

## **Explanatory Memorandum to the Non-Domestic Rating (Definition of Domestic Property) (Wales) Order 2010**

This Explanatory Memorandum has been prepared by Local Government Finance Division and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 24.1.

### Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Non-Domestic Rating (Definition of Domestic Property) (Wales) Order 2010. I am satisfied that the benefits outweigh any costs.

*Carl Sargeant*

Minister for Social Justice and Local Government

5 March 2010

## **1. Description**

This Order amends section 66 of the Local Government Finance Act 1988 so that from 1 April 2010 for a furnished property to be listed for non domestic rates as opposed to council tax it must meet the following conditions

i) for the 12 months prior to assessment

a) it must be available for commercial letting to the public for periods which amount, in the aggregate, to not less than 140 days;

(b) the periods for which it is so let amount in the aggregate to at least 70 days; and

ii) for a period comprising at least 12 months following the assessment it must be available for commercial letting to the public for periods which amount, in the aggregate, to not less than 140 days.

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

None

## **3. Legislative Background**

The amendment to the definition of a domestic property can be implemented via an Order amending Section 66 of the Local Government Finance Act 1988 using the negative resolution procedure.

Section 66 (9) of the Local Government Finance Act 1988, gives the Secretary of State the power to make an order which amends the definition of domestic property for the purposes of Section 66.

These powers were transferred, in relation to Wales, to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999, and by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006 these powers have now transferred to the Welsh Ministers.

This Order follows the negative resolution procedure.

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

Commercially let property can become liable to pay non-domestic rates instead of council tax if the owner states that it is available to be let for short periods totalling at least 140 days in a year, even if it is actually let for fewer days or not at all, (the requirement is that it must be made available to let for 140 days in a year but in practice Valuation Officers are unable to verify the bald statement by an owner that he or she intends to make it available for 140 days).

This legislation closes a potential loophole whereby owners of properties that are predominately unoccupied, used as second homes, or occupied for most of the time by the owner, can effectively reduce the tax liable on their properties by becoming liable to pay non-domestic rates instead of council tax. This can currently happen by declaring that a property is available for let for short periods totalling at least 140 days in a year, but making little or no realistic effort to actually do so, by, for example, not actively marketing the property, asking for unrealistic rents, or restricting the dates that the property is actually available for let. Since 2003, properties unoccupied for more than 6 months and second homes now pay the full council tax in most of Wales.

The non domestic liability for a property may be less than its council tax liability. This differential has increased since 1 April 2007 when the small business rates relief scheme was introduced, and properties with a rateable value up to £2,000 receive a 50% discount on their rates, and those with a rateable value of between £2,001 and £6,500 receive a 25% discount.

If this legislation were to be annulled, this potential tax loophole will not be closed, and the benefits described in paragraph 8 will not be realised

#### **5. Consultation**

A consultation with representatives of the tourism industry, local authorities, and the Valuation Office Agency took place between 6 April and 30 June 2009. The consultation document was published on the Assembly Government website throughout this period

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

#### **7. Options**

No other options for closing this potential loophole were identified other than to have increased or decreased the period that these properties are actually required to have been let over the 12 month period. To have increased the period could adversely have affected genuine businesses that are not let for this period during difficult trading conditions, and to have decreased it would have meant that properties that are empty for the majority of the time could continue to reduce their local tax liabilities. The 70 day period is generally accepted by the industry, and is used for the purposes of determining taxation liability by the Income and Corporation Taxes Act.

#### **8. Costs & Benefits**

This legislation will mean that dwelling properties that are not actually let for the period specified will be liable to pay council tax to the local authority which will fund the provision of services for local people regardless as to whether they are occupied. It closes the potential loophole whereby owners of what

are effectively second homes can be assessed to pay business rates, and so pay a reduced amount of local taxation, but it does not affect the local tax liability of properties that are genuinely used for commercial letting for at least 70 days in a 12 month period.

In addition to the loss of income from taxation, properties that are unoccupied for much of the year can adversely affect the sustainability of local communities as they do not have occupants to use and pay for local goods and services, and can exacerbate a shortage of dwelling accommodation.

The non domestic rating lists show that between 1 April 2005, and 31 December 2008, 1835 additional properties were listed as holiday homes for non domestic rates, and there has been a marked annual increase since 2006, the year that the current small business rates relief scheme was announced. One third of these properties were listed in 2007-2008, the year the scheme came into effect.

The short term holiday letting industry makes an important contribution to the Welsh economy, and these businesses premises will continue to be assessed for business rates, and qualify for relief on the same basis as other businesses. This legislation will bring more closely into line the definition, for local taxation purposes, of a premises used for commercial letting with the definition of such a premises used in the Income and Corporation Taxes Act for income and corporation taxation purposes, and should not adversely affect the taxation liability of genuine businesses, while closing a potential tax avoidance loophole.

There are no costs to the Assembly Government, local authorities or to businesses

## **9. Consultation**

A consultation took place between 6 April and 30 June 2009. Ten responses were received

One business owner objected to the proposals for various reasons, but particularly because properties that could not, despite the best efforts of their owners be let for 70 days a year, would become liable for council tax, and this could damage the tourist industry.

The Wales Tourism Alliance supported the proposals

All four responses from local authorities were supportive, although Gwynedd wanted to go further and increase the proposed 70 day occupation period to 90 days. The Valuation Tribunal Service for Wales supported the proposals.

Two respondents raised concerns that property owners could have to wait for 12 months after a property becomes available to be commercially let before they could be listed for non domestic rates instead of council tax. The British Holiday & Home Parks Association Ltd and the Farmers Union of Wales

expressed concerns that in certain circumstances, properties, entering the self catering sector, or returning to it after a period of domestic use would, under these proposals have to wait for a year before being listed for non domestic rates instead of council tax. They suggested that in these circumstances the 12 month qualifying period be waived. However, this legislation will require them to be listed for non domestic rates after they have been available to let for 140 days, not 12 months, provided they had also been let for 70 days during this period.

One business owner suggested that where a business comprises of a number of properties, if they are in the same location their periods of occupation should be averaged. However council tax and non domestic rates are a property tax on individual properties, not on income or profits, and this would not be a practical proposition. It could also result in a loophole where a property or properties within such a group could be predominately unoccupied or used for domestic purposes, but remain on the rating list as when averaged with other properties the 70 day period of occupancy requirement is exceeded.

#### 10. **Competition Assessment**

This has been scored against the competition filter test which indicated that there should be no detrimental effect on competition.