

Explanatory Memorandum to the Council Tax (Chargeable Dwellings) (Amendment) (Wales) Order 2014

This Explanatory Memorandum has been prepared by the Local Government Department and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Council Tax (Chargeable Dwellings) (Amendment) (Wales) Order 2014. I am satisfied the benefits outweigh any costs.

Leighton Andrews

MINISTER FOR PUBLIC SERVICES

24 SEPTEMBER 2014

1. Description

It is proposed the Council Tax (Chargeable Dwellings) 1992 Order be amended to ensure refuges comprising self-contained units which provide shelter for victims of domestic violence are treated as one dwelling and therefore subject to one assessment for Council Tax purposes.

2. Legislative background

Local Government Finance 1992 Act (the 1992 Act)

Section 1 of the 1992 Act provides each Billing Authority (a county or county borough council) shall levy and collect Council Tax. Council Tax is payable in respect of a “dwelling”. A dwelling is defined in section 3 of the 1992 Act and there is a power at section 3(5) for Welsh Ministers to prescribe by order that anything which, without the Order would otherwise be regarded as two or more dwellings, shall be treated as one dwelling.

Section 13A provides a Billing Authority with the discretion to reduce the amount of Council Tax bill a person is required to pay to the extent it thinks fit. This includes the power to reduce the amount to nil.

The Council Tax (Chargeable Dwellings) Order 1992 (the 1992 Order)

The 1992 Order is made under section 3(5) of the 1992 Act. The Order provides at article 3 that where a single property contains more than one self-contained unit, for the purposes of Part 1 of the 1992 Act, the property shall be treated as comprising as many dwellings as there are such units included in it and each such unit shall be treated as a dwelling.

This Order was amended in 2004 in relation to care homes in Wales to provide that a care home, instead of being treated for the purposes of Council Tax as comprising separate dwellings within a dwelling in accordance with the number of self-contained units, is instead treated as the number of dwellings found by adding one to the number of self-contained units provided to accommodate the person registered in respect of the care home.

The proposed Order will make different amendments in relation to refuges in Wales than those made in relation to care homes. The effect of the amendment is that a refuge, will be treated as one dwelling for the purpose of Council Tax provision, even if the property comprises more than one self-contained unit.

This instrument will follow the negative resolution procedure. This means it will be made and laid before the Assembly but should not be brought into force until at least 21 days from the date of laying. However, Standing Orders specify a 40-day period which also commences from the date of laying during which the Assembly may resolve that the instrument should be annulled. Unless an annulment motion is tabled, there will be no debate of this instrument in Plenary.

4. Purpose and intended effect of the legislation

The purpose of the proposed order is to ensure refuges comprising self-contained units can continue to be treated as a single dwelling in relation to the levying and collection of Council Tax.

Until recently, refuges providing emergency accommodation in Wales were provided on a communal basis, with shared living and cooking facilities. However new service models have been developed with a view to improving provision for victims of domestic violence, and now some refuges comprise self-contained units, with separate cooking and living facilities.

Under current legislation, each of these self-contained units is being treated as a separate dwelling for Council Tax purposes. Consequently, residents who stay in these refuges can become individually liable for Council Tax during their stay in the refuge accommodation.

Incurring a Council Tax liability may present an additional obstacle for victims of domestic violence who wish to leave their current situation. If they have limited financial means, vulnerable people may feel they are being financially disadvantaged to such an extent they decide to stay in the property where they are at risk of harm.

In some cases, the service provider pays the Council Tax liability rather residents of the refuge. Consequently the making of this order would also ensure the overall level of Council Tax liability does not increase for the service provider, ensuring refuges remain financially viable.

This policy is in line with the Welsh Government's commitment to protect and support victims of domestic violence as outlined in the Gender-based Violence, Domestic Abuse and Sexual Violence (Wales) Bill.

PART 2 – REGULATORY IMPACT ASSESSMENT

Options

Option 1 – Do nothing

Refuges comprising self-contained accommodation would continue to be treated as separate dwellings in relation to Council Tax under the current legislation. Residents who stay in these refuges could be individually liable for Council Tax during their stay at the accommodation and this may act as a disincentive for people to seek necessary support from refuges. However, treating individual units as self-contained units could allow local authorities to raise additional Council Tax revenue.

Option 2 – Encourage local authorities to exercise their discretionary powers in relation to the Council Tax bills for refuges

Under this option, Welsh Ministers would write to local authorities requesting they exercise their discretionary powers under section 13A of the Local Government Finance Act 1992 to reduce the Council Tax levied on refuges comprising self-contained units.

Whilst some local authorities may agree to do this for refuge accommodation in their area, it cannot be guaranteed and some authorities may continue to charge Council Tax on individual units. This could mean victims of domestic violence would be treated differently depending on where they sought refuge.

Option 3 – Make proposed Order

The proposed Order would ensure refuges with self-contained units are treated as a single dwelling for Council Tax purposes. It would ensure vulnerable residents staying at these refuges are not individually liable for Council Tax. In addition, it would ensure the overall level of Council Tax liability for the property does not increase for the service providers.

It may also have the effect of simplifying the administration and collection of Council Tax for local authorities.

Costs and benefits

Option 1 – Do nothing

Benefits

Local authorities would continue to issue individual Council Tax bills to residents of refuges living in self-contained accommodation, rather than levying one charge for the entire building.

As the introduction of refuges comprising self-contained units has led to an increase in the overall Council Tax liability for refuges, this could lead to a small increase in Council Tax revenue for local authorities.

There are approximately 60 buildings in Wales which provide emergency accommodation for victims of domestic abuse. 15% to 20% of these buildings contain self-contained units. On average, these buildings contain five separate units.

This means there are approximately 45-60 additional refuge properties on the Council Tax register for Wales, as opposed to the situation in previous years when between 9 and 12 larger buildings would have been on the register.

The amount of additional revenue authorities could raise would depend on a number of factors. It would depend on the location and value of the properties and whether any discounts apply. It would also depend on whether authorities are able to collect 100% of the liable amount.

Costs

The potential additional cost of Council Tax may present an obstacle for victims of domestic violence who wish to leave their current situation. Vulnerable people may feel they are being financially disadvantaged to such an extent they decide to stay in the property where they are at risk of harm.

In many cases, residents could be liable for Council Tax at two properties (their current home and the accommodation at the refuge) for the period of time they are staying at the refuge. If they are on a low income, they would only be eligible for Council Tax Reduction for one address.

In addition, there is a risk residents' names and addresses could be placed on the Council Tax register which could weaken the ability of service providers to keep the location and identity of domestic abuse victims secure.

In some cases, the organisation which manages the refuge may pay Council Tax bills on behalf of its residents. However, this option would lead to increased running costs and in the long term may jeopardise service provision.

Instead of issuing one bill to the service provider, local authorities incur costs in sending a large number of small bills to residents because of the high turnover of people staying at the property.

Option 2 – Encourage local authorities to exercise their discretionary powers in relation to the Council Tax bills for refuges

Benefits

Some local authorities may agree to continue to treat all refuge accommodation as one dwelling in relation to Council Tax for a period of time.

The Local Government Finance Act 1992 (s13A) provides a Billing Authority with the discretion to reduce the amount of Council Tax a person is required to pay to the extent it considers fit. This includes the power to reduce the amount to nil.

If a local authority agrees, this would be likely to lead to some vulnerable residents being protected from any additional Council Tax liability.

Costs

It is likely some Local Authorities would choose not to use their discretion and continue to issue Council Tax bills to residents of refuges who live in self-contained accommodation.

Victims of domestic violence may feel they are being financially disadvantaged to such an extent they cannot leave the property where they are at risk of harm.

The organisation which manages the accommodation may pay Council Tax bills on behalf of residents. However, this could lead to increased running costs and in the long term may jeopardise service provision.

Option 3 – Make proposed Order

Benefits

The proposed order would ensure refuges which contain self-contained units are treated as a single dwelling for Council Tax purposes. It would ensure the vulnerable residents of short-term emergency accommodation are not individually liable for Council Tax by being assessed separately.

The proposed Order would support the Welsh Government's commitment to protect and support victims of domestic violence. It is in line with the intention of the Gender-based Violence, Domestic Abuse and Sexual Violence (Wales) Bill and it removes a financial barrier which may prevent a victim of domestic abuse from leaving the property where they are at risk of harm. It would also ensure the overall level of Council Tax liability does not increase for the service provider. This would support the long-term financial viability of refuges.

Issuing just one bill for the whole property would simplify the administration and collection of Council Tax for local authorities and minimise the costs of collection.

Costs

The amended Order would ensure all refuges in Wales are treated in the same way, whether or not they contain self-contained accommodation units. It would therefore have the effect of maintaining the tax-base.

Whilst this would not have a detrimental impact on Local Authorities' tax-base, it would mean Local Authorities would be prevented from raising additional Council Tax revenue which could have been raised as outlined in Option 1.

Consultation

A public consultation sought views on possible amendments to the Council Tax (Chargeable Dwellings) Order 1992 (the 1992 Order) to ensure Emergency Accommodation comprising self-contained units is treated as a single dwelling for Council Tax purposes. The 12-week consultation was launched on 5 February 2014 and closed on 19 March. The full consultation can be found at Annex A.

It asked for general views on the proposal and the types of accommodation which should be covered when defining Emergency Accommodation.

The consultation was sent to the following organisations:

- All Local Authorities
- Welsh Local Government Association
- Welsh Women's Aid
- Valuation Tribunal Wales
- Valuation Office Agency
- Calan DVS
- Institute of Revenues, Rating and Valuation
- Citizens Advice
- Older People's Commissioner Wales
- Chwarae Teg
- Muslim Council Wales
- Mewn Cymru
- Chartered Institute of Housing

Six consultation responses were received. All respondents were supportive of the proposal to amend the 1992 Order and provided information on the various benefits. All responses were also supportive of proposals to include refuges within the definition of emergency accommodation.

Key stakeholders were shown a draft version of the Order to confirm it would have the intended effect and would not result in unintended consequences. Two responses were received regarding the description of domestic abuse used. These expressed concern there could be some people who stay in refuges whose abuse would not be covered within the description in the Order. However as the purpose of Order is to define which buildings can be classified as a "refuge" when assessing a dwelling's council tax liability, rather than to define what constitutes domestic abuse, no amendments to the Order were considered necessary.

Competition Assessment

The Order will not affect business, or charities and/or the voluntary sector in ways which raise issues related to competition. The competition filter has not been applied.

Equality Impact Assessment

In drafting this Order, consideration has been given to the duty on Welsh Ministers' to promote equality and eliminate discrimination.

There would not be any negative effects on any of the protected groups or community cohesion. Whilst refugees (as defined in the legislation) could equally refer to male refugees or female refugees, it is recognised victims of domestic violence are predominantly women and children.

The Order will have a positive effect for victims of domestic violence as it will remove a financial barrier for those wishing to leave their situation. A reduction in domestic abuse will allow more men and women to be more involved in their communities and would contribute to an increase in community cohesion.

United Nations Convention on the Rights of the Child

In drafting this Order, due regard has been given to the United Nations Convention on the Rights of the Child.

It is recognised victims of domestic violence are predominantly women and children. The proposed Order supports outcomes in relation to Article 19 of the Convention 'Governments should ensure children are properly cared for, and protect them from violence, abuse and neglect by their parents or anyone else that looks after them'.

ANNEX A

**Responses to Consultation on Amendments to the
Council Tax (Chargeable Dwellings) Order 1992 for
Emergency Accommodation**

Contents

- 1 Introduction
- 2 Summary of Responses
- 3 List of respondents

1. Introduction

Emergency Accommodation has until recently been classed as one dwelling for council tax purposes even though a number of 'units' may be located within the premises. This treatment has been consistent with Council Tax legislation and the treatment of premises according to case law as certain facilities in the premises were shared and not of a fully self-contained nature.

However, the model of service provision in some locations has now changed so self-contained units are being provided for residents. This means that in many cases each unit is now separately assessed for Council Tax with each individual resident being liable for at least a Band A charge. Such a charge would obviously be greater than a shared element of the Council tax bill due if the whole premises is assessed as being one dwelling.

The most suitable course of action to ensure self-contained emergency accommodation units are treated as one assessment for Council Tax purposes is to amend the Council Tax (Chargeable Dwellings) Order 1992 (the 1992 Order).

The change is necessary to allow the Welsh Ministers to amend the 1992 Order so that properties which are classed as emergency accommodation and consist of a number of self contained units are treated as one dwelling for Council Tax purposes.

This document sets out a summary of the responses.

2. Responses

Six responses to the consultation were received. These responses were submitted by:

- Four local authorities
- Two from Welsh Women's Aid (Neath and Cardiff)

A list of respondents is included in Section 3.

The consultation asked for views on the following areas.

- What are your views on the Welsh Government's proposal to amend the Council Tax (Chargeable Dwellings) Order 1992 to ensure that Emergency Accommodation comprising self-contained units is treated as a single dwelling for council tax purposes?
- What types of accommodation do you consider should be covered when defining Emergency Accommodation?

Summary of Comments

- 1. What are your views on the Welsh Government's proposal to amend the Council Tax (Chargeable Dwellings) Order 1992 to ensure that Emergency Accommodation comprising self-contained units is treated as a single dwelling for council tax purposes?**

All respondents were supportive of the proposal to amend the Order.

One respondent felt the changes would simplify the administration and collection of council tax in emergency accommodation. The respondent also thought, as emergency accommodation is seen as temporary and only used in exceptional circumstances, it conflicts with the existing legislation which relates to sole and main place of residence and is therefore not appropriate.

The same respondent cited the previous provision model which led to tenants having no liability for Council Tax, served as an additional safeguard against the protection of tenants' identity and whereabouts. If the Order is not amended, a record of each tenant would be required for Council Tax purposes which would weaken this safeguard and threaten tenants' anonymity.

Another respondent thought that tenants who have been victims of domestic violence have more pressing concerns, such as personal safety, education for children, rehousing etc, without the added concern of Council Tax.

Welsh Women's Aid (WWA) believes amending the Order would be a positive step by the Welsh Government as it would acknowledge the varied models of emergency accommodation of shared and self-contained in meeting different needs. It would also ensure no individual is disadvantaged financially from the potential costs of accessing the appropriate services.

Welsh Women's Aid is seeing an increased shift towards commissioning at a local level of emergency safe accommodation via self-contained units, as opposed to communal refuge provision. They added service providers are now aware of the fact every self-contained unit is liable for Council Tax. Welsh Women's Aid expressed concerns surrounding the existing legislation as, it will cause a major obstacle which will prevent women and children from accessing life-saving services provided by specialist agencies and place existing providers in increased financial difficulties during these financially austere times.

2. What types of accommodation do you consider should be covered when defining Emergency Accommodation?

All respondents were of the opinion the types of accommodation covered when defining Emergency Accommodation should be those suggested within the consultation document as well as night shelters/homelessness hostels, safe houses and complex needs units. One respondent felt accommodation such as that used by victims of modern slavery, forced marriage and women with no alternative to public funds should also be covered when defining Emergency Accommodation.