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Llywodraeth Cymru  
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Suzy Davies  
Chair, Wales Tourism Alliance

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11 August 2022

Dear Suzy,

Thank you for your further letter in relation to the classification of self-catering accommodation for local tax purposes.

There was a cross-over in the exchange of our most recent letters. You will now have received my reply of 28 July 2022, which followed your previous letter and your meeting with my officials. The recent exchanges we have had in relation to the Welsh Government's policy position on this matter have been comprehensive and I will not repeat that detail here.

You have asked a number of specific questions, which I have answered the annex to this letter. Some related questions have been grouped to answer.

In addition, our published [guidance](#) on non-domestic rates for self-catering properties has recently been updated, to reflect the changes that will take practical effect from 1 April 2023 and to include frequently asked questions from operators.

Yours sincerely,

A handwritten signature in black ink that reads "Rebecca Evans".

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

## ANNEX – RESPONSES TO QUESTIONS

- 1. Second home proliferation is a problem which, according to the Brooks report, affects 22 wards out of 852; this has likely increased somewhat during the pandemic. Even so, unlike proposals for council tax and tourism tax, which allow discretionary tax-raising powers to the local authorities most affected by second homes, this is all-Wales legislation.**

**How is this a reasonable and proportionate response to a serious but localised problem?**

The Explanatory Memorandum and Regulatory Impact Assessment (RIA) for the Non-Domestic Rating (Amendment of Definition of Domestic Property) Order 2022 sets out the purpose and intended effect of the legislation, placing it in the context of the wider package of measures the Welsh Government is delivering through the three-pronged approach. The rationale for the approach has also been the subject of our recent exchanges of correspondence. The Order differs from other aspects of the approach, in that it provides for the underlying definition of property as domestic or non-domestic for local tax purposes, rather than dealing with the local application of specific powers.

An effective policy response to this complex and multi-faceted issue requires a combination of Wales-wide and locally-delivered interventions. The national and more localised aspects of our local taxation changes are complementary and should not be considered in isolation from each other, or from the wider set of measures, in delivering the overall policy objective.

- 2. The EM states that it has limited evidence on which to draw to support the 182-day threshold as being effective, and no economic impact assessment has been done.**

**The Explanatory Memorandum confirms the evidence that Welsh Government has itself gathered is contradictory as to trends identifying demand for self-catering, the VOA stating that the trend from the 2019 high watermark was already heading downwards before the cost of living crisis hit.**

**The following extract summarises how limited Welsh Government’s knowledge base is:**

***“Even if previous occupancy related to the new thresholds were known with confidence, it would not reveal how many of those would be able to increase their letting activity so that they do meet the new criteria by the time they take effect. This makes it difficult to estimate accurately the potential costs and benefits of this option”.***

**Noting that Welsh Government had no idea how many businesses would transfer from NDR to council tax, but not disputing the policy aim, how did you**

**(a) assess the risks and benefits of this particular piece of legislation, particularly as it was introduced so swiftly and with such limited evidence collected by Welsh Government;**

**(b) assess the chances of it fulfilling the policy aim, albeit as part of a suite of policies coming forward;**

**(c) assess whether there would be a material risk to the policy aim were this particular change be removed from that suite of policies;**

**(d) assess whether the order in which these and other proposed changes were introduced might be more or less effective in achieving the policy aim;**

**(e) assess whether or not Regulatory Impact Assessments (RIAs) properly accounted for the effect on business of proposed legislation (para 13. Ministers' Business Scheme, s.75 GOWA 2006);**

The RIA sets out that, in the context of the wider policy aims, there is a limit to the available evidence in relation to any option – including doing nothing. The available evidence has been included in the RIA, which considers the potential costs, benefits and disadvantages of the options. This includes direct references to the potential impacts on self-catering businesses.

The Welsh Government's three-pronged approach is based on a recognition that a range of measures is necessary to fulfil the policy aim. The Explanatory Memorandum acknowledges that the policy should be viewed as part of a wider programme of measures if its full intent is to be achieved.

Whilst it is not possible to assess the level of risk to the full policy intent if this measure were not adopted, not increasing the occupancy thresholds for self-catering accommodation would dilute or undermine the effectiveness of the other measures. This point is addressed in the RIA under the benefits of the policy, where it is clarified that it could increase the effectiveness of the council tax premium as a discretionary lever for local authorities, by ensuring that a transfer from the council tax to the non-domestic rating list is out of reach of second home owners who wish to retain their property primarily for their own private use. The importance of this policy, within the package of measures, is also reflected in the broad support for increasing thresholds that the original policy consultation received.

The Welsh Government is developing the wider suite of measures at pace. The need for a lead-in for the local taxation changes taking practical effect is exemplified by your later comments in relation to the period of notice afforded to property owners. That is, in part, why this aspect of the wider package of measures is among the first to be progressed and will help to ensure that alignment with the implementation of the other measures being developed is as close as possible.

**(f) assess how much extra income this would make for each council in order to calculate whether the change was worth it (three examples of 'typical' businesses gives no indication of how many there are of each type); and**

As stated in the RIA, as it is not known how many properties might transfer between the non-domestic rating and council tax lists and it is not possible to estimate the overall implications for the local tax-base. The primary aim of the policy is not, however, to increase local tax revenue or provide financial savings to the Welsh Government, but to ensure property owners are making a fair contribution and to maximise the use of property, for the benefit of local communities. The examples provided are intended to assist property owners in considering the potential local tax implications of moving between property classifications, not to inform an estimate of overall implications. In determining whether to apply a council tax premium and at what level, each local authority needs to make an assessment of the potential impacts.

**(g) establish how many properties currently in use as both professional holiday lets and second homes are actually suitable as permanent dwellings?**

As stated in the RIA, the VOA has matched self-catering properties currently listed for NDR to a previous council tax band using standard data techniques and achieved an overall match rate of over 80%. With further work, the match rate could have been increased. The vast majority of self-catering properties have, therefore, previously been classified as domestic accommodation and liable for council tax.

The Welsh Government recognises that not all self-catering properties could be used as permanent dwellings. I have announced, and clarified in our recent exchanges, the work we are doing to explore further exceptions from the council tax premium and to update the relevant guidance for local authorities on the use of their discretion to reduce liability, where properties are not suitable as permanent dwellings.

**3. The Explanatory Memorandum refers to sector-specific evidence from WTA, UK Hospitality and the Professional Association of Self Caterers, uncontaminated by casual lets of second homes. Regrettably, the explanatory memorandum is misleading, stating that 499 responses were received to the technical consultation**

**That was not an insubstantial body of detailed evidence. Even so, they were a just a sample of the 1500 responses from professional businesses. These were collected in record time once the sector knew about the 182-day decision, but it was not possible to anonymise them all by the closing date of the technical consultation. The offer was made to you to submit them once anonymised, if you wanted to see them. No such request was made.**

**Why did the Explanatory Memorandum not disclose**

**(a) that more than 499 responses were offered to Welsh Government, but that 1000+ were not requested;**

The statement in the Explanatory Memorandum relates to the number of formal responses to the technical consultation. This is a standard component of any such document. In my statement of 24 May 2022, I expressed my gratitude to the sector for providing additional

information you gathered from your members. I, and other Ministers, had sight of this information and I noted that the same themes were reflected in the formal responses to the technical consultation. I have assured you that the information provided by the sector has been considered and I have clarified the further steps the Welsh Government is taking, having listened to the representations from the sector and taking account of the views of other stakeholders, and the wider policy objectives in the context of the impact on communities.

**(b) while 34% of the sector's respondents were able to reach the 182-day threshold at the high point of 2019 (which is different from the average figure presented by Welsh Government) ... they went on to say that only 16% would achieve that going forward;**

The RIA included reference to the 34% of the sector's respondents who reported they have previously let their property for 182 days. The scale of this estimate could be validated by the Welsh Government as broadly similar estimates are available from other sources and also included. Future occupancy cannot, however, be predicted with accuracy and this is explained in the RIA.

As mentioned previously, one of the aims of our wider policy approach is to shift behaviours and increase the usage of properties for the benefit of communities. Another is that property owners should make a fair contribution to their local communities. We recognise that some self-catering operators may not attain the new thresholds. Our policy position is that properties should be classed as non-domestic only if they are used for business purposes for the majority of the year. If they are let on a less frequent basis, they will be liable for council tax. Self-catering operators who meet the thresholds will make a contribution through the higher economic activity they bring. Operators who are below the thresholds will be treated as second home owners and will make their contribution through council tax, in the same way as those who do not meet the current thresholds.

**(c) the locations of the businesses on which Welsh Government relied for their evidence and the locations of those relied upon by the sector's evidence (this is material if the high-achieving businesses are in areas of high demand/second homes);**

The Welsh Government did not rely on examples from particular locations as this might prove to be unintentionally disclosive. Those provided in Table 2 of the RIA are not real properties but illustrations, as is noted. The notional locations were chosen to illustrate a range of local authority decisions which might apply in relation to the use of a council tax premium. It would not be possible to present all the possible permutations. The examples used do not reflect a reliance on evidence from specific areas.

**(d) any of the reasons given in either Welsh Government evidence and the sector's evidence as to why the new threshold was unattainable for some businesses;**

I take a different view from the premise suggested by this question. The key challenge raised by the sector related to seasonal and geographical variations in the possible levels of demand. This issue is explored in the RIA. Representations we have received from operators of multi-unit clusters, suggesting that some manage the occupancy levels for their

properties in order to avoid their businesses from generating revenue which exceeds the VAT threshold, are also considered. Other common themes from the sector's objections to the policy related to the impact of increased local tax liability and barriers to the use of some types of property for domestic purposes, if they did not meet the occupancy threshold, rather than the reasons why it is considered unattainable. These themes are also included in the RIA.

**(e) that the technical consultation was the only opportunity for views on the 182-day threshold to be shared. The original policy consultation sought views on changes to the occupancy and availability thresholds but that it might be as high as 182 days was not mentioned; and**

The original policy consultation sought views on whether the letting criteria should be changed and did not suggest a specific alternative. It is usual to ask open questions in a consultation of this nature. A wide range of specific suggestions was received, the most common of which was 105 days actually let. However, many respondents suggested higher figures. Some respondents were of the view that all properties providing living accommodation should be classified as domestic and liable for council tax, or suggested letting criteria so high that they would have the same effect.

The Welsh Government was not duty bound to consult further on decisions taken following the consultation, but I did decide to hold the further technical consultation on the draft legislation to change the letting criteria. As noted above, a large number of views were provided by stakeholders, both within and outside of that technical consultation. I also met sector representatives during the technical consultation period, as did my officials.

**(f) how it had complied with its Para 16, Welsh Ministers' Business Scheme (supra) obligation to, as part of the policy formulation process, consider whether there was scope for exemptions or special provisions to reduce or eliminate any adverse impact on the business sector or the business sector's employees. NB: The exemption referred to in the EM relates to council tax premiums, not exemption from the 182-day threshold.**

As noted in my statement of 24 May 2022, I have listened to the representations on behalf of the self-catering sector and taken action as a result. The thresholds provide a common definition as to whether a property is treated as domestic or non-domestic for local tax purposes. It is important that there is a consistent definition for determining whether a property falls within the council tax system or the non-domestic rating system. Other aspects of the local taxation system determine the actual liability for council tax or non-domestic rates and take account of a range of factors. However, creating exemptions from the basic definition could introduce unintended avenues for avoidance. The exceptions I am exploring in relation to council tax premiums are directly relevant, as they are part of the same local taxation system in which self-catering properties are already classified as domestic or non-domestic according to their use.

**4. The initial consultation sought approval for raising the current availability and occupancy thresholds from the current 140 and 70 days respectively. Of the respondents who supported a rise, less than 1% of them suggested a 182-day**

**occupancy threshold. The majority supported 105 days occupancy and 210 days availability (exceeding your challenge, declared later, to be open-for-trade for 6 months or more)**

**As the explanatory memorandum says, the government is not bound to accept the most common response to a consultation. A point the LCJ Committee brought out in its report, I suspect, because it prompts these further questions:  
Why**

**(a) was a suggestion which pleased just nine respondents out of the 900+ responses one of the three options put to you;**

**(b) did you not ask for the majority view of those who supported change to also be put to you as an option (105/210 days);**

**(c) did you not ask for a 140 day option to be brought forward for your consideration as this is the average occupancy rate across the UK, and adopted in Scotland for similar policy purposes;**

As noted in the RIA in relation to Option 2 (increase the letting criteria), other options for increased letting thresholds were considered, including 210 days available to let and 105 days actually let. The reason why lower thresholds were not pursued is also outlined. It is also acknowledged that an alternative option for increased thresholds would have similar advantages and disadvantages, but the costs and benefits would vary and the impact on the self-catering sector would be less pronounced.

**(d) did you not, under the terms of the Welsh Minister's Business Scheme (supra), engage with the sector once you had formed a view that 182 days was an appropriate threshold;**

As noted above, I held the further technical consultation on the draft legislation, received a large number of views from stakeholders and met sector representatives (including the Wales Tourism Alliance) during that period. I am aware that other Ministers and/or their officials have also engaged with the sector. The Welsh Government has responded to a large volume of correspondence received from the self-catering sector, providing clarification on a range of matters related to our local taxation changes.

**(e) was there no acknowledgement of the additional demands that the requirement to consult with business places on social partners, the representative bodies in this instance. "Therefore, in addition to ensuring that reasonable expectations are placed on social partners in the engagement process, the Welsh Ministers will assist the social partners' ability to engage by providing resources to facilitate engagement." (Welsh Ministers' Business Scheme, supra). No resources were offered;**

A large volume of responses was received to both consultations, within the time available. The provision of resources to support representative bodies in responding to a consultation is not routine and no such support was requested. The Welsh Government has invested

considerable time and resources in providing timely responses to queries and requests from sector representatives, during and after the consultation processes.

**(f) did you not ask how many other small businesses in the NDR system are asked to be open - and busy - in the same way as opposed to how the VOA carries out business evaluations; and**

Properties that are used for purposes other than the provision of living accommodation are not classified in the same way within the local taxation system. The wider tax-base does not have the same relevance to the policy aims. Most properties used for business and other non-domestic purposes can be readily identified as non-domestic and classified as such for local tax purposes. Particular issues arise in the case of self-catering accommodation as many of the properties in question could also be used as permanent living accommodation, and thus classified as domestic property and liable for council tax. Therefore, there is a need for a specific definition to distinguish between these uses for local tax purposes.

**(g) did you assert that the application of a non-identified competition filter determined that the risk of significant detrimental impact on competition was low at the same time as stating “It is not possible to predict the number of businesses which may be impacted and how they might respond”?**

The reasoning is clarified in the relevant section of the RIA.

**5. The EM is says that there is no specific equalities impact, stating that it is not clear that women, particularly with caring responsibilities (and retired people) would be less able to let their property for more of the year than others and that there is no “sound evidence available in this regard”. This shows a clear lack of understanding about how rural families participate in the economy and no appetite for seeking evidence, leading to an unsubstantiated assumption. The sector managed to get a small amount of evidence together at short notice, sufficient to suggest that Welsh Government should have explored this further.**

**What work did the self-declared feminist, pro-caring Welsh Government, with a commitment to gender budgeting, carry out to determine the impact of this policy on women?**

The Welsh Government considered available evidence, which was found to be very limited, as data held from surveys and administrative sources do not include personal characteristics of the operators. The survey conducted by the sector is referred to in the RIA even though its robustness cannot be validated by the Welsh Government. The RIA recognises that there is a lack of sound evidence in relation to the possible impacts on particular groups, but makes no assumptions in this regard.

**6. A warning that legislation is coming is different from legislation being made. Anything can happen, and I understand that there was a delay laying the Order in order for the late evidence to be considered.**

**Why, when it was clear that the Order would be delayed, was it not amended to ensure that it only affected assessments carried out after the anniversary the law was made, rather than the arbitrary date of April 1st? That way, the relevant 12 months to be taken into account by the VOA would be in the post legislation period instead of partly within it and partly retrospective? Anyone assessed between 1 April 2023 and 25 May 2023 will be asked to apply a new law to a period which predates its coming into force.**

The statement on the three-pronged approach by the Minister for Climate Change in July 2021 set out the reasons for urgency and pace in addressing the issues affecting the availability and affordability of housing and the impact of large numbers of second homes and holiday lets on communities. This was followed by the initial policy consultation on potential changes to the local taxes over the summer of 2021, which set out the case for change. On 2 March 2022, more than 12 months before the changes take practical effect, I announced the outcome of our consultation on local taxes for second homes and self-catering accommodation. During the consultation period and subsequently, I have had discussions with stakeholders, responded to debates on the subject in the Senedd and answered questions from Members. Throughout this period, I have been clear about the Welsh Government's decision and the timing of changes. I recognise the importance of clarity and certainty for businesses in relation to the timing of changes.

The implementation date of 1 April 2023 has been selected for a number of reasons. It is the start of a new operating (financial) year for businesses and other stakeholders in the system. The date also coincides with the coming into effect of the latest non-domestic rates revaluation, ensuring that all self-catering properties in Wales have been assessed on the basis on the current letting thresholds in readiness for the new rating list being compiled and providing consistency in how they have been defined ahead of the new thresholds being applied. I am not aware of representations from the sector suggesting that operators do not make their properties available to let during April and May. It is occupancy outside of the spring and summer seasons which has been raised as a challenge.

In the context of the wider policy approach, it is also important to ensure that closely related interventions are aligned, particularly the two arms of the local taxation system. Local authorities will set any council tax premium on a financial year basis and the Welsh Government has been clear that the timings of these related policy changes within the local taxation system would align.

## **7. Finally**

**(a) What is the appeals process for businesses, especially those who will fall on different sides of the 182-threshold from year to year?**

There are established routes of appeal for owners who consider that their property has been incorrectly classified or valued. An operator wishing to make an appeal should first [contact](#) the VOA. If agreement between the ratepayer and the VOA cannot be reached, the appeal may be considered by the Valuation Tribunal for Wales.

**(b) Will the threshold be averaged out where there is more than one unit on-site?**

The criteria apply to each individual unit of self-catering property rated separately by the VOA and this approach is not changing. If an operator has more than one unit of property at the same location or within very close proximity to each other and used for the same or connected businesses, as now it will still be possible to take an average for the number of days actually let, if some units are let for at least 182 days and others are not.

**(c) Why was no formal review period built into the Order to ensure that the impact of the legislation is addressed within a process which allowed for revocation should the monitoring and evaluation work reveal detriment/no benefit?**

It is not routine practice to build a formal review period into legislation. Our plans for post-implementation review are noted in the RIA. My officials are preparing to monitor the impact of the changes following implementation, from 1 April 2023. Our Service Level Agreement with the VOA includes a requirement to monitor and report to the Welsh Government on movements between the non-domestic rating and council tax lists.

In my statement of 24 May, I clarified that the Welsh Government will keep all policy levers under review, as we continue to progress the package of measures. However, I recognise the importance of clarity and certainty for businesses and consider it would not be helpful to suggest that the Welsh Government is likely to revise thresholds again in the short-term

