

Explanatory Memorandum to The Council Tax (Exceptions to Higher Amounts) (Wales) Regulations 2015

This Explanatory Memorandum has been prepared by the Local Government Finance Policy Division 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 (Exceptions to Higher Amounts) (Wales) Regulations. I am satisfied that the benefits outweigh any costs.

Leighton Andrews
Minister for Public Services

21 December 2015

1 Description

These Regulations prescribe the classes of dwelling in relation to which a billing authority may not make a determination to apply a higher amount of council tax on long-term empty homes and / or second homes.

2 Matters of special interest to the Constitutional Affairs Committee

None

3 Legislative Background

The Housing (Wales) Act 2014 (“the 2014 Act”) amends the Local Government Finance Act 1992 (“the 1992 Act”) by inserting new sections 12A and 12B, which enable a billing authority in Wales, in certain circumstances, to disapply a discount and apply a higher amount of council tax on long-term empty homes and second homes.

Properties that are exempt from council tax under the Council Tax (Exempt Dwellings) Order 1992 will not be liable to the premium.

In addition, the Welsh Ministers have powers under section 12A(4) and 12B(5) of the 1992 Act to prescribe by regulations one or more classes of dwelling in relation to which a billing authority may not charge a premium.

A class of dwellings may be prescribed by reference to such factors as the Welsh Ministers think fit and may, amongst other factors, be prescribed by reference to:

- (a) the physical characteristics of, or other matters relating to, dwellings;
- (b) the circumstances of, or other matters relating to, any person who is liable to the amount of council tax concerned.

These Regulations follow the negative resolution procedure.

4 Purpose and intended effect of the legislation

From 1 April 2017, local authorities will have discretionary powers to charge higher amounts of council tax (a premium of up to 100 per cent of the standard rate of council tax) on long-term empty homes and second homes in their area. A determination by a billing authority under new section 12A or new section 12B to charge a council tax premium will also disapply the discount available under section 11 of the Local Government Finance Act 1992 (a discount on the amount of council tax payable in respect of dwellings in which there are no residents).

Local authorities will be able to apply a council tax premium on long-term empty homes, where the dwelling is substantially unfurnished and has been unoccupied for a continuous period of at least one year. In determining the length of time a dwelling has been empty no account is to be taken of any period which predates 1 April 2016.

In the case of second homes, local authorities will be able to apply a council tax premium on a dwelling occupied periodically. This is defined as a dwelling which is not a person's sole or main residence (has no resident) and is substantially furnished – such dwellings are commonly referred to as “second homes”. However, in order for a premium to apply to second homes, a billing authority must make its first determination under section 12B to charge a premium at least one year before the beginning of the financial year to which the premium relates. This means that in order to be able to charge a premium from 1 April 2017, a billing authority must make its determination by 1 April 2016.

The making of these Regulations is part of the preparatory arrangements to ensure that local authorities are able to introduce premiums on long-term empty homes and second homes for any financial year starting on or after 1 April 2017.

The Welsh Ministers are making these Regulations to prescribe classes of dwelling in relation to which local authorities may not charge a premium. These prescribed classes of dwellings are the exceptions to the premiums. They are additional to the existing council tax exemptions under which certain dwellings are entirely exempt from council tax¹.

These Regulations prescribe seven classes of dwellings in relation to which a premium may not be charged.

Classes 1, 2, 3 and 4 are exceptions to both the premium on long-term empty homes and the premium on second homes.

- Class 1 applies to dwellings that are being marketed for sale.
- Class 2 applies to dwellings that are being marketed for let.
- Class 3 applies to dwellings that are annexes which are being used as part of the main dwelling.
- Class 4 applies to dwellings which would be a person's sole or main residence but which are unoccupied because that person resides in armed forces accommodation.

Classes 5, 6, and 7 apply only in relation to the premium on second homes.

- Class 5 applies to dwellings which consist of a pitch occupied by a caravan or a mooring occupied by a boat.
- Class 6 applies to dwellings that are subject to planning conditions that prevent occupancy for a continuous period of at least 28 days in any one year period.
- Class 7 applies to job-related dwellings and dwellings that are occupied periodically when the usual resident is residing in job-related

¹ (See the Council Tax (Exempt Dwellings) Order 1992 (SI 558/1992)).

accommodation. The meaning of 'job-related dwelling' is given in the Schedule to these Regulations.

Key provisions

Regulation 4

This Regulation prescribes the exception for dwellings in Class 1 and applies to dwellings which are being marketed for sale. It also covers dwellings where an offer to purchase a property has been accepted by the owner but the sale has not been completed.

To be eligible for the exception the dwelling must be marketed for sale at a reasonable price, ie. what it would be expected to fetch on the open market.

The exception period applies for up to one year provided that the dwelling continues to meet the criteria. After the exception has ended, a dwelling will not be eligible for a further exception period unless it has been sold. In this context, the sale of the dwelling includes the sale of the freehold or sale of a lease for seven years or longer.

Regulation 5

This Regulation prescribes the exception for dwellings in Class 2 and applies to dwellings which are being marketed for let. It also covers dwellings where an offer to rent the dwelling has been accepted but the tenancy has not started.

To be eligible for the exception, the dwelling must be marketed for let at a reasonable price, ie. at a rent the property would be expected to fetch on the open market.

The exception period applies for up to one year provided that the dwelling continues to meet the criteria. After the exception has ended, a dwelling will not be eligible for a further exception period unless the dwelling has been subject to a tenancy that was granted for a term of six months or more.

Regulation 6

This Regulation prescribes the exception for dwellings in Class 3 and applies to annexes. It covers annexes which form part of a main residence, or as dwellings in that residence, and which are being used by the owner as part of their main residence.

It does not apply where an annexe is not being used as part of the owner's main residence.

Regulation 7

This Regulation prescribes the exception for dwellings in Class 4 and applies to dwellings which would be a person's sole or main residence if they were not residing in armed forces accommodation.

For the purposes of this exception armed forces accommodation covers any accommodation which is provided to a member of Her Majesty's forces or to a family member of a member of Her Majesty's forces. This exception also includes armed forces personnel serving overseas.

Regulation 8

This Regulation prescribes the exception for dwellings in Class 5 and applies to a dwelling which consists of a pitch occupied by a caravan or a mooring occupied by a boat, where the boat or caravan currently has no resident, but when next in use will be a person's sole or main residence.

Regulation 9

This Regulation prescribes the exception for dwellings in Class 6 and applies to dwellings that are subject to planning conditions that prevent occupancy for a continuous period of at least 28 days in a one year period.

It is intended to cover purpose-built holiday homes or chalets which are subject to planning conditions restricting year-round occupancy.

The exception is based on the definition of the existing discretionary Council Tax discount for seasonal homes (Class A) in The Council Tax (Prescribed Classes of Dwellings) (Wales) Regulations 1998.²

Regulation 10

This Regulation prescribes the exception for dwellings in Class 7 and covers job-related dwellings. It applies to dwellings occupied by a person who is:

- a qualifying person in relation to the dwelling, but who is resident in another dwelling which is job-related: or
- a qualifying person in relation to a job-related dwelling.

A qualifying person is defined as:

- a person who is liable for council tax in respect of a dwelling on a particular day, whether or not jointly with another person; and
- a person who would be liable for the council tax in respect of a dwelling on a particular day, whether or not jointly with another person if that dwelling did not fall within:

² SI 1998 No 105

- i. Class O of the Council Tax (Exempt Dwellings) Order 1992; or
- ii. Class E of the Council Tax (Liability for Owners) Regulations 1992.

The definition of a job-related dwelling is given in Schedule 1 to the Regulations. Although this exception is similar to the job-related discount under the Council Tax (Prescribed Classes of Dwellings) (Wales) Regulations 1998³, it differs because the discount only applies if the job-related dwelling is a person's sole or main residence. However, this exception will also apply where the job-related dwelling is a person's second home.

Another difference from the job-related dwelling discount is that there is no requirement for the taxpayer to be liable for council tax in respect of two dwellings, meaning that a person who has either a main home abroad or a job-related dwelling abroad can also benefit from the exception.

Schedule 1

As detailed above, Schedule 1 defines a job-related dwelling for the purposes of this exception. The definition mirrors that used in Council Tax (Prescribed Classes of Dwellings) (Wales) Regulations 1998⁴, which provide for mandatory 50% council tax discount for a second home where someone's sole or main residence is job-related.

This schedule also contains an additional provision to ensure that Ministers of any religious denomination who are required to live in a dwelling to perform the duties of their office are also covered by the job-related dwelling exception.

5 Consultation

Details of the consultations undertaken are included in the Regulatory Impact Assessment below.

6 Regulatory Impact Assessment (RIA)

Options

Option 1 – Do nothing

Under this option, there would be no prescribed exceptions to the council tax premiums on long-term empty homes and second homes. Although, local authorities could use their discretionary powers under section 13A of the 1992 Act to reduce additional council tax liability resulting from the premiums, there would be no prescribed exceptions and this could result in the inconsistent treatment of council tax payers across Wales.

³ SI 1998 No 105

⁴ SI 1998 No 105

Option 2 – Make Regulations prescribing exceptions to the premiums

This option would mean that certain exceptions to the premiums on long-term empty homes and second homes are prescribed by the Welsh Ministers. This would ensure that the premium is not charged in cases where the Welsh Ministers think it would be unreasonable to do so. Prescribing exceptions would also ensure the consistent application of the premiums across Wales.

Option 1 – Do nothing

Costs

As the implementation of the premiums is discretionary, it is not known how many local authorities will choose to implement one or both of the premiums. Similarly, as the powers to reduce council tax liability under section 13A of the 1992 Act are also discretionary, it is difficult to estimate the number of authorities who would use these powers to reduce council tax liability in respect of a premium, if no exceptions were prescribed. This makes it difficult to accurately estimate the potential costs of this option. However, the likely implications are set out below.

If no exceptions to the premiums are prescribed, then council tax payers who are liable for the premium are likely to be charged more council tax (up to 100% of the standard rate of council tax for their property).

Some taxpayers may be unable to afford this additional council tax liability and as a result, the lack of exceptions to the premium could result in difficulties, where taxpayers reduce their expenditure in relation to other areas to meet the liability. Consequently, if no exceptions are prescribed there is likely to be an increase in council tax collection and enforcement costs. There could also be an increase in fraud where liable council tax payers seek ways in which to avoid the premium. These will all have an associated administrative impact on local authorities. It is also likely that there would be an increase in demand for advice services as affected council tax payers might seek assistance such as debt advice.

Another potential impact of having no prescribed exceptions to the premiums is that there is likely to be a greater number of appeals regarding liability for the premiums. This is likely to result in additional administration for local authorities who must consider these appeals in the first instance, and subsequently, additional workload for the Valuation Tribunal for Wales.

If no exceptions were provided, local authorities could decide to use their discretionary powers under section 13A of the 1992 Act to reduce additional council tax liability arising from the premiums in certain circumstances. However, as these powers are discretionary, local authorities might use them differently in different areas, for example, liability for a premium might be reduced in respect of a certain class of property in one authority area but not in another. This could lead to inconsistency in treatment of council tax payers in different parts of Wales. This could lead to confusion for council tax payers and

might also result in an increased number of appeals in relation to the use of the discretionary 13A powers.

Benefits

By not providing any prescribed exceptions to the premiums, local authorities could use their discretion to consider individual circumstances when deciding whether or not to grant an exception using their discretionary 13A powers. This means that local needs and priorities, as well as the characteristics of the local area like the strength of the local housing market, or the nature of the property, could be taken into account.

Without prescribed exceptions local authorities would also be able to generate more revenue from implementing a premium, particularly if they also decide not to use their discretionary 13A powers to reduce liability for a premium in certain circumstances. This additional revenue would be available to help bring empty homes back into use and to provide more affordable housing.

Without any prescribed exceptions there would also be more simplicity. Local authorities would not have to administer exceptions or monitor properties to ensure their continued eligibility.

Option 2 – Make Regulations prescribing exceptions to the premiums

Costs

Again it is difficult to estimate the costs of this option, as it is not known how many local authorities will use their discretionary powers to charge a premium.

Prescribing exceptions will ensure that a council tax payer is not charged additional council tax in circumstances in which it would be unreasonable to do so. As such, a number of the costs associated with Option 1, such as difficulty in paying additional council tax, and the collection and enforcement costs for local authorities are mitigated.

There will also be some costs for local authorities in determining eligibility for the prescribed exceptions and in monitoring their use. However, in considering whether or not to apply a premium, local authorities will be expected to weigh up the likely costs they will incur against any additional revenue which could be generated.

Prescribing exceptions would also mitigate the risk of an increased number of appeals. There are still likely to be appeals against liability for a premium, as well as eligibility for an exception, which will result in additional work for a local authority and the Valuation Tribunal for Wales but this will be lower than if no exceptions were prescribed.

Prescribing exceptions to the premium does not prevent local authorities from using their discretionary powers under section 13A of the 1992 Act to reduce the additional council tax liability resulting from a premium – for example in

cases where a property is not eligible for an exception but an authority decides that a premium should not be applied. Whilst this could result in different authorities taking different approaches, the variation will be smaller than it would be if no exceptions were prescribed.

Benefits

Prescribing exceptions to the premiums means that additional council tax will not be charged in circumstances where the Welsh Ministers consider it ought not to be charged and this will benefit taxpayers who might otherwise become liable for a council tax premium.

Prescribing exceptions to the premiums will also ensure that there is consistency in application of the policy across all local authorities in Wales which will help to ensure council tax payers in similar circumstances are treated equally.

Prescribing exceptions also means local authorities would not need to rely on their discretionary Section 13A powers. It will also be simpler for council tax payers to identify and apply for exceptions which they might be eligible for.

While there will be some costs for local authorities in administering the premium, these are likely to be lower than if no exceptions were provided and authorities had to consider whether or not to use their discretionary 13A powers to reduce council tax liability – this is because such decisions are often taken on a case-by-case basis. Prescribing exceptions to the premiums is also likely to result in fewer appeals which will reduce the workload for authorities and the Valuation Tribunal for Wales.

Consultation

There were consultations on the empty homes and second homes premiums as part of the consultation on the Housing (Wales) Act 2014.

There have also been three consultations in relation to the exceptions to the council tax premiums. Two were policy consultations: Exemptions to the Council Tax Premium on Long-Term Empty Homes in Wales and Exemptions to the Council Tax Premium on Second Homes in Wales and the other was a technical consultation: Technical Consultation on The Council Tax (Exceptions from Higher Amount) (Wales) Regulations 2015. The details of these consultations are provided below.

Consultation on Exemptions to the Council Tax Premium on Long-Term Empty Homes in Wales

The consultation on Exemptions to the Council Tax Premium on Long-Term Empty Homes ran for a twelve-week period from 13 March 2015 to 13 June 2015.

The consultation sought views on circumstances in which an empty dwelling should be exempt from the council tax premium; how the existing council tax exemptions and discounts will apply in light of the premium and practical considerations relating to the implementation of the premium, in particular the administration of the different exemptions and reporting information to the Welsh Government.

31 responses to the consultation were received and a breakdown of respondents is provided below.:

- Local authorities – 8
- Community and Town Councils – 4
- Professional bodies – 2
- Third Sector Organisations – 1
- Housing Associations – 2
- Representative Organisations – 1
- Private Landlords – 1
- Individuals – 12

The full consultation can be found at the following link:

<http://gov.wales/consultations/localgovernment/council-tax-on-long-term-empty-homes-consultation/?lang=en>.

There was broad support for the majority of the proposed exemptions from the premium. Whilst the majority of respondents supported an exemption for empty properties undergoing major repair work or structural alteration, and unoccupied property where probate or letters of administration have not yet been granted, neither of these exemptions have been provided. The Welsh Government felt that providing these exemptions would not incentivise empty properties to be brought back into use as soon as possible. It should be noted that these dwellings already benefit from a period during which they are exempt from paying any council tax and therefore already receive a period relief. It should also be noted that these types of property may also be captured by other exemptions, such as that being provided for dwellings being marketed for sale or let.

There was public support for an exemption for properties being marketed for sale or let, but the majority of responses from local authorities disagreed with the exemption as they considered it would be difficult to administer. In light of this, the Welsh Government is providing guidance to local authorities to assist with the application and administration of these exemptions.

Consultation on Exemptions to the Council Tax Premium on Second Homes in Wales

The consultation on Exemptions to the Council Tax Premium on Second Homes ran for a twelve-week period from 13 March 2015 to 13 June 2015.

The consultation sought views on circumstances in which second homes should be exempt from the council tax premium; how the existing council tax exemptions and discounts will apply in light of the premium and practical considerations relating to the implementation of the premium, in particular the administration of the different exemptions and reporting information to the Welsh Government.

155 responses to the consultation were received and a breakdown of respondents is provided below:

- Local authorities – 8
- Community and Town Councils – 4
- Professional Bodies – 2
- Tourism Organisations – 3
- Representative Organisations – 1
- Other Organisations – 6
- Individuals – 13

The full consultation can be found at the following link:

<http://gov.wales/consultations/localgovernment/council-tax-premium-second-homes-consultation/?lang=en>.

There was broad support for the majority of the proposed exemptions from the premium. However, many local authorities disagreed with the exemption for properties being marketed for sale or let feeling it would be difficult to administer and prone to abuse. The Welsh Government will provide guidance to local authorities to assist with the application and administration of both of these exemptions.

Many respondents also supported an exemption for properties unoccupied since the death of the owner, however no exemption has been provided for this class of dwelling. The Welsh Government felt that the length of time provided for under the existing council tax exemption was sufficient and that such dwellings were also likely to be covered by other exemptions such as those for dwellings being marketed for sale or let.

Many of the respondents to the consultation were from seasonal home owners who sought an exemption from the premium for seasonal homes where year-round occupation is prohibited by planning or licensing restrictions. In light of these responses and given that such properties are normally purpose-built as holiday homes and not suitable for year-round occupation, the Welsh Ministers agreed that an exemption for this category should be provided.

Technical Consultation on the Council Tax (Exceptions from Higher Amount) (Wales) Regulations 2015

For clarity, the term 'exception' is used in the Consultation on The Council Tax (Exceptions from Higher Amount) (Wales) Regulations 2015 rather than

'exemption' in order to differentiate between the exceptions to the council tax premiums and exemptions from the standard rate of council tax.

The consultation on The Council Tax (Exceptions from Higher Amount) (Wales) Regulations 2015 ran from 16 October 2015 to 13 November 2015.

The consultation sought views on the content and operation of the Regulations, and whether any amendments to the Regulations were required to assist their effective application by Local Authorities.

6 responses to the consultation were received and a breakdown of respondents is provided below:

- Local authorities – 3
- Third Sector Organisations – 1
- Professional Bodies – 1
- Individuals – 1

The full consultation can be found at the following link:

<http://gov.wales/consultations/localgovernment/consultation-council-tax-regulations/?lang=en>.

One response highlighted that there are seasonal homes, eg. self-catering properties which are not restricted by planning conditions preventing habitation for a continuous period of time but which are restricted by planning conditions limiting occupation, for example allowing holiday use only. Consequently the respondent felt that there should also be an exception for these types of property if they were liable for council tax. The Welsh Government considers that the current exception for seasonal homes is reasonable and also ensures there is no unintended interaction with the legislation governing Non-Domestic Rates.

The Residential Landlords' Association raised a number of queries in relation to the tenancies defined in the exceptions and their interrelationship with other legislation including the Renting Homes (Wales) Bill. They also raised concerns regarding the requirement for dwellings being marketed for let being to only qualify for a further exception period if the dwelling had been occupied as a sole or main residence for a continuous period of six months or more. This was considered to unfairly penalise landlords who could not control how long a tenant occupied their property, as a result the exception has been amended so that a further exception is available where a dwelling has been subject to a tenancy that was granted for a period of six months or more.

Local Authorities continued to highlight the potential administrative difficulties with the exceptions for dwellings being marketed for sale and the dwellings being marketed for let. However, as mentioned above, the Welsh Government has taken these concerns into consideration and will prepare guidance to assist local authorities when applying these exceptions.

7 Duties

In drafting these Regulations consideration has been given to Welsh Minister's duty to promote equality and eliminate discrimination.

The introduction of the council tax premiums on long-term empty homes and second homes is intended to bring empty properties back into use to improve the supply of affordable housing and to support the sustainability of local services and communities. As such they are likely to benefit those in poverty. Prescribing exceptions to the premiums provides protection by ensuring that the premiums are not charged in circumstances where it would be unreasonable to do so.

Although the council tax premiums will apply to parents of children and young people, one of the aims of the premiums is to increase housing supply which would protect the standard of living of families with the least income. The premiums may also benefit children whose families are living in accommodation which does not meet their needs.

The council tax premiums including their exceptions will be implemented and administered by Local Authorities who are under general duties to comply with Welsh Language and Sustainable Development duties.

8 Competition Assessment

No competition impacts have been identified as arising from these Regulations.

9 Post Implementation Assessment

Local authorities will be required to monitor and report on the implementation of the council tax premiums on an annual basis.

The legislation will be reviewed after the premiums have been implemented for a year. The legislation will also be kept under review following this period.