

## **Explanatory Memorandum to The Council Tax (Administration and Enforcement) (Amendment) (Wales) Regulations 2017**

This Explanatory Memorandum has been prepared by the Local Government Finance Policy Division and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

### **Cabinet Secretary's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Council Tax (Administration and Enforcement) (Amendment) (Wales) Regulations 2017. I am satisfied that the benefits justify the likely costs.

Mark Drakeford  
Cabinet Secretary for Finance and Local Government  
25 January 2017

## **1 Description**

The Council Tax (Administration and Enforcement) (Amendment) (Wales) Regulations 2017 (“the Regulations”) amend the Council Tax (Administration and Enforcement) Regulations 1992 (“the 1992 Regulations”) in order to enable the effective administration of the council tax premiums on long-term empty and second homes.

## **2 Matters of special interest to the Constitutional and Legislative Affairs Committee**

None

## **3 Legislative Background**

The Housing (Wales) Act 2014 amends the Local Government Finance Act 1992 (“the Act”) by inserting new sections 12A and 12B which enable a billing authority in Wales to apply a council tax premium in respect of long-term empty homes and second homes.

The Regulations amend the 1992 Regulations in relation to Wales to take account of the amendments made to the Act.

The Regulations are made by Welsh Ministers in exercise of the powers conferred by on the Secretary of State by sections 113(1) and 116(1) of, and paragraphs 1(1) and 4 of Schedule 2 to, the Local Government Finance Act 1992. Functions of the Secretary of State, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). Those functions were subsequently transferred to the Welsh Ministers by virtue of paragraphs 30 and 32 of Schedule 11 to the Government of Wales Act 2006

The Regulations are subject to the negative procedure.

## **4 Purpose and intended effect of the legislation**

The Regulations make amendments to require billing authorities, before calculating council tax liability, to take reasonable steps to ascertain whether the amount is subject to a premium and if so, the amount of the premium. A local authority is then able to make certain assumptions based on the reasonable steps it has taken.

Where a person has been informed by a local authority that an assumption has been made that a council tax premium applies, but has reason to believe that the assumption is incorrect, he or she must notify the billing authority within 21 days if he or she believes that the chargeable amount:

- is not subject to any premium; or
- is subject to a premium of a smaller or larger amount.

Schedule 1 to the 1992 Regulations makes provision about the payment of council tax by instalments. Amendments are made to Schedule 1 setting out the circumstances in which a local authority must adjust the instalments payable when a demand notice has been served on the basis that a premium does, or does not, apply.

## **5 Consultation**

Details of the consultation undertaken are included in the Regulatory Impact Assessment below.

## **6 Regulatory Impact Assessment (RIA)**

### **Options**

#### **Option 1 – Do nothing**

If there are no amendments to the 1992 Regulations, local authorities will be unable to administer the council tax premiums effectively.

#### **Option 2 – Make amending Regulations**

Making amendments to the 1992 Regulations will ensure that local authorities will be able to bill, collect and enforce the council tax premiums.

#### **Option 1 – Do nothing**

### **Costs**

If no Regulations are made, local authorities will not be able to take reasonable steps to ascertain whether the amount is subject to a premium and if so, the amount of the premium before calculating council tax liability. Local authorities will also not be able to adjust the instalments payable when a demand notice has been issued on the assumption that a premium does, or does not, apply. As such, authorities could make incorrect assumptions regarding liability for the premiums which could lead to the over or under collection of council tax and the associated administrative costs of rectifying this.

There would also be no duty on taxpayers to notify authorities if an incorrect assumption has been made that a premium should be charged or that a premium of a smaller or larger amount should be charged. This could result in taxpayers paying too little or too much council tax.

### **Benefits**

There are minimal benefits of not amending the 1992 Regulations as, without these amendments, local authorities will be unable to effectively bill for, collect or enforce the council tax premiums.

#### **Option 2 – Make amending Regulations**

## **Costs**

There may be some minor costs for local authorities in ascertaining whether the amount of council tax chargeable is subject to a premium and subsequently collecting and enforcing the council tax premiums. As the council tax premiums are discretionary, it is for local authorities to take into account the additional administration costs when deciding whether or not to implement the premiums.

## **Benefits**

Local authorities will be able to take reasonable steps to ascertain whether dwellings in their area are liable for a council tax premium and to ascertain the level of the premium based on their assumptions. This will ensure taxpayers can be charged the correct amount of council tax. Local authorities will also be able to adjust the instalments payable when issuing a demand notice where a premium does, or does not, apply.

Taxpayers will be able to correct an incorrect assumption made by a local authority that a chargeable dwelling is subject to a premium or is subject to a premium of a smaller or larger amount, ensuring that they are not over or undercharged council tax.

## **Consultation**

A Consultation on Technical Amendments to Council Tax Legislation to Reflect the Introduction of Council Tax Premiums on Long-Term Empty Homes and Second Homes ran for an eight-week period from 6 October 2016 to 1 December 2016.

The consultation sought views on the amendments being made to the 1992 Regulations to take account of the implementation of the council tax premiums from 1 April 2017.

In total, 19 responses to the consultation were received. A breakdown of respondents is provided below:

- Local Authorities – 4
- Police and Crime Commissioners – 1
- Private Landlords – 2
- Individuals – 12

The majority of consultation responses commented on the introduction of the council tax premiums rather than the amendments being made to existing council tax legislation to allow for their effective administration. Two technical comments were made regarding the adjustment of instalments to reflect the charging of a premium and the duty to notify an authority if an incorrect assumption had been made.

The full consultation can be found at the following link, along with a summary of the consultation responses:

<https://consultations.gov.wales/consultations/amendments-council-tax-legislation-reflect-introduction-premiums-long-term-empty-homes>.

## **7 Duties**

The Regulations themselves, being technical in nature, are likely to have minimal impacts as regards Tackling Poverty, UNCRC and the Well-Being of Future Generations. However they provide for the full operation of the overall policy of allowing the introduction of premiums in Wales, which is assessed to have the following impacts.

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

In drafting these Regulations, consideration has been given to the Well-being of Future Generations (Wales) Act 2015 and how the policy supports the well-being objectives. The introduction of council tax premiums on long-term empty homes and second homes is intended to help to bring empty properties back into use, to generate additional income 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.

### Tackling poverty

For the same reasons, the premiums are likely to benefit those in poverty. The existing exemptions from council tax and the exceptions to the premiums ensure that there is no negative impact on people in poverty as no additional council tax will be charged in situations where it would be unfair or unreasonable to do so.

### 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 the lowest incomes.

### Welsh Language

The 1992 Regulations are in English only as they predate devolution. The amending set of Regulations will be made bilingually. In line with Welsh Language Standards, consideration has been given to remaking the original Regulations bilingually in their entirety rather than amending them. However, due to the length and complexity of the 1992 Regulations, and the requirement for the instrument to be in force mid February, it has not been possible to do so. Any delay would present a clear operational risk for local authorities. Questions regarding the Welsh Language Standards were posed in the consultation and no comments were received.

## **8 Competition Assessment**

No competition impacts have been identified as arising from these Regulations.