POLICY NOTE

THE COUNCIL TAX (DWELLINGS AND PART RESIDENTIAL SUBJECTS) (SCOTLAND) AMENDMENT REGULATIONS 2021

SSI 2021/489

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 72(4) and (4A), 73(5), 113(1) and (2) and 116(1) of the Local Government Finance Act 1992 and all other powers enabling them to do so. The instrument is subject to the negative procedure and comes into force on 1 April 2022.

This instrument amends the the Council Tax (Dwellings and Part Residential Subjects) (Scotland) Regulations 1992 ("the 1992 Regulations"). The instrument introduces a 70 day letting requirement for premises to be classed as self-catering holiday accommodation and replaces the existing text of paragraph 2(b) of schedule 2 such that the existing 140 day intention to let requirement also includes the counting of 70 days of actual letting. The instrument also enables an assessor to request evidence of actual letting, or intention to let, or both, be supplied.

The instrument sets out when an entry in or deletion from the valuation roll, as a result of falling into or out of the definition of a dwelling, takes effect. It also enables local authorities to treat properties as self-catering holiday accommodation in certain circumstances, where they would fall within that class, but for the requirement to evidence 70 days of actual letting.

Policy objective

This instrument creates a requirement that, to be classed as self-catering holiday acommodation, premises must actually be let for a period of at least 70 days in the financial year. The existing requirement, of an intention by a relevant person to make the premises available for letting for 140 days or more, will also need to be met. However, the 70 days of actual letting will be counted towards the 140 day period. It is intended that the 70 days may comprise either a continuous period of time, or discrete periods amounting to 70 days.

For properties not yet listed on the valuation roll as self-catering holiday accommodation they will require to meet the requirements, within the financial year, to be entered in the valuation roll. As such, once the owner or occupier of a property can evidence that they meet the letting requirements set out in this instrument, the property considered to be self-catering holiday accommodation rather than a dwelling. The entry in the valuation roll has effect from the date on which the lands and heritages were first let, where letting started within the financial year in which the property is entered in the valuation roll. Where letting has started earlier, the entry has effect from 1 April in the financial year in which the entry in the valuation roll is made. This is consistent with the fact that the question of whether a property is self-catering holiday accommodation is to be determined by reference to the position in each indivdiual financial year.

For properties already listed on the valuation roll as self-catering premises, toward the end of each financial year local assessors will determine whether the requirements regarding letting and intention to let are met. For those that do meet the criteria, they will remain on the valuation roll until their next assessment in the following financial year. For those that do not meet the criteria, they will be removed from the valuation roll and council tax will be payable in respect of them as a result of the removal. Applying new regulation 5D of the 1992 Regulations, the date from which council tax will be payable will depend on which of the requirements in paragraph 2 of schedule 2 of the 1992 Regulations first fails to be met. This will determine when the deletion from the valuation roll takes effect. Ratepayers may approach their local assessor at any time in the financial year to request that a change be made to reflect a change in the use of a property.

This instrument also provides for a discretion for local authorities to determine that properties that would be classed as self-catering holiday accommodation, but for the fact that they fail to meet the 70 days actual letting requirement, can be treated as though they have met that requirement, where they have been prevented from letting as a result of exceptional circumstances. The circumstances that might be appropriate for this consideration include events that would physically prevent the premises from being let, such as a pandemic, environmental or seasonal conditions, or any other physical impediment that would hinder access to the property (landslides, floods and fire). The result of this determination will be that the property will remain on the valuation roll for the financial year in which the discretion is applied. In deciding whether to apply the discretion, new regulation 5B(1)((b) requries that account be taken of reasonableness with regard to the interests of other persons liable to pay council tax. This reflects the fact that, where a property is not determined to be self-catering holiday accommodation, liability to pay council tax will arise.

Background

In December 2017, the Scottish Government accepted the independent Barclay Review of Non-Domestic Rates' recommendation that 'to counter a known avoidance tactic for second homes, owners or occupiers of self-catering properties must prove an intention to let for 140 days in the year and evidence of actual letting for 70 days.'

The Review had identified that some property owners, to avoid payment of council tax on second homes, claim that the property has moved from domestic use (liable for council tax) to non-domestic use as a self-catering property (liable for non-domestic rates). Although the gross liability is generally higher for non-domestic rates than it is for council tax, the majority of self-catering premises registered as non-domestic receive 100% Small Business Bonus Scheme relief.

Owners or occupiers have previously only been required to make the premises 'available to let', or to intend to make them so available, for 140 days or more a year for the premises to be classed as self-catering holiday accommodation, and entered in the valuation roll. This must be taken together with the requirement that the premises are not the sole or main residence of any person.

The Scottish Government's consultation on the implementation of the Barclay Review highlighted the risk "extenuating" and "exceptional" circumstances could preclude self-catering businesses from achieving 70 days of let and called forlocal authority discretion in these circumstances. Example of and exceptional circumstances might include:

Seasonal/environmental based discretion (e.g. where travel to and from an island is limited to ferries which can be restricted due to the weather or season, this would then impact the amount of time for which any properties on the island can be let.)

In order to deliver this, the Non-Domestic Rates (Scotland) Act 2020 amended the Local Government Finance Act 1992 to confer a discretion on local authorities, in prescribed circumstances, to determine whether partiuclar classes of lands and heritages fall within the definition of "dwellling".

Consultation

There is no statutory requirement to formally consult on these Regulations. However, the Scottish Government has consulted with the Scottish Assessors Association and with local authorities on the provisions contained within this instrument.

Impact Assessments

No Business and Regulatory Impact Assessment has been carried out. This measure was a formal recommendation of the independent Barclay Review of Non-Domestic Rates aimed at countering a known non-domestic rates avoidance tactic for second homes and there is no impact on those properties that are let as part of a bonafide self-catering business..

Financial Implications

This policy is not estimated to have a significant fiscal effect and is not considered to be material. This policy will have no significant financial effect on local authorities, and no impact on those properties that are let as part of a bonafide self-catering business.

Scottish Government
Local Government and Communities Directorate
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