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Consultation – summary of responses

Technical Consultation on the draft Non-Domestic Rating (Definition of a Domestic Property) (Wales) Order 2015 and Accompanying Guidance for Ratepayers

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Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

Responses to the Technical Consultation on the draft Non-Domestic Rating (Definition of a Domestic Property) (Wales) Order 2015 and Accompanying Guidance for Ratepayers

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1. Introduction

The Non-Domestic Rating (Definition of Domestic Property) (Wales) Order 2010 (“the 2010 Order”) which amended section 66 of the Local Government Finance Act 1988 was introduced to close a loophole in the law. The loophole was being exploited by some individuals to avoid paying Council Tax on their properties by claiming their second homes were being let as self-catering accommodation and were therefore non-domestic and liable for non-domestic rates. In many instances this represented a lower tax liability, and in some cases reduced tax liability to nil as a result of the Small Business Rate Relief Scheme.

The amendments made by the 2010 Order were intended to ensure that only properties that were genuinely being commercially let as self-catering accommodation were assessed as non-domestic and therefore liable for Non-Domestic Rates. The Order introduced additional criteria requiring a dwelling to be let for at least 70-days in any 12 month period, in addition to being available to let for 140 days, in order to be liable for non-domestic rates rather than Council Tax.

As a result of concerns from members of the public and the self-catering and tourism industry following the implementation of the 2010 Order, its impact was reviewed and potential recommendations for reform were consulted upon. Specialist advice was then sought from the Valuation Office Agency and Her Majesty’s Revenue and Customs to inform possible amendments to the current legislation.

These options were considered by Welsh Ministers and the Non-Domestic Rating (Definition of a Domestic Property) (Wales) Order 2015 (“the 2015 Order”) was drafted and published for a technical consultation. The technical consultation was issued to seek the views of key stakeholders regarding the practical application of the draft 2015 Order and its supporting Guidance for Ratepayers (‘the Guidance’). The consultation ran for six weeks from 3 August to 14 September 2015 and was published on the Welsh Government website.

This document sets out a summary of the responses and provides a full list of those who submitted responses.

2. Summary of Responses

A total of 12 responses to the consultation were received. Responses were received from the following categories of organisations and individuals.

Local Authorities – 1

Private Individuals (including self catering businesses) – 3

Representative Organisations – 8

A full list of respondents is given in Section 4.

The following views were sought on the draft Order and its practical application:

- Do you agree that provisions should be made to average the 70 day criteria for properties at the same location or within very close proximity of each other owned by the same business?
- Are there any issues regarding the administration and enforcement of such a provision?
- Do you have any other comments in relation to the draft Order?

The following views were sought in relation to the Guidance to accompany the draft Order:

- Does the Guidance provide sufficient advice to self-catering property owners in relation to the draft Order?
- Should the Guidance cover any other areas?

The main issues raised are briefly summarised below-

- Most respondents concurred with the intention of the 70/140 day criteria as a measure to close the tax avoidance loophole.
- Some responses suggested that the 70/140 day letting criteria should be raised to 105/210 days in line with HMRC's criteria for Furnished Holiday Lettings.
- A suggestion was put forward that ratepayers should be required to obtain permission from Local Authorities before changing the use of a property from domestic to non-domestic and this could be reviewed on an annual basis.
- One respondent stated there was a requirement for a clear stance on tax avoidance.
- There should be a requirement for ratepayers to submit letting evidence to Valuation Office Agency on an annual basis.
- Concerns were raised that the 70 days benchmark is too high with no flexibility provided for ratepayers struggling to meet it due to unforeseen/exceptional circumstances.
- It was proposed that the option to average out should apply to all properties owned by the same person, not just where they reside within one curtailment.

- A number of concerns were raised in relation to the Guidance regarding a property reverting to being rated for Council Tax when it is sold.
- Two respondents queried 'the default position' referred to in the Guidance. There is no provision for properties which have been specifically converted to be used as a self-catering property where they do not have permission to be used as a domestic dwelling.

3. Detailed Summary of Comments

Six respondents highlighted their understanding of the principle and the need to maintain the intent of the 2010 Order to close the tax loophole. One respondent agreed that taxes and tax laws should not be abused by ratepayers and one other respondent highlighted the need to ensure an effective stance was taken on tax avoidance.

Two respondents suggested that the criteria of 70 days letting and 140 days availability in the current Order should be increased to 105/210 days respectively to be consistent with HMRC's requirements for Furnished Holiday lettings in relation to income tax.

One respondent suggested that an additional measure should be introduced requiring ratepayers to gain planning permission from the Local Authority before changing the use of a property from being a domestic property to being a business property. It was also felt that these decisions should then be reviewed on an annual basis.

Six respondents expressed disappointment at the perceived limitations of the proposed 2015 Order, feeling that it did not fully address the recommendations made by the IRRV. Another respondent expressed concern at the way the Welsh Government and the Valuation Office Agency perceive the self-catering sector in Wales and how it should be treated. These respondents thought the 2015 Order should be rewritten and one thought that all suggestions made in the IRRV report should be taken into account.

Three respondents raised concerns that the 70 days benchmark is too high with no flexibility provided for ratepayers struggling to meet it due to unforeseen or exceptional circumstances.

Five respondents stressed the importance of the self-catering sector and its contribution to the Welsh economy. Two respondents pointed out that many farmers rely on self-catering trade as an important source of diversified income as part of their wider business. Six respondents also noted that there was no such law in England placing Welsh holiday homes at a competitive disadvantage.

Three respondents queried 'the default position' referred to in the Guidance which stated that if ratepayers do not meet the non-domestic rates criteria then they will revert to the default position of being rated as a domestic dwelling. It was queried

where this is specifically mentioned under statute and if it was ever consulted upon. The suggestion is that this could be open to mis-interpretation by ratepayers.

Three respondents pointed out that that the option to average out should apply to all properties owned by the same person, not just where they reside within one curtailment.

Several respondents also pointed out that there was no provision within the Guidance for buildings that have been converted for self-catering purposes and only have planning permission for this purpose. One respondent thought that Ministers should consider reviewing the planning restrictions placed on these properties, so that they could then be used for the residential housing market.

Another respondent suggested tax returns submitted to HMRC could be used as an alternative method of distinguishing genuine businesses from second home owners. The same respondent also thought this method would reduce the burden of applying the 70 days rule on valuation offices and local authorities. This respondent also expressed the view that the 70 days rule should be immediately withdrawn.

Two respondents commented on the Guidance and suggested re-wording to ensure that the sale of a genuine self-catering business to a genuine business purchaser does not invalidate self-catering accommodation status for rating purposes.

Two respondents agreed with the proposal to average the 70 day criteria for properties co-located, within close proximity of each other or owned by the same business. Whilst welcoming the tightening of the existing law in section 66(2BB) of the 1988 Act, as inserted by the 2010 Order, the same respondents also thought the 70 day criteria should be increased to 105 days to bring it in line with HMRC guidelines. Both respondents thought the Guidance should include an additional requirement that ratepayers for self-catering properties should have to submit evidence of letting annually to the VOA.

4. List of Respondents

Responses were received from the following organisations:

Wales Association of Self Catering Operators (WASCO)

Wales Tourism Alliance

Gwynedd Council

North Wales Tourism

Pembrokeshire Tourism

British Hospitality Association

CLA Cymru

Federation of Small Businesses

Welsh Local Government Association

A number of individuals also responded to the consultation.