

POLICY NOTE

THE COUNCIL TAX (VARIATION FOR UNOCCUPIED DWELLINGS) (SCOTLAND) REGULATIONS 2013

SSI 2013/ DRAFT

The above instrument will, if approved by the Scottish Parliament, be made in exercise of the powers conferred by section 33(1) to (4) of the Local Government in Scotland Act 2003. The instrument is subject to the affirmative procedure.

Policy Objectives

Introduction

These Regulations replace the Council Tax (Discount for Unoccupied Dwellings) (Scotland) Regulations 2005 ('the 2005 Regulations'). They are part of a package of three SSIs and will enable local authorities to charge a council tax increase for certain long-term unoccupied dwellings. While they replicate much of the effect of the 2005 Regulations, they give local authorities new flexibility to charge a council tax increase of up to 100% (i.e. double the rate of council tax otherwise payable) for certain dwellings which have been unoccupied for one year or more. (The 2005 regulations only allow local authorities to vary the level of discounts, with a minimum discount of 10% for empty and second homes.)

This greater flexibility is intended as an additional tool to help local authorities to encourage owners to bring empty properties back into use, both to increase the supply of housing for those who need homes and to reduce the blight on communities caused by houses being left empty and allowed to fall into disrepair.

These Regulations will not affect an owner's eligibility to claim council tax exemptions under the Council Tax (Exempt Dwellings) (Scotland) Order 1997 ('the 1997 Order'). There are a number of exemptions in place for unoccupied dwellings, such as where the owner is: in long-term residential care, in hospital long term, in prison, where a dwelling has been repossessed by a lender, where a dwelling is being structurally repaired (for up to one year after it becomes unoccupied) or where the owner has died (in which case the exemption is for up to six months after the owner's estate has been settled). As long as an owner is eligible for an exemption, they would not be charged any council tax, regardless of how long the dwelling has been unoccupied. However where a dwelling becomes no longer eligible for the exemption, but remains unoccupied, it will become subject to the provisions in these Regulations.

Key provisions

Regulation 2 defines an unoccupied dwelling and a second home. The definition of a second home requires it to be furnished and lived in for at least 25 days in any twelve month period, but not as someone's sole or main residence. This aims to ensure that only homes which are likely to be reasonably well maintained and which the owner is likely to visit regularly (and therefore make some contribution to the local economy) can qualify as a second home. Local authorities will not be able to charge a council tax increase for second homes; they will, as is currently the case, have flexibility to set a discount level of between 10-50%.

An unoccupied dwelling is any dwelling which is not someone's sole or main residence, but does not fall within the definition of a second home. Therefore an unoccupied dwelling may be either furnished or unfurnished but is either not lived in at all or is lived in for less than 25 days in any twelve month period.

It may be difficult for local authorities to determine whether or not a dwelling has been lived in for at least 25 days in any year, so the definition of a second home will require owners to provide evidence that they have been living in the home. It will be for a local authority to decide what evidence is acceptable and in what circumstances it will ask for evidence. This process will also allow appeal to a Valuation Appeal Committee under existing provisions for liability disputes.

Regulation 3 sets a 50% council tax discount as the default charge for all dwellings which are not someone's sole or main residence. This is the same as under the 2005 Regulations.

Regulation 4 gives local authorities the power to alter the level of discount below 50%, offer no discount, or charge a council tax increase for certain unoccupied homes, subject to restrictions in regulations 5 and 6. It also gives local authorities discretion to vary the council tax charged for different cases. This could include charging different rates according to:

- whether the dwelling is an unoccupied dwelling or a second home;
- the area the dwelling is in;
- the length of time that the dwelling has been unoccupied;
- such other types or characteristics of dwellings, or circumstances relating to why they are unoccupied, as a local authority considers appropriate.

Based on feedback from consultation on the draft Regulations, the flexibility in the final bullet point is included so that local authorities can modify provision (by not charging a council tax increase, charging a reduced level of increase or offering a higher level of discount), though this is subject to the limits in the Regulations and exemptions from council tax. This allows a local authority to avoid charging a council tax increase (or to charge a lower level of council tax than for other unoccupied dwellings) where it considers there are reasons why the owner is justified in leaving the dwelling unoccupied and/or reasons why the dwelling could not be lived in, sold or let.

Regulations 5 and 6 set out restrictions to local authorities' flexibility to amend council tax charges. As noted earlier and in line with the 2005 Regulations, a council tax discount of between 10% and 50% must be offered to second homes.

A council tax discount of between 10% and 50% applies to dwellings which have been an unoccupied dwelling for up to a year. If unfurnished, they remain exempt from council tax for the first six months they are 'empty' under the 1997 Order (or if the home is eligible for any other exemption under the 1997 Order that would still continue to be applied). Under the 2005 Regulations, dwellings which have been classed as empty for between six and twelve months must receive a 50% discount (which can be reduced to a minimum of 10% after twelve months), but local authorities would in future have discretion to reduce that discount to 10%.

As in the 2005 Regulations, local authorities must retain a 50% discount for three types of homes. Firstly, purpose-built holiday homes, as defined in Schedule 1. These are chalets or other types of holiday property which are either unsuitable to be occupied all year round (their construction may mean they are only suitable to be lived in during the warmer months) or are not allowed to be lived in all year due to planning, licensing or other restrictions. Secondly, job-related dwellings as defined in Schedule 1, are homes owned by someone who has to live elsewhere most or all of the time as part of their job, or the home the person occupies to undertake their job if the person has another home that is their main residence. Thirdly, an unoccupied dwelling which is undergoing or needs major repair work to become habitable and which has changed ownership, though the 50% discount for such dwellings can be varied after six months have passed since the change in ownership.

As required by section 2(5) of the Local Government Finance (Unoccupied Properties etc.) (Scotland) Act 2012, regulation 5 prevents local authorities from using their discretion to vary council tax charges in a way that gives more favourable treatment to unoccupied social rented dwellings just because they are owned by a social landlord. The Scottish Government believes it is important that all owners take steps to bring unoccupied homes back into use as soon as possible, rather than leaving them empty.

Regulation 6 allows local authorities discretion to charge anything in between a maximum council tax discount of 50% and a maximum increase of 100% of the rate of council tax that would otherwise apply for dwellings that have been unoccupied for over twelve months. Regulation 6(4)(a) requires any period of reoccupation of an unoccupied home to be disregarded in determining how long a home has been unoccupied if it lasts less than three months. This provision (and provision in the Council Tax (Exempt Dwellings) (Scotland) Amendment Order 2012) aims to restrict avoidance by preventing an owner from being able to live in their home for a very short period of time and then declare it unoccupied, restarting the clock on the period the home is considered as having been unoccupied.

Regulation 6(4) also clarifies that if a home was previously a second home, purpose-built holiday home or job-related dwelling and then subsequently becomes classed as an unoccupied dwelling, any council tax increase or full removal of discount can only apply after the home has been classed as an unoccupied dwelling for over twelve months (so time spent as, for example, a second home would not count towards the twelve month period). It also provides for new property, which has never been occupied, to provide that the period of non-occupancy starts when the property is entered on the council tax list of dwellings.

Finally, Regulation 6 also requires local authorities to maintain a council tax discount of 10% to 50% for unoccupied homes which are being marketed for sale or let and have been unoccupied for less than two years as defined in Schedule 2. This is to allow owners who are actively trying to bring their home back into use some extra time to do so if they are having difficulties in finding a buyer or a tenant before they may be required to pay a council tax increase.

Consultation

The Scottish Government carried out an initial public consultation¹ from October 2011 to January 2012 on plans for legislation on a council tax increase. A further consultation² on the detailed draft package of council tax regulations was held from July to October 2012, which included seeking views on these Regulations. The consultations were sent to local authorities, NHS Boards, key housing and council tax stakeholders, equalities groups and other bodies whose members were likely to own empty homes. The Scottish Government also promoted the consultations through News Releases and announcements to raise wider awareness. Two open consultation events were held as part of the first consultation, along with ongoing discussions with local authorities through an officer working group on the package of regulations.

The Scottish Government has published consultation analysis reports³ for both consultations. The majority of respondents favoured the Scottish Government's proposals for these Regulations, in particular the proposals to give local authorities the flexibility to charge a council tax increase of up to 100% of the standard rate of council tax for dwellings which are unoccupied long-term (as a result of views from the initial consultation, the Scottish Government decided to only allow the increase to be applied to homes which have been unoccupied for over one year).

In response to the consultations, there was also support for:

- Local authorities being able to offer a council tax discount of between 10% and 50% for homes which have been unoccupied for up to a year (under the 2005 Regulations empty homes receive a mandatory 50% discount when they have been empty for between six and twelve months if they are unfurnished).
- Protection for homes which are being marketed for sale or let so that they could only be charged a council tax increase after they have been unoccupied for at least two years (they would receive a discount of 10% to 50% until then).
- Local authorities being given the flexibility to offer special treatment to other types of homes where the authority feels that is justified.
- Short periods of occupation of a home being disregarded when determining whether a home has been unoccupied for over a year. However, many respondents felt that a proposed disregard period of 20 days was not sufficient and that a longer period was needed to prevent this being used for avoidance. This has therefore been increased to 3 months.

There were mixed views on how second homes and unoccupied homes should be defined. In particular, there were concerns about the potential for avoidance or evasion through owners seeking to classify their home as a second home rather than an unoccupied one and how local authorities would be able to check whether or how often a home was lived in. However, a majority of respondents felt that a second home should be defined based on being lived in for a set number of days each year. Views on the most appropriate number of days varied; some respondents supported 20 days per year as proposed in the consultation, but several

¹ See <http://www.scotland.gov.uk/Publications/2011/10/17105007/0> - particularly Section 1, compliance and enforcement, and question 6

² See <http://www.scotland.gov.uk/Publications/2012/07/9137> - particularly pages 9 to 10

³ See <http://www.scotland.gov.uk/Publications/2012/03/3821> - legislation consultation analysis and <http://www.scotland.gov.uk/Publications/2012/11/5103>

respondents felt this should be higher. The number of days has been increased to 25 after taking on board some of these responses.

Copies of individual responses to both consultations (except where respondents asked for their response not to be published) are also available on the Scottish Government's website⁴.

Impact Assessments

An Equality Impact Assessment has been completed on the proposals for the council tax legislation⁵. A draft of this Assessment was consulted on and copies were sent to bodies representing equalities groups. As a result of the limited feedback received, the Scottish Government concluded that, while equalities information is not available in relation to owners of empty homes, these proposals would not be expected to lead to negative impacts on any particular equalities groups. It is not possible to say at this stage whether any equalities groups will particularly benefit from bringing empty homes back into use.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed following the consultation on the legislation and this is provided with this Policy Note. The BRIA focuses on the proposal to allow local authorities to increase council tax on certain long-term unoccupied homes. As a result of the consultation on the draft BRIA and meetings or telephone discussions with some businesses who own unoccupied homes (such as rural landowners, representatives of house builders and housing associations), some changes were made to the proposals to give owners extra time to bring their homes into use, for example by only allowing a council tax increase to be charged after a home has been unoccupied for over a year (as opposed to a proposed six months).

In addition, to help minimise the impacts of the increase on businesses such as house builders, the Scottish Government has made some changes to ensure that new build homes for sale or let are protected so that an increase cannot be charged for the first two years after the homes are completed and entered on the council tax valuation list.

Scottish Government

Housing and Regeneration, the Commonwealth Games and Sport Directorate

⁴ See <http://www.scotland.gov.uk/Publications/2012/02/7761/downloads> and <http://www.scotland.gov.uk/Publications/2012/11/4993/0>

⁵ See Assessment at <http://www.scotland.gov.uk/Publications/2012/04/7872/2>