EXPLANATORY MEMORANDUM TO

THE COUNCIL TAX (PRESCRIBED CLASSES OF DWELLINGS AND CONSEQUENTIAL AMENDMENTS) (ENGLAND) REGULATIONS 2024

2024 No. 1007

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Housing, Communities and Local Government and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Jim McMahon, Minister of State for the Ministry of Housing, Communities and Local Government confirms that this Explanatory Memorandum meets the required standard.

2.2 Michelle Warbis, Deputy Director for Local Taxation and Pensions, at the Ministry of Housing, Communities and Local Government confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Temitope Akinrujomu at the Ministry of Housing, Communities and Local Government: temitope.akinrujomu@communities.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument will amend the Council Tax (Prescribed Classes of Dwellings) (England) Regulations 2003[1] ("the 2003 Regulations") and prescribe additional classes of dwellings in relation to which a billing authority may not make a determination to apply a higher amount of council tax on long-term empty homes and/or dwellings occupied periodically (often referred to as second homes). Some of the exceptions are time limited to 12 months and others run for as long as the dwelling meets the qualifying criteria. The instrument also makes necessary amendments to the Council Tax (Administration and Enforcement) Regulations 1992[2], the Council Tax (Demand Notices) (England) Regulations 2011[3] and the Local Authorities (Calculation of Council Tax Base) (England) Regulations 2012[4], consequential on the introduction of the premium on second homes through section 80 of the Levelling-up and Regeneration Act 2023.

[1] S.I. 2003/3011, as amended by S.I. 2004/926, 2005/416, 2005/2866, 2012/2964 and 2019/1458.
[2] S.I. 1992/613, as amended by S.I. 2012/3086.
[3] S.I. 2011/3038, as amended by S.I. 2012/3087.
[4] S.I. 2012/2914.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England only.

5. Policy Context

What is being done and why?

5.1 The government recognises that second homes and empty homes can impact some communities, particularly where a significant proportion of properties are not occupied all year round. Large numbers of empty homes can contribute to housing supply pressures and risk the sustainability of local services. This may in turn reduce the desirability of local areas for permanent residents. Second homes can provide flexibility to enable people to work in and contribute to the local community, whilst being able to return to a family home in another part of the country on a regular basis. However, large concentrations of second homes reduce the size of the permanent population, which can lead to local services becoming unsustainable. Through the Levelling-up and Regeneration Act 2023, local authorities were given additional powers to tackle these issues.

Long term empty homes premiums

5.2 Since 2013, billing authorities have had discretionary powers to charge additional council tax on long-term empty homes under section 11B of the Local Government Finance Act 1992 ("1992 Act") (introduced through the Local Government Finance Act 2012). The government strengthened this power (through the Levelling-up and Regeneration Act 2023) so that from April 2024, billing authorities can charge additional council tax on dwellings which have been unoccupied and substantially unfurnished for at least one year (rather than the previous two years). This is intended to further incentivise owners of empty dwellings to bring them back into productive use.

Second homes premiums

5.3 From 1 April 2025, billing authorities will have discretionary powers to charge additional council tax (of up to 100% of the standard rate of council tax) on dwellings occupied periodically (introduced through the Levelling-up and Regeneration Act 2023). These are dwellings which have no resident (i.e., is not a person's sole or main residence) and are substantially furnished – such dwellings are commonly referred to as "second homes". For a premium to apply in the local area or parts of the local area for the first time, a billing authority must make its first determination under section 11C of the 1992 Act to charge a premium at least one year before the beginning of the financial year to which the premium relates. This means that in order to be able to charge a premium from 1 April 2025, a billing authority must have made its determination by 1 April 2024 at the latest.

Exceptions to the premiums

5.4 During the passage of the Levelling-up and Regeneration Act, debates in both Houses highlighted scenarios where it was felt that the premiums should not apply. The previous government recognised that the premiums were not intended to penalise owners who were making a genuine effort to make use of the properties. Following a consultation, the previous government committed to regulate a set of circumstances

where the premiums should not apply. The current Government has considered the consultation responses and has decided to continue with the policy announced by the previous Government in its consultation response and to make the regulations.

5.5 These regulations are made under Section 11B and 11D of the 1992 Act which enables the Secretary of State to prescribe classes of dwellings to which the premiums would not apply. They prescribe seven classes of dwellings in relation to which a premium may not be charged. The exceptions are separate from the existing council tax exemptions under which certain dwellings are entirely exempt from council tax[5]. The regulations will take effect from November 2024 and the exceptions will apply to premiums charged by billing authorities from April 2025.

5.6 Billing authorities will not be able to charge either an empty or second homes premium in relation to dwellings which are being marketed for sale or let for up to one year or which have been exempt under Class F in the Council Tax (Exempt Dwellings) Order 1992 ("the Exempt Dwellings Order") and have undergone probate (for a period of up to 12 months after the grant of probate). A second homes premium may not be charged in relation to dwellings which are periodically occupied in certain job-related circumstances; a pitch occupied by a caravan, or a mooring occupied by a boat; or where a planning condition prevents permanent occupancy. The empty homes premium may not be charged, for a period of up to 12 months, in relation to a vacant dwelling which is undergoing major work to make it habitable, or structural alteration. The Regulations also provide that the current exemptions for annexes and military properties from the empty homes council tax premium are extended to the second homes premium.

What was the previous policy, how is this different?

5.7 Since 2013, billing authorities have been able to decide whether to charge additional council tax on dwellings that are substantially unfurnished and unoccupied for a period. There are currently two council tax exceptions to the premiums – the empty homes premium cannot be applied to homes that are empty due to the occupant being provided with armed forces accommodation for job-related purposes, or to annexes being used as part of a main dwelling.

5.8 Currently, second homes are liable to the standard rate of council tax. From 1 April 2025, billing authorities will be able to decide to charge additional council tax of up to 100% on second homes (subject to meeting the requirements set out in section 11C of the 1992 Act). Billing authorities may make a determination to apply the empty homes and/or second homes premium to dwellings in their areas.

5.9 Following consultation, the Government has considered that there are categories of dwellings to which the premium should not apply across England. However, billing authorities retain discretionary powers in relation to how they apply premiums in the circumstances of their local areas. If there were no additional prescribed exceptions to the council tax premiums, homeowners may be charged additional council tax in circumstances where it may not be appropriate for the premium to apply.

[5] See the Council Tax (Exempt Dwellings) Order 1992 (S.I. 1992/558), as amended in relation to England by S.I. 1994/539, 1997/656, 1998/291, 1999/536, 2000/424, 2005/2865, 2012/2965, 2019/1458 and 2022/439.

6. Legislative and Legal Context

How has the law changed?

6.1 Section 11(2)(a) of the 1992 Act makes provision for a council tax discount where there is no resident of a dwelling. Sections 11B and 11C of the 1992 Act[6] enable billing authorities in certain circumstances, to disapply the discount and apply a higher amount of council tax.

6.2 Under section 11B of the 1992 Act[7] billing authorities may charge a discretionary premium in relation to dwellings empty for at least one year (commonly known as an "empty homes premium"), subject to classes of exceptions prescribed by the Secretary of State. There are two existing exceptions to the empty homes premium, prescribed under the 2003 Regulations. These are Class E - dwellings which would otherwise be the sole or main residence of a member of the armed services, who is provided with a dwelling as a result of such service and; Class F – a dwelling which forms part of a single property that is being treated by a resident of that property as part of the main dwelling.

6.3 Under section 11C of the 1992 Act[8], billing authorities may charge a discretionary premium on dwellings occupied periodically (commonly known as a "second homes premium"), also subject to such classes of exceptions as may be prescribed by the Secretary of State under section 11D of the 1992 Act.

6.4 Regulation 2(3) amends Regulation 3 of the 2003 Regulations to extend the existing Classes E and F for the purposes of the second homes premium and to prescribe new classes in respect of both premiums.

6.5 Regulation 2(5) inserts seven new classes into the 2003 Regulations. These Regulations prescribe the classes of dwelling in relation to which a billing authority may not make a determination to apply a higher amount of council tax.

6.6 Classes G, H and I are exceptions to the long-term empty homes and second homes premiums respectively.

- Class G applies to dwellings which are being marketed for sale.
- Class H applies to dwellings which are being marketed for let.
- Class I applies to dwellings which have fallen in Class F of the Exempt Dwellings Order and have undergone probate (for a period of up to 12 months after the grant of probate).

6.7 Classes J, K, and L apply in relation to the second homes premiums.

- Class J applies to dwellings which are periodically occupied in certain job-related circumstances.
- Class K applies to a pitch occupied by a caravan, or a mooring occupied by a boat
- Class L applies to dwellings where a planning condition prevents permanent occupancy.

[6] Inserted by Section 12 of the Local Government Finance Act 2012 and Section 80 of the Levelling-Up and Regeneration Act 2023 respectively

[7] Inserted by the Local Government Finance Act 2012 and amended by the Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Act 2018 and the Levelling-Up and Regeneration Act 2023

[8] Inserted by the Levelling-Up and Regeneration Act 2023

6.8 Class M only apply in relation to the long-term empty homes premium.

- Class M applies to a vacant dwelling which requires or is undergoing major repair work to make it habitable, or structural alterations.

6.9 Regulation 3 makes consequential amendments to Regulation 1(2) of the Council Tax (Administration and Enforcement) Regulations 1992; Regulation 4 makes consequential amendments to para 18 of Schedule 1 to the Council Tax (Demand Notices) (England) Regulations 2011; Regulation 5 makes consequential amendments to the Local Authorities (Calculation of Council Tax Base) (England) Regulations 2012. The amendments have been made to ensure that the second homes premium is taken into account in the administration of council tax and calculations made by local authorities in setting their local council tax.

Why was this approach taken to change the law?

6.10 The long-term empty homes premium has been in place since 2013 and has two prescribed classes of statutory exceptions. The previous government set out guidance[9] to councils noting the policy intention of the premiums was not to penalise owners of dwellings that were making efforts to make productive use of their properties. In particular, the guidance encouraged councils to consider whether to apply the premium on dwellings which were on the market for sale or rent as these owners were taking steps to bring properties back into productive use.

6.11 Despite the guidance, the department has continued to receive correspondence noting that property owners were still being charged a premium where they were in the process of selling or letting out the property. This suggested that despite the guidance, most local councils were adopting a blanket approach in applying the premiums to long term empty properties. With the introduction of the second homes premium and a recognition that there were other circumstances where it would not be appropriate for the premium to apply, prescribing statutory exceptions would ensure that council taxpayers were treated fairly and consistently across England.

6.12 If the exceptions were delivered through non-statutory guidance, this may lead to inconsistency across England in the application of the premiums in these circumstances as billing authorities would be able to depart from guidance. Billing authorities have discretionary powers under section 13A of the 1992 Act to reduce council tax liability, however as these powers are discretionary, billing authorities may use them differently in different areas. For example, a certain class of dwelling in one area might be excluded from the premium in one area but treated differently in another area. Whilst billing authorities retain discretion over how they treat dwellings for premiums and discounts, the Government considered (following consultation) that certain statutory exceptions should apply across England.

6.13 Separately, prescribing exceptions to the premium does not prevent local authorities from using their discretionary powers to reduce the additional council tax liability resulting from a premium. E.g., councils may have applied discretionary reductions in council tax liability which are more generous than the prescribed exceptions. Whilst this could result in local authorities taking different decisions, the legislative approach ensures that the baseline exceptions in the prescribed classes will be apply across England.

[9] https://www.gov.uk/government/publications/council-tax-empty-homes-premium

7. Consultation

Summary of consultation outcome and methodology

7.1 The Government ran a public consultation10 between 6 July – 31 August to seek views on circumstances where it may not be appropriate for the council tax premiums to apply. The consultation set out a limited range of scenarios and sought views on whether they should be subject to an exception from one, or both, of the premiums. In some cases – for example, major repair work on long-term empty property – the consultation proposed that the exception should be time-limited. In all cases, the dwelling would remain liable for the appropriate level of council tax.

7.2 The consultation received 615 responses from a range of stakeholders including members of the public, owners of second homes, landlords, local authorities, organisations specialising in housing and holiday homes, councillors, Members of Parliament, and other bodies.

7.3 There was broad support for the proposed exceptions set out in the consultation document. The consultation response[11] set out the previous government's intention to legislate for exceptions to apply to the premiums in a limited set of circumstances. The response took account of representations on the proposed length of time limited exceptions, providing for a 12-month limit exception in cases where dwellings are marketed for sale or let; cases where dwellings have undergone probate; or cases where empty dwellings are undergoing major repairs. The response also confirmed support for exceptions to the second homes premiums on dwellings which are periodically occupied in certain job-related circumstances; a pitch occupied by a caravan, or a mooring occupied by a boat; or where a planning condition prevents permanent occupancy.

7.4 Some local authorities expressed concern around the administration of some of the exceptions. To address this the Government has committed to provide guidance to assist with the application and administration of these premiums.

7.5 The current Government has carefully considered the consultation responses and has decided to continue with the policy announced by the previous Government in the consultation response.

8. Applicable Guidance

8.1 The Government will issue guidance on application and administration of the exceptions to the empty homes and second homes premium. The guidance will be made available on the gov.uk website.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full impact assessment has not been produced for this instrument because it amends an existing local tax regime. Publication of a full impact assessment is not necessary

[10] https://www.gov.uk/government/consultations/proposals-to-exempt-categories-of-dwellings-from-the-council-tax-premiums/consultation-on-proposals-to-exempt-categories-of-dwellings-from-the-council-tax-premiums-in-england

[11] https://www.gov.uk/government/consultations/proposals-to-exempt-categories-of-dwellings-from-the-council-tax-premiums/outcome/3310269d-d160-47b2-966c-73bd66640bc0

for such legislation. Amendments to any tax are excluded from the definition of a regulatory provision[12] .

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because billing authorities collect and administer council tax and the legislation does not apply to activities that are undertaken by business, charities or voluntary bodies.

9.3 The legislation does not impact small or micro businesses.

9.4 The impact on the public sector is limited. The power is discretionary, and as such it is up to councils to decide whether to charge a premium. There will be some cost for local authorities in determining eligibility for the prescribed exceptions and monitoring their use, however, in considering whether or not to apply a premium, local authorities will be expected to weigh up the likely cost they will incur against any additional revenue which could be generated.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The Government keeps the operation of council tax and the underpinning legislation under regular review.

10.2 Information on the operation of the policy will be collected as part of the routine collection of data on local authorities 'council tax base. There are no plans for a formal review of these regulations.

[12] Section 22(4)(a) of the Small Business, Enterprise, and Employment Act 2015

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 The Parliamentary Under Secretary of State at the Department for Levelling Up, Housing and Communities has made the following statement regarding Human Rights:

"In [my/our] view the provisions of the Council Tax (Prescribed Classes of Dwellings) (England) (Amendment) Regulations 2024 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").