

Explanatory Memorandum on the Council Tax (Long-Term Empty Dwellings and Dwellings Occupied Periodically) (Wales) Regulations 2022

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 (Long-Term Empty Dwellings and Dwellings Occupied Periodically) (Wales) Regulations 2022. I am satisfied that the benefits justify the likely costs.

Rebecca Evans MS
Minister for Finance and Local Government
1 March 2022

PART 1

1. Description

- 1.1 The Council Tax (Long-Term Empty Dwellings and Dwellings Occupied Periodically) (Wales) Regulations 2022 (the Regulations) increase the maximum level at which local authorities can set council tax premiums on long-term empty dwellings and dwellings occupied periodically in their areas to 300%.

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), as inserted by the Housing (Wales) Act 2014, enable local authorities to disapply certain council tax discounts to long-term empty dwellings and dwellings occupied periodically in Wales and to apply a higher amount of council tax (a premium).
- 3.2 Local authorities currently have discretionary powers to decide on the amount of the premium up to a maximum of 100% of the standard rate of council tax that applies to the dwelling.
- 3.3 Sections 12A(13) and 12B(12) of the 1992 Act provide a power for the Welsh Ministers by regulations, to specify a different percentage in the place of 100%.
- 3.4 Regulations made under section 12A(13) and 12B(12) of the 1992 Act are subject to the draft affirmative resolution procedure.

4. Purpose and intended effect of the legislation

- 4.1 There has been considerable coverage and debate in recent years about the availability of affordable housing in Wales, particularly for young people, and linked to this, the levels of second homes and self-catered holiday lets in some communities. Although not a pan-Wales issue, the numbers of second homes and holiday lets have provoked strong feelings in parts of Wales.
- 4.2 It is recognised that higher numbers of second homes and self-catered holiday lets can impact on local housing markets and on the sustainability of local communities, particularly in areas where properties are not occupied for parts of the year.
- 4.3 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 discretionary powers given to local authorities to apply council tax premiums to dwellings occupied periodically and long-term empty dwellings. For the purposes of this legislation, dwellings occupied periodically are treated as second homes: however, the term second homes applies to a range of uses in other contexts. The term long-term empty dwellings refers to dwellings which have been empty for more than a year.

- 4.4 The discretion given to local authorities to charge a premium is intended to be a tool to help local authorities to:
- bring long-term empty homes back into use to provide safe, secure and affordable homes; and
 - support local authorities in increasing the supply of affordable housing and enhancing the sustainability of local communities.
- 4.5 The powers are discretionary and enable local authorities to take into account the different circumstances within individual local authority areas. The decision to charge a premium and the amount of that premium (currently up to a maximum of 100%) is a matter for each local authority. Local authorities should have regard to the above aims and take into account the particular housing needs and circumstances in their area in making any decision to apply a premium.
- 4.6 Since their introduction on 1 April 2017, the premiums have enabled the relevant authorities to collect millions of pounds in additional council tax. Any additional funds raised through a higher rate of council tax on properties periodically occupied and long-term empty properties can be used as the local authority sees fit.
- 4.7 The Welsh Government has encouraged authorities to use the additional income to address issues affecting the supply of affordable housing. Local authorities should consult local people and homeowners before introducing premiums, allowing a minimum period of 12 months between making its first determination to introduce a premium and the financial year in which it takes effect.
- 4.8 The Welsh Government has powers to increase the maximum level of the premium by regulations. Increasing the maximum to 300% would give local authorities greater scope to increase the premium in accordance with the particular needs in their locality. It is for each local authority to determine whether to apply a premium and, if so, the amount of that premium up to the statutory maximum amount. This gives authorities greater flexibility to respond to the circumstances in their particular areas.

5. Consultation

- 5.1 The Welsh Government consulted from 25 August to 17 November 2021, seeking the views of individuals and organisations on the discretionary powers which allow local authorities to levy a higher rate of council tax on

properties occupied periodically and long-term empty properties. The consultation also sought evidence about how local authorities have used the premiums to date and how they have used the revenue from premiums to address issues affecting local housing supply.

- 5.2 The consultation received 974 responses, reflecting a wide spectrum of views. Respondents included local authorities, town and community councils, self-catering providers, local businesses, representative bodies, professional bodies/associations and private individuals.
- 5.3 The majority of responses to the consultation did not support an increase in the maximum premium. The consultation yielded limited evidence that stakeholders believe that increasing the maximum percentage could have a positive effect in addressing the issues presented by second homes.
- 5.4 There were also views reflecting that the ability to charge additional council tax premiums has been a welcomed mechanism for local authorities to mitigate the negative impact of dwellings occupied periodically and long-term empty dwellings. While many of the opportunities for addressing housing issues through premiums have not yet been fully realised, providing local authorities with the option of setting a premium in excess of 100% offers them the flexibility to adopt a higher premium when they consider the local circumstances are appropriate and that the impact would be beneficial. It is for each local authority to determine whether to make use of the powers and the discretionary nature of the powers gives authorities greater flexibility in managing the issues affecting housing supply in their areas.
- 5.5 The consultation documents and a summary of the responses are available at:
[Local taxes for second homes and self-catering accommodation | GOV.WALES](#)

PART 2 – REGULATORY IMPACT ASSESSMENT

6. Options, costs and benefits

- 6.1 This Regulatory Impact Assessment presents two options in relation to increasing the maximum level at which local authorities can set council tax premiums on long-term empty dwellings and dwellings occupied periodically (referred to here as second homes) to 300%.
- 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 Two options have been considered in the development of the amendment to the regulations. The following options were considered.
- Option 1: Maintain the status quo and continue with the current arrangements where local authorities may choose to implement their existing discretionary power to levy premiums of up to 100%
- Option 2: Introduce legislation by 1 April 2022 to increase the maximum level at which local authorities can set council tax premiums on long-term empty dwellings and dwellings occupied periodically to 300%.

Option 1: Maintain the status quo and continue with the current arrangements where local authorities may choose to implement their existing discretionary power to levy premiums of up to 100%

- 6.4 Option 1 would not require any legislative change. Existing powers would continue to give local authorities the discretionary power to levy premiums of up to 100% of the standard rate of council tax on long-term empty homes and dwellings occupied periodically in their areas.
- 6.5 In 2022-23, there will be an estimated 24,000 dwellings occupied periodically and 22,100 long-term empty dwellings liable for council tax in Wales. Premiums will be paid on an estimated 15,300 dwellings occupied periodically and 6,700 long-term empty dwellings.

Costs

- 6.6 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

- 6.7 No legislative changes would be required. Local authorities would continue to use their current discretionary powers.

6.8 Keeping the premium to a maximum of 100% would provide some financial certainty for taxpayers liable for the premium.

Disadvantages

6.9 Limiting local authorities to the option of setting a premium of up to 100% restricts the impact of the premium and reduces funding available to local authorities for:

- bringing long-term empty homes back into use to provide safe, secure and affordable homes;
- increasing the supply of affordable housing and enhancing the sustainability of local communities; and
- providing any other services to benefit local communities.

6.10 In the updated Programme for Government 2021-26, the Welsh Government committed to seek to review council tax to ensure a fairer and more progressive system. Continuing with the current arrangements, Option 1, would not actively contribute towards the policy objective.

6.11 The Co-operation Agreement includes a reference to 'greater powers to local authorities to charge council tax premiums and increasing taxes on second homes'. Maintaining the current arrangements would not contribute to this policy objective.

Option 1 Summary

6.12 Doing nothing would retain existing arrangements and would not result in any additional costs to the Welsh Government or local authorities. The option would not further the Welsh Government's commitment to reform council tax to ensure a fairer and more progressive system. Nor would it reflect the Co-operation Agreement commitment regarding council tax premiums. It is therefore not the preferred option.

Option 2: Introduce legislation by 1 April 2022 to increase the maximum level at which local authorities can set council tax premiums on long-term empty dwellings and dwellings occupied periodically to 300%.

6.13 Option 2 would involve introducing Regulations to provide that from 1 April 2023 a local authority in Wales:

- can make a determination to apply a premium of up to 300% on long-term empty dwellings; and or
- can make a determination to apply a premium of up to 300% on dwellings occupied periodically.

Costs

6.14 To date, eleven authorities have chosen to apply premiums to long-term empty or second homes, or both. Gwynedd and Swansea have set the premium at the current maximum level of 100% on dwellings occupied periodically from 1 April 2021; Pembrokeshire will do so from 1 April 2022.

Swansea, Isle of Anglesey and Pembrokeshire have set a 100% premium on long-term empty dwellings.

- 6.15 As the implementation of the premiums is discretionary, it is not known how many local authorities will choose to implement one or both of the premiums at a level above the current 100% maximum.
- 6.16 This makes it difficult to accurately estimate the potential costs and benefits of this option. However, the possible implications are set out below.
- 6.17 If an authority chooses to introduce or increase a premium above the current maximum of 100%, then council tax payers who are liable for the premium are likely to be charged more council tax (up to 300% of the standard rate of council tax for their property).
- 6.18 Some taxpayers may be unable to afford this additional council tax liability, and either reduce their expenditure in other areas to meet the liability, or consider selling their property or using it differently. Others may find the increase affordable but choose to one of these other avenues.
- 6.19 There could be an increase in local authority's council tax collection and enforcement costs if taxpayers refuse to pay the additional premium. Alternatively council tax payers may seek ways in which to avoid the premium. There could also be an increase in complaints from council tax payers who consider the premium to be unfair and discriminatory. These could all have an administrative impact on local authorities.
- 6.20 It is likely that there would be modest administrative costs to the Welsh Government arising from this option.

Benefits

- 6.21 Since their introduction on 1 April 2017, the premiums have enabled the relevant authorities to collect millions of pounds in additional council tax.
- 6.22 The additional revenue local authorities will be able to generate from implementing a higher premium could be available to help bring empty homes back into use and to provide more affordable housing.
- 6.23 There is evidence local authorities find the current power useful. Eleven authorities have already determined to apply a premium, including four which plan to apply a premium at 100%. Providing local authorities with the option of setting a premium of up to 300% offers them flexibility to adopt a higher premium when they consider the local circumstances are appropriate and the impact would be beneficial.
- 6.24 Funds raised through a higher rate of council tax on periodically occupied and long-term empty properties can be used by the local authority to respond to local circumstances. For example, funds could be deployed to

alleviate some of the impacts second homes might have on local communities. These include impacts on the availability of affordable housing and the provision of public services and other local facilities, including public transport.

- 6.25 Option 2, would contribute towards the commitment in the updated Programme for Government 2021-26 to seek to review council tax to ensure a fairer and more progressive system. It would also contribute to the objective in the Co-operation Agreement to provide 'greater powers to local authorities to charge council tax premiums and increasing taxes on second homes'.

Disadvantages

- 6.26 A higher maximum could lead to increases in local authority council tax collection and enforcement costs if taxpayers refuse to pay the additional premium. It could also lead to owners seeking ways to avoid the premium. Complaints from council tax payers who consider the premium to be unfair and discriminatory may increase. These factors would have an administrative impact on local authorities. Authorities would need to take such factors into account in deciding whether to apply a higher premium.

Option 2 Summary

- 6.27 Option 2 requires legislative change. This involves some additional administrative cost to local authorities and the Welsh Government. The option to allow the setting of a premium in excess of 100% offers local authorities the flexibility to adopt a higher premium when they consider the local circumstances are appropriate and that the impact would be beneficial.
- 6.28 This option contributes to the relevant commitment in the updated Programme for Government 2021-26 and an objective in the Co-operation Agreement.
- 6.29 Therefore Option 2 is the preferred option.

7. Duties

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

The introduction of council tax premiums on long-term empty homes 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.

7.2 UNCRC

Although the council tax premiums 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.

7.3 Welsh language

No effect on the opportunities to use the Welsh language or the equal treatment of the language has been identified in connection with this amendment. The use of premiums may assist local authorities in supporting certain communities to be sustainable.

7.4 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 no impact on the competitiveness of businesses, charities or the voluntary sector.

9. Post-Implementation Assessment

9.1 The Welsh Government will monitor the impact of increasing the maximum premium to 300% through engagement with local authorities and other stakeholders.

9.2 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 increase the maximum premium from 100% to 300%. The option of setting a premium in excess of 100% offers local authorities the flexibility to adopt a higher premium when they consider the local circumstances are appropriate and that the impact would be beneficial.