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Consultation – Summary of Responses

Non-Domestic Rates

A Technical Consultation on the Draft Non-Domestic Rating
(Amendment of Definition of Domestic Property) (Wales) Order 2022

24 May 2022

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

Overview

This document provides a summary of the responses to the Technical Consultation on the Draft Non-Domestic Rating (Amendment of Definition of Domestic Property) (Wales) Order 2022.

Action Required

This document is for information only.

Further information and related documents

Large print, Braille and alternative language versions of this document are available on request.

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Additional copies

This summary of response and copies of all the consultation documentation are published in electronic form only and can be accessed on the Welsh Government's website.

Link to the consultation documentation: [Draft Non-Domestic Rating \(Amendment of Definition of Domestic Property\) \(Wales\) Order 2022](#)

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Introduction

1. This document provides a summary of the responses to the technical consultation on the draft *Non-Domestic Rating (Amendment of Definition of Domestic Property) (Wales) Order 2022* (the Order).
2. The proposed changes are being pursued as part of the Welsh Government's three-pronged approach to address issues of housing affordability and the high density of second homes in some locations. It is recognised that individual measures, such as alterations to the local taxation system, will not be sufficient on their own and that a broad strategic approach is required.

The self-catering criteria

3. Within the local tax system, properties used for the purpose of providing self-catering accommodation (for example, holiday lets) are treated as businesses and are liable for non-domestic rates, rather than council tax, subject to their meeting certain criteria set out in legislation.
4. The legislation underpinning the classification of properties in the local taxation system sets minimum short-term letting thresholds for classifying self-catering accommodation as non-domestic. The original legislation was subject to consultation prior to its introduction.
5. Section 66(2BB) of the Local Government Finance Act 1988, inserted by the Non-Domestic Rating (Definition of Domestic Property) (Wales) Order 2010 and amended by the Non-Domestic Rating (Definition of Domestic Property) (Wales) Order 2016, sets out the criteria for a property used to provide self-catering accommodation to be classified as non-domestic for local taxation purposes.
6. The current criteria are as follows:
 - the property is intended to be available for letting commercially as self-catering accommodation for short periods totalling 140 days or more in the following 12-month period;
 - the ratepayer's interest in the property enables them to let it for such periods;
 - in the 12 months prior to assessment, the property has been available for letting commercially as self-catering accommodation for short periods totalling 140 days or more; and
 - during that period the short periods it has actually been commercially let for amounted to at least 70 days.
7. Where the criteria are not met, the property is classed as domestic and is liable for council tax.
8. The Welsh Government has identified the local taxation system as a potential vehicle to help address concerns about the impact of high proportions of second homes on certain communities. A consultation seeking views on the operation of council tax premiums on second homes and long-term empty homes, the existing criteria for self-catering accommodation, and eligibility conditions for Small

Business Rates Relief (SBRR) for self-catering accommodation ran from 25 August to 17 November 2021.

9. The views from the consultation supported the thresholds for self-catering accommodation being increased, with a wide range of suggestions for the precise level at which they should be set. The Welsh Government has decided to amend legislation to set new thresholds of actually let and available to let. This is intended to ensure that self-catering properties are required to make a more substantial contribution to the local economy, in order to be considered businesses and liable for non-domestic rates rather than council tax.
10. The Order amends the length of time a property is required to be actually let, increasing it from 70 days to 182 days (26 weeks), and intended to be available to let and have been available to let, increasing them from 140 to 252 days (36 weeks). These changes would also apply to criteria introduced by the Non-Domestic Rating (Definition of Domestic Property) (Wales) Order 2016, whereby an average for days actually let could be taken where multiple properties operated by the same business exist on a singular site.
11. It is recognised that a period of time will be required for self-catering operators to evidence the new criteria and for administrative bodies including local authorities and the Valuation Office Agency (VOA), to adapt their systems and processes. Any property being assessed prior to 1 April 2023 will, therefore, be treated in line with the existing criteria. From 1 April 2023, the new criteria will be used for new assessments, as well as for reassessments, of self-catering properties for the non-domestic rating list. The VOA's target is to check the status of each self-catering property already listed at least once every two years.
12. The consultation sought views on the draft Order that would increase the requirement to be actually let to 182 days and requirement to be available to let to 252 days. The consultation was technical in nature and asked for views on the clarity and practical application of the legislation.

Proposals

13. The Welsh Government proposes that the draft *Non-Domestic Rating (Amendment of Definition of Domestic Property) (Wales) Order 2022* be used to bring about the changes to the proposed levels at which a self-catering is required to be both actually let and available to let.

Engagement

14. The consultation began on 1 March 2022 and ended on 12 April 2022. It was published on the consultation pages of the Welsh Government's website. The consultation was also emailed to stakeholders with an interest in the matters raised. Respondents were able to submit their views and comments on paper, by email or online, and in Welsh or English.
15. A list of respondents to the consultation is provided at Annex A.

Overview of responses

16. In total, the consultation received 499 responses. Responses were received from a mix of individuals, business owners, representative bodies and local government bodies. There were 333 individuals and 137 business owners, most of whom are operators of self-catering properties. In addition, 13 representative bodies, from within the sector and with a broader remit, and four local government bodies responded. There were 11 responses where there was not sufficient information available to enable the respondent to be categorised.
17. The consultation also prompted a range of representations which focused on the policy approach, rather than the matters raised in the technical consultation. These views have been taken into account in assessing the impact of the proposed changes, but the following summary concentrates on the responses to the questions set out in the technical consultation.

Summary of responses

18. This document provides a summary of the responses received. It does not aim to capture every point raised by respondents, but outlines the key themes.

Q1. Does the amending of subsection (2BB) altering reference to ‘70 days’ to now read ‘182 days’, used to define the period a property or aggregated property is required to be actually let, provide clarity? If not, how can it be improved?

19. 443 respondents provided views in response to Question 1. The majority view, held by 403 respondents, was that the regulations provide sufficient clarity.
20. The remaining 40 responses that viewed the regulation to be unclear were primarily concerned with the policy and against the level of increase to 182 days actually let, rather than identifying issues of clarity. Across those who felt there was clarity and those who did not, 274 responses stated the criteria of 182 days was too high. 159 responses provided an alternative value, ranging from 70 days to 160 days, the most common of which was 105 days (126 respondents).
21. Other comments related to scenarios where properties are aggregated (multiple units on the same site), how nights and days will be distinguished, planning restrictions on use or occupancy, the level of evidence required, and whether there would be extenuating circumstances to the thresholds if a demand side shock were to occur.
22. As has been in operation since 2016, where there are multiple units on the same site, the values may be aggregated and averaged. For example, two properties, one let out for 80 days, the other let out for 68 days, would be viewed as having a combined average of 74 days and thus be classified as non-domestic (under the existing criteria). The same methodology will apply for the new higher thresholds.

23. As the terminology 'days' has been in place and used since 2010, it is viewed as the understood and appropriate measure.
24. Where a property has restricted use, the letting thresholds will need to be met, independently of conditions that may be set out in other areas of legislation. All self-catering properties are classified, for local taxation purposes, according to the same criteria. Should the property be classified as domestic and become liable for council tax, it will be for the local authority to determine appropriate liability in individual circumstances.
25. The VOA is responsible for determining whether a property is classified as non-domestic. It gathers evidence on the use of a property through its VO6048 form. This is an established process and evidence requirement.
26. Should exceptional circumstances occur whereby use is restricted, for example through a lockdown scenario, the legislation will be kept under review.
27. 91 respondents queried the extent to which an economic impact survey had been carried out. When laying the regulations, a Regulatory Impact Assessment will be published by the Welsh Government.

Q2. Does the amending of subsection (2BB) altering reference to '140 days' to now read '252 days', used to define the period a property is required to be intended to be available to let and have been available to let provide clarity? If not, how can it be improved?

28. 432 respondents provided views in response to Question 2. The majority, 383 responses, were of the view that clarity was provided.
29. 49 responses were of the view that clarity was lacking. The majority of these views were focused on the figure of 252 days being too high, rather than specific legislative clarity. Points raised in response to question 1 were echoed. Concern was raised about the meaning of availability to let, given the flexible nature of advertising. Properties are required to be available to let, as availability indicates an intention to operate on a commercial basis, rather than, for example, letting at a discounted rate to family and friends.

Q3. Does the wording in Article 3 provide clarity that properties assessed prior to 1 April 2023 are treated on the basis of meeting the current thresholds?

30. 393 respondents provided views in response to Question 3. Views were split, with 214 responses stating 'No' and 179 responses stating 'Yes'.
31. Those who viewed there to be a lack of clarity were concerned with how properties already classified as non-domestic would be treated in the transition to the new criteria. Wider policy views not directly linked to timing were focused on how properties with restrictions on use would be treated, how factors such as maintenance would be considered, and whether there would be variations to the thresholds reflecting changes in demand.

32. Prior to 1 April 2023, properties will be assessed by the VOA against the current criteria of 70 days actually let and 140 days available to let. From 1 April 2023 onwards, properties will be assessed against the new criteria. The implementation date of 1 April 2023 is to allow a period of notice before the criteria change, given the requirement for evidence from the 12 months prior to the date of an assessment.
33. The VOA conducts a rolling programme to check that properties listed as self-catering properties on the non-domestic rating list meet the criteria in place at the time of assessment. The VOA's target is to check the status of each self-catering property at least once every two years. Properties already listed for non-domestic rates when the criteria change, on 1 April 2023, will be required to submit evidence related to the new criteria when they are next reassessed by the VOA.

Q4. Are there any other issues regarding the practical application of the Draft Order?

34. 424 respondents provided views in response to Question 4. 359 responses raised further comments, whilst 65 responses stated there were no other issues.
35. 43 responses were specifically focused on requirements for further detail needed in the regulations. Concerns were raised about the clarity around how the thresholds will be enforced, how evidence will be collated and verified, as well as how properties with restrictions on use will be treated. Some of these points have been covered in relation to previous questions.
36. As part of this process for determining whether a self-catering property has met the criteria, the VOA issues forms of return to self-catering units, whereby the business owners are required to provide evidence of use of the property, including proof of letting as well as detail on various items of income and expenditure. This process has been operated by the VOA since 2010.
37. A range of policy views were put forward, with 215 responses of the view that the thresholds were too high, whilst 36 responses were generally against the proposal. A further 31 responses raised concerns about the possible impacts on businesses, both existing and newly formed.

Q5. Do you have any other comments about the draft regulations?

38. 334 respondents provided views in response to Question 5. Of these the majority were policy related comments, rather than focusing on the drafting of the regulations.
39. Nine responses raised specific views about the regulations, there was confusion about how the Order will be enforced, how new businesses will be treated, how the regulations will apply to existing self-catering accommodation and to new self-catering accommodation, as well as a call for the thresholds to be kept under review given the impact on trading of recent COVID-19 restrictions.

40. Policy comments were in large against the proposed changes to the criteria. The most common concern, 124 responses, being that the regulations appeared to adopt a one-size-fits-all approach, not being flexible for different conditions, such as planning restrictions placed on property currently classified as non-domestic.
41. 72 responses focused specifically on concerns about the criteria being set at too high a level, with responses commonly suggesting an alternative level of 105 days. Whilst 46 responses highlighted the potential negative impact of the regulations on the tourism sector, as a consequence. Similar comments have been received in response to previous questions.
42. Concerns were also raised about the approach to consultation, with it viewed that the policy position had not been properly considered and due process not followed. Similarly, concerns were raised about the lack of evidence supporting the proposed thresholds, with the findings from the policy consultation being referenced as differing to the outcome. Other comments were against the policy, as well as a small number highlighting the potential impact of becoming liable for a council tax premium.
43. 15 respondents raised views about wider policy measures including the need for a broader strategy on the development of housing and the need for a registration scheme for the sector. These issues are being considered as part of the Welsh Government's three-pronged approach.

Q6. The Welsh Government would like your views on the effects these draft regulations would have on the Welsh language, specifically on:

- i. **opportunities for people to use Welsh; and**
- ii. **on treating the Welsh language no less favourably than English.**

What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

44. 407 respondents provided views in response to Question 6. Of these, 365 were directly about the impact of the proposals on the Welsh language. Other responses either raised general policy comments, were against the use of a question focused on Welsh language or set out how the use of Welsh is encouraged.
45. The majority view, 225 responses, was that the proposals would have a negative impact on the Welsh language. It was commonly noted that the proposals would reduce the business viability for self-catering operators, with these operators then being required to sell their property. The view commonly put forward was that this property would most likely be sold to wealthy individuals from England, with an existing Welsh operator displaced. In turn, it was viewed that, there would be an erosion of Welsh culture and use of the Welsh language.
46. 116 respondents were of the view that there would be no impact upon the Welsh language, whilst 11 were unsure about the impacts.
47. 13 respondents were of the view that there would be a positive impact. It was viewed that increased thresholds would bring about increased spend in local

communities, allowing them to be more viable. This view was supported by the Welsh Language Commissioner.

Q7. Please also explain how you believe the draft regulations could be formulated or changed so as to have:

- i. positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language; and**
- ii. no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.**

48. 346 respondents provided views in response to Question 7. A majority of these views replicated concerns raised in response to Question 6.
49. 128 responses raised wider measures, with focus primarily on the need for better provision of housing. It was suggested that more needed to be done by the Welsh Government to make use of properties that are currently empty, to encourage the use of private land for development of properties suitable for first-time buyers, and a dedicated programme for first-time buyers.
50. These matters are being considered as part of the Welsh Government's wider strategy on the availability of housing and form part of the Welsh Government's three-pronged approach.
51. 53 responses set out ways in which the use of Welsh could be encouraged. These did not constitute practical amendments that could be made to the Order to bring about the desired effects. Suggestions included using bilingual materials both within the community and within self-catering accommodation and providing greater more education opportunities for tourists visiting self-catering accommodation. It was also suggested that better access to cultural sites was provided.
52. Suggestions specific to the regulations included replacing non-domestic rates with a turnover tax, and a sliding scale of council tax liability depending on how close to the non-domestic thresholds the property was.
53. A small proportion of responses were either against the inclusion of Welsh language questions, against the broader policy, or unsure as to how the draft Order could be formulated or changed to either have positive effects or no adverse effects on the Welsh language.

Q8. We have asked a number of specific questions. If you have any related points which we have not specifically addressed, please use this space to record them.

54. 375 respondents provided views in response to question 8. No views specific to the legislative detail were provided.

55. The majority of views were against the proposed policy. 180 respondents stated that the proposed criteria were set at too high a level. From a similar viewpoint, 94 respondents raised concern about the economic impacts of the policy, with concern about the viability of businesses in the tourism industry. There was also focus on subsequent impacts on communities in which self-catering properties are currently located, such as reduced employment and spend in the economy.
56. A small number of respondents were concerned about the cost impact of having to pay council tax due to not being able to meet the thresholds. Concerns were also raised that the policy was too universal in its approach, not adapting to individual scenarios, such as limitation of use due to planning conditions. A few respondents were unhappy with the approach to the consultation, either unhappy with the outcome of the policy consultation or unaware of it taking place.
57. Some respondents highlighted how wider measures, outside the local taxation system, could be used to address concerns about the impact of second homes. Views were primarily focused on how more needed to be done to bring improve the availability of affordable housing. Suggestions included making changes to the planning system, bringing in compulsory purchase orders, and establishing a registration scheme for the sector. These measures are being considered as part of the Welsh Government's three-pronged approach.
58. More broadly, it was viewed that there needed to be increased investment in rural job creation. Other comments raised included removing the sector from being eligible for SBRR and preventing properties being used for personal use.

Wider comments

59. A small number of responses were submitted outside the questionnaire format. The views provided broadly represent the majority view, with policy concerns raised that the proposed threshold of 182 days actually let was too high and that wider measure to address the affordability of housing should be implemented.

Next steps

60. The Welsh Government plans to make the Order, as drafted and consulted on. Interested parties will be notified once the Order has been made and laid. An Explanatory Memorandum and Regulatory Impact Assessment will be published alongside the laying of the Order. Revised guidance will also be published, setting out clarity around the application of the legislation and providing further detail in response to specific queries raised as part of this consultation.
61. The Welsh Government recognises the differing views of stakeholders and remains of the view that to operate as non-domestic, self-catering properties shall be required to be used for business purposes for the majority of the year.
62. The Welsh Government will explore whether amendments can be made to the Council Tax (Exceptions to Higher Amounts) (Wales) Regulations 2015, to provide for an additional exception from a council tax premium for properties with

a planning condition preventing permanent occupation as a person's main residence.

63. The Welsh Government will continue to monitor the impact of the legislation, and the appropriateness of the thresholds.

Annex A: List of respondents

Responses were received from the following.

Individuals

Alan and Janet Turner
Alan Hughes
Alan Williams
Andrea Willan
Andrew Lawson
Andrew Packer
Angela Lawson
Carl Davies
Carol & Elwyn Jones
Carol Gent
Carol Price-Jones
Chris Atherton
Chris Goodall
Claire Degg
Clemency Crawshaw
Clive Williams
Colin Nash
Colleen Greening
Craig Hargreaves
Dafydd Wyn
Damian Ashman
David Parsons
Denise Raynor
Elizabeth Marshall
Frances Jones
Gerard Murray
Gillian Llewelyn
Gillian Richards
Glan
Gordon Bluck
Graham Keen
Heather Jones
Hedydd Llewelyn
Howard Edwards
Huw Prydderch Davies
Ian Pattinson
James Glover
Jane Ashman
Jason Jones

Jenny Vince
John Bennett
John Hardy
Jonathan Beeston
Jonathan Macgill
Judith
Kate Arbuckle
Kate Kenyon
Keith Morey
Kirstie Lumsdon
L Jones
Lana Burke
Lesley Markham
Linda Drake
Lisa Fantom
Lorraine Morley
Louise Jones
Lowri Lloyd-Preston
Lynne Paul
M Reynolds
Mcgill Stuart
Mr and Mrs Rayer
Mr Lewis
Mrs E S Meredith
Ms Louise Anne Ferguson
Nigel Christie
Nigel Powell
Patricia Barritt
Paul Dixon
Peter Berry
R Kelsey
Rachel Hartley
Rachel Thomas
Rebecca Lovell-Newman
Richard Deed
Richard Gallafent
Richard Mitchley
Richard Paver
Richard Sumray
Robert Jones
Rodger Frost
Roger Schmid
Ron Morgan
Ruth Christie
Sally Howdle
Sam Harding

Sarah McGovern
Sarah Morrison
Sian Oliver-Gay
Simon Nicholls
Simon Shanklin
Sion
Spencer Watkeys
Steve Culverhouse
Steven Morgan-Goldsmith
Sue Macgill
Susan Emlyn Williams
Suzanne Thomas
Sylvia Gail Bates
Tony Fitzgerald
Tony Lander
Tony Robertson
Zelah Pengilley

Organisations

AA Properties Wales
Aberhyddnant Farm Cottages
Anglesey Cottages
Aotearoa
Barmouth Town Council
Basel Cottage Holidays
Ben & Hollys Hideaways
Blaencwm Mawr Cottage
Brecon Beacons Tourism Associaton
Bridge Cafe B&B
Bronyn Farm
Bryn Melyn Farm Cotrages
Capell Holiday Cottages
Carmarthenshire Farm & Country Holidays
Cefnllysgwynne Estate
Cefnsuran Farm Holidays
Cerbid Cottages
Chameleon
Crow's Nest Barry Island
Cymdeithas yr Iaith
Cyngor Gwynedd
Dolgoch Holidays
Dolwyddelan Holiday Cottage
Edith Cottage
Ere Fawr OPC
Farmers' Union of Wales

Federation of Small Businesses Wales
Gadlys Coastal Cottages
Gaer Hall Estate
Glyn Bach Farm Cottage
Gwalia Cottage
Gwrl View
Gwyliau Talwrn Bach
Hilltops Brecon
Jasmine Cottage & Velvet Cottage
JP Lettings Ltd.
Llandetty Hall Farm Holiday Cottages
Llanfendigaid Estate
Llety Holiday Cottage
Mid Wales Tourism
Morfan
Nantygroes The Beudy
Norbury Cottage
Pembrokeshire County Council
Pen Llyn Accommodation
Penally Abbey Hotel Ltd
Plas Pantyderi Manor
Professional Association of Self-Caterers UK Ltd
Propertymark
Quaintways
Rhiw Goch Penrhyndeudraeth
River Cottage
Rosemoor Country Cottages and Nature Reserve
Roundwood Holiday Lets
Salem Cottage
South Wales Homes
Tan yr Eglwys Cottages
The Cnewr Estate Ltd
The Forest Cottages
The Laundry Retreat
The Old Sunday School Room Holiday Cottage
TopFloor at Cantref House
TurTwig Cottage
Ty Cam Holiday Cottage
Ty Howton
Ty Newydd Furnished Holiday Let
Tyddyn Sydney Bach
Tymartins Ltd
UK Short Term Accommodation Association (STAA)
Visit Pembrokeshire
Wales Tourism Alliance
Warrantdyte Cottage

Welsh Language Commissioner
Welsh Local Government Association
Wern Fawr Manor Farm
Wye View Limited
Yr Hen Stablau

320 respondents shall remain anonymous. Where it has been unclear on the respondents preference, the response has remained anonymous.