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SCOTTISH STATUTORY INSTRUMENTS

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**2013 No. 45**

**COUNCIL TAX**

**The Council Tax (Variation for Unoccupied Dwellings) (Scotland) Regulations 2013**

*Made* - - - - *7th February 2013*

*Coming into force* - - *1st April 2013*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 33(1) to (4) of the Local Government in Scotland Act 2003<sup>(1)</sup> and all other powers enabling them to do so.

In accordance with section 33(7) of that Act, they have consulted with such associations of local authorities and such other persons as they think fit.

In accordance with section 33(6) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

**Citation and commencement**

1. These Regulations may be cited as the Council Tax (Variation for Unoccupied Dwellings) (Scotland) Regulations 2013 and come into force on 1st April 2013.

**Interpretation**

2. In these Regulations—

an “unoccupied dwelling” is a dwelling which is no one’s sole or main residence, but which is not a second home; and

a “second home” is a dwelling which is no one’s sole or main residence, but which is furnished and in respect of which, during any period of 12 months, the person who is liable to pay the council tax that is chargeable can produce evidence to establish that it is lived in other than as a sole or main residence for at least 25 days during that period.

**Discounts for unoccupied dwellings and second homes**

3. The amount of council tax payable in respect of a chargeable dwelling and any day is subject to a discount of 50% of that amount if on that day there is no resident of the dwelling.

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(1) [2003 asp 1](#). Section 33 was amended by section 2 of the Local Government Finance (Unoccupied Properties etc.) (Scotland) Act 2012 ([asp 11](#)).

### **Modification of the application of these Regulations**

4.—(1) A local authority may, subject to regulations 5 and 6, modify the application of regulation 3 in respect of unoccupied dwellings and second homes in its area so that—

- (a) a discount of a percentage other than 50% applies;
- (b) no discount applies; or
- (c) instead of being subject to a discount, an increased amount of council tax is payable.

(2) The power conferred by paragraph (1) may be exercised to make different modifications for different cases or different classes of case, including for different areas.

### **Limitations on local authorities' power to modify the application of these Regulations**

5. The power conferred by regulation 4 does not permit a local authority to modify the discount provided for by regulation 3—

- (a) beyond the percentages specified in regulation 6;
- (b) for the classes of dwellings specified in Schedule 1;
- (c) for a dwelling which is undergoing or requires major repair work to render it habitable, or which is undergoing structural alteration, during the period of 6 months beginning with the day on which that dwelling was purchased by the person who is liable to pay council tax in respect of that dwelling; or
- (d) in a manner that treats unoccupied dwellings owned by a social landlord (within the meaning of section 165 of the Housing (Scotland) Act 2010(2)) more favourably than other unoccupied dwellings solely on the ground of that ownership.

6.—(1) Unless the dwelling is one to which paragraph (3) applies, for the purposes of regulation 5(a) no modification may be made to impose an increase in council tax liability, and—

- (a) the discount percentage may not be greater than 50%;
- (b) the discount percentage may not be less than 10%.

(2) If the dwelling is one to which paragraph (3) applies, for the purposes of regulation 5(a)—

- (a) the discount percentage may not be greater than 50%;
- (b) the modification can impose no variation in council tax liability;
- (c) the maximum amount of council tax liability may not exceed an increase of 100%.

(3) This paragraph applies where the dwelling—

- (a) is an unoccupied dwelling;
- (b) is not of a class of dwellings specified in Schedule 2; and
- (c) has been unoccupied for a continuous period exceeding 12 months.

(4) In determining for the purposes of paragraph (3) whether a dwelling has been continuously unoccupied for a period exceeding 12 months—

- (a) the dwelling is to be regarded as having been unoccupied during any period of occupation as a sole or main residence which was less than three months in duration;
- (b) the dwelling is to be regarded as having been occupied during any period in which it was a second home or a dwelling of a class referred to in Schedule 1; and

- (c) where the dwelling has never been occupied, the length of time is to be determined by reference to the length of time since the dwelling was entered on the valuation list compiled and maintained under section 84 of the Local Government Finance Act 1992<sup>(3)</sup>.

### **Revocations**

7. The Council Tax (Discount for Unoccupied Dwellings) (Scotland) Regulations 2005<sup>(4)</sup> are revoked.

8. Articles 51 and 52 of the Civil Partnership Act 2004 (Modification of Subordinate Legislation) Order 2005<sup>(5)</sup> are revoked.

St Andrew's House,  
Edinburgh  
7th February 2013

*M J BURGESS*  
Authorised to sign by the Scottish Ministers

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(3) 1992 c.14. Section 84 was amended by Schedules 13 and 14 to the Local Government etc. (Scotland) Act 1994 (c.39).  
(4) S.S.I. 2005/51.  
(5) S.S.I. 2005/572; articles 51 and 52 amended S.S.I. 2005/51.

SCHEDULE 1

Regulation 5(b)

CLASSES OF UNOCCUPIED DWELLINGS SUBJECT TO 50% COUNCIL TAX DISCOUNT

**Purpose-built holiday homes**

1. A dwelling—
  - (a) which is used for holiday purposes; and
  - (b) which either—
    - (i) in accordance with any licence or planning permission regulating the use of the site, or for any other reason, is not allowed to be used for human habitation throughout the whole year; or
    - (ii) by reason of its construction or the facilities which it does, or does not, provide, is unfit so to be used.

**Job-related dwellings**

2.—(1) A dwelling which is owned or tenanted by a person whose sole or main residence is a different dwelling which for that person is job related.

(2) A dwelling which is job related for a person whose sole or main residence is a different dwelling which is owned or tenanted by that person.

(3) For the purposes of sub-paragraphs (1) and (2), a dwelling is job related if it falls within the description set out in sub-paragraphs (4), (6) or (7).

(4) Subject to sub-paragraph (5), a dwelling is job related for a person if it is provided for that person by reason of that person's employment, or for that person's spouse or civil partner by reason of the spouse's or civil partner's employment, in any of the following cases—

- (a) where it is necessary for the proper performance of the duties of the employment that the employee should reside in that dwelling;
- (b) where the dwelling is provided for the better performance of the duties of the employment, and it is one of the kinds of employment in the case of which it is customary for employers to provide dwellings to employees; or
- (c) where, there being a special threat to the employee's security, special security arrangements are in force and the employee resides in the dwelling as part of those arrangements.

(5) If the dwelling is provided by a company and the employee is a director of that or an associated company, sub-paragraph (4)(a) or (b) do not apply unless either—

- (a) the employment is as a full time working director;
- (b) the company is non profit making, that is to say, it does not carry on a trade nor do its functions consist wholly or mainly in the holding of investments or other property; or
- (c) the company is established for charitable purposes only.

(6) A dwelling is job related for a person if that person or that person's spouse or civil partner is a minister of religion and the dwelling is inhabited by that person as a residence from which that person performs the duties of that person's office.

(7) A dwelling is job related for a person if that person or that person's spouse or civil partner is required, under a contract to which this sub-paragraph applies, to live in that dwelling, unless the dwelling concerned is in whole or in part provided by any other person or persons together with whom the person or spouse or civil partner carries on a trade or business in partnership.

(8) A contract to which sub-paragraph (7) applies is a contract entered into at arm's length and requiring the person concerned or that person's spouse or civil partner (as the case may be) to carry on a particular trade, profession or vocation in a property provided by another person and to live in a dwelling provided by that other person.

(9) For the purposes of sub-paragraphs (4) to (8)—

- (a) a company is an associated company of another person if one of them has control of the other or both are under the control of the same person;
- (b) “director”, “full time working director” and “control”, in relation to a body corporate have the same meanings as they have in sections 67 and 69 of the Income Tax (Earnings and Pensions) Act 2003 in relation to the benefits code;
- (c) “provided” means provided under a tenancy or otherwise; and
- (d) references to a person's spouse include references to another person living together with that person as husband and wife and references to a person's civil partner include references to another person living together with that person as civil partners.

## SCHEDULE 2

Regulation 6(3)(b)

### CLASSES OF UNOCCUPIED DWELLINGS SUBJECT TO RESTRICTIONS ON THE POWER OF A LOCAL AUTHORITY TO VARY COUNCIL TAX

#### **Property being marketed for sale**

1. An unoccupied dwelling that has been continuously unoccupied for less than two years and in respect of which the person who is liable to pay the council tax that is chargeable can produce evidence to establish that—

- (a) it is being actively marketed for sale on terms and conditions, including proposed price, which are appropriate for sale of the property; and
- (b) an offer to purchase at that price would be accepted by the owner.

#### **Property being marketed for let**

2. An unoccupied dwelling that has been continuously unoccupied for less than two years and in respect of which the person who is liable to pay the council tax that is chargeable can produce evidence to establish that—

- (a) it is being actively marketed for let on terms and conditions, including proposed rent, which are appropriate for let of the property; and
- (b) an offer to pay such a rent would be likely to lead to creation of a tenancy.

#### **Interpretation**

3. In determining for the purposes of paragraphs 1 and 2 whether a dwelling has been continuously unoccupied for less than two years—

- (a) the dwelling is to be regarded as having been unoccupied during any period of occupation as a sole or main residence which was less than three months in duration;
- (b) the dwelling is to be regarded as having been occupied during any period in which it was a second home or a dwelling of a class referred to in Schedule 1; and

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

- (c) where the dwelling has never been occupied, the length of time is to be determined by reference to the length of time since the dwelling was entered on the valuation list compiled and maintained under section 84 of the Local Government Finance Act 1992.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision for council tax variations for dwellings which have no resident.

Regulation 2 provides two categories of dwelling. A property which is not occupied as a sole or main residence is classed as an “unoccupied dwelling”, unless it is a “second home”. To be classed as a second home a dwelling must be furnished and the taxpayer will have to be able to establish that it is lived in for at least 25 days in any year.

Regulation 3 provides the default position, where there is no resident of the dwelling, of a 50% discount from the amount of council tax payable in respect of a chargeable dwelling.

Regulation 4 gives local authorities the power to modify the application of these Regulations in respect of unoccupied dwellings and second homes. Local authorities are also given power to modify the application of these Regulations in relation to different cases or classes of cases, and to provide differently for different parts of a local authority’s area.

Regulations 5 and 6 limit the power to vary, including that local authorities cannot modify the application of these Regulations outwith specified bandwidths. Regulation 5 provides that a local authority cannot modify the discount in respect of the classes of dwellings set out in Schedule 1 and can only modify the discount in respect of dwellings that require major repair or are being structurally altered after a period of time has elapsed. It also ensures that modifications cannot be made solely to favour housing owned by local authorities or registered social landlords.

Regulation 6 sets out the bandwidths. For most dwellings, including second homes, the amount of discount cannot be increased beyond the 50% provided by regulation 3 and a discount of no less than 10% must be awarded. However, where a dwelling has been an unoccupied dwelling for over a year, an increase in liability of up to 100% can be provided for, subject to the exceptions in Schedule 2. In determining whether a dwelling has been an unoccupied dwelling for over a year short periods of occupation as a sole or main residence are to be ignored and any period when a property has been a second home is regarded as a period of occupation.

Regulations 7 and 8 revoke the previous Regulations which provided for council tax discounts for unoccupied dwellings and also make a consequential revocation.