

## **Explanatory Memorandum to The Local Authorities (Calculation of Council Tax Base) (Wales) (Amendment) Regulations 2016**

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 Local Authorities (Calculation of Council Tax Base) (Wales) (Amendment) Regulations 2016. I am satisfied that the benefits justify the likely costs.

Mark Drakeford  
Cabinet Secretary for Finance and Local Government

**7 October 2016**

## **1 Description**

These regulations amend the Local Authorities (Calculation of Council Tax Base) (Wales) Regulations 1995 (“the 1995 Regulations”) in respect of a financial year beginning on or after 1 April 2017. The regulations are amended to ensure the council tax premiums are reflected in the calculation of the council tax base.

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

None

## **3 Legislative Background**

The Housing (Wales) Act 2014 (“the 2014 Act”) amends the Local Government Finance Act 1992 (“the Act”) by inserting a new section 139 which enables a billing authority in Wales to apply a council tax premium in respect of long-term empty homes and second homes.

The amendments in these regulations are made as a consequence of the above amendments to the Act.

The regulations are subject to the negative procedure.

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

From 1 April 2017, local authorities will have discretionary powers to implement council tax premiums of up to 100% of standard council tax on long-term empty homes and second homes in their areas.

The amendments are made to ensure that local authorities are able to retain any additional revenue generated by the council tax premiums, and to ensure accountability and transparency regarding how any additional revenue is to be spent. The additional revenue is intended to be used to provide affordable housing and meet local housing needs.

These regulations amend the 1995 Regulations which provide for the calculation by billing authorities (county and county borough councils) and major precepting authorities of the council tax bases for their area or part of their area.

The council tax base is a measure of the taxable capacity of an area, expressed as the number of band D equivalent dwellings in the area. A band D equivalent dwelling is determined by a series of ratios. For example, a band A dwelling counts as 6/9 of a band D dwelling, whereas a band H dwelling counts as 18/9 of a band D dwelling.

The council tax base is the aggregate of the relevant amounts calculated for each valuation band (A-I), multiplied by the authority’s estimated collection rate

for the year. It is used for the purposes of calculating a billing authority's and a precepting authority's band D council tax.

The basic band D council tax amount for an area is determined as follows.

$$\frac{\text{Budget requirement having deducted certain income}}{\text{Council tax base}} = \text{Band D amount}^1$$

The authority calculates its budget requirement and deducts the estimated amount it will receive in respect of certain income and grants. This figure is divided by the council tax base to produce the basic amount of council tax for a band D dwelling.

The 1995 Regulations require the council tax base to reflect any discounts or exemptions that are applicable. The granting of a discount or exemption will have the effect of reducing the tax base. Similarly, the proposed treatment of the premiums in the calculation of the tax base will have the effect of increasing the tax base for local authorities that implement a council tax premium.

## Amendments

### Regulation 5B

The Local Authorities (Calculation of Council Tax Base) (Wales) (Amendment) Regulations 2016("the 2016 Regulations") insert a new Regulation 5B into the 1995 Regulations. Regulation 5B sets out a new formula for the calculation of the tax base for financial years starting on 1 April 2017 onwards, with the inclusion of a new factor "E" to take account of the premiums in the calculation of the relevant amount. All the other factors remain the same.

$$(H - Q + E + J) \times (F \text{ divided by } G)$$

Where –

H is the number of chargeable dwellings in the band;

Q is a factor to take account of the discounts to which the amount of council tax payable was subject;

E is a factor to take account of a premium, if any, to which the amount of council tax payable was subject;

J is the amount of any adjustment in respect of changes in the number of chargeable dwellings, discounts or premiums;

F is the proportion for the band;

G is the proportion for band D.

To calculate "E" a billing authority must, for each valuation band, multiply an estimate of the number of dwellings to which a premium applies with the

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<sup>1</sup> See section 33 of the Local Government Finance Act 1992.

“relevant percentage”. The relevant percentage is the amount by which the authority has increased council tax by charging a council tax premium.

For example, assuming an authority makes a determination to charge a council tax premium of 50% on long-term empty homes then a liable property would be counted in the council tax base as follows:

- Band A property:  $6/9 \times 1.5 = 1.0$  Band D equivalent dwelling
- Band D property:  $9/9 \times 1.5 = 1.5$  Band D equivalent dwellings
- Band H property:  $18/9 \times 1.5 = 3.0$  Band D equivalent dwellings

An authority that decides to charge a premium for both long-term empty homes and second homes but at different levels will have to calculate the amount of “E” for each premium. Similarly an authority which decides to adopt an incremental scale for the long-term empty homes premium, based on the length of time a property has been empty, will need to calculate “E” for each relevant percentage that applies.

## **5 Consultation**

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

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

### **Options**

#### **Option 1 – Do nothing**

The policy intentions of the premiums are to help bring empty homes back into use, to increase the availability of affordable housing and to enhance the sustainability of local communities. The additional income will not be ring-fenced and will be available to local authorities to support the provision of affordable housing and to help meet local housing needs.

With no amendments to the regulations, the council tax premiums will not be accounted for in the council tax base. This will mean that local authorities will not be able to retain the additional revenue generated by the premiums and will not have the flexibility to make decisions as to the use of the income. It would also mean that there would be no local accountability with regard to the use of the revenue from the premiums.

#### **Option 2 – Make amending regulations**

Amendments are needed to the regulations setting out the calculation of the council tax base so that the council tax premiums are accounted for as part of the council tax base calculation. This will have the effect of raising the council tax base.

The regulations will ensure that local authorities are able to retain any additional revenue generated by charging council tax premiums. Through this, there will be accountability and transparency regarding the implementation of the premiums and how any additional revenue is to be spent.

Although not the intended purpose of the premiums, the Welsh Government recognises that authorities implementing a council tax premium could use the consequent increase in their council tax base to lower council tax bills or negate council tax rises if there is no corresponding increase in their budget requirement.

## **Option 1 – Do nothing**

### **Costs**

The council tax base needs to increase to reflect the implementation of the council tax premiums. This is so that local authorities can identify any increases as a result of the premiums separately to calculate the correct amount of council tax in their areas and make accurate submissions to the Welsh Government. This is similar to the current treatment of discounts or exemptions in the council tax base which have the effect of reducing the base.

Including the premiums in the council tax base will ensure that local authorities are using the correct council tax base in any given year. With no adjustment to the council tax, the main policy objectives of bringing empty homes back into use and meeting local housing needs will not be fulfilled.

Not adjusting the council tax base will also mean local authorities would not benefit from the additional revenue from the premiums without there being an impact on their core funding. If the tax base figure used for the Local Government Settlement included the premiums, the core funding provided through the settlement would be decreased accordingly for authorities charging a premium and they would not consequently benefit from any additional revenue.

### **Benefits**

The council tax base will remain the same with no adjustments required to reflect the premiums. The existing tax base would be used by local authorities that do not choose to charge a premium. Local authorities and major precepting authorities will therefore use the existing tax base in setting their budget requirements. Council tax payers will therefore pay the same police precept unless the precept is increased.

There will be a level of certainty over the budget requirements for local authorities and major precepting authorities, but this will not achieve the purpose of bringing empty homes back into use or meeting local housing needs. This is because there will be no account taken of the implementation of the council tax premiums.

## **Option 2 – Make amending regulations**

### **Costs**

Including the premiums in the council tax base to increase the base, with the same budget requirement level will lead to a decrease in the Band D equivalent amount. The standard council tax bill for a Band D dwelling will be slightly lower because the same amount will be spread over a larger council tax base. If local authorities and major precepting authorities do not make a corresponding increase to their budget requirement, they will experience a decrease in their income. To benefit from the additional revenue from the premiums, local authorities and major precepting authorities must adjust their budget requirements accordingly. It is assumed that local authorities and major precepting authorities will engage as usual in setting their budget requirements and tax bases.

### **Benefits**

Any additional revenue from the council tax premiums will not be ring-fenced. As such, it is important for the premium to be part of the council tax base calculation. This enables local authorities to make local decisions in relation to how the additional income is to be spent and to be accountable to their local electorates. The Welsh Government encourages local authorities to use the additional revenue for the provision of affordable homes and to help meet other local housing needs. The amendments to the regulations set out the calculation of the council tax base so that the premiums are accounted for as part of the council tax base calculation.

By including the premiums in the calculation of the tax base, the council tax base will increase for those local authorities that implement a council tax premium. This is similar to the current treatment in the tax base for council tax discounts or exemptions which have the effect of reducing the tax base. As the policy intent of the premium is to generate additional revenue to help meet local housing needs, it is expected that authorities deciding to charge a premium will increase their budget requirement accordingly.

The council tax base figure used for each authority for the Local Government Settlement will be net of any increases attributable to the council tax premiums so there will not be any perverse incentives. This means that the premiums will not impact on the distribution of local authorities' core funding. Thus, any revenue generated from the premiums is additional revenue for the local authority concerned.

### **Consultation**

Consultation on The Local Authorities (Calculation of Council Tax Base) (Wales) (Amendment) Regulations 2016 ran for a six-week period from 15 July 2016 to 2 September 2016.

The consultation sought views in relation to the amendments being made to the regulations to reflect the introduction of the council tax premiums.

Five responses to the consultation were received. A breakdown of respondents is provided below:

- Pembrokeshire County Council
- Wrexham County Borough Council
- Caerphilly County Borough Council
- Newport City Council
- Police and Crime Commissioner for South Wales

The full consultation can be found at the following link:

<https://consultations.gov.wales/consultations/local-authorities-calculations-council-tax-base-wales-amendment-regulations-2016>.

The majority of respondents supported the proposed changes to reflect the council tax premiums in the calculation of the council tax base.

Two authorities disagreed with the inclusion of the premiums within the council tax base as they felt that as the purpose of the premiums was to 'help generate additional revenue to help with the provision of affordable housing', then Police and Crime Commissioners and Town and Community Councils should not also be able to benefit from additional revenue. However, police bodies and Town and Community Councils are likely to face additional costs from a prevalence of empty or second homes in their areas, for example as a result of antisocial behaviour, damage to property or high numbers of tourists. Police and Crime Commissioners and Town and Community Councils will only generate additional revenue from the premiums if they increase their budget requirement.

One respondent also proposed that the premiums should not be included within the calculation of the tax base as they might adversely affect collection rates (because it may be more difficult to collect council tax from properties liable to the premium). However, in calculating the tax base, local authorities make an assumption about their collection rate and if they believe it will be more difficult to collect additional council tax from properties liable to the premium, they may take this into account in setting their assumed collection rate.

## **7 Duties**

### 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 well-being 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 amending regulations are bilingual. The Local Authorities (Calculation of Council Tax Base) (Wales) Regulations 1995, which will be amended by the Local Authorities (Calculation of Council Tax Base) (Wales) (Amendment) Regulations 2016, are in English only.

Due to their length and complexity, and to ensure local authorities can meet the statutory timescales for calculating the tax base for the next financial year, it is not possible to remake the regulations in their entirety at this stage. However, if future amendments are required to amend the calculation of the tax base, the opportunity can be taken to remake the regulations bilingually.

## **8 Competition Assessment**

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