

# SL(6)167 – The Council Tax (Long-Term Empty Dwellings and Dwellings Occupied Periodically) (Wales) Regulations 2022

## Background and Purpose

The Council Tax (Long-Term Empty Dwellings and Dwellings Occupied Periodically) (Wales) Regulations 2022 (“the Regulations”) are made by the Welsh Ministers in exercise of the powers conferred on them by sections 12A(13)(a), 12B(12) and 113(2) of the Local Government Finance Act 1992 (“the 1992 Act”) and come into force on the 1 April 2022.

The [Regulations](#) amend sections 12A and 12B of the 1992 Act to provide that, for a financial year beginning on or after 1 April 2023, a billing authority in Wales may determine in relation to its area, that if on any day a dwelling is a long-term empty dwelling or a dwelling occupied periodically, the amount of council tax payable in respect of that dwelling and that day is increased by a percentage of not more than 300 (currently the maximum is 100 percent).

The power to increase the amount levied is discretionary and enables billing authorities to take into account the different circumstances within individual billing authority areas. The decision to charge a premium and the amount of that premium is a matter for each local authority. In making such a decision, local authorities will have regard to a variety of factors including the need bring long-term empty homes back into use to provide safe, secure and affordable homes, and to increase the supply of affordable housing and enhancing the sustainability of local communities.

## Procedure

Draft Affirmative

The Welsh Ministers have laid a draft of the Regulations before the Senedd. The Welsh Ministers cannot make the Regulations unless the Senedd approves the draft Regulations.

## Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

## Merits Scrutiny

The following three points are identified for reporting under Standing Order 21.3 in respect of this instrument.

**1. Standing Order 21.3(ii) - that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd**



The very significant increase in the charging authority's discretion from 100 percent to 300 percent is both notable in its own right and also appears to engage Article 1 of the First Protocol ("A1P1") to the European Convention Human Rights. Whilst it is recognised that the State can interfere with a citizen's possessions, in this case by increasing the Council Tax charge on long-term empty dwellings or a dwellings occupied periodically, neither the Explanatory Memorandum or Explanatory Note to the Regulations, nor it appears the original consultation, sets out any specific consideration of the impact on A1P1 rights and whether the scheme implemented by the Regulations is a proportionate means of achieving a legitimate aim in this regard.

## **2. Standing Order 21.3(ii) - that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd**

Part 5 of the Explanatory Memorandum deals with the consultation undertaken in respect of the Regulations. Paragraphs 5.2 and 5.3 state:

*"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."*

Taking into account the very high number of responses to the consultation and the fact the majority of those responses did not support the proposal to increase the percentage rate discretion, it is unclear why Option 2 of the Regulatory Impact Assessment was pursued, not least because no clear projection is provided as to the likely increase in revenue to charging authorities. Paragraph 6.26 of the Explanatory Memorandum is noted also:

*"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"*

One means by which owners might seek to avoid the premium is to secure properties in neighbouring charging authority areas, which may serve to simply transfer the 'problem of second homes' elsewhere.

## **3. Standing Order 21.3(i) - that it imposes a charge on the Welsh Consolidated Fund or contains provisions requiring payments to be made to that Fund or any part of the government or to any local or public authority in consideration of any licence or consent**



**or of any services to be rendered, or prescribes the amount of any such charge or payment**

It is noted that the scheme set out in the Regulations will likely result in increased revenue to charging authorities for the provision of services covered by the Council Tax charge, and that the Regulations prescribe, by amendment, the mechanism by which that charge can be increased at the charging authority's discretion.

**Welsh Government response**

A Welsh Government response is required to Merits reporting points 1 and 2.

**Legal Advisers**

**Legislation, Justice and Constitution Committee**

**8 March 2022**



Senedd Cymru

**Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad**

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Welsh Parliament

**Legislation, Justice and Constitution Committee**