

SL(6)203 – The Non-Domestic Rating (Amendment of Definition of Domestic Property) (Wales) Order 2022

Background and Purpose

This Order amends section 66 of the Local Government Finance Act 1988, which defines domestic property for the purposes of Part 3 (non-domestic rating) of that Act.

These amendments increase the number of days a self-catering property must be intended to be made available to let, have been available to let and actually have been let, within any 12-month period, in order to be classified as non-domestic within the local taxation system. Such properties are liable for non-domestic rates (NDR).

Currently, such properties must be intended to be let and have been made available to let for at least 140 days and actually have been let for at least 70 days.

This Order will increase the requirements from 140 to 252 days and from 70 to 182 days respectively. Self-catering properties which do not meet the letting criteria are classified as domestic, and are liable for council tax.

Procedure

Negative.

The Order was made by the Welsh Ministers before it was laid before the Senedd. The Senedd can annul the Order within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date it was laid before the Senedd.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3 in respect of this instrument.

1. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

Paragraphs 5.1-5.3 of the Explanatory Memorandum accompanying the Order notes the responses to the Welsh Government's policy consultation. The Welsh Government states that responses were received from a range of stakeholders, providing various suggestions for non-domestic classification criteria:



A policy consultation took place from 25 August to 17 November 2021. The consultation sought views on, among other matters, the criteria to be met for self-catering properties to be classified as non-domestic for local taxation purposes. A summary of responses was published on 1 March 2022.

The consultation received 974 responses, from a wide range of stakeholders. Respondents included local authorities, town and community councils, self-catering providers, local businesses, representative bodies, professional bodies/associations and private individuals.

Views from the consultation generally supported an increase to the criteria and a range of suggestions was provided. The most common specific suggestions were for 210 days available to let and 105 days actually let, but many respondents also suggested higher numbers. Some respondents were of the view that all properties providing living accommodation should be classified as domestic and liable for council tax, or suggested letting criteria so high that they would have the same effect. The Welsh Government is not duty bound to accept the most common specific response to a consultation.

Paragraph 5.4 of the Explanatory Memorandum notes responses to the technical consultation in relation to a draft of the Order. The Welsh Government states that most responses were from self catering property owners and their representative bodies, who considered that the requirement to let a property for 182 days was too high:

A draft of the 2022 Order was the subject of a technical consultation between 1 March and 12 April 2022. The consultation received 499 responses. The vast majority were from self-catering property owners and representative bodies who stated that the criteria of 182 days actually let is too high. The response to the technical consultation was, therefore, very sector-specific, capturing only part of the broader set of stakeholders which responded to the previous policy consultation. This is generally expected for technical consultations, which mainly attract responses from stakeholders for whom the relevant legislation will be directly applicable. No issues with the technical clarity of the Order were identified. Some areas of misunderstanding with regards to the application and timing of the Order were identified, which will be clarified in revised guidance.

Welsh Government response

A Welsh Government response is not required.

Committee Consideration

The Committee considered the instrument at its meeting on 13 June 2022 and reports to the Senedd in line with the reporting point above.

