

Petition: Allow exemptions to the 182-day occupancy rule

Y Pwyllgor Deisebau | 9 Ionawr 2023
Petitions Committee | 9 January 2023

Reference: SR22/4475-4

Petition Number: P-06-1313

Petition title: Allow exemptions to the 182-day occupancy rule to reduce harm to real Welsh self-catering businesses

Text of petition: The Trade Associations that represent genuine self-catering businesses in Wales (Wales Tourism Alliance, UK Hospitality Cymru and PASC UK Wales Branch) will meet Welsh Government with a view to agreeing mitigation measures to reduce the harm that the introduction of the 182-day occupancy rule will cause real Welsh-owned self-catering businesses. These are not second homes or casual lets. Over 30% of these businesses have said that they will have to close or sell without these exemptions.

The Body of Evidence of harm: <https://www.pascuk.co.uk/wales-182-days-reports/>

KEY ASKS

- The day count not to start from April 22, ie retrospectively.
- An appeal process

EXEMPTIONS

- Lets limited by planning permission
- Lets that lie within the curtilage of a primary residence
- Multiple units on one site can average occupancy across the units.



- Where the units are not housing stock withdrawn from the market but can be proved through recorded planning and building control that they have been created from vacant commercial or agricultural buildings or farm diversification.
- The property is run by a charity
- Weeks given by owners to charities should count towards days let.
- If your short-let business is VAT rated
- Review of 182 days if Wales officially goes into recession, pandemics or forced local closure.
- Period of grace for new business entrants

DISPENSATION

Account taken of days to carry out repairs/property improvements or for ill-health or caring responsibilities

1. Background

The *Non-Domestic Rating (Amendment of Definition of Domestic Property) (Wales) Order 2022* (the Order) was laid before the Senedd on 24 May 2022. It came into force on 14 June 2022 and will have practical effect from 1 April 2023.

The Order amends section 66 of *the Local Government Finance Act 1988 (the 1988 Act)*, which defines domestic property for the purposes of Part 3 (non-domestic rating) of that Act. Section 66(2BB) of the 1988 Act sets out when buildings, or self-contained parts of buildings, that are let commercially for short-periods as self-catering accommodation are not to be considered domestic property.

The Order increases the number of days that a property must have been let to be classified as non-domestic from at least 70 days to at least 182 days in the 12 months prior to assessment. The Order also increases the number of days a property must have been made available for letting (in the previous year) and intended to be available for letting (in the following year) from 140 days or more to 252 days or more. Self-catering properties that do not meet the new criteria will be classified as domestic and will be liable for council tax, including any

applicable premium. The Order contains transitional provisions so any property assessed prior to 1 April 2023 will be subject to the existing criteria.

2. Welsh Government action

Changing the definition of domestic property is part of a wider series of legislative and policy changes relating to the impact of second homes and short-term lettings that have been made since the start of the Sixth Senedd. The Welsh Government's **three-pronged approach** to address the impact of second homes focuses on **support** for local people; the **regulatory framework** (including the planning system); and also ensuring property owners make a **fairer contribution** through local and national taxation systems. Additionally, a **Welsh Language Communities Housing Plan** has been consulted on in order to support and protect Welsh-speaking communities.

The Minister's response to the petition notes that the letting thresholds apply nationally and consistently because they define a key aspect of the system, namely whether a property is treated as a domestic dwelling or a non-domestic holiday let for local tax purposes and, in turn, whether it is liable for council tax or non-domestic rates. Other aspects of the local tax system, such as the powers for individual local authorities to apply reductions, reliefs or premiums, allow for the system to be tailored to local circumstances. The Minister states:

"I have explained this to the petitioners and their subsequent correspondence has focussed the request on exceptions from a council tax premium, where a property does not meet the letting criteria and is classified as domestic. Some self-catering properties are restricted by planning conditions preventing permanent occupation as someone's main residence. An exception from a council tax premium is already provided for one type of planning condition and I am exploring whether an exception should apply to other planning conditions. My intention is that any necessary changes are brought into effect from 1 April 2023, alongside the increased thresholds. It is important that statutory exceptions are clearly definable in legislation and would be appropriate in all circumstances where they apply. Planning conditions satisfy those requirements as they have their own legislative basis and, where they apply, would limit the options of property owners in a consistent way.

I will also be issuing revised guidance to local authorities on additional options that are available to them if self-catering properties restricted by

planning conditions do not meet the thresholds. These options include discretion to reduce standard rate of council tax liability for certain properties, where considered appropriate by the local authority. Local authorities may apply this discretion to particular properties or to classes of property. Authorities could use this discretion, for example, to support operators in particular circumstances or facing particular challenges.”

The Welsh Government consulted on the [draft Council Tax \(Exceptions to Higher Amounts\) \(Wales\) \(Amendment\) Regulations 2023](#) (‘the draft Regulations’) and [draft guidance for local authorities](#) mentioned above between 11 November and 22 December 2022.

The draft Regulations extend class 6 of the exceptions to council tax premiums to add properties subject to a planning condition which specifies that a dwelling may only be used for short-term holiday lets or which prevents occupancy of the property as a person’s sole or main 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 they could not be charged a premium.

3. Welsh Parliament action

On [6 July 2022](#), the Senedd debated a motion tabled in the name of Tom Giffard MS (Conservative) to annul the *Non-Domestic Rating (Amendment of Definition of Domestic Property) (Wales) Order 2022*. In the debate, Mr Giffard said the increases in the thresholds would “...have a hugely damaging impact on the businesses being able to operate within Wales and damage our economy, with many businesses that will simply just be forced to close.” He also highlighted concerns about the changes from within the sector.

For Plaid, Mabon ap Gwynfor MS said:

...we shouldn't look at the 182-day policy in isolation; this policy of 182 days is part of a broader package—in this case specifically, the announcement on Monday on the establishment of a new statutory licensing system for holiday lets.

Responding for the Welsh Government, Minister for Finance and Local Government Rebecca Evans MS said that:

I do recognise that the stronger criteria might be challenging for some operators, but it's important to recognise that there is evidence that

average occupancy of self-catering properties exceeded 50 per cent over the three years prior to the pandemic. So, many operators in all parts of Wales are already meeting the new criteria. And I think it is reasonable to expect businesses to adopt an operating model that maximises the use of their property and the benefit that it brings to local communities.

The motion to annul the Order was [rejected](#) by 35 votes to 14.

In June 2022, the Senedd's Local Government and Housing Committee published a series of recommendations following its [inquiry into second homes](#). The Committee noted that the increased letting requirements for self-catering accommodation go further than many of the respondents to the Welsh Government's own consultation suggested.

In July 2022, the Senedd's Economy, Trade and Rural Affairs Committee published a report, [Raising the Bar: Securing the future of Hospitality, Tourism and Retail](#), which included a recommendation for the Welsh Government to set out the rationale behind the 182-day rule. The Welsh Government's response can be found [here](#). The Committee's report was debated in the Senedd on 9 November 2022 and the transcript is available [here](#).

Every effort is made to ensure that the information contained in this briefing is correct at the time of publication. Readers should be aware that these briefings are not necessarily updated or otherwise amended to reflect subsequent changes.