



OFFICE OF THE
DEPUTY PRIME MINISTER

Council Tax Liability for Care Homes

A Consultation Paper

June 2003

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June 2003

Council Tax Liability for Care Homes

A Consultation Paper

Purpose

1. This consultation paper seeks views on:
 - Proposed legislative changes to ensure that a care home within the meaning of the Care Standards Act 2000, and in respect of which a person is registered under Part 2 of that Act, is valued as a single chargeable dwelling for the purposes of the council tax with the owner being liable for the council tax bill;
 - the draft order and regulations bringing this into effect, and amending council tax legislation in consequence of the Care Standards Act 2000 (Annexes B and C); and
 - the Partial Regulatory Impact Assessment (Annex D).
2. A copy of this consultation paper has been sent to all English billing authorities, the Local Government Association, the National Care Homes Association, the UK Homecare Association, the Independent Healthcare Association, Care Forum, the National Housing Association, The National Care Standards Commission, Help the Aged, the Chartered Institute of Public Finance Accounts and The Institute of Revenues, Rating and Valuation, and has been made available on the web-site of the Office of the Deputy Prime Minister at www.odpm.gov.uk
3. We invite responses by **18 July 2003**. Please send paper responses to:

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Or e-mail responses to counciltax.consultations@odpm.gov.uk

4. Further copies of this consultation paper can be obtained from 0870 1226 236 or on the ODPM website at <http://www.local-regions.odpm.gov.uk/conindex.htm>
5. The Office may wish to publish responses to this consultation exercise in due course or deposit them in the Office's Library. If so, all responses received will be published or deposited, unless a respondent specifically

asks the Office to treat their response as confidential. Confidential responses will, nevertheless be included in any statistical summary of the numbers of comments received and views expressed.

Introduction

6. Section 3 of the Local Government Finance Act 1992 (“the LGFA 1992”) defines a dwelling for the purposes of the council tax provisions for England and Wales. Article 3 of the Council Tax (Chargeable Dwellings) Order 1992 requires a single property containing more than one self-contained unit to be treated as comprising the same number of dwellings as there are self-contained units.
7. A self contained unit is defined as a building or part of a building which has been constructed or adapted for use as separate living accommodation. To be a self-contained unit the accommodation must contain facilities sufficient to enable the resident to maintain a fully independent existence from others. A facility for the preparation and cooking of food is essential but a bathroom is not - use of a communal shower or bath does not prevent the accommodation being self contained.
8. Residential care homes are valued for council tax purposes on the same basis as any other domestic property. Therefore, where the living accommodation in a care home is comprised of bedrooms with communal bathroom and kitchen facilities the home will be banded as one dwelling. Where the living accommodation is comprised of bedrooms with en-suite bathroom and kitchen facilities the home may be banded as a collection of individual self contained dwellings. In the former there is one council tax bill for which the owner is liable (see Class A in the Council Tax (Liability for Owners) Regulations 1992 (S.I. 1992/551). In the latter a separate bill will be issued in respect of each unit and the resident is the person liable to pay it (unless it is unoccupied, in which case the owner is liable)
9. A non domestic rate assessment will be made for any accommodation that is not domestic. This will include not only space used for “business purposes” such as administrative offices but also ancillary facilities such as hairdressing salon, resource centre, library, pool room or hydrotherapy pool. Lounges, dining rooms and laundries will generally be reflected in the council tax banding.

Background

10. Many care homes are now being constructed or adapted so that the living accommodation is provided with en-suite bathroom and kitchen facilities,

even if these are just in an alcove and rather basic. This is enough to ensure that they must be viewed as self contained accommodation. In such cases the Valuation Office Agency will disaggregate the living accommodation. Each unit will then be placed in the appropriate value band and receive a council tax bill for which the resident not owner will normally be liable. (The owner is liable where the unit is unoccupied).

11. As listing officers of the Valuation Office Agency increasingly disaggregate the units of residential accommodation provided by care homes, many more residents will become liable for council tax bills for the first time. Although most may receive assistance in meeting this bill via the means tested council tax benefit system some will not if they have savings or income which take them above the benefit thresholds. Also, as the residents of care homes are often very vulnerable individuals, the care home may have to deal with the bills including applying for council tax benefits thereby increasing their operating costs.
12. There are currently about 30,000 care and nursing homes in England. Unfortunately we do not have any information on how many may have already been disaggregated or may be disaggregated in the future. **We would therefore welcome any data respondents might have in this respect to help us to quantify the scale of problem.**
13. The necessity to disaggregate some care homes has caused uncertainty, as it is dependant on the internal configuration of individual care homes and the degree of facilities provided. Recent decisions at Valuation Tribunals and in the High Court have reinforced this. We believe that it is in the interests of the residents and providers of care homes, and Government policy for the provision of care homes for the vulnerable and elderly, to end this uncertainty by amending legislation, even though we do not at present know exactly how many homes are affected, or are likely to be affected in future.

The options for change

14. We have examined four possible options for change. These were:
 - Do nothing - units continue to be separately banded: resident liability
 - Units separately banded: owner liability
 - Create an exemption for care homes
 - Treat homes as one unit and have owner liability
15. We felt that option 1 was not tenable. The residents of care homes whose accommodation had been separately banded would continue to receive individual bills. Whilst the statutory discount for single person occupancy would help, in some cases, to reduce bills by 25%, many residents are likely to have little or no income and most, if not all of their liability would have to be picked up by council tax benefit. However, there would be a

number of residents who would not have their bills met by the benefit system and would have to pay the bill themselves. This might make staying in a care home too expensive. There would also be additional administration and costs for care home owners who will have to assist residents in the payment of the bills and in the claiming of council tax benefits. Where individual units were unoccupied, the care home owner would be liable for the council tax in the usual way, in accordance with section 6 of the LGFA 1992.

16. We also felt that option 2 although removing the necessity of directly billing the residents would nevertheless still impact on them. With a separate bill for each unit for which the care home owner would be liable the additional cost would merely be passed on to the residents through increased fees. (see Appendix B of the Partial Regulatory Impact Assessment).
17. We dismissed option 3 because it would mean that care homes would make no contribution towards the cost of providing services except where they are liable for business rates on that part of the home used for business purposes. This would result in a net loss in revenue to local authorities nationally which would have to be met either by increased Government grant, or higher council tax levels, or both.
18. After due consideration we believe option 4 provides the best solution. It maintains the position of care homes before disaggregation took place. It minimises the impact of the council tax on both the residents and owners of care homes whilst still ensuring they make some contribution to the cost of providing local services.
19. We therefore propose to make an order under section 3(5) of the LGFA 1992 (a chargeable dwellings order) so that where a care home within the meaning of the Care Standards Act 2000, in respect of which a person is registered in accordance with Part 2 of that Act, contains more than one self contained unit, it shall be treated as a single dwelling for the purposes of council tax.
20. Only those care homes in respect of which a person is registered, as they are required to be by Part 2 of the Care Standards Act 2000, should benefit from the amendments. Where the person managing or carrying on a care home, within the meaning of that Act, has failed to register as they are required to do, we propose that the care home would continue to be treated as the same number of separate dwellings as there are self-contained units. This is intended to provide a further incentive for registration.
21. As a single dwelling the owner would then be liable for the council tax under class A of the Council Tax (Liability for Owners) Regulations 1992 (S.I. 1992/551). (We propose to amend the latter regulations to reflect amendments made to paragraph 7 of Schedule 1 to the LGFA 1992 by paragraph 20 of Schedule 4 to the Care Standards Act 2000, which replaced references to and definitions of a "residential care home, nursing

home or mental nursing home” with references to and definitions of a “care home or independent hospital”. This amendment to paragraph 7 was subject to transitional savings under the Care Standards Act (Commencement No. 10 (England) and Transitional, Savings and Amendment Provisions) Order 2001 (S.I. 1001/4150 (C 134)) where someone remained transitionally registered under the Registered Homes Act 1984 in accordance with the Care Standards Act 2000 (Commencement No 9 (England) and Transitional and Savings Provisions) Order 2001 (S.I. 2001/3852 (C 125))).

22. A draft order and regulations that would put into effect our proposals are attached at Annexes B and C and a fuller analysis of the options can be found in the Partial Regulatory Impact Assessment attached at Annex D.

Timing of changes

23. Any secondary legislation to change the council tax position of care homes would be brought into force as soon as possible after reaching a decision following the close of consultation. (In practice the order and regulations would come into force 21 days after being laid before Parliament, so it should be possible to make this change during 2003).

Other amendments to council tax secondary legislation consequential on the Care Standards Act 2000

24. We need to make other amendments to the secondary legislation consequential on the Care Standards Act 2000. A fuller explanation is attached at annex A.

Conclusion

- 25. We would welcome views on whether the order and regulations should be amended in accordance with option 4.**
- 26. We would also welcome views on the Partial Regulatory Impact Assessment at Annex D. In particular, estimates of the number of care homes that might be affected by disaggregation and the competitive implications for each of the 4 options.**
- 27. We would also welcome comments on the proposed amendments consequential on the Care Standards Act 2000.**

June 2003

Annex A

OTHER AMENDMENTS TO COUNCIL TAX SECONDARY LEGISLATION CONSEQUENTIAL ON THE CARE STANDARDS ACT 2000

The Council Tax (Exempt Dwellings) Order 1992 (S.I. 1992/558) and the Council Tax (Discount Disregards) Order 1992 (S.I. 1992/548) (as well as the Council Tax (Liability for Owners) Regulations 1992) all still contain references to “residential care home”, “nursing home” and “mental nursing home”. We therefore propose to amend these instruments to reflect the changes made by paragraph 20 of Schedule 4 to the Care Standards Act 2000 to paragraph 7 of Schedule 1 to the LGFA 1992 (which replaced these terms with references to “care home or independent hospital”).

The Exempt Dwellings Order

The effect of article 3 of the draft order attached at Annex B will be that where an individual who is an owner or tenant of an unoccupied dwelling which was previously his sole or main residence, has his sole residence in another place (not being a “care home” or “independent hospital” within the meaning in paragraph 7 of Schedule 1 to the LGFA 1992), and has been a “relevant absentee” for the whole of the period since the dwelling last ceased to be his residence, the dwelling will be an exempt dwelling within Class I of the Council Tax (Exempt Dwellings) Order 1992.

(Where the individual who is the owner or tenant of an unoccupied dwelling has his sole or main residence in a care home or independent hospital within the meaning of paragraph 7, the unoccupied dwelling will be exempt under Class E of the Council Tax (Exempt Dwellings) Order. The wording of Class E does not need amending to achieve this).

We have retained references to “residential care home” and “nursing home” in Class I of the Council Tax (Exempt Dwellings) Order as these terms are used in paragraph 8 of Schedule 1 to the LGFA 1992, which is referred to in Class I. Paragraph 8 of Schedule 1 has not been amended in England and Wales.

Note that we do not propose to insert reference a person being registered under Part 2 of the Care Standards Act 2000 in respect of the care home for the purposes of the exemption from council tax of the care home resident’s previous dwelling. We do not consider it appropriate to require the care home resident to pay council tax on their previous dwelling merely because the person managing or carrying on the care home has failed to comply with their statutory obligation to register under the Care Standards Act 2000.

The Discount Disregards Order

Article 4 of the draft order attached at Annex B amends the definition of hostel, in the Council Tax (Discount Disregards) Order 1992, for the purposes of paragraph 7 of Schedule 1 to the LGFA 1992. A person whose sole or main

residence is a hostel in England or Wales, in which he is receiving care and/or treatment, is to be disregarded for the purposes of the council tax discount.

The current definition of hostel in article 2(1)(b) of the Council Tax (Discount Disregards) Order includes reference to its not being a “residential care home, nursing home or mental nursing home” for the purposes of paragraph 7 of Schedule 1 to the LGFA 1992. We propose to change this definition to include reference to the building not being a “care home or independent hospital” for the purposes of paragraph 7 of Schedule 1 to the LGFA 1992.

Again, we do not propose to insert reference to a person being registered under Part 2 of the Care Standards Act 2000 in respect of the care home: non registration by a person carrying on or managing a care home would not make it a hostel if it would not otherwise be a hostel.

 STATUTORY INSTRUMENTS

2003 No.

COUNCIL TAX, ENGLAND
**The Council Tax (Chargeable Dwellings, Exempt Dwellings and
Discount Disregards) (Amendment) (England) Order 2003**

<i>Made</i> - - - -	2003
<i>Laid before Parliament</i>	2003
<i>Coming into force</i> - -	2003

The First Secretary of State, in exercise of the powers conferred upon him by sections 3(5)(b) and 4 of and paragraphs 4(4) and 7(2) of Schedule 1 to the Local Government Finance Act 1992(1) hereby makes the following Order:

Citation, commencement and application

- 1. This Order may be cited as the Council Tax (Chargeable Dwellings, Exempt Dwellings and Discount Disregards) (Amendment) (England) Order 2003 and shall come into force on xxxxx 2003.

(1) This Order applies to England only(2).

Amendment to the Chargeable Dwellings Order

- In article 3 of the Council Tax (Chargeable Dwellings) Order 1992(3) after “single property” insert— “, which is not a care home within the meaning of the Care Standards Act 2000(4) in respect of which a person is registered in accordance with Part 2 of that Act,”.

Amendment to the Exempt Dwellings Order

- In article 3 of the Council Tax (Exempt Dwellings) Order 1992(5), in class I, for “mental nursing home” substitute “care home, independent hospital”.

(1) 1992 c. 14.

(2) The Secretary of State can exercise the powers under sections 3(5)(b) and 4 and paragraphs 4(4) and 7 of Schedule 1 to the Local Government Finance Act 1992 only in relation to England: see article 2 of and Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999.

(3) S.I. 1992/549 to which relevant amendments have been made by the Council Tax (Chargeable Dwellings, Exempt Dwellings and Discount Disregards) Amendment Order 1997 (S.I. 1997/656).

(4) 2000 c. 14.

(5) S.I. 1992/558 to which relevant amendments have been made by the Council Tax (Exempt Dwellings) (Amendment) Order 1994 (S.I. 1994/539).

Amendment to the Discount Disregards Order

4. In article 6(1) of the Council Tax (Discount Disregards) Order 1992⁽⁶⁾ for “residential care home, nursing home or mental nursing home” substitute “care home or independent hospital”.

Signed on behalf of the First Secretary of State

2003

Minister of State
Office of the Deputy Prime Minister

EXPLANATORY NOTE

(This note is not part of the Order)

Section 3 of the Local Government Finance Act 1992 (“the 1992 Act”) defines a dwelling for the purposes of the council tax provisions for England and Wales. Article 3 of the Council Tax (Chargeable Dwellings) Order 1992 requires a single property containing more than one self-contained unit to be treated as comprising the same number of dwellings as there are self-contained units.

Article 2 of this Order amends article 3 of the Council Tax (Chargeable Dwellings) Order 1992 to ensure that a care home within the meaning of the meaning of the Care Standards Act 2000, and in respect of which a person is registered in accordance with Part 2 of that Act, shall be treated as a single dwelling for the purposes of the council tax, and not as a number of separate dwellings where it contains more than one self-contained unit.

Section 4 of the 1992 Act provides that the Secretary of State may prescribe by order classes of dwellings for which no council tax is payable. Class I in Article 3 of the Council Tax (Exempt Dwellings) Order 1992 exempts from council tax an unoccupied dwelling whose owner or tenant now has his sole or main residence in another place, “not being a hospital, residential care home, nursing home, mental nursing home or hostel within the meaning of paragraphs 6, 7 or 8 of Schedule 1” to the 1992 Act, for the purpose of receiving personal care required by him for certain specified reasons.

The Care Standards Act 2000 amended paragraph 7 of Schedule 1 to the Local Government Finance Act 1992, by substituting references to “care home” and “independent hospital” for the previous terms “residential care home”, “nursing home” and “mental nursing home”. Article 3 of this Order amends Class I in the Council Tax (Exempt Dwellings) Order 1992 in consequence of the Care Standards Act 2000 by inserting references to care homes and independent hospitals.

Article 3 of this Order does not remove references to “residential care homes and “nursing homes” in the Council Tax (Exempt Dwellings) Order 1992 since paragraph 8 of Schedule 1 to the 1992 Act, in so far as it extends to England and Wales, still contains definitions of these terms in Scotland. In so far as paragraph 8 of Schedule 1 to the 1992 Act extends to Scotland, it has been amended by the Regulation of Care (Scotland) Act 2001. This latter Act of the Scottish Parliament removed references to “residential care home” and “nursing home” and provided for a person to be disregarded for the purposes of the council tax discount if a care home service provides in Scotland accommodation which is his sole or main residence. Because an Act of the Scottish Parliament cannot change the law of England and Wales, these amendments cannot be taken into account in the Council Tax (Exempt Dwellings) Order 1992.

Section 11 and Schedule 1 to the 1992 Act provide for descriptions of people resident in a dwelling to be disregarded in determining whether the amount of council tax payable in respect of the dwelling is subject to a discount. Paragraph 7 of Schedule 1 to the 1992 Act provides for a person to be disregarded if he has his sole or main residence in a hostel. Paragraph 7(2) allows the Secretary of State to define a hostel by Order. Article 4 of this Order amends the definition of a

⁽⁶⁾ S.I. 1992/548.

hostel, by substituting “care home or independent hospital” for “residential care home, nursing home or mental nursing home” in article 6(1) of the Council Tax (Discount Disregards) Order 1992 in consequence of the amendments made by the Care Standards Act 2000 to paragraph 7 of Schedule 1 to the 1992 Act.

 STATUTORY INSTRUMENTS

2003 No.

COUNCIL TAX, ENGLAND
**The Council Tax (Liability for Owners) (Amendment) (England)
Regulations 2003**

<i>Made</i> - - - -	2003
<i>Laid before Parliament</i>	2003
<i>Coming into force</i> - -	2003

The First Secretary of State, in exercise of the powers conferred upon him by sections 8(1) and 113(1) of the Local Government Finance Act 1992(7) hereby makes the following Regulations:

Citation, commencement and application

5. —(2) These Regulations may be cited as the Council Tax (Liability for Owners) (Amendment) (England) Regulations 2003 and shall come into force on xxxxx 2003.
- (3) These Regulations apply to England only.

Residential care homes

6. In regulation 2 of the Council Tax (Liability for Owners) Regulations 1992(8) for Class A there is substituted—
- “Class A
- (a) a care home within the meaning of the Care Standards Act 2000(9), in respect of which a person is registered in accordance with Part 2 of that Act;
 - (b) a building or a part of a building in which residential accommodation is provided under section 21 of the National Assistance Act 1948(10); or
 - (c) a hostel within the meaning given by paragraph 7 of Schedule 1 to the Act.”

Signed on behalf of the First Secretary of State

2003

Minister of State
Office of the Deputy Prime Minister

(7) 1992 c. 14.
 (8) S.I. 1992/551.
 (9) 2000 c. 14.
 (10) 1948 c. 29.

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Council Tax (Liability for Owners) Regulations 1992 prescribe the classes of dwelling for which the person liable for council tax is the owner rather than the occupier. Class A in regulation 2 of those regulations provided for the owner to be liable for council tax for “a residential care home, nursing home, mental nursing home or hostel within the meanings given by paragraph 7 of Schedule 1 to” the Local Government Finance Act 1992.

The Care Standards Act 2000 amended paragraph 7 of Schedule 1 to the Local Government Finance Act 1992, by substituting references to “care home” and “independent hospital” for the previous terms “residential care home”, “nursing home” and “mental nursing home”. Article 2 of these Regulations substitutes for the existing Class A a new Class A in the Council Tax (Liability for Owners) Regulations 1992 which refers to care homes within the meaning of the Care Standards Act 2000, in respect of which a person is registered in accordance with Part 2 of that Act, buildings or parts of buildings in which residential accommodation is provided under section 21 of the National Assistance Act 1948 and hostels within the meaning of paragraph 7 of Schedule 1 to the Local Government Finance Act 1992.

The owner and not the occupier will be liable to pay the council tax only for those care homes within the meaning of the Care Standards Act 2000, in respect of which a person is registered in accordance with Part 2 of that Act. Where no person is so registered, although they should have, the occupiers and not the owner will continue to be liable for council tax.

COUNCIL TAX LIABILITY FOR RESIDENTIAL CARE AND NURSING HOMES:
PARTIAL REGULATORY IMPACT ASSESSMENT

1. Purpose and intended effect

The objective

To clarify the council tax liability for care homes in the light of recent appeals.

Devolution

The amendments will only apply to England.

The background

Council tax is levied on chargeable dwellings. These can either be a complete building as is the case with most houses or a part of a building where the building contains a collection of self-contained units, i.e. a block of flats. To be a self-contained unit the accommodation must contain facilities sufficient to enable the resident to maintain a fully independent existence from others. A facility for the preparation and cooking of food is essential but a bathroom is not - use of a communal shower or bath does not prevent the accommodation being self contained.

Residential care homes are valued for council tax purposes on the same basis as any other domestic property. Therefore where the living accommodation in a care home is comprised of bedrooms with communal bathroom and kitchen facilities the home will be banded as one dwelling. Where the living accommodation is comprised of bedrooms with en-suite bathroom and kitchen facilities the home may be banded as a collection of individual self contained dwellings. In the former there is one council tax bill for which the owner is liable. In the latter a separate bill will be issued in respect of each unit, and the resident will be the person liable to pay it (unless it is unoccupied in which case the owner is liable).

A non domestic rate assessment will be made for any accommodation that is not domestic. This will include not only space used for “business purposes” such as administrative offices but also ancillary facilities such as hairdressing salon, resource centre, library, pool room or hydrotherapy pool. Lounges, dining rooms and laundries will generally be reflected in the council tax banding.

Many care homes are now being constructed or adapted so that the living accommodation is provided with en-suite bathroom and kitchen facilities, even if these are just in an alcove and rather basic. This is enough to ensure that they must be viewed as self-contained accommodation. In such cases the

listing officers of the Valuation Office Agency may disaggregate the living accommodation. Each unit would then be placed in the appropriate value band and receive a council tax bill for which the resident not the owner is normally liable. (The owner is liable where the unit is unoccupied).

Care home owners say that the construction of individual self-contained units within the homes is being done as part of the national minimum standards for care arising from the Care Standards Act 2000 which came into force on 1 April 2001.

The new standards for care are meant to ensure that amongst a number of measures residents of care homes have safe and comfortable bedrooms. Although some of the rooms have been equipped with en-suite facilities, having separate cooking and washing facilities, the Department of Health has advised that the requirements of the new standards does not require them to be en-suite. They have also advised that nothing in the Care Standards Act 2000 or the national minimum standards should lead to a demand for council tax.

A definition of a care home is at Appendix A to this partial regulatory impact assessment.

Risk assessment

As listing officers increasingly disaggregate the accommodation provided by care homes, many more residents will become liable for council tax bills for the first time. Although most may receive assistance in meeting this bill via the means tested council tax benefit system some will not if they have savings which take them above the benefit threshold for savings. Also as the residents of care homes are often very vulnerable individuals the care home may have to deal with the bills including applying for council tax benefits thereby increasing their operating costs. It could also increase local authority and Department for Work and Pensions costs because there would be more bills issued and claims for benefit.

At 31 March 2001, the latest date for which figures are currently available there were 24,075 residential care homes in England providing accommodation for 341,175 adults. There were 5,679 nursing homes providing 186,828 bedspaces. (Note that the Care Standards Act 2000 replaced the previous concepts of "residential care homes" and "nursing homes" (and "mental nursing homes") with new concepts of "care homes" and "independent hospitals"). However, precise numbers of care homes or residents likely to be effected by disaggregation are unavailable. It will largely depend on the physical circumstances of each care home. But we are aware of particular problems at two care homes but all care homes could potentially be affected.

Case study 1: The home was previously banded as a single unit at band E but following alterations has been banded as 13 separate units each at Band A. The owner appealed against the listing officers decision to a Valuation

tribunal who confirmed the listing officer's decision.

Case study 2: The home contains a number of single bedrooms and some flatlets for two people. All have bathroom and kitchen facilities. Originally the listing officer banded all the rooms separately but reconsidered and separately banded only the flatlets. A recent Valuation Tribunal disagreed with this.

The Department of Health have also advised that some care homes that have been registered are now presenting themselves as care homes no longer so that they can benefit from housing benefit or Supporting People funding and to avoid registering and inspection. Ultimately, it will be for the National Care Standards Commission to decide if an establishment is providing personal care and therefore whether it is a care home within the meaning of the Care Standards Act 2000, and whether therefore a person carrying on or managing the home should be registered under Part 2 of that Act, whether they want to be or not.

2. Options

We have started from the position that it would not be acceptable for these care homes to be reassessed entirely as non-domestic premises as this would substantially increase the tax burden for the home. We therefore identified four options for consideration:

1. Do nothing - Units continue to be separately banded: resident liability
2. Units separately banded: owner liability
3. Create an exemption for care homes
4. Treat homes as one unit and have owner liability

Option 1 - Do Nothing - Units continue to be separately banded: resident liability

The Valuation Office Agency would continue to disaggregate in appropriate cases which would lead to the residents of the individual units being liable for the council tax and receiving individual bills. The individual units would probably be in band A rather than the higher band for the original care home.

Risk

Whilst the statutory discount for single person occupancy would help in some cases to reduce bills by 25%, many residents are likely to have little or no income and most if not all of their liability would have to be picked up by council tax benefit. This will mean additional council tax benefit costs which will have to be met from central government (DWP). However, there would be a number of occupants that would not have their bills met by the benefit system and would have to pay the bill themselves. This might make staying in a care home too expensive for them.

There would be additional administration and costs for care home owners who would have to assist residents in the payment of the bills and in the claiming

of council tax benefits. There would be also be consequential increases to local authority and DWP costs because more bills would be issued and there would be more claims for benefit.

The banding decisions can be appealed against in a Valuation Tribunal and this option would probably lead to more challenges and attendant publicity. Given the recent cases, it is by no means clear that a definitive position will be reached quickly. This could create a great deal of uncertainty.

Option 2 - Units separately banded; home owner liability

As with Option 1, the Valuation Office Agency would continue to disaggregate in appropriate cases. The effect of this option would mean that there would be a separate bill for each unit but the care home owners would be liable for the council tax of all the individual self contained units.

Risk

Care home owners would face additional costs in the payment of a number of bills. Individual units will most likely be band A. Council tax on four single person units at band A would equal the tax on a single band H property, so if there were five or more single person units, the total liability would be higher than if it were a single Band H dwelling. The position would be even worse for the owner of the whole building which was in a band lower than H.

This option avoids the administrative and presentational difficulties of billing individual residents, but may be no more acceptable as the home owner would probably have to pass on the costs to the residents, but those on benefit would not be able to claim for this element of their housing costs. There are still likely to be appeals and a need for a definitive position to be established by this means.

Option 3 - Exempt Residential Care Homes from Council Tax.

This would exempt care homes from council tax liability.

Risk

Care homes would make no contribution towards the cost of providing services except where they are liable for business rates on that part of the home used for business purposes. There would be no effect on an individual local authority as its relative share of Revenue Support Grant would increase to compensate for the loss because of the new class of exemption. But it would lead to a net loss in revenue to local authorities nationally. This could be made up by increased Government grant, but if this were not forthcoming, council tax levels could be higher than they would otherwise have been.

This option would no doubt be welcomed by owners as a positive move by central government to provide help to care homes by reducing their running

costs. But an exemption for care homes might lead to calls for exemptions for other types of institution such as hostels.

The Valuation Office Agency has no data available for the amount of council tax that would be lost by exempting residential care homes from council tax.

Option 4 - Treat Residential Care Homes as one dwelling with owner liability.

This option ensures that a care home would be classified as one dwelling. This would be achieved by making an order under section 3(5) of the Local Government Finance Act 1992 (a chargeable dwellings order) which would prescribe that where a care home within the meaning of the Care Standards Act 2000, in respect of which a person is registered in accordance with Part 2 of that Act, contains more than one self contained unit, it shall be treated as one dwelling for council tax purposes.

Under this option only those care homes in respect of which a person is registered, as they are required to be by Part 2 of the Care Standards Act 2000, should benefit from the amendments. Where the person managing or carrying on a care home, within the meaning of that Act, has failed to register as they are required to do, we propose that the care home would continue to be treated as the same number of separate dwellings as there are self-contained units. This is intended to provide an incentive for registration.

As a single dwelling the owner would then be liable for the council tax under class A of the Council Tax (Liability for Owners) Regulations 1992 (S.I. 1992/551). (We propose to amend the latter regulations to reflect amendments made to paragraph 7 of Schedule 1 to the LGFA 1992 by paragraph 20 of Schedule 4 to the Care Standards Act 2000, which replaced references to and definitions of a “residential care home, nursing home or mental nursing home” with references to and definitions of a “care home or independent hospital”. See Annex C)

Risk

However, it would mean that in cases where the VOA has disaggregated, the list will have to be altered to insert a single band for the premises. This would lead to a loss in revenue. It is not known how many care homes will be affected but the number is not thought to be great. The effect on total revenue should therefore be minimal. The VOA has confirmed that they will have the resources to make such a change.

We would need to be sure that other categories of accommodation such as sheltered housing units were not caught inadvertently caught up a result of the change. However, this could be overcome by careful definition for example only including care homes that are care homes within the meaning of the Care Standards Act 2000 in our order. Regulation 14 of the Care Homes Regulations 2001 (S.I. 2001/3965) prevents the provision of accommodation to a person in a care home unless, so far as it shall have been practicable to do so, they have been assessed under the regulations and the care home is

suitable for meeting the person's needs in respect of his health and welfare. Regulations made under the Act provide that a property cannot be a care home unless it has been constructed or adapted in a way that makes it suitable for this specific use. This should be sufficient to exclude such property as sheltered accommodation.

As with option 3, there could be pressure to treat hostels and similar premises in the same way.

3. Benefits

Option 1 - Do Nothing - Units continue to be separately banded: resident liability

Care home owners would have an incentive for keeping units occupied otherwise they would have to pay council tax on any of the units that were unoccupied.

Option 2 - Units separately banded: home owner liability

This option avoids the administrative and presentational difficulties of billing individual residents, but may be no more acceptable as the home owner would probably have to pass on the costs to the residents.

Option 3 - Exempt Residential Care Homes from Council Tax.

This option would no doubt be welcomed by owners as a positive move by central government to provide help to care homes by reducing their running costs

Option 4 - Treat Residential Care Homes as one dwelling with owner liability.

Each home would receive a single council tax bill with the owner liable for payment. It would remove the necessity to bill vulnerable residents.

Treating a care home in respect of which a person is registered under Part 2 of the Care Standards Act 2000 as a single dwelling would also ensure that all such care homes were treated in the same way for council tax purposes no matter what their internal configuration. It removes the necessity of the VOA to determine what is or is not a self-contained unit within a care home in respect of which a person is registered under Part 2 of the Care Standards Act 2000.

4. Costs

Compliance costs

It is difficult to provide precise costs as they will depend on the size and value of the individual care home and /or the self contained accommodation units.

However, the model at appendix B illustrates the cost comparison of the differing options.

Other costs

In considering the options it should be noted that changing the liability would affect the tax base of the local authorities in the area. This in turn would affect their revenue support grant. Increasing the taxbase of an area would lead to a reduction in grant to the authorities in the area, whilst reducing the taxbase would increase the grant. Other things being equal, all other authorities would then have a marginal gain in the first case and a marginal loss in the second case.

5. Consultation with small business

We have spoken to representatives of the two major providers of care homes who originally brought the problem of disaggregated valuation of care homes to our attention. They have indicated their approval of our preferred option of treating accommodation in a care home as one unit for council tax purposes.

6. Competition Assessment

The preferred option of treating accommodation in a care home as one unit for council tax purposes will not affect competition between providers as all would be subject to one council tax bill irrespective of the physical configuration of the care home. Indeed it will ensure a more level playing field in competition as currently individual care homes may be treated differently when banded for council tax. The present situation could place new care homes at a competitive disadvantage because they may contain more self-contained accommodation than older premises. As the residents would be subject to individual council tax bills this might make newer care homes more expensive.

7. Enforcement and sanctions

Care homes will be subject to the normal enforcement measures applicable to all council taxpayers.

8. Monitoring and review

Care homes will be subject to valuation and re-valuation on the same basis as for all chargeable dwellings.

9. Consultation

Within Government

We have held discussions with the Valuation Office Agency and the Department of Health.

Public Consultation

This partial RIA is being published with a publicly available consultation document.

10. Summary and Recommendation

We have identified four options for legislative change:

1. Do nothing - units continue to be separately banded: resident liability
2. Units separately banded: owner liability
3. Create an exemption for care homes
4. Treat homes as one unit and have owner liability

ODPM has decided to proceed with option 4. This maintains the position of care homes before disaggregation took place. It minimises the impact of the council tax on both the residents and owners of care homes whilst still ensuring they make some contribution to the cost of providing local services.

Definitions

Paragraph 7 of Schedule 1 to the Local Government Finance Act 1992, as amended by paragraph 20 of Schedule 4 to the Care Standards Act 2000 states that:

“(1) A person shall be disregarded for the purposes of discount on a particular day if on the day -

- (a) he has his sole or main residence in a care home, independent hospital or hostel in England and Wales; and
- (b) he is receiving care or treatment (or both) in the home, hospital or hostel.

(2) In this paragraph -

“care home” means -

- (a) a care home within the meaning of the Care Standards Act 2000; or
- (b) a building or part of a building in which residential accommodation is provided under section 21 of the National Assistance Act 1948;

“hostel” means anything which falls within any definition of hostel for the time being prescribed by order made by the Secretary of State under this sub-paragraph;

“independent hospital” has the same meaning as in the Care Standards Act 2000.

(3) The Secretary of State may by order substitute another definition for any definition of “care home” or “independent hospital” for the time being effective for the purposes of this paragraph.”

Care homes

(1) For the purposes of this Act, an establishment is a care home if it provides accommodation, together with nursing or personal care, for any of the following persons.

(2) They are—

- (a) persons who are or have been ill;
- (b) persons who have or have had a mental disorder;
- (c) persons who are disabled or infirm;
- (d) persons who are or have been dependent on alcohol or drugs.

- (3) But an establishment is not a care home if it is—
- (a) a hospital;
 - (b) an independent clinic; or
 - (c) a children's home
- or if it is of a description excepted by regulations.

The definitions of “care home” and “independent hospital” in paragraph 7 of Schedule 1 to the Local Government Finance Act 1992 replaced earlier, separate definitions of “mental nursing home”, “nursing home” and “residential care home”. The latter terms were used in the Registered Homes Act 1984 which was repealed by the Care Standards Act 2000.

"Self-contained unit"

The Council Tax (Chargeable Dwellings) Order (SI 1995/549, article 2 as amended) defines a self-contained unit as meaning a building or part of a building which has been constructed or adapted for use as separate living accommodation.

Appendix B

COUNCIL TAX LIABILITY ON CARE HOMES: COMPARISON OF OPTIONS

Basic assumptions:

Home is Band H; units are band A:

Band H: £1500; Band A £500, reduced for single person to £375

No residential parts not in units, offices etc subject to business rates

HOME WITH 10 SINGLE PERSON UNITS

	option 1	option 2	option 3	Option 4
	Individual units with resident liability	Individual units with owner liability	homes exempt from Council Tax	homes as one dwelling with owner liability
each resident	£375	£0	£0	£0
owner	£0	£3,750	£0	£1,500
total Council Tax	£3,750	£3,750	£0	£1,500

HOME WITH 30 SINGLE PERSON UNITS

	option 1	option 2	option 3	option 4
	Individual units with resident liability	Individual units with owner liability	homes exempt from Council Tax	homes as one dwelling with owner liability
each resident	£375	£0	£0	£0
owner	£0	£11,250	£0	£1,500
total Council Tax	£11,250	£11,250	£0	£1,500