

Explanatory Memorandum to the Non-Domestic Rating (Amendment of Definition of Domestic Property) (Wales) Order 2022

This Explanatory Memorandum has been prepared by Local Government Finance Reform Division and is laid before Senedd Cymru 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 Non-Domestic Rating (Amendment of Definition of Domestic Property) (Wales) Order 2022. I am satisfied that the benefits justify the likely costs.

Rebecca Evans MS
Minister for Finance and Local Government
24 May 2022

PART 1: EXPLANATORY MEMORANDUM

1 Description

- 1.1 The Non-Domestic Rating (Amendment of Definition of Domestic Property) (Wales) Order 2022 (“the 2022 Order”) amends 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, to be classified as non-domestic within the local taxation system and, therefore, 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. The 2022 Order will increase these criteria 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.

2 Matters of special interest to the Legislation, Justice and Constitution Committee

- 2.1 None.

3 Legislative background

- 3.1 Section 66(2BB) of the Local Government Finance Act 1988 (“the 1988 Act”) set outs the criteria, in relation to Wales, which a property providing self-catering accommodation must meet to be classified as non-domestic, rather than domestic, for local taxation purposes. The existing criteria, which constitute an exception to the domestic definition of property providing self-catering accommodation, were inserted by the Non-Domestic Rating (Definition of Domestic Property) (Wales) Order 2010 (“the 2010 Order”).
- 3.2 The Non-Domestic Rating (Definition of Domestic Property) (Wales) Order 2016 (“the 2016 Order”) amended the criteria to provide that, where multiple units of property are operated by the same owner on a singular site, an average for the number of days actually let may be taken.
- 3.3 The existing criteria provide that a property providing self-catering accommodation is classified as non-domestic property if:
- the property is intended to be made available for letting commercially as self-catering accommodation for short periods totalling 140 days or more in the following 12-month period;
 - in the 12 months prior to assessment, the property has been made available for letting commercially as self-catering accommodation for short periods totalling 140 days or more; and
 - during that period, the short periods it has actually been commercially let for amounted to at least 70 days; or
 - during that period, for self-contained units of property in very close proximity and operated by the same or connected business, the short

periods each individual unit of property has actually been commercially let for amounted to an average of at least 70 days.

- 3.4 The Secretary of State may, by Order, amend or substitute another definition for any definition of domestic property within section 66 of the 1988 Act. The power of the Secretary of State so far as is exercisable in relation to Wales, was transferred to the National Assembly for Wales by virtue of article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999. By virtue of section 162 of, and paragraphs 30 and 32 of Schedule 11 to, the Government of Wales Act 2006 the power is now vested in the Welsh Ministers. Orders made under Section 66 of the 1988 Act are subject to the negative resolution procedure.

4 Purpose and intended effect of the legislation

- 4.1 There has been considerable debate in recent years about the availability of affordable housing in Wales and, linked to this, the numbers of second homes and self-catering holiday lets in some communities. Although not a pan-Wales issue, the numbers of such properties have provoked strong feelings in parts of Wales. It is recognised that higher numbers of second homes and self-catered holiday lets can have an impact on local housing markets and on the sustainability of local communities, particularly in areas where properties are not occupied for much of the year.
- 4.2 To ensure that all home owners and businesses make a fair contribution to the communities in which they own or let property, the Welsh Government has reviewed the arrangements for the local taxes, including the criteria used for local taxation purposes to classify properties providing self-catering accommodation. The Welsh Ministers have powers to change these criteria by Order.
- 4.3 Some stakeholders have argued that the current criteria are insufficient and have previously suggested an increase to the letting thresholds, to ensure that transfers between council tax and NDR lists only take place for genuine businesses which are making a more substantial contribution to the local economy than the existing criteria require.
- 4.4 On 2 March 2022, the Welsh Government [announced](#) that it will legislate to increase the relevant letting criteria. This will ensure that self-catering properties make a greater economic contribution to the communities in which they are located by generating tourism income and jobs. The Welsh Government is of the view that such properties should be occupied for short periods amounting to at least half the year, in order to be classified as non-domestic and be liable for NDR. If they are not, then they will make a more direct economic contribution through council tax.
- 4.5 The 2022 Order will increase number of days a self-catering property must be intended to be let, made available to let and actually be let, in any 12-month period, to be classified as non-domestic for local tax purposes. From 1 April 2023, evidence must be provided that a property has been

made available to let for at least 252 days and actually let for at least 182 days, over the 12 months prior to the date of assessment and is intended to be let for at least 252 days over the 12 months following the date of assessment.

- 4.6 As the criteria require that evidence must be achieved within the previous 12 months, the 2022 Order will have practical effect from 1 April 2023, to enable letting evidence between 1 April 2022 and 1 April 2023 to be taken into account. Any property assessed prior to 1 April 2023 will be subject to the existing criteria (at least 140 days available to let and 70 days actually let). All non-domestic properties, including self-catering properties, in Wales are currently being reassessed for the scheduled NDR revaluation which takes effect on 1 April 2023.
- 4.7 It is also recognised that many potential interventions, as set out in the [three-pronged approach](#) to tackling the impact of second homes, are outside the local taxation system, including planning regulations and wider taxation powers. The intent of the policy change effected by the 2022 Order is to address a specific aspect of matters relating to second homes, where certain properties may contribute less local tax revenue towards the local community than others. The policy change should be viewed as part of a wider programme of measures if its full intent is to be achieved.
- 4.8 A number of possible behavioural changes may occur amongst owners of second homes and self-catering accommodation in response to the increased letting criteria. These could include property owners adapting their operating models to make greater use of their properties, to meet the increased criteria. Where this is not desirable or achievable, owners may choose to adapt their operating models to account for council tax liability. Some owners may choose to sell their properties, or to let them out as permanent domestic accommodation for the local community. Others may choose to occupy the property as their primary home or to adopt another option.

5 Consultation

- 5.1 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.
- 5.2 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.
- 5.3 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.

- 5.4 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.

PART 2: REGULATORY IMPACT ASSESSMENT

6 Options

6.1 This Regulatory Impact Assessment (RIA) presents three options in relation to the criteria used to classify self-catering properties for local taxation purposes. All costs and benefits quantified in this RIA are based on information available to the Welsh Government leading up to publication. There are limitations to the availability of data with which to fully analyse the potential impacts of any option, including doing nothing.

6.2 The options considered are as follows:

Option 1 – Do nothing. Retain the existing criteria, of at least 140 days available to let and at least 70 days actually let, for a self-catering property to be classified as non-domestic and liable for NDR.

Option 2 – Increase the letting criteria. Increase the criteria for a self-catering property to be classified as non-domestic, to at least 252 days available to let and at least 182 days actually let.

Option 3 – Classify all self-catering properties as domestic. Remove the letting criteria so that all properties providing living accommodation, whether for short periods or otherwise, are classified as domestic and liable for council tax, including a council tax premium where applicable.

7 Costs and benefits

Option 1 – Do nothing

7.1 Option 1 would not require any legislative change. The existing criteria for classifying self-catering properties for local taxation purposes would remain in place. In 2021-22, there were almost 10,000 properties classified as self-catering properties in Wales, in accordance with the criteria. This number has grown steadily and quite consistently over recent years, as has the size of the local tax-base as a whole.

Costs

7.2 If the existing criteria were retained, there may be further growth in the number of self-catering properties liable for NDR. Around 95% of such properties are eligible for full or partial Small Business Rates Relief (SBRR). The cost to the Welsh Government of providing SBRR would, therefore, increase as a consequence of any further growth in numbers. It is not possible to estimate how much the cost might increase by. Between 2017-18 and 2021-22, the estimated cost to the Welsh Government of providing SBRR to self-catering properties doubled, from just over £8m to almost £17m.

Benefits

- 7.3 Doing nothing would minimise administrative burdens on local authorities, the Valuation Office Agency (VOA) and the Welsh Government, and no legislative changes would be required.
- 7.4 The existing criteria provide some financial certainty for property owners, with 87% of the self-catering properties listed for NDR benefiting from zero local tax liability through SBRR. A further 8% benefit from partial relief. The local tax liability for self-catering properties is, in the majority of cases, lower than if the same property were liable for council tax or ineligible for SBRR.

Disadvantages

- 7.5 The perceived ease with which second home owners can transfer their property to the NDR list, by letting it for short periods totalling 70 days per year, has been cited by local authorities as a barrier to using their discretionary powers to introduce or increase a council tax premium. This barrier would remain if the existing criteria were retained.
- 7.6 Retaining the current criteria could result in a continued growth in Welsh Government expenditure on SBRR for self-catering properties.
- 7.7 Within the Welsh Government's three-pronged approach is a wider set of measures aimed at addressing issues associated with the high proportion of second homes in certain communities. This includes 'a fairer contribution – using national and local taxation systems to ensure second home owners make a fair and effective contribution to the communities in which they buy'. Retaining the current criteria would limit the contribution of the local taxation system to this policy objective.
- 7.8 The Co-operation Agreement with Plaid Cymru includes a commitment to act on the recent consultation and ensure genuine self-catering accommodation is distinguished from domestic properties with regard to local taxes. Retaining the current criteria would not contribute to this policy objective.

Option 2 – Increase the letting criteria

- 7.9 Option 2 would require an Order to increase the criteria for a self-catering property to be classified as non-domestic, to at least 252 days intended to be available to let and at least 182 days actually let, within any 12-month period. The changes would be given practical effect from 1 April 2023, when they will be reflected in the evidence requirements for assessments.
- 7.10 Other options for increased letting thresholds were considered, including 210 days available to let and 105 days actually let. Lower thresholds were not pursued because they would not align to the Welsh Government's view that properties should be operated as a business for the majority of the year, in order to be classified as non-domestic. An alternative option for increased thresholds would have similar advantages and disadvantages, but the costs

and benefits would vary and the impact on the self-catering sector would be less pronounced.

Costs

- 7.11 Increasing the letting criteria, particularly with regards to days actually let, is likely to result in some properties becoming liable for council tax, rather than NDR. The requirement for properties to evidence 182 days letting amounts to 50% occupancy, across a 12-month period. There is limited evidence to enable an assessment of the potential impact of this increase.
- 7.12 The [Wales tourism accommodation occupancy surveys](#) demonstrate that, over the three years prior to the coronavirus pandemic (2017 to 2019), self-catering properties in Wales consistently exceeded 50% occupancy, on average. There is regional variation, with average occupancy for south east Wales below 50% in 2018 and 2019. Average occupancy for mid Wales was below 50% in 2018. These averages will hide underlying variation and it is recognised that previous occupancy for some individual self-catering properties will have been below 50%, in all regions of Wales, but will have been more common where average rates are lower.
- 7.13 The Welsh Government has limited data to estimate how many properties would not previously have met the new thresholds. Small extracts of property level occupancy data are available, from a sample of VOA assessments and responses to the Wales tourism accommodation occupancy surveys. The two data sources present opposing trends over the three years prior to the coronavirus pandemic. In the VOA sample, around 40% of properties were let for at least 182 days in 2017, declining thereafter. In contrast, the occupancy survey shows an increase over the three years, to reach around 40% of properties in 2019.
- 7.14 A survey of operators conducted by the Professional Association of Self-Caterers UK, Wales Tourism Alliance and UK Hospitality Wales, found that 34% currently let their properties for at least 182 days per year. Almost a quarter currently exceed 200 days. These sources represent a sector-specific view, as the surveys focused on self-catering operators, many of whom might benefit from retaining the existing criteria or seeing a smaller increase than that proposed. Even if previous occupancy related to the new thresholds were known with confidence, it would not reveal how many of those would be able to increase their letting activity, so that they do meet the new criteria by the time they take effect. This makes it difficult to estimate accurately the potential costs and benefits of this option.
- 7.15 The possible cost implications are explored, using illustrative examples of the potential liability for individual properties, with respect to local taxes, were they to become liable for council tax rather than NDR. The VOA has matched self-catering properties currently listed for NDR to a previous council tax band using standard data techniques and achieved an overall match rate of over 80%. Table 1 shows the overall distribution of matched self-catering properties, according to broad rateable value grouping (related to SBRR

eligibility) and council tax band. Over 60% of matched properties were previously in council tax bands A to D. It should be noted that the unmatched properties may not follow the same distribution and that properties may have undergone alterations between being listed for council tax and NDR.

Table 1: Previous council tax band for self-catering properties

Council tax band	NDR rateable value (£)			Total
	0 – 6,000	6,001 – 12,000	12,001 or greater	
A	1,019	36	*	1,055
B	1,105	43	*	1,148
C	1,436	44	*	1,480
D	1,651	63	*	1,714
E	1,534	85	*	1,619
F	858	133	*	991
G	357	90	*	447
H	58	38	*	96
I	14	13	*	27
Total	8,032	545	32	8,609

Source: Valuation Office Agency

Notes: * Property counts below 10 have been suppressed and excluded from totals for individual council tax bands.

7.16 A range of examples of the local tax liability of individual properties for NDR and council tax is shown in Table 2 for illustration. These have been selected to illustrate different scenarios, covering a range of property sizes, the operation of the two property limit per local authority for SBRR eligibility, and variation in the discretionary use of the council tax premium (no premium, 25%, 50% and 100%) by local authorities. The council tax liabilities are based on the premiums currently being applied and it cannot be assumed that local authorities will raise them to the maximum level allowed from 1 April 2023. Three local authorities are applying the current maximum premium of 100% to second homes.

7.17 Where the new letting criteria are not met, some ratepayers may be unable to afford the additional local tax liability that would result from the transfer of their property to the council tax list. Property owners may seek to reduce their expenditure in other areas to meet the liability, or consider selling their property or using it differently. Others may find an increased liability affordable, but choose to pursue one of these other avenues.

Table 2: Examples of local tax liability for self-catering properties

Units of property	Local authority	NDR		Council tax		Difference in liability (£)
		Rateable value (£)	Liability (£)	Band	Liability (£)	
One	Monmouthshire	2,800	0	C	1,642	1,642
One	Isle of Anglesey	4,000	0	E	3,186	3,186
One	Gwynedd	3,600	0	D	3,786	3,786
Two	Ceredigion	(2x) 3,500	0	D	4,443	4,443
One	Cardiff	7,500	803	F	2,369	1,566
One	Carmarthenshire	9,000	1,605	G	2,967	1,362
One	Pembrokeshire	9,000	1,605	G	5,262	3,657
Five	Powys	(5x) 2,600	4,173	B (x5)	10,579	6,406
Five	Bridgend	(5x) 2,800	4,494	B (x5)	6,810	2,316
Five	Swansea	(5x) 3,200	5,136	C (x5)	15,844	10,708
One	Gwynedd	13,000	6,955	H	7,573	618
One	Pembrokeshire	16,000	8,560	I	7,367	-1,193
One	Powys	18,000	9,630	I	6,347	-3,283

Notes:

These are not real properties, but theoretical examples which are considered realistic, based on the overall distribution summarised in Table 1.

NDR liability includes any SBRR, subject to the two property limit per local authority.

Council tax liability includes any premium applicable in 2022-23: 100% in Gwynedd, Pembrokeshire and Swansea, 50% in Denbighshire, Flintshire, Isle of Anglesey and Powys, and 25% in Ceredigion and Conwy.

7.18 For properties aiming to meet the new criteria, increasing letting activity could reduce profit margins, due to competitive pricing and increases in other costs (e.g. agency marketing, energy and staffing). For multi-unit clusters, increased letting could generate revenue that exceeds the VAT threshold, resulting in an additional financial pressure that operators of single properties would not be exposed to. The implication of this is that such businesses may currently be limiting the availability of their properties and, in doing so, limiting their economic contribution to the local communities in which they operate. Businesses not operating in this way may already be liable for VAT.

7.19 There could be increased administrative costs for local authorities if taxpayers for properties which become liable for council tax seek ways to reduce their liability. Authorities would also incur the normal administrative costs of issuing and collecting council tax bills.

7.20 There could be increased administrative costs for the VOA, depending on the number of properties currently on the NDR list which are required to transfer to the council tax list. The VOA already runs a rolling programme of rechecks, funded by the Welsh Government, to ensure self-catering properties listed for NDR continue to meet the criteria applicable at the time.

Benefits

7.21 Increasing the letting criteria would deliver on the policy intention, announced by the Welsh Government, to ensure that all self-catering properties make a substantial economic contribution to the communities in which they are

located. This option aligns to the Welsh Government's view that such properties should be occupied for short periods amounting to at least half the year, in order to be classified as non-domestic and liable for NDR, rather than council tax.

- 7.22 An increase in letting activity by operators seeking to meet the increased criteria would increase the economic contribution of such properties to their local area. It may also help to extend the tourism season in Wales, if letting increased outside the peak months, supporting other tourism and hospitality businesses for more of the year. The average spend per night for tourists visiting Wales has been estimated to be £57 (Great Britain Tourism Survey 2019). Every additional week that a property is occupied by a visiting couple (two adults) would contribute an estimated £800 to the local economy. An additional month on the same basis would contribute around £3,200.
- 7.23 As it is not known how many properties would increase their letting activity, and by how much, it is not possible to estimate the overall economic benefit to their local areas. If, for example, 10% of self-catering properties were occupied by a visiting couple for an extra week, the economic contribution to local areas would be estimated to amount to more than £780,000. An additional month of letting by 10% of properties would contribute over £3.1m. If 50% of self-catering properties were occupied by a visiting couple for an extra week, the economic benefit would be estimated to exceed £3.9m.
- 7.24 The average number of nights stayed per visit to Wales is 3.3 (Great Britain Tourism Survey 2019), but some self-catering operators limit bookings to a full-week minimum stay. Such operators may consider adapting to a more flexible model, particularly outside the peak tourism season, in order to increase letting. Every additional 3-night stay by a visiting couple (two adults) would be estimated to contribute around £340 to the local economy. Any increase in activity outside the peak season could be of particular economic benefit to local communities and businesses.
- 7.25 This option could increase the effectiveness of the council tax premium, as a discretionary lever for local authorities within the local taxation system. Increasing the letting thresholds would make it more difficult for owners to meet the criteria to secure a transfer from the council tax list to the rating list, and put this option beyond the reach of owners who wish to retain their property primarily for private use as a second home. This would enable local authorities to consider their approach to addressing the impact of high numbers of second homes in their areas, without fear of such properties being transferred out of the council tax system.
- 7.26 The policy consultation also sought views on the eligibility of self-catering properties for SBRR and responses were polarised, as eligibility for SBRR means that most self-catering properties have a lower local tax liability as a result of being classified as non-domestic rather than as domestic second homes. Increasing the letting criteria would help to address this polarisation of views, as only those properties making a substantial contribution to their

local communities, by hosting tourists for the majority of the year, will be eligible for this potential benefit with respect to local tax liability.

- 7.27 As it is not known how many properties would transfer, it is not possible to estimate the overall implications for the local tax-base. Given the estimated impact of all properties becoming liable for council tax (see Option 3), a transfer of, for example, 10% of properties might be expected to generate around £1m of additional funding from local taxes. The movement of some properties from NDR to council tax liability would be expected to result in a reduction in Welsh Government expenditure on SBRR.
- 7.28 The primary aim of the policy is not, however, to provide financial savings to Welsh Government, but to ensure property owners are making a fair contribution and to maximise the use of property, to the benefit of local communities. This could include benefits arising from increased occupancy for short-term letting or the release of some properties for sale or rent as permanent homes for local people. It is not possible to predict how many permanent homes may be made available or whether they would be affordable to locals.
- 7.29 Increasing the letting criteria would make a substantive contribution to relevant policy objectives within the Welsh Government's three-pronged approach and the Co-operation Agreement.

Disadvantages

- 7.30 Some genuine self-catering businesses may not be able to consistently meet the increased criteria for days actually let.
- 7.31 If the financial viability of some providers of self-catering accommodation is compromised, and owners are not able to adapt their operating models sufficiently, they may decide not to continue letting their properties. This could limit the availability of accommodation at peak times within the tourism season. The Welsh Government is not able to predict how many properties might cease to operate in this way, or estimate the impact, but a combination of continued demand, adaptation and acceptance of any additional local tax liability, would be expected to ensure a reasonable level of capacity is retained to support tourism.
- 7.32 Some stakeholders have suggested that there will be a greater impact on women, particularly those with caring responsibilities, and retired people, due to their reported level of representation amongst self-catering operators. A survey of 146 operators suggests people with these characteristics are over-represented within the sector. It is not, however, clear that such operators would be less able to let their properties for more of the year than others. There is very little evidence available in this regard, and none which can be validated by the Welsh Government. The survey referred to appears to have been targeted towards operators with these characteristics.

- 7.33 There could be increased administrative costs for local authorities arising from an increase in council tax payers, particularly if taxpayers for properties which become liable for council tax seek ways to reduce their liability. Authorities would need to take a range of factors into account, including local context and priorities, in deciding how to use their discretion with respect to charging a council tax premium and granting any discounts.
- 7.34 While it would be generally beneficial to extend the tourism season, it is recognised that this may incentivise over-tourism in some areas.

Option 3 – Classify all self-catering properties as domestic

- 7.35 Option 3 would require an Order to revoke the existing letting criteria. This would result in all properties providing living accommodation, whether for short periods or otherwise, being classified as domestic and liable for council tax, including a council tax premium where applicable.

Costs

- 7.36 This option would be expected to result in all of the almost 10,000 self-catering holiday lets in Wales becoming liable for council tax. Of these, around 87% receive full NDR relief under SBRR and a further 8% receive partial relief. The remaining 5% are not eligible for SBRR, either because they exceed the two property per local authority limit, or because their rateable value exceeds £12,000. A large majority would, therefore, see their local tax liability increase from zero to a level which may include a council tax premium.
- 7.37 The Welsh Government does not have sufficient data to estimate what the council tax liability of every individual property currently listed for NDR would be. The illustrative examples provided in respect of Option 2 are, however, relevant in considering the potential cost implications for individual properties (see Tables 1 and 2).
- 7.38 There could be increased administrative costs for local authorities, particularly if taxpayers for properties which become liable for council tax seek ways to reduce their liability.
- 7.39 The VOA would be required to rate for council tax all of the self-catering properties currently listed for NDR. This would result in administrative costs and would be likely to require additional funding from the Welsh Government.

Benefits

- 7.40 Classifying all self-catering properties as domestic would ensure they all make a local tax contribution to the communities in which they are located, and address concerns related to their eligibility for SBRR when listed for NDR.

- 7.41 Any increase in letting activity for individual properties would be expected to provide similar economic benefits to local communities, related to spending by tourists, as those described for Option 2.
- 7.42 This option could increase the effectiveness of the council tax premium, enabling local authorities to consider their approach to addressing the impact of high numbers of second homes in their areas, with certainty that owners could not seek to transfer their properties to the NDR list as a consequence.
- 7.43 If all the properties remained as self-catering properties or second homes, the estimated increase in the overall level of annual funding generated for public services from the local tax-base would be around £11m. This is based on scaling up from the more than 80% of self-catering properties matched to a previous council tax band by the VOA and includes the council tax premiums that are currently being applied by relevant local authorities. However, if some properties were sold or long-term let as permanent domestic accommodation, then a council tax premium would not apply and the new occupants might be eligible for a discount or reduction.
- 7.44 The movement of properties from NDR to council tax liability would reduce Welsh Government expenditure on SBRR. In 2021-22, the cost of providing SBRR to self-catering properties was estimated to be around £17m.
- 7.45 The primary aim of the policy is not, however, to provide financial savings to Welsh Government, but to ensure property owners are making a fair contribution and to maximise the use of property, to the benefit of local communities. Classifying all self-catering properties as domestic could make a substantive contribution to relevant policy objectives within the Welsh Government's three-pronged approach and the Co-operation Agreement.

Disadvantages

- 7.46 There could be significant unintended consequences of moving away from the established basis for defining domestic and non-domestic property, according to usage, underpinning the local taxation system. It may not simply be a case of removing self-catering accommodation from the definition of non-domestic property. A redefinition of other properties may be required and it is possible that new avenues for abuse of the local taxation system could inadvertently be generated. Such changes could also have implications for the revenue generated through the local taxes and alter the liability for a range of local taxpayers, as well as requiring some redesign of the operation of the local taxes. A change of this magnitude would require a full impact assessment before it could be considered further.
- 7.47 The recent consultation on local taxes for second homes and self-catering accommodation did not seek views on how domestic property should be defined, except in reference to existing letting criteria and whether they should be changed. A small proportion of respondents proactively suggested that all self-catering accommodation should be liable for council tax.

- 7.48 The existing distinction between domestic and non-domestic is based on criteria related solely to the existing use of a property (including short-term letting activity in relation to the thresholds). In amending the definition of domestic property, it may not be possible to ensure properties not suitable for use as permanent living accommodation could continue to be classified as non-domestic.
- 7.49 This option would result in genuine self-catering businesses being treated differently from other businesses with respect to local taxation, irrespective of their level of economic contribution to the local community. For example, all small business properties below a specified rateable value are eligible for SBRR. It is recognised that some of the properties operated by such businesses have planning or occupancy restrictions which mean they are only suitable for short-term letting.
- 7.50 The viability of many self-catering businesses could be compromised by this option. The Welsh Government is not able to estimate how many providers might cease to operate. A large reduction in self-catering capacity would risk economic consequences for the tourism sector as a whole and for local communities in some areas. Self-catering represents around 60% of accommodation establishments in Wales, with this proportion much higher in some local authorities. The extent of potential consequences for local economies, including those with a heavy reliance on tourism, cannot be easily assessed. There would be a risk that the negative economic impact of properties ceasing to operate could offset or exceed the increased contribution of those which increase their letting activity. There could also be an impact on the attractiveness of Wales as an area for tourism investment.
- 7.51 As for Option 2, there could be increased administrative costs for local authorities. Authorities would need to take a range of factors into account, including local context and priorities, in deciding how to use their discretion with respect to charging a council tax premium and granting any discounts.
- 7.52 The rating for council tax of all self-catering properties, by the VOA, would represent a considerable administrative burden. An achievable timescale for such an exercise would require further consideration.

Option summary

- 7.53 Doing nothing would result in no changes to existing criteria used to classify self-catering properties for local taxation purposes and would not, therefore, contribute to established Welsh Government and Co-Operation Agreement policy objectives. Option 1 is, therefore, not the preferred approach.
- 7.54 Option 3 would undermine the long-established basis of local taxation, related to how property is used, is not considered sufficiently targeted and could risk unforeseen consequences. It would require a thorough consideration of the potential implications for the local tax system, the tourism industry and local communities, informed by further consultation. Genuine self-catering businesses would not have the opportunity to adapt

their operating models to meet amended letting criteria. Option 3 is, therefore, not the preferred approach.

- 7.55 Increasing the letting criteria, in accordance with Option 2, strikes a balance between the established policy objectives and a recognition of the substantial benefit of local communities and the tourism industry that self-catering businesses provide, if they are occupied for at least half the year. It is recognised that some genuine businesses do not currently meet the increased criteria for days actually let, and consider that it may be difficult to do so. However, it is also considered reasonable to expect genuine businesses to adopt a flexible operating model which maximises occupancy and economic contribution for as much of the year as possible.
- 7.56 This challenge should be considered in the context of the intended impact of the broader policy objective, supported by the broader suite of actions within the three-pronged approach, to reduce the prevalence of second homes in parts of Wales. Where second home owners operate on an occasional and casual basis within the self-catering sector, they enter into direct competition with these same genuine businesses. A reduction in second homes being operated within the sector will result in the residual demand for self-catering accommodation being concentrated amongst genuine businesses, increasing the likelihood that the higher criteria can be met.
- 7.57 The approach described by Option 2 was announced by the Welsh Government on 2 March 2022, and the draft legislation published for technical consultation, providing clarity that the changes will have practical effect from 1 April 2023. This has provided property owners with the opportunity to consider their options with regards to the use of their properties, and take any desired action over the year prior to the changes taking effect.
- 7.58 Option 2 is, therefore, the preferred approach.
- 7.59 In considering the implications of this decision, it should not be assumed that local authorities will adopt the increased maximum council tax premium that will be enabled from 1 April 2023. The powers have been available since 2016 and three local authorities are applying the current maximum premium of 100% to second homes. Individual local authorities will decide whether to apply a premium, at what level to apply it and when to apply or change it. In making these decisions, local authorities will need to make an assessment of the possible impacts on individuals, communities and the local economy.
- 7.60 It is recognised that some properties are restricted by planning conditions preventing permanent occupation as a person's main residence. The Welsh Government will, therefore, explore whether amendments can be made to the Council Tax (Exceptions to Higher Amounts) (Wales) Regulations 2015 to provide for an exception from a council tax premium for such properties.

8 Duties

- 8.1 ***Well-being of Future Generations (Wales) Act 2015***. The legislation seeks to support the sustainability of local communities by encouraging greater use of property to increase the economic benefit to the local area, or by making more housing accessible to local people. Where underused, properties will be liable for council tax, ensuring their owners contribute towards the cost of local public services. The policy will contribute to the wellbeing objectives of a prosperous Wales, a more equal Wales, and a Wales of cohesive communities.
- 8.2 ***UNCRC***. No particular impact on the rights of children has been identified.
- 8.3 ***Welsh language***. No direct effect on the opportunities to use the Welsh language or the equal treatment of the language has been identified in connection with this legislation. It is recognised that there are areas where the Welsh language is predominantly spoken with high numbers of properties owned either as second homes or self-catering holiday lets. The legislation may have an effect on these communities where used in conjunction with the other measures set out in the three-pronged approach.
- 8.4 ***Equalities***. No specific impacts, positive or negative, on persons who share a protected characteristic (as determined by the Equality Act 2010) have been identified. A survey of operators referred to in the options analysis suggests that women, particularly those with caring responsibilities, and retired people are over-represented within the sector. It is not, however, clear that such operators would be less able to let their properties for more of the year than others. There is no sound evidence available in this regard.
- 8.5 ***Voluntary sector***. No particular impact on the voluntary sector has been identified.

9 Competition assessment

- 9.1 A competition filter test has been applied to the 2022 Order and the risk of a significant detrimental impact on competition is considered to be low. The letting criteria apply equally to all properties classified as self-catering accommodation in Wales. It is recognised that some individual businesses in the self-catering sector may not be able to meet the new letting criteria. Such businesses may choose to adopt a different business model, to close or to remain in operation and be liable for council tax. It is not possible to predict the number of businesses which may be impacted in this way or how each might respond.

10 Post-implementation review

- 10.1 The Welsh Government will monitor the impact of the legislation by continuing to analyse data on the numbers of second homes and self-catering properties, seeking further insights into occupancy patterns and through engagement with stakeholders.