dwelling (see section 11(1) of the 1992 Act) and
- there is a discount of 50 per cent if there is no resident of a chargeable dwelling (see section 11(2) of the 1992 Act)¹

6. In determining the number of residents of a dwelling for these purposes certain persons are not counted, or in the words of the 1992 Act certain persons are ‘disregarded’. Schedule 1 to the 1992 Act has effect for determining who must be disregarded for the purposes of discount.

¹ The discounts in section 11 of the 1992 Act are subject to section 11A of that Act in relation to England and section 12 of that Act in relation to Wales.

The treatment of students for council tax purposes in relation to England and Wales

7. There are three main ways in which students are treated differently from other persons for council tax purposes. Each of these is considered briefly in turn below.

Exempt dwellings

8. In summary, by virtue of Class M and N of article 3 of the Council Tax (Exempt Dwellings) Order 1992² (‘the Exempt Dwellings Order’) a hall of residence and a dwelling which is occupied by relevant persons is an exempt dwelling for the purposes of council tax. ‘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 Act.

Discount disregards

9. As mentioned above, 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

10. 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

11. As mentioned above, 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.

12. In summary, then, if a person is a ‘student’ for council tax purposes, that person will not be liable to pay council tax and enforcement action can also not be taken against that person in respect of any other person’s liability to council tax.

² S.I. 1992/558.

The definition of “student” for council tax purposes

13. Article 4 of the Council Tax (Discount Disregards) Order 1992³ (‘the Discounts Disregards Order’) defines “student” as:

a person, who is to be regarded as:

- a foreign language assistant, by paragraph 2 of Schedule 1 to this Order
- a person undertaking a full-time course of education, by paragraphs 3 and 4 of that Schedule or
- a person undertaking a qualifying course of education, by paragraph 5 of that Schedule

14. In relation to a full-time course of education, paragraph 3 of Schedule 1 to the Discounts Disregards Order provides that a person is to be regarded as undertaking a full-time course of education on a particular day if:

- on the day he is enrolled for the purpose of attending such a course with a prescribed educational establishment within Part I of Schedule 2 to this Order, and
- the day falls within the period beginning with the day on which he begins the course and ending with the day on which he ceases to undertake it

15. A person is to be regarded as ceasing to undertake a course of education for the purpose of paragraph 3 of Schedule 1 to the Discounts Disregards Order if he has completed it, abandoned it or is no longer permitted by the educational establishment to attend it.

16. Paragraph 4 of Schedule 1 to the Discounts Disregards Order defines what a full-time course of education is. In summary, a full-time course of education is one:

- which subsists for at least one academic or calendar year
- which persons attending it are normally required to attend (whether at premises of the establishment or otherwise) for periods of at least 24 weeks in each year and
- the nature of which is such that a person undertaking it would normally require to undertake periods of study, tuition or work experience which together amount in each year to an average of at least 21 hours a week during periods of attendance

³ S.I. 1992/548.

17. Part 1 of Schedule 2 to the Discounts Disregards Order provides that an institution is a prescribed educational establishment if it is:

- a university (including a constituent college, school or other institution of a university)
- a central institution or college of education in Scotland within the meaning of the Education (Scotland) Act 1980
- a college of education in Northern Ireland within the meaning of the Education and Libraries (Northern Ireland) Order 1986
- institutions within the higher education sector as defined in section 91(5) of the Further and Higher Education Act 1992
- a theological college
- any other institution in England or Wales established solely or mainly for the purpose of providing courses of further or higher education
- any other institution in Scotland or Northern Ireland established solely or mainly for the purpose of providing courses of further education
- an institution accredited by the Training and Development Agency for Schools or, in Wales, by the Higher Education Funding Council for Wales under regulations for the time being in force under section 218(2) and (2A) of the Education Reform Act 1988

18. However, a Ministry of Defence training establishment for the armed forces is not a prescribed educational establishment (paragraph 3 of Schedule 2 to the Discounts Disregards Order).

19. For these purposes (see paragraph 2 of Schedule 2 to the Discounts Disregards Order):

- “further education” with respect to an educational establishment in England or Wales has the same meaning as in section 2 of the Education Act 1996, with respect to an educational establishment in Scotland has the same meaning as in the Education (Scotland) Act 1980, and with respect to an educational establishment in Northern Ireland has the same meaning as in article 5(c) of the Education and Libraries (Northern Ireland) Order 1986 and
- “higher education” has the meaning given by section 120(1) of the Education Reform Act 1988

Proposed changes

20. The legislative provisions for the treatment of students for council tax purposes have not substantially changed since council tax was introduced in 1993. Since that time 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')

21. In short, legislation is now having effects which it either didn't 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 another Member State can be treated as full-time students for council tax purposes, provided they meet the relevant tests in the Discount Disregards Order.

Students undertaking a full-time course of education with an establishment situated in another Member State

22. As mentioned earlier, "prescribed educational establishments" are defined in paragraph 1 of Schedule 2 to the Discounts Disregards Order. With some exceptions the establishments referred to are defined by reference to their location in one of the countries of the United Kingdom. In particular, the 'catch-all' categories for institutions established wholly or mainly for the purposes of providing courses of further or higher education are defined by reference to their situation in England, Scotland, Wales or Northern Ireland (see, in particular, paragraph 1(f) and (g) of Schedule 2 to the Discounts Disregards Order).

23. For these reasons, CLG and the Welsh Assembly Government have concluded that, properly interpreted, the establishments referred to in paragraph 1 of Schedule 2 to the Discounts Disregards Order are only establishments situated in the UK. It follows that to broaden the definition to include establishments situated in other Member States amendments are required to the Discounts Disregards Order.

An explanation of the proposed changes

24. A copy of the Discounts Disregards Order with the proposed changes (highlighted in red) is attached at Annex A.

25. The drafting keeps the basic relationship between the definition of a person undertaking a full-time course of education in paragraphs 3 and 4 of Part 2 of Schedule 1 to the Discounts Disregards Order and the definition of a prescribed educational establishment in Part 1 of Schedule 2 to the Discounts Disregards Order.

26. **In relation to prescribed educational establishments**, as mentioned above there is currently a list in paragraph 1 of Part 1 of Schedule 2 to the Discounts Disregards Order, and these establishments are within the UK.

27. Based on the current 'catch-all wording' of the current paragraph 1(f) and (g) of Part 1 of Schedule 2 to the Discounts Disregards Order, the re-draft of paragraph 1 defines these establishments by their purpose (solely or mainly to provide courses of further or higher education) and their situation in a Member State. If these changes were made, the word "member" in "Member State" would mean a Member of the European Union⁴.

28. It is also necessary to re-draft paragraph 2 of Part I of Schedule 2 to the Discounts Disregards Order so that it includes new definitions for the terms "further education", "higher education" and "relevant authority".

29. **The definition of "further education"** is based on the definition in section 2(3) of the Education Act 1996, although amended to refer to the compulsory school age in the relevant Member State. We see no need to refer to full-time and part-time education, since the temporal aspects of the definition of a person undertaking a full time course of education are addressed in paragraphs 3 and 4 of Part II of Schedule 1 to the Discounts Disregards Order.

30. In relation to England and Wales we also see no reason expressly to exclude secondary education as the current drafting does⁵, since the person will be treated as a "student" one way or another. In other words, although the approach may result in some shift (probably minor) in the numbers of people who are treated as undertaking full-time courses of education as opposed to qualifying courses of education, we doubt that this matters in a practical sense since the outcome is the same; the persons in question will be treated as students for council tax purposes.

31. **The definition of "higher education"** is based on the definition in Schedule 6 to the Education Reform Act 1988. However, it has not been possible to use that definition in full, since it contains references (such as the references to Higher National Diploma and Higher National Certificate) which are purely domestic and so have no general application to other Member States.

32. Instead, we have provided paragraph (c) which defines these other qualifications in a more generic way. The test we have adopted is that the qualification (including a professional qualification) is one which is regarded by the relevant authority as being equivalent to a qualification (or part of a qualification) mentioned in paragraph (a) or (b).

33. The ultimate arbiter of whether a course is 'equivalent' to a first or higher degree for these purposes is the "relevant authority" which is defined as the authority which in relation to the Member State has sole or primary responsibility for the regulation of higher education.

⁴ Section 5 of, and Schedule 1 to, the Interpretation Act 1978 provide that the definition of "EU" and other expressions defined by section 1 of and Schedule 1 to the European Communities Act 1972 have the meanings prescribed by that Act unless the contrary intention appears. Schedule 1 to the European Communities Act 1972 defines "member" in the expression "member State" as referring to membership of the EU.

⁵ This is achieved in the current drafting by the cross-reference to section 2 of the Education Act 1996 in the definition of "further education" in paragraph 2 of Part I of Schedule 2 to the Order.

34. **Two consequential amendments** are necessary as a result of the amendments to Part I of Schedule 2 to the Discounts Disregards Order.

35. The first concerns article 5. This article prescribes the institutions that must issue a certificate for the purposes of paragraph 5 of Schedule 1 to the 1992 Act and this is done by referring to the definitions in Parts I and II of Schedule 2 to the Discounts Disregards Order.

36. Because of the expanded scope of the definition in Part I of Schedule 2 to the Discounts Disregards Order (to cover all Member States) we have amended the definition in article 5(2) of the Discounts Disregards Order to clarify that the obligation to issue a certificate only applies to establishments which are situated in England and Wales. This mirrors the current approach and it is clearly not possible for the Secretary of State or Welsh Ministers to legislate so as to impose similar obligations on establishments in other Member States.

37. The second consequential amendment is to change the definition of “course of higher education” in paragraph 6(2) of Part II of Schedule 1 to the Discounts Disregards Order. This term is used in the definition of a qualifying course of education and we have simply ensured that the definition is consistent with the changes in Part I of Schedule 2 to the Discounts Disregards Order.

38. No consequential amendments are required to the Exempt Dwellings Order, since “student” is defined in that Order as “a person falling within the definition of student in paragraph 4 of Schedule 1 of the Act” (see article 2(1) of the Order).

Distance learning students

39. In CTIL 13 dated 15th September 1997, DETR (a predecessor Department to CLG) said the following about Open University students (emphasis added):

Open University

We have received a number of queries about the status of students undertaking Open University courses of education, in particular relating to the Post Graduate Certificate in Education course, described by the OU as a part-time eighteen month course. It is for local authorities to determine whether attendance on this, or any other OU course will enable a person to fall within the definition of a full-time student. There is no reason why a student on an OU course should not receive a discount or exemption, provided they meet the normal criteria.

When determining student status local authorities should bear in mind:

i) attendance on a course need not be at the premises of the education establishment: the regulations state attendance should be at the premises “or otherwise”;

ii) a course described as full time, or part-time, by a particular educational establishment will not necessarily be classified in the same way for council tax purposes. Authorities should therefore consider whether the actual requirements of a particular course meet the criteria prescribed in the regulations, rather than rely solely on an education establishment’s description.

40. The relevant legislation has remained largely unchanged since that time. However, in the case of *R (on the application of Fayad) v London South East Valuation Tribunal* [2008] EWHC 2531 (Admin) ('the *Fayad* case') Neil Garnham QC (sitting as a deputy High Court judge) concluded that the words "to attend" in paragraph 4 of Schedule 1 to the Discounts Disregards Order mean physically attend (see, generally, paragraphs 22 to 25 of judgment).

41. The case concerned a student (Mr. Fayad) who was writing up his Ph.D thesis. Whilst writing up in this way there was no requirement on Mr. Fayad to attend a particular place and the main question in the case was whether Mr. Fayad met the relevant tests in paragraph 4(1)(b) of Schedule 1 to the Discounts Disregards Order. In the circumstances the court decided that physical attendance was required.

42. It remains CLG's and the Welsh Assembly Government's policy that distance-learning students should be capable of being persons undertaking a full-time course of education. By distance-learning students we mean students who do not physically attend the establishment for the relevant periods specified in paragraph 4 of Schedule 1 to the Discounts Disregards Order, but who are otherwise required to undertake periods of study, tuition or work experience which in practice mean that they are full-time students.

43. In CLG's and the Welsh Assembly Government's view the *Fayad* case does not inevitably mean that physical attendance will always be required for the purposes of paragraph 4 of Schedule 1 to the Discounts Disregards Order. Mr. Fayad was not attending, or required to attend, the University in any distance-learning sense and so the question of whether he was attending the University during the period when he was writing up his thesis could only be determined by asking whether 'attend' meant physically attending the University, or attending to the work necessary to complete the Ph.D. However, a different result may be reached in relation to a person who is (for example) attending the educational establishment remotely via the internet.

44. Nevertheless, CLG and the Welsh Assembly Government accept that the *Fayad* case may have made paragraph 4 of Schedule 1 to the Discounts Disregards Order materially more difficult to apply in relation to distance-learning students.

45. We have not provided any suggested drafting in this consultation document, but **in the light of the *Fayad* case would billing authorities welcome a change to paragraph 4 of Schedule 1 to the Discounts Disregards Order in order to clarify the status of distance learning students and ensure that the legislation meets CLG's and the Welsh Assembly Government's policy in this regard?**

Guidance

46. The Government recognises the need for guidance to assist local authorities with implementing these proposed changes, and to that end has produced a draft guidance document, which identifies key issues and signposts to some potential sources of further information.

47. A copy of the draft guidance is at Annex B.

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?
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?
3. Have the correct consequential legislative amendments been identified?
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? Are there any other potential effects of the proposed changes that have not been identified?
5. Does the guidance document address the key issues for local authorities that are raised by these changes?
6. Is the ERASMUS list likely to provide a useful source of information when considering an application for student discount?
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 authorities access in order to establish the legitimacy of a further and/or higher education establishment?
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?

Since the proposed legislative provisions are applicable to both England and Wales, both administrations have agreed that subject to the outcome of this consultation a joint amending order is the most efficient way forward.

Responses to this consultation should be sent to either CLG or the Welsh Assembly Government respectively. The contact points to which consultees should respond are:

For Wales

By post to Gemma Smith
LGF1 Consultations
Local Government Finance Division
Welsh Assembly Government
Cathays Park
Cardiff CF10 3NQ

By e-mail LGF1consultations@wales.gsi.gov.uk

For England

By post to Mumuna Mumuni
Council Tax Division
Communities and Local Government
5/E2 Eland House
Bressenden Place
London SW1E 5DU

By e-mail counciltax.consultations@communities.gsi.gov.uk

The deadline for responses is 14 September 2010.

Annex A: Draft statutory order

STATUTORY INSTRUMENTS

1992 No. 548

COUNCIL TAX, ENGLAND AND WALES

The Council Tax (Discounts Disregards) Order 1992

<i>Made</i> - - - -	<i>9th March 1992</i>
<i>Laid before Parliament</i>	<i>10th March 1992</i>
<i>Coming into force</i> - -	<i>31st March 1992</i>

The Secretary of State for the Environment, as respects England, and the Secretary of State for Wales, as respects Wales, in exercise of the powers conferred on them by section 113 of and paragraphs 1, 2, 4, 5 and 7 of Schedule 1 to the Local Government Finance Act 1992, and of all other powers enabling them in that behalf, hereby make the following Order—

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Council Tax (Discount Disregards) Order 1992 and shall come into force on 31st March 1992.

(2) For the purposes of this Order, "the Act" means the Local Government Finance Act 1992 and "prescribed educational establishment" means a body specified in Part I or Part II of Schedule 2 to this Order.

Persons in detention

2. Under paragraph 1(6) of Schedule 1 to the Act, a person is to be disregarded for the purposes of discount on a particular day if on the day he is imprisoned under, or in service custody for the purposes of, the Armed Forces Act 2006 and, where a person is in custody, the custody forms part of a continuous period exceeding 48 hours.

The severely mentally impaired

3.—(1) The condition prescribed for the purposes of paragraph 2(1)(c) of Schedule 1 to the Act is that the person in question is entitled to one of the qualifying benefits listed in paragraph (2) below or meets the requirements in paragraph (3) or (4) below.

(2) The qualifying benefits for the purposes of paragraph (1) are—

- (a) an incapacity benefit under section 30A of the Social Security (Contributions and Benefits) Act 1992;
- (b) an attendance allowance under section 64 of that Act;
- (c) a severe disablement allowance under section 68 of that Act;
- (d) the care component of a disability living allowance under section 71 of that Act, payable at the highest rate under section 72(4)(a) or at the middle rate under section 72(4)(b) of that Act;
- (e) an increase in the rate of his disablement pension under section 104 of that Act (increase where constant attendance needed);
- (f) a disability working allowance under section 129 of that Act, where the qualifying benefit is—
 - (i) one falling within subsection (2)(a)(i) or (ii) of that section, or

- (ii) income support, and the applicable amount formerly payable included a disability premium within the description in sub-paragraph (j) below,
or is a corresponding Northern Ireland benefit;
 - (g) an unemployability supplement under Part I of Schedule 7 to that Act;
 - (h) a constant attendance allowance under—
 - (i) article 14 of the Personal Injuries (Civilians) Scheme 1983; or
 - (ii) article 14 of the Naval, Military and Air forces etc. (Disablement and Death) Service Pensions Order 1983 (including that provision as applied, whether with or without modifications, by any other instrument);
 - (i) an unemployability allowance under--
 - (i) article 18(1) of the Personal Injuries (Civilians) Scheme 1983, or
 - (ii) article 18(1) of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983 (including that provision as applied, whether with or without modifications, by any other instrument);
 - (j) income support where the applicable amount includes a disability premium in respect of which the additional condition in paragraph 12(1)(b) of Schedule 2 to the Income Support (General) Regulations 1987 is satisfied;
 - (k) incapacity benefit under sections 40 and 41 of the Social Security Contribution and Benefits Act 1992.
- (3) The requirements in this paragraph are—
- (a) that the person in question has reached pensionable age as defined for the purposes of Parts I to VI of the Social Security Contributions and Benefits Act 1992, and
 - (b) that had he not reached pensionable age he would have been entitled to one of the benefits listed in paragraph (2) above.
- (4) The requirements of this paragraph are that—
- (a) the person in question is a person whose partner is in receipt of jobseeker's allowance, and
 - (b) by virtue of that person's incapacity for work the applicable amount for the purposes of regulation 83 or 84 of the Jobseeker's Allowance Regulations 1996 includes a premium which falls to be determined under paragraph (d) or (g) of paragraph 14(1) of Schedule 1 to those Regulations.

Students, etc

4. For the purposes of paragraph 4 of Schedule 1 to the Act--

“apprentice” has the meaning given by paragraph 1 of Schedule 1 to this Order;

“student” means a person who is to be regarded as—

- (a) a foreign language assistant, by paragraph 2 of Schedule 1 to this Order;
- (b) a person undertaking a full time course of education, by paragraphs 3 and 4 of that Schedule; or
- (c) a person undertaking a qualifying course of education, by paragraph 5 of that Schedule.

“student nurse” has the meaning given by paragraph 7 of Schedule 1 to this Order;

“youth training trainee” has the meaning given by paragraph 8 of Schedule 1 to this Order.

Prescribed Educational Establishments

5.—(1) For the purposes of paragraph 5(2) of Schedule 1 to the Act the information prescribed to be contained in a certificate is--

- (a) the name and address of the prescribed educational establishment by whom the certificate is issued;
- (b) the full name of the person to whom it is issued;
- (c) his date of birth (where this is known to the establishment and where the person falls within paragraph (c) of the definition of student in article (4) above);
- (d) a statement certifying that he is following or has followed a course of education as a student or, as the case may be, a student nurse;

- (e) the date when the person became a student or a student nurse at the establishment and the date when his course has come or is expected to come to an end.

(2) For the purposes of paragraph 5(4) of Schedule 1 to the Act, the bodies prescribed for the definition of "institution" are those institutions situated in England or Wales which-

- (a) in relation to students, are defined as prescribed educational establishments in Part I of Schedule 2 to this Order; and
- (b) in relation student nurses, are defined as prescribed educational establishments in Part II of that Schedule.

Patients in homes

6. For the purposes of paragraph 7 of Schedule 1 to the Act, "hostel" means--

- (a) premises approved under section 9(1) of the Criminal Justice and Court Services Act 2000, or
- (b) a building or part of a building—
 - (i) which is solely or mainly used for the provision of residential accommodation in other than separate and self-contained sets of premises, together with personal care, for persons who require such personal care by reason of old age, disablement, past or present alcohol or drug dependence or past or present mental disorder, and
 - (ii) which is not a care home or independent hospital for the purposes of that paragraph.

SCHEDULE 1

Article 4

Definition of Students, etc

PART 1

Apprentices

1.—(1) A person is an apprentice on a particular day if, on that day he is—

- (a) employed for the purpose of learning a trade, business, profession, office, employment or vocation;
- (b) for that purpose undertaking a programme of training leading to a qualification accredited by the Qualifications and Curriculum Authority or the Scottish Vocational Education Council—
 - (i) to which Part 7 of the Apprenticeships, Skills, Children and Learning Act 2009a applies which is awarded or authenticated by a body which is recognised by the Office of Qualifications and Examinations Regulation under section 132 of that Act in respect of the qualification, or
 - (ii) accredited by the Scottish Vocational Education Council; and
- (c) employed at a salary or in receipt of an allowance or both, which are, in total no more than £195 per week.

(2) A person is undertaking a programme for the purposes of sub paragraph (1) on a particular day, if the day falls within the relevant period for that programme.

PART 2

Students

2. A person is to be regarded as a foreign language assistant on a particular day if--

- (a) on the day he is registered with the British Council as a foreign language assistant; and
- (b) the day falls within the period of his appointment as a foreign language assistant at a school or other educational institution in Great Britain.

3. A person is to be regarded as undertaking a full time course of education on a particular day if—

- (a) on the day he is enrolled for the purpose of attending such a course with a prescribed educational establishment within Part I of Schedule 2 to this Order, and

- (b) the day falls within the period beginning with the day on which he begins the course and ending with the day on which he ceases to undertake it,

and a person is to be regarded as ceasing to undertake a course of education for the purpose of this paragraph if he has completed it, abandoned it or is no longer permitted by the educational establishment to attend it.

4.—(1) A full-time course of education is, subject to subparagraphs (2) and (3), one—

- (a) which subsists for at least one academic year of the educational establishment concerned or, in the case of an educational establishment which does not have academic years, for at least one calendar year;
- (b) which persons undertaking it are normally required by the educational establishment concerned to attend (whether at premises of the establishment or otherwise) for periods of at least 24 weeks in each academic or calendar year (as the case may be) during which it subsists, and
- (c) the nature of which is such that a person undertaking it would normally require to undertake periods of study, tuition or work experience which together amount in each such academic or calendar year to an average of at least 21 hours a week during the periods of attendance mentioned in paragraph (b) above in the year.

(2) In determining whether a course falls within the definition in sub-paragraph (1)—

- (a) in applying paragraph (c) of that definition, a person is to be treated as undertaking work experience at any time if, as part of the curriculum of the course—
 - (i) he is at a place of employment of his and is providing services under his contract of employment, or
 - (ii) he is at a place where a trade, business, profession or other occupation which is relevant to the subject matter of the course is carried on, and he is there for the purposes of gaining experience of that trade, business, profession or other occupation,

and references in sub-paragraph (3) below to periods of work experience shall be construed accordingly;

- (b) in applying paragraphs (b) and (c) of that definition, the first calendar year shall be treated as beginning with the day on which the course begins, and subsequent calendar years (if any) as beginning on the anniversary of that day;
- (c) in applying those paragraphs to a course which begins part-way through an academic year of the educational establishment concerned, the academic year shall be treated as beginning at the beginning of the term in which the course begins, and subsequent academic years (if any) as beginning at the beginning of the equivalent terms in those years; and
- (d) in applying those paragraphs to a course which subsists (or is treated as subsisting) for other than a number of complete academic or calendar years (as the case may be), any last part of the course shall be disregarded.

(3) Except in the case of a course for the initial training of teachers in schools, a course is not to be treated as a full time course of education if the aggregate for the course as a whole of all the periods of work experience normally required to be undertaken as part of it exceeds the aggregate of all the periods of study or tuition not constituting work experience normally so required (taking account for this purpose of any period of study, tuition or work experience in a part year which, might otherwise fall to be disregarded under sub-paragraph (2)(d)).

5.—(1) A person is to be regarded as undertaking a qualifying course of education on a particular day only if on that day—

- (a) he is under the age of 20;
- (b) he is not undertaking a course of full time education within the meaning of paragraphs 3 and 4 above; and
- (c) the relevant number of hours per week for that course, or where he is undertaking 2 or more qualifying courses with the same establishment, the aggregate of the relevant number of hours per week, exceeds 12.

(2) A person is undertaking a course on a day for the purposes of sub-paragraph (1) if—

- (a) the day falls in the relevant period for that course; and
- (b) he is not an apprentice or a youth training trainee.

(3) In relation to a qualifying course of education "the relevant number of hours per week" means the average number of hours per week a person undertaking it would normally require to spend, in the period during which the course subsists, on relevant activities within the meaning of paragraph 6 below, (excluding for the purpose of calculating that average any period of vacation).

6.—(1) In paragraph 5, a qualifying course of education means a course—

- (a) which subsists for more than 3 calendar months;
 - (b) which is not a course of higher education;
 - (c) with respect to which tuition is principally received otherwise than through correspondence;
 - (d) which is not undertaken in consequence of an office or employment held by the person in question; and
 - (e) with respect to which the relevant activities are (insofar as they are normally carried out under the course at particular times) normally so carried out principally between 8.00 am and 5.30 pm.
- (2) In sub-paragraph (1)—

“relevant activities” means the receipt of tuition, the undertaking of supervised study or examination, and the taking part (as part of the curriculum of the course) in any supervised exercise, experiment, project or practical work;

“course of higher education” means a course which is within the meaning of the definition of “higher education” in paragraph 2 of Part I of Schedule 2 to this Order.

PART 3

Student Nurses

7.—(1) A person is a student nurse on a particular day if, on that day, he is undertaking a course which would (if successfully completed) lead to first registration in the Nurses' Part or the Midwives' Part of the register maintained by the Nursing and Midwifery Council under article 5 of the Nursing and Midwifery Order 2001.

(2) A person is to be regarded as undertaking a course for the purposes of sub paragraph (1) on a particular day if the day falls within the relevant period for that course.

PART 4

Youth Training

8.—(1) A person is a youth training trainee on a particular day if, on that day he is--

- (a) under the age of 25; and
- (b) undertaking training—
 - (i) pursuant to arrangements made under section 2 of the Employment and Training Act 1973,
 - (ii) which is funded by the Learning and Skills Council for England.

(2) A person is to be regarded as undertaking training on a particular day for the purposes of sub paragraph (1) if the day falls within the relevant period for that course.

PART 5

Interpretation

9. In this Schedule, the relevant period for a course or programme means the period beginning with the day on which a person begins that course or programme and ending with the day ("the last day") on which he completes it, abandons it or is dismissed from it (which period includes any periods of vacation between terms and before the last day).

Prescribed Educational Establishments

PART 1

Establishments for Students

1. Subject to paragraph 3 below, an institution is a prescribed educational establishment within this Part if it is—
- (a) situated in a Member State, and
 - (b) established solely or mainly for the purpose of providing further or higher education.

2. In this Part—

“further education”, in relation to a Member State, means—

- (a) any course of education (other than a course which is within the meaning of the definition of “higher education” below) which is suitable to the requirements of persons who are over the compulsory school age applicable in that State, and
- (b) organised leisure-time occupation provided in connection with such a course;

“higher education”, in relation to a Member State, means any course of education the successful completion of which results in any of the following qualifications—

- (a) a first degree,
- (b) a higher degree,
- (c) a qualification (including a professional qualification) which is regarded by the relevant authority as being equivalent to a qualification (or part of a qualification) mentioned in paragraph (a) or (b) above; and

“relevant authority”, in relation to a Member State, means the authority which in relation to that State has sole or primary responsibility for the regulation of higher education.

3. A Ministry of Defence training establishment for the armed forces is not a prescribed educational establishment within this Part of this Schedule.

PART 2

Establishments for Student Nurses

4. An institution is a prescribed educational establishment within this Part if it is--
- (a) a college of nursing and midwifery; or
 - (b) a college of health

established by a regional or a district health authority within the meaning of section 8 of the National Health Service Act 1977 or a Health Board within the meaning of section 2 of the National Health Service (Scotland) Act 1978.

Annex B: Draft guidance document

Guidance on students and council tax

CAVEAT

This document has been issued as guidance to billing authorities. Authorities should satisfy themselves that their administration of council tax complies with the legislation.

INTRODUCTION

The Council Tax (Discount Disregards) (Amendment) Order 2010 [*insert SI reference*] amends the Council tax (Discount Disregards) Order 1992 ('the Discounts Disregards Order'). The purpose of the amendments is to allow persons who are undertaking a full-time course of education with an educational establishment situated in any Member State of the European Union ('Member State') to be treated as students for council tax purposes.

VERIFYING EDUCATIONAL ESTABLISHMENTS

The main practical issue arising from these amendments is how billing authorities will consider an application for student status from a person who is resident in England or Wales, but undertaking a full-time course of education with an educational establishment situated in another Member State.

Paragraph 5 of Schedule 1 to the Local Government Finance Act 1992 requires an educational establishment prescribed by order to provide a certificate, on request from the student, detailing information on the course. This information includes name and address of establishment, student's full name and date of birth, a statement certifying course has or is being followed as a student and the date when course has come or is expected to end. However, this duty applies only to establishments situated in England and Wales. There is no such duty on institutions outside the UK and no such duty can be imposed by the Secretary of State or Welsh Ministers.

To assist local authorities in ascertaining the credentials of a particular establishment CLG has identified a list of institutes which hold an Erasmus Charter. The list covers 4000+ institutions that represent the large majority of higher education institutions in the 33 countries of the European Union, including the UK, participating in Erasmus.

The Erasmus Programme (European Region Action Scheme for the Mobility of University Students), is a European Union (EU) education and training programme, enabling more than 180,000 students to study and work abroad each year, as well as supporting co-operation actions between higher education institutions across Europe. It also caters for professors and business staff who want to teach abroad and for university staff who want to be trained abroad.

The Erasmus University Charter (EUC) provides the general framework for the European co-operation activities a higher education institution (HEI) may carry out within the Erasmus programme. It is a prerequisite for HEIs to organise student mobility and teaching and other staff mobility, to carry out Erasmus intensive language courses and intensive programmes, and to apply for multilateral projects, networks, accompanying measures and to organise preparatory visits.

Billing authorities can access the list at

http://ec.europa.eu/education/erasmus/doc/euclist_en.pdf

PROVISION OF INFORMATION

In addition to using the Erasmus list billing authorities are entitled to request information from the applicant in order to satisfy themselves that the application meets the criterion set out in legislation.

Under the Council Tax (Administration and Enforcement) Regulations 1992 billing authorities are required to take reasonable steps to ascertain certain matters. They are also enabled to require certain information to be provided to them. In considering whether a person meets the relevant tests in the Discounts Disregards Order it is reasonable for billing authorities to request information including any of the following:

- copy of confirmation of acceptance on course
- enrolment details
- key details of course (duration, hours, syllabus etc)
- confirmation of payment for course - this may be an invoice
- contact name and details of the institute course administrator to whom the local authority can seek further information

In accordance with their statutory powers and obligations, billing authorities may also wish to request further information which is not listed above.

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