

Explanatory Memorandum to the Council Tax (Exceptions to Higher Amounts) (Wales) (Amendment) Regulations 2023

This Explanatory Memorandum has been prepared by the Local Government Finance Reform Division of the Welsh Government 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 Council Tax (Exceptions to Higher Amounts) (Wales) Regulations 2023. I am satisfied that the benefits justify the likely costs.

Rebecca Evans MS
Minister for Finance and Local Government
6 March 2023

PART 1

1. Description

1.1 The Council Tax (Exceptions to Higher Amounts) (Wales) (Amendment) Regulations 2023 (the “2023 Regulations”) amend regulation 9 (class 6) of the Council Tax (Exceptions to Higher Amounts) (Wales) Regulations 2015, adding properties subject to a planning condition specifying that they may only be used for holiday let or as a person’s sole or main residence to a class of dwelling in relation to which a billing authority may not make a determination to apply a higher amount of council tax. Class 6 applies to properties occupied periodically (referred to as second homes).

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

2.1 None.

3. Legislative background

3.1 Sections 12A and 12B of the Local Government Finance Act 1992 (the “1992 Act”) (inserted by the Housing (Wales) Act 2014) enable local authorities to disapply any discount granted to long-term empty dwellings (section 12A) and dwellings occupied periodically (section 12B) and to apply a higher amount of council tax (a premium). Local authorities have discretion to determine the amount of the premium up to a maximum of 100% (300% from 1 April 2023) of the standard rate of council tax that applies to the dwelling.

3.2 Welsh Ministers have powers under sections 12A(4) and 12A(5) and 12B(5) and 12B(6) of the 1992 Act to make regulations prescribing dwellings which will be exempt from a council tax premium by reference to such factors as the Welsh Ministers think fit and may, among other factors, be prescribed by reference to:

- (a) the physical characteristics of, or other matters relating to, dwellings;
- (b) the circumstances of, or other matters relating to, any person who is liable for the amount of council tax concerned.

3.3 These powers enable the Welsh Ministers to make regulations which provide that the premium does not apply in circumstances where it would be unreasonable or incompatible with the policy aims. These circumstances are prescribed in the Council Tax (Exceptions to Higher Amounts) (Wales) Regulations 2015 (the “2015 Regulations”) and provide classes of dwelling in relation to which a billing authority may not apply a premium to the standard rate of council tax.

3.4 The 2023 Regulations have been made using the powers in section 12B(5) and (6) and relate to properties occupied periodically. They are subject to the negative procedure.

4. Purpose and intended effect of the legislation

- 4.1 Class 6 set out in the 2015 Regulations, prescribes an exception for properties for which occupation is restricted by a planning condition (the seasonal occupancy condition) which prevents occupancy for a continuous period of at least 28 days in any one year. This usually relates to property where the character of its construction or design means it is not suitable for continuous occupation, especially during the winter months. Also, seasonal conditions may be applied to protect local features, for example where the site is near a fragile natural habitat which requires protection at particular times of year.
- 4.2 Modern self-catering accommodation is much more capable of being occupied all year round. However, where such accommodation is located in areas where the provision of permanent housing would be contrary to national and/or local policies, a local planning authority can impose a condition specifying its use as holiday accommodation only or restrict the occupancy of that property from use as a person's sole or main residence. Examples include conversions of redundant buildings into holiday accommodation where conversion into residential dwellings would not be permitted, for example to reduce pressure on other housing in rural areas or to reduce pressure on local services.
- 4.3 There is currently no exception from the council tax premium for property with a planning condition specifying its use as holiday accommodation or restricting the occupancy of that property as a person's sole or main residence.
- 4.4 The Non-Domestic Rating (Amendment of Definition of Domestic Property) (Wales) Order 2022 (the 2022 Order) increased the availability and letting thresholds which a self-catering property must meet to be classified as non-domestic and liable for non-domestic rates.
- 4.5 The 2022 Order amends the minimum number of days a self-catering property is required to be made available to let in any 12-month period, from 140 to 252, and must be actually let, from 70 to 182, for the property to be classified as non-domestic from 1 April 2023 onwards.
- 4.6 Self-catering properties which do not meet the new criteria will be classified as domestic property and will be liable for council tax. This will include a premium where the local authority has determined to apply such a charge.
- 4.7 The Welsh Government is aware that some self-catering and periodically occupied properties are subject to planning restrictions which prevent sole or main occupancy or specifies their use as holiday let accommodation only. Such properties cannot be sold or let long-term as a home for a member of the local community – without a change of planning conditions – and are arguably not limiting the local housing stock by being let to

holiday makers. The owners of such properties potentially have fewer options to respond to the new letting criteria.

- 4.8 The 2023 Regulations add properties subject to a planning condition which specifies that a dwelling may only be used for holiday let or which prevents occupancy of the property as a person's sole or main residence to class 6 set out in regulation 9 of the 2015 Regulations. These properties will become a class of dwelling in relation to which a billing authority may not make a determination to apply a higher amount of council tax. This class relates to properties which are occupied periodically. Such properties would become liable for council tax at the standard rate if they do not meet the letting criteria for non-domestic property, but they could not be charged a council tax premium.
- 4.9 These exceptions will apply from 1 April 2023, in conjunction with the increased thresholds for properties providing self-catering accommodation to be classified as non-domestic.

5. Consultation

- 5.1 The Welsh Government carried out a technical consultation from 11 November to 22 December 2022, seeking the views of individuals and organisations on the clarity of the Regulations. The consultation also sought evidence to identify unintended consequences to self-catering operators or second home owners.
- 5.2 The consultation received 143 responses, reflecting a wide spectrum of views. Respondents included local authorities, self-catering providers, second homeowners, local businesses, town and community councils, representative bodies, professional bodies/associations, and private individuals.
- 5.3 As a result of the consultation, minor changes have been made to the draft Regulations to remove the references to holiday lets needing to be 'short-term' for the planning condition exception to apply. This is because some respondents identified that some planning conditions limit the use of a property to being a holiday let without specifying any length of letting period. The consultation documents and a summary of the responses are available at:
[Draft council tax \(exceptions to higher amounts\) \(Wales\) \(amendment\) Regulations 2023 | GOV.WALES](#)

PART 2 – REGULATORY IMPACT ASSESSMENT

6. Options, costs and benefits

- 6.1 This Regulatory Impact Assessment presents two options in relation to the introduction of an additional class of exception, to apply to self-catering properties with a planning condition which restricts use to holiday accommodation or prevents permanent occupation as a person's primary

residence. Such properties would become liable for council tax at the standard rate if they do not meet the letting criteria for definition as non-domestic property but could not be charged a premium.

6.2 All costs and benefits quantified in this Regulatory Impact Assessment are based on information and data available to the Welsh Government leading up to publication.

6.3 The following two options have been considered in the development of the amendment to the regulations.

Option 1: Do not extend the exception to council tax premiums, maintain the status quo and continue with the current arrangements.

Option 2: Make regulations extending the Class 6 Exception to come into force on 1 April 2023.

Option 1: Maintain the status quo

6.4 The Council Tax (Exceptions to Higher Amounts) (Wales) Regulations 2015 were made to accompany the introduction of the discretionary powers for local authorities to apply council tax premiums and prevent specified types of second homes and long-term empty dwellings from being charged a premium. These regulations already provide for an exception from a council tax premium for properties restricted by a planning condition preventing occupation for a continuous period of at least 28 days in any one-year period.

Costs

6.5 Option 1 would result in the continuation of the current practice and there would be no additional costs to the Welsh Government or local authorities.

Benefits

6.6 No legislative changes would be required. Not extending the Class 6 exception would not create further complexity of administration for local authorities.

6.7 Local authorities would potentially be able to collect more in council tax in the event that self-catering properties which do not meet the new letting criteria from 1 April 2023 would be classified as domestic property and would be liable for council tax and the premium.

Disadvantages

6.8 Self-catering accommodation subject to planning restrictions which prevent permanent occupancy or which specify their use as holiday let accommodation only cannot be sold or let long-term as a home for a

member of the local community, without a change of planning conditions. The owners of such properties, therefore, potentially have fewer options for responding to the new criteria.

- 6.9 The updated Programme for Government 2021-26 and the Cooperation Agreement commit to seeking to review council tax to ensure a fairer and more progressive system. Continuing with the current arrangements, Option 1, would not actively contribute towards this policy objective.

Option 1 Summary

- 6.10 Doing nothing would retain existing exceptions and would not result in any additional costs to the Welsh Government or local authorities. The option would not further the commitment to reform council tax to ensure a fairer and more progressive system. It is therefore not the preferred option.

Option 2: Make regulations extending the Class 6 Exception to come into force on 1 April 2023

- 6.11 Option 2 would involve introducing Regulations to provide that from 1 April 2023, Class 6 of the exceptions to council tax premiums would include properties subject to a planning condition which specifies that a dwelling may only be used for holiday lets or which prevents occupancy of the property as a person's sole or main residence.
- 6.12 Such properties would become liable for council tax at the standard rate if they do not meet the letting criteria for definition as non-domestic property, but they could not be charged a premium, notwithstanding the wide discretionary powers local authorities have in general on council tax bills.

Costs

- 6.13 There will be financial implications for those local authorities which apply council tax premiums in that the legislation will extend a class of properties to which they cannot apply a premium. This impact will be counteracted by the fact that, from 1 April 2023, authorities will be able to set a higher maximum premium and the higher letting criteria may result in more dwellings being classed as second homes rather than as self-catered holiday lets. It is for individual authorities to assess any financial implications and other impacts as part of the process for determining whether to apply or increase a premium and the actual financial implications will depend on their decisions. The Welsh Government is not in a position to forecast the outcome of such decisions.

Table 1: Local authorities charging a premium

2022-23	Second Home Premium (percentage)
Isle of Anglesey	50
Gwynedd	100
Conwy	25
Denbighshire	50
Flintshire	50
Powys	50
Ceredigion	25
Pembrokeshire	100
Swansea	100

6.14 It is unlikely there would be any direct costs to the Welsh Government arising from this option.

Benefits

6.15 Extending the Class 6 exception to the premium means that additional council tax will not be charged in circumstances where the Welsh Ministers consider it ought not to be charged and this will benefit taxpayers who might otherwise become liable for a council tax premium. For 2023-24, it is estimated that there will be around 11,000 properties classified as self-catering properties in Wales for local taxation purposes. However, it is not known how many of these properties might be subject to a planning condition which might make them eligible for the extended Class 6 Exception.

6.16 Extending the Class 6 exception to the premium will ensure that there is consistency in application of the policy across all local authorities in Wales which will help to ensure council taxpayers in similar circumstances are treated equally.

6.17 Extending the Class 6 exception would also mitigate the risk of an increased number of appeals. There are still likely to be appeals against liability for a premium, as well as eligibility for an exception, which will result in additional work for a local authority and the Valuation Tribunal for Wales, but this will be lower than if this exception were not prescribed.

6.18 Option 2, would contribute towards the commitment in the updated Programme for Government 2021-26 and the Cooperation Agreement to seek to review council tax to ensure a fairer and more progressive system.

Disadvantages

6.19 If the Class 6 exception is not extended, complaints of unfairness could increase as some owners may have fewer options than others to sell or let their home as a main residence, it is also likely that the number of appeals would increase. These factors would have an administrative impact on local authorities.

Option 2 Summary

6.20 Option 2 requires legislative change and would extend the Class 6 exception making it more practicable for council taxpayers to identify and apply for this exception. It would also ensure council taxpayers in similar circumstances are treated equally. There may be some additional administrative costs to local authorities.

6.21 This option contributes to the relevant commitment in the updated Programme for Government 2021-26 and the Cooperation Agreement.

6.22 Therefore Option 2 is the preferred option.

7. Duties

7.1 Programme for Government

The policy is part of a wider set of measures aimed at addressing issues associated with the high proportion of second homes and holiday lets in certain communities. This includes 'a fairer contribution – using national and local taxation systems to ensure second homeowners make a fair and effective contribution to the communities in which they buy', within the Welsh Government's three-pronged approach. Together, these measures work towards the wellbeing goals of ensuring a Wales of cohesive communities and a Wales of vibrant culture and thriving Welsh Language.

7.2 Well-Being of Future Generations (Wales) Act 2015

The introduction of council tax premiums on long-term empty dwellings and second homes was intended to help to bring empty properties back into use, to improve the supply of affordable housing and to support the sustainability of local services and communities. The policy will contribute to the wellbeing objectives of a prosperous Wales; a more equal Wales; and a Wales of cohesive communities.

7.3 UNCRC

Although the council tax premiums and any exceptions will apply to parents of children and young people, there is no adverse effect on children's rights as one of the aims of the premiums is to increase housing supply which would protect the standard of living of families with low incomes.

7.4 Welsh language

The use of premiums may assist local authorities in supporting certain communities to be sustainable. The extension of the exception may have a beneficial effect on the opportunities to use the Welsh language or the equal treatment of the language has been identified in connection with this amendment by enabling the viability of some rural businesses.

7.5 Equalities

No negative impact on groups with a protected characteristic has been identified as a result of these Regulations.

8. **Competition Assessment**

8.1 The making of the Regulations has may have a marginal effect on the competitiveness of businesses, charities or the voluntary sector.

9. **Post-Implementation Assessment**

9.1 Local authorities are required to monitor and report on the implementation of the council tax premiums on an annual basis.

9.2 The Welsh Government will monitor the impact of extending the Class 6 exception to the council tax premium through engagement with local authorities and other stakeholders.

9.3 The package of work to seek to review council tax to ensure a fairer and more progressive system will include a review of council tax discounts, disregards, exemptions and premiums, to ensure they remain aligned to policy priorities.

10. **Summary**

10.1 The making of these Regulations will make it more practicable for council taxpayers to identify and apply for this exception. It will also ensure council taxpayers in similar circumstances are treated equally.