



## Council tax: members of the armed services

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Members of the armed forces, who are stationed away from the family home for long periods, may yet remain liable for council tax payable on that property. This note provides information on this and related matters.

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## A. Council tax liability

Service personnel who own or rent property are liable to pay council tax (or, in Northern Ireland, rates) on their homes. Those living in Ministry of Defence accommodation are liable to pay contributions in lieu of council tax (CILOCT), or in Northern Ireland, contributions in lieu of rates (CILOR). Further information on CILOCT and CILOR is given in the next section.

The fact that a member of the armed forces is stationed away from home does not necessarily mean that his or her council tax liability is removed and that a spouse or partner who remains in the family home will be entitled to single person discount. *Sole or main residence* is an important concept in council tax - as it was under the community charge (poll tax) - but it is not defined in the legislation. Case law indicates that questions of residence cannot be decided exclusively with regard to the time spent in a property. If someone occupies a property purely in connection with their employment, while maintaining a permanent home to which they can return at any time, the local authority may not regard their work-based accommodation as their main residence.

Two of the leading cases on this subject were as follows: In *City of Bradford Metropolitan Council v Neil Anderton*,<sup>1</sup> a merchant seaman was found to have his main residence in England despite spending the majority of the year on his ship. Mr Justice Hutchison in the High Court found that even if a ship could constitute a person's residence (which it could not), Mr Anderton's sole or main residence was his house in England because:

- that is where his home is, where he has his settled and usual abode, which he leaves only when the exigencies of his occupation compel him to go to sea;
- Other matters are the fact that Mr Anderton regarded the house as his home, that his wife lived there, he spent his time there when not on the ship and that he has an interest in and security of tenure at the house.

In another case, *Doncaster BC v Stark and Stark*<sup>2</sup> (1998), the High Court considered the position of a married RAF serviceman who was required to spend most of his time living at an airbase rather than in the property which he owned jointly with his wife. The Court held that sole or main residence should not be determined solely by the length of time spent at a property, but should take into account factors such as:

- security of tenure;
- where Corporal Stark spent time when he was not on duty;
- where he would return to should his employment with the RAF be terminated.

A court of appeal judgement in a more recent case<sup>3</sup>, which involved job-related accommodation though not in the context of the armed services, established the principle that a person's main residence would be the dwelling that a "reasonable onlooker" with a knowledge of the facts would regard as that person's home at the time. This did not overturn

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<sup>1</sup> RA (1991) 45

<sup>2</sup> RVR (1998) 80

<sup>3</sup> *R (Williams) v Horsham District Council* CA (2004)

the earlier judgements since the Court considered that a reasonable onlooker would have concluded in those cases that the person's main residence would have been the matrimonial home.<sup>4</sup> The judgement emphasised the fact that local authorities and valuation tribunals must consider all relevant aspects of a case when determining a question of sole or main residence. The CPAG's *Council tax handbook* states that: "Factors such as voter registration and registration for medical treatment have often been details used by valuation tribunals to determine sole or main residence."<sup>5</sup> Nevertheless, the answer in each case will depend on the particular circumstances and will be a matter of fact and degree.

Information on how to appeal over a council tax bill can be found in a leaflet published by the Department for Communities and Local Government (DCLG)<sup>6</sup> and on the website of the Valuation Tribunal Service.<sup>7</sup>

## **B. Contributions in Lieu of Council Tax (CILOCT)**

Armed forces accommodation owned by the MOD is exempt from council tax under the *Council Tax (Exempt Dwellings) Order 1992*.<sup>8</sup> The exemption covers barracks, messes and married quarters.

Although the local authority is not able to raise council tax on such properties it receives a "contribution in lieu of council tax" (CILOCT) from the Ministry of Defence, in line with an agreement with the then Department for the Environment, Transport and the Regions. The contribution paid is broadly equal to the council tax revenue that would have been collected on the properties. This is intended to ensure that other citizens in a local authority area are not subsidising armed forces accommodation through their own council taxes.

The costs incurred for occupied properties are recovered from individuals through CILOCT according to type of property and are payable with accommodation charges. Those living in single accommodation also pay CILOCT although their liability is much lower than those living in family accommodation because the rates for mess or barrack blocks are shared by all the occupants. The system allows a uniform payment wherever personnel are posted, including overseas. In Northern Ireland, a domestic rating system is in force and service personnel there pay contributions in lieu of rates (CILOR). Further information on CILOCT and CILOR is given in a factsheet produced by the Army Welfare Information Service.<sup>9</sup>

## **C. Second homes**

The *Local Government Act 2003* changed the rules on council tax on second homes to allow councils the discretion to reduce the discount from the previously prescribed 50% to a

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<sup>4</sup> See Valuation Tribunal Service, *LPAC Newsletter issue 3*, p14, <http://www.valuation-tribunals.gov.uk/newsletters/VTS%20LPAC%20Newsletter%20-%20Issue%203.pdf>

<sup>5</sup> Alan Murdie, *Council tax handbook*, Child Poverty Action Group, 7<sup>th</sup> ed, 2007, p71

<sup>6</sup> DCLG, *Council tax: a guide to your bill*, October 2006, pp22-3, <http://www.local.communities.gov.uk/finance/ct.htm>.

<sup>7</sup> <http://www.valuation-tribunals.gov.uk/>

<sup>8</sup> SI 1992/558 Reg. 3, Class O

<sup>9</sup> [http://www.army.mod.uk/soldierwelfare/supportagencies/aws/awis\\_index/information\\_sheets\\_index\\_as\\_at\\_2006/information\\_sheet\\_council\\_tax\\_and\\_ciloct.htm](http://www.army.mod.uk/soldierwelfare/supportagencies/aws/awis_index/information_sheets_index_as_at_2006/information_sheet_council_tax_and_ciloct.htm)

minimum of 10%. However, regulations made under the 2003 Act contained provisions designed to ensure that billing authorities would not reduce the discount for a property owned by those persons, such as service personnel or ministers of religion, who are required by the terms of their employment to occupy a second home. Thus, second homes owned by persons who are obliged to live in a class O exempt dwelling (i.e. accommodation provided by the Ministry of Defence) retain the full 50% discount.<sup>10</sup> This applies whether the main home is in England, Scotland or Wales.<sup>11</sup>

## D. Financial help for those posted overseas

### 1. Background

As explained in section A, a member of the armed forces who is stationed away from home for much of the year may still be liable for council tax on the family home if this is deemed by the local authority to be his/her sole or main residence. Chris Leslie, then Parliamentary Under-Secretary at the ODPM, confirmed in a parliamentary answer in 2003 that the spouse of someone posted abroad would not normally qualify for single person discount:

**Mr. Flook:** To ask the Deputy Prime Minister for what reasons the spouses of servicemen deployed overseas cannot claim the sole occupier discount for council tax. [106519]

**Mr. Leslie:** A full council tax bill assumes that at least two adults have their sole or main residence in a dwelling. There is a 25 per cent. discount for a dwelling that is the sole or main residence of only one person. Service personnel are treated in the same way as anyone else who is working away from home when determining their sole or main residence. When a person is employed overseas, the dwelling in which their spouse lives remains the main residence unless it can be shown that there has been a change of sole or main residence. A single person discount will not therefore apply.<sup>12</sup>

Nevertheless, in May 2005 a parliamentary answer indicated that officials at the MOD and ODPM (now the DCLG) were exploring the possibility of allowing a CT discount or exemption for service personnel posted overseas.<sup>13</sup> Later parliamentary answers indicated that discussions had moved on to the possibility of providing financial help with CT costs of those stationed abroad.<sup>14</sup>

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<sup>10</sup> The *Council Tax (Prescribed Classes of Dwellings) (England) Regulations 2003* (SI 2003/3011), regulation 6 and schedule. See also the explanatory notes to the regulations

<sup>11</sup> The practical effect of the original regulations was that the discount was not retained where the main home was in Scotland and it was arguable as to whether it applied where the main home was in Wales. Amending regulations were passed (SI 2005/416) to clarify that it applied where the main home was anywhere in mainland Britain. See: DCLG, *Council Tax Information Letter 1/2005*, 8 March 2005, p1, <http://www.local.communities.gov.uk/finance/ctax/Ctil.htm>

<sup>12</sup> HC Deb 2 April 2003 c711W

<sup>13</sup> HC Deb 23 May 2005 c33W

<sup>14</sup> See, for example, HC Deb 21 May 2007 cc1097-8W

## 2. Government announcement

On 25 September 2007 at the Labour Party conference, Defence Secretary Des Browne announced at the Labour Party conference that troops serving in Iraq and Afghanistan would receive a “25% discount” on their council tax and that this would be extended over the next year to all those serving on overseas operations. The MOD press release explained:

All troops who pay council tax for a property in the UK [or CILOCT on service family accommodation] will receive financial support through a flat-rate rebate payment over a six month tour of £140 - worth 25 per cent of the average Band D Council tax bill. The rebate will be added to the tax-free Operational Allowance paid at the end of an operational tour in Afghanistan or Iraq. The new measures will be introduced from October and first payments will be made from 1 April 2008.<sup>15</sup>

It should be emphasised that this was not a change in council tax legislation involving discounts or exemptions, but an additional payment from the MOD to help with the council tax costs of those serving overseas. Liam Fox, Conservative Shadow Defence Secretary was quoted as saying:

The nature of this measure will be divisive amongst the Armed Forces because it discriminates between personnel on different operations. It will put further pressure on the frontline budget because no new money is being made available to the MOD.<sup>16</sup>

On 28 January 2008, Des Browne confirmed the extension of the scheme to all personnel deployed on overseas operations. The MOD news article explained:

Troops who pay Council Tax for a property in the UK or Contributions in Lieu of Council Tax for Service Family Accommodation will receive financial support through a relief payment, based on the number of days in theatre, and worth some £140 over a six-month tour. The extension of the scheme will be effective from 1 April 2008, with payments backdated to 1 February 2008.<sup>17</sup>

## 3. Numbers involved

A series of parliamentary answers in October 2007 gave information on the numbers expected to benefit:

**Mr. Pickles:** To ask the Secretary of State for Defence how many members of the armed forces are entitled to the council tax exemption on his Department's homes. [158109]

**Derek Twigg:** Based on current deployment numbers, it is estimated that some 3,000 Service personnel with Service Families Accommodation will initially be eligible for

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<sup>15</sup> “Council tax relief for troops on operations”, 25 September 2007, <http://www.whitehallpages.net/modules.php?op=modload&name=News&file=article&sid=35444&topic=167&newlang=eng>

<sup>16</sup> See, for example, “MOD to give troops £140 council tax rebate”, *Daily Mail*, 25 September 2007; “No new MOD budget for army housing”, *The Times*, 26 September 2007 p7

<sup>17</sup> MOD, “Council tax relief extended to all troops on operations”, *News article*, 28 January 2008, <http://www.mod.uk/DefenceInternet/DefenceNews/DefencePolicyAndBusiness/CouncilTaxReliefExtendedToAllTroopsOnOperations.htm>

the council tax relief payment, increasing to some 5,000 next year when the relief will cover those on operational deployments beyond Iraq and Afghanistan.

**Mr. Pickles:** To ask the Secretary of State for Defence how many members of the armed forces will be entitled to the new council tax discount on homes not owned by his Department for troops serving abroad. [158110]

**Derek Twigg:** Based on current deployment numbers, it is estimated that some 5,000 Service personnel with private accommodation will initially be eligible for the council tax relief payment, increasing to some 7,500 next year when the relief will cover those on operational deployments beyond Iraq and Afghanistan.<sup>18</sup>

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<sup>18</sup> HC Deb 17 October 2007 c1113W