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STATUTORY INSTRUMENTS

1997 No. 728 (S.68)

COUNCIL TAX, SCOTLAND

The Council Tax (Exempt Dwellings) (Scotland) Order 1997

| | | |
|-------------------------------|---------|------------------------|
| <i>Made</i> | - - - - | <i>7th March 1997</i> |
| <i>Laid before Parliament</i> | | <i>11th March 1997</i> |
| <i>Coming into force</i> | - - | <i>1st April 1997</i> |

The Secretary of State, in exercise of the powers conferred on him by sections 72(6) and (7) and 113(2) of the Local Government Finance Act 1992(1) and of all other powers enabling him in that behalf, hereby makes the following Order:

Citation and commencement

1. This Order may be cited as the Council Tax (Exempt Dwellings) (Scotland) Order 1997 and shall come into force on 1st April 1997.

Interpretation

2. In this Order—

“the Act” means the Local Government Finance Act 1992;

“charitable” shall be construed in the same way as if it were contained in the Income Tax Acts;

“the last occupation day” with respect to an unoccupied dwelling means the day on which the dwelling concerned was last occupied, save that where a dwelling which was unoccupied becomes occupied on any day and becomes unoccupied again at the expiry of a period of less than 6 weeks beginning with that day, for the purpose of determining the last occupation day (and only for that purpose) the dwelling shall be treated as having remained unoccupied during that period;

“personal care” includes the provision of appropriate help with physical and social needs;

“qualifying person” means a person who would be liable (either solely or jointly and severally with another person or persons) for council tax in respect of the dwelling concerned, but for the provisions of this Order;

“registered housing association” has the same meaning as it has for the purposes of the Housing Associations Act 1985⁽²⁾;

“relevant person” means a person who—

- (a) is disregarded for the purposes of discount by virtue of paragraph 1, 6, 7 or 8 of Schedule 1 to the Act;
- (b) has his sole or main residence in a place (other than the dwelling concerned or a place referred to in paragraph 6(1), 7(1)(a) or 8(1)(a) of that Schedule) for the purpose of receiving personal care which he requires by reason of old age, disablement, illness, past or present alcohol or drug dependence or past or present mental disorder; or
- (c) has his sole or main residence in a place (other than the dwelling concerned) for the purpose of providing, or better providing, personal care for a person who requires such care by reason of old age, disablement, illness, past or present alcohol or drug dependence or past or present mental disorder;

“student” has the same meaning as in paragraph 4(2) of Schedule 1 to the Act⁽³⁾;

“valuation list” means a list maintained by a local assessor under section 84 of the Act⁽⁴⁾.

Exempt dwellings

3. The classes of dwelling specified in Schedule 1 to this Order are prescribed as exempt dwellings for the purposes of section 72(6) of the Act.

Amendment of Regulations

4. In regulation 9(4)(b) of the Council Tax (Administration and Enforcement) (Scotland) Regulations 1992⁽⁵⁾, for the words “18 or 21 of the Schedule to the Council Tax (Exempt Dwellings) (Scotland) Order 1992” there shall be substituted the words “17, 20 or 24 of Schedule 1 to the Council Tax (Exempt Dwellings) (Scotland) Order 1997”.

Revocations

5. The provisions specified in column 1 of Schedule 2 to this Order are hereby revoked to the extent specified in column 3 of that Schedule.

St Andrew’s House,
Edinburgh
7th March 1997

George Kynoch
Parliamentary Under Secretary of State, Scottish
Office

(2) 1985 c. 69.

(3) See article 6 of S.I. 1992/1408.

(4) Section 84 was amended by the Local Government etc. (Scotland) Act 1994 (c. 39), Schedule 13, paragraph 176(6) and Schedule 14.

(5) S.I. 1992/1332, as amended by S.I. 1992/3290.

SCHEDULE 1

Article 3

EXEMPT DWELLINGS

New dwellings

1. An unoccupied and unfurnished dwelling in respect of which—
 - (a) less than 6 months have elapsed since the effective date for the first entry in the valuation list; and
 - (b) there was no entry in the valuation roll immediately prior to that effective date.

Dwellings under repair

2. A dwelling which is incapable of, and is not, being lived in because it is being structurally repaired, improved or reconstructed.

Dwellings last occupied by charitable bodies

3. An unoccupied dwelling—
 - (a) in respect of which—
 - (i) a body established for charitable purposes only is a qualifying person; and
 - (ii) less than 6 months have elapsed since the last occupation day; and
 - (b) which was on that day occupied in furtherance of the objects of the body in question.

Empty dwellings

4. A dwelling—
 - (a) which is both unoccupied and unfurnished; and
 - (b) in respect of which less than 6 months have elapsed since the end of the last period of 6 weeks or more throughout which it was continually occupied or furnished.

Dwellings last occupied by persons living or detained elsewhere

5. An unoccupied dwelling which on the last occupation day was the sole or main residence of a person who—
 - (a) is, and has throughout the period since that day been, a relevant person; and
 - (b) is a qualifying person.

Deceased owners

6. A dwelling—
 - (a) which is not the sole or main residence of any person; and
 - (b) in respect of which any liability to pay council tax (but for the terms of this Order) would fall to be met solely out of the estate of a deceased person and either—
 - (i) no grant of confirmation to the estate of that person has been made; or
 - (ii) no more than 6 months have passed since such a grant was made.

Dwellings empty under statute

7. A dwelling—
- (a) the occupation of which is prohibited by law; or
 - (b) which is kept unoccupied by reason of action taken under powers conferred by or under any Act of Parliament, with a view to prohibiting its occupation or to acquiring it.

Dwellings awaiting demolition

8. A dwelling which—
- (a) is owned by a local authority or Scottish Homes; and
 - (b) is kept unoccupied with a view to having it demolished.

Dwellings for occupation by ministers

9. A dwelling which—
- (a) is not the sole or main residence of any person; and
 - (b) is held by or on behalf of a religious body for the purpose of being available for occupation by a minister of religion as a residence from which to perform the duties of his office.

Dwellings occupied by students, etc.

10. A dwelling which—
- (a) is occupied by at least one person who is—
 - (i) a student;
 - (ii) a student's spouse or dependent, being in either case a person who is not a British citizen and who is prevented by the terms of his leave to enter or remain in the United Kingdom from taking paid employment or from claiming benefits;
 - (iii) a person disregarded for the purposes of discount in terms of paragraph 3 of the Schedule to the Council Tax (Discounts) (Scotland) Regulations 1992⁽⁶⁾; or
 - (iv) a person under the age of 18 years; and
 - (b) is not the sole or main residence of any person other than a person described in subparagraph (a)(i) to (iv) above.
11. An occupied dwelling—
- (a) which is not the sole or main residence of any person other than a student or a person falling within paragraph 10(a)(ii) above;
 - (b) which, when last occupied, was occupied by at least one student; and
 - (c) in respect of which less than 4 months have passed since the last occupation day.
12. A dwelling—
- (a) which is not the sole or main residence of any person; and
 - (b) in respect of which each qualifying person is a student.

Repossessed dwellings

13. A dwelling—

(6) [S.I. 1992/1409](#), to which there are amendments not relevant to this Order.

- (a) which is not the sole or main residence of any person;
- (b) in respect of which the qualifying person (or, where there is more than one such person, one or more of them) is a debtor, or one of the joint debtors, in a heritable security secured over the dwelling; and
- (c) lawful possession of which has been entered into by the creditor in that heritable security.

Agricultural dwellings

14. An unoccupied and unfurnished dwelling which—

- (a) is situated on lands and heritages used for agricultural or pastoral purposes only, or as woodlands, market gardens, orchards, allotments or allotment gardens, or on lands exceeding one tenth of an hectare used for the purpose of poultry farming; and
- (b) when last occupied and used, was occupied together with and used in connection with the lands and heritages on which the dwelling is situated.

Dwellings for old or disabled persons

15. A dwelling which—

- (a) is not the sole or main residence of any person;
- (b) falls within the description mentioned in paragraph (a) of section 61(4) of the Housing (Scotland) Act 1987⁽⁷⁾;
- (c) is held by a registered housing association for the purpose of being available for occupation by persons of pensionable age or disabled persons who are likely in future to have their sole or main residences in other dwellings falling within the same description which are provided by the association.

Halls of residence

16. A dwelling which is, or is part of, a hall of residence provided predominantly for the accommodation of students, and which—

- (a) is owned and managed by—
 - (i) an institution within the meaning of paragraph 5(4) of Schedule 1 to the Act⁽⁸⁾; or
 - (ii) a body established for charitable purposes only; or
- (b) is the subject of an agreement allowing such an institution to nominate the majority of the persons who are to occupy the accommodation so provided.

Barracks, etc.

17. A dwelling—

- (a) of which the Secretary of State for Defence is the owner; and
- (b) which is held for the purposes of armed forces accommodation.

Dwellings occupied by young people

18. A dwelling which is the sole or main residence of one or more persons under the age of 18 years and of no other person.

⁽⁷⁾ 1987 c. 26.

⁽⁸⁾ See article 9 of S.I. 1992/1408.

Status: This is the original version (as it was originally made).

Difficult to let dwellings

- 19.** An unoccupied dwelling—
- (a) which either—
 - (i) forms part of premises which include another dwelling; or
 - (ii) is situated within the curtilage of another dwelling;
 - (b) which is difficult to let separately from that other dwelling; and
 - (c) in respect of which a qualifying person has his sole or main residence in that other dwelling.

Garages and storage premises

20. A dwelling which falls within either of the classes of lands and heritages specified in paragraphs (2) and (3) of regulation 2 of the Council Tax (Dwellings) (Scotland) Regulations 1992⁽⁹⁾.

Dwellings of persons made bankrupt

- 21.** A dwelling—
- (a) which is not the sole or main residence of any person;
 - (b) an interest in which is vested in a permanent trustee by virtue of subsection (1) or (10) of section 31, or subsection (6) of section 32, of the Bankruptcy (Scotland) Act 1985⁽¹⁰⁾; and
 - (c) in respect of which that trustee is the only qualifying person.

Visiting forces

22. A dwelling in respect of which any of the qualifying persons is a person who has a relevant association, within the meaning of Part I of the Visiting Forces Act 1952⁽¹¹⁾, with a body, contingent or detachment of the forces of a country to which any provision in that Part applies.

Dwellings occupied by severely mentally impaired persons

23. A dwelling which is occupied only by one or more persons who are disregarded for the purposes of discount by virtue of paragraph 2 of Schedule 1 to the Act.

Prisons

24. A dwelling falling within the scope of regulation 2(1) of the Council Tax (Dwellings) (Scotland) Regulations 1997⁽¹²⁾.

⁽⁹⁾ S.I. 1992/1334.

⁽¹⁰⁾ 1985 c. 66; subsection (1) of section 31 was amended by the Pensions Act 1995 (c. 26), Schedule 3, paragraph 13; subsection (10) of section 31 was inserted by the Housing Act 1988 (c. 50), section 118(2).

⁽¹¹⁾ 1952 c. 67.

⁽¹²⁾ S.I. 1997/673.

SCHEDULE 2

Article 5

REVOCATIONS

| <i>Column 1</i> <i>Provisions revoked</i> | <i>Column 2</i> <i>References</i> | <i>Column 3</i> <i>Extent of revocation</i> |
|--|--------------------------------------|--|
| The Council Tax (Exempt Dwellings) (Scotland Order 1992 | S.I. 1992/1333 | The whole Order |
| The Council Tax (Exempt Dwellings) (Scotland) Amendment Order 1992 | S.I. 1992/2796 | The whole Order |
| The Council Tax (Exempt Dwellings) (Scotland) Amendment Order 1993 | S.I. 1993/345 | The whole Order |
| The Council Tax (Exempt Dwellings) (Scotland) Amendment Order 1994 | S.I. 1994/628 | The whole Order |
| The Council Tax (Exempt Dwellings) (Scotland) Amendment Order 1995 | S.I. 1995/598 | The whole Order |
| The Rating, Valuation and Council Tax (Miscellaneous Provisions) (Scotland) Order 1996 | S.I. 1996/580 | Regulation 6 |

EXPLANATORY NOTE*(This note is not part of the Order)*

The Council Tax (Exempt Dwellings) (Scotland) Order 1992 (“the 1992 Order”) made provision as to those classes of dwelling which were to be exempt from the council tax in Scotland. This Order consolidates the 1992 Order and its amending Orders (which are revoked by Schedule 2 to this Order). The prescribed classes of exempt dwellings are now listed in Schedule 1 to this Order. The principal changes as against the 1992 Order (as amended) are the deletion of what was paragraph 2 of the Schedule to that Order (new dwellings entered in list as at 1st April 1993) which is now spent, and the addition of a provision (paragraph 24 in Schedule 1 to this Order) providing an exemption for those parts of a prison which will be treated as a dwelling from 1st April 1997 by virtue of the Council Tax (Dwellings) (Scotland) Regulations 1997.