

Local Government, Housing and Planning Committee

5th Meeting, 2024 (Session 6)

Tuesday, 6 February 2024

SSI cover note for: Council Tax (Dwellings and Part Residential Subjects) (Scotland) Amendment Regulations 2024

SSI 2024/10

Title of Instrument: Council Tax (Dwellings and Part Residential Subjects) (Scotland) Amendment Regulations 2024

Type of Instrument: Negative

Laid Date: 12 January 2024

Circulated to Members: 18 January 2024

Meeting Date: 6 February 2024

Minister to attend meeting: No

Motion for annulment lodged: No

Drawn to the Parliament's attention by the Delegated Powers and Law Reform Committee? No

Reporting deadline: 26 February 2024

Recommendation

1. The Committee is invited to consider any issues which it wishes to raise on this instrument.
2. An electronic copy of the instrument is available at: <https://www.legislation.gov.uk/ssi/2024/10/contents/made>
3. Copies of the Scottish Government's Explanatory and Policy Notes are included in **Annexe A**.

Purpose

4. The Policy Note explains that the purpose of the instrument is to ‘amend the Council Tax (Dwellings and Part Residential Subjects) (Scotland) Regulations 1992. They introduce a deadline for providing evidence of intention to let, and/or actual letting, in response to information requests from assessors in relation to premises classed as self-catering holiday accommodation and entered on the Valuation Roll (and therefore liable for non-domestic rates).

5. The regulations also clarify the action to be taken by assessors where evidence is not provided within the prescribed timeframe or is insufficient to demonstrate the requirements have been met in a given financial year; and when an entry or deletion on the valuation roll related to this has effect. Finally, the regulations clarify that the unit of measurement for the letting requirement for premises to be classed as self-catering holiday accommodation is the number of nights which it is available to let, and actually let, rather than the number of days.’

6. The Policy Note further states that “the intention of these regulations is to provide clarity around the requirement that in order to be entered on the valuation roll and therefore liable for non-domestic rates, self-catering holiday accommodation must be available for letting for 140 days or more *and* actually be let for a period of at least 70 days in the financial year.”

Delegated Powers and Law Reform Committee consideration

7. At its meeting on 30 January 2024¹ the DPLR Committee considered the instrument and agreed not to draw it to the attention of the relevant lead committee.

Procedure for Negative Instruments

8. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds). Under Rule 10.4, any member (whether a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument. If the motion is agreed to, the Parliamentary Bureau must then lodge a motion to annul the instrument for consideration by the Parliament.

9. If that is also agreed to, Scottish Ministers must revoke the instrument. Each negative instrument appears on a committee agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow correspondence to be entered into or a Minister or

<https://digitalpublications.parliament.scot/Committees/Report/DPLR/2024/1/31/8f16b51f-2eee-415a-902f-549edc893225#0e2be8bd-e3aa-4096-95af-a750b183e336.dita>

officials invited to give evidence. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendation on it.

**Clerks,
Local Government, Housing and Planning Committee**

Annexe A

Scottish Government Explanatory Note

These Regulations make amendments to the Council Tax (Dwellings and Part Residential Subjects) (Scotland) Regulations 1992 (“the 1992 Regulations”).

Regulation 2(2) inserts new paragraphs (3), (4) and (5) into regulation 5A. The effect of new regulation 5A(3) is to impose a time period within which evidence of letting and/or intention to let a property as self-catering holiday accommodation must be supplied to the assessor under regulation 5A(1). This must be done within 56 days of the end of the financial year to which the evidence relates, or within 56 days of the request for evidence, whichever is the later. It also imposes a requirement that the evidence supplied be sufficient to confirm that either or both of the requirements in heads (i) and (ii) of paragraph 2(b) of schedule 2 are met. Regulation 5A(4) sets out the effect of failure to provide evidence within the period set down by regulation 5A(3); the assessor must treat the lands and heritages as not falling within the class of self-catering holiday accommodation specified in paragraph 2 of schedule 2. The same position applies where the assessor reasonably considers that the evidence supplied is not sufficient to confirm that either or both of the requirements in heads (i) and (ii) of paragraph 2(b) of schedule 2 are met. Regulation 5A(5) details what must be set out in a request from an assessor for evidence of letting or intention to let in accordance with paragraph 2(b) of schedule 2.

Regulation 2(3) amends regulation 5B of the 1992 Regulations to clarify the effect of a determination by a local authority that lands and heritages fall within the class of self-catering holiday accommodation in schedule 2 of the 1992 Regulations, despite not meeting the condition of having been actually let for at least 70 days. New regulation 5B(3) makes it clear that an assessor who is informed of such a determination must treat the lands and heritages as falling within that class. To enable the assessor to determine the date from which the entry should take effect under regulation 5D, the intimation from the local authority must include an indication of the financial year in relation to which the determination is made.

Regulation 2(4) amends regulation 5D(1) of the 1992 Regulations to clarify when the entry in the valuation roll has effect in the event of a determination under regulation 5B. It also amends regulation 5D(1)(b) so that, where lands and heritages cease to be a dwelling because they are considered to be self-catering holiday accommodation, the entry in the valuation roll has effect from the start of whichever financial year in which they are considered to have become self-catering holiday accommodation (or the date on which the lands and heritages were first let, if later). Previously, the entry in the valuation roll took effect only from the start of the financial year during which the entry was made. Further, it clarifies when a deletion from the valuation roll takes effect, where it arises from a failure to provide evidence within the time scale provided for, or to provide sufficient evidence.

Regulation 2(5) amends paragraph 2 of schedule 2 to clarify the intention that the classification of a property as self-catering holiday accommodation is governed by the number of nights for which it is available to let, and actually let (rather than the number of days).

Policy Note

The Council Tax (Dwellings and Part Residential Subjects) (Scotland) Amendment Regulations 2024 SSI 2024/10

The above instrument is made in exercise of the powers conferred by sections 72(4), 73(5) and 113(2) of the Local Government Finance Act 1992 and all other powers enabling them to do so. The instrument is subject to the negative procedure.

These regulations amend the Council Tax (Dwellings and Part Residential Subjects) (Scotland) Regulations 1992. They introduce a deadline for providing evidence of intention to let, and/or actual letting, in response to information requests from assessors in relation to premises classed as self-catering holiday accommodation and entered on the Valuation Roll (and therefore liable for non-domestic rates).

The regulations also clarify the action to be taken by assessors where evidence is not provided within the prescribed timeframe, or is insufficient to demonstrate the requirements have been met in a given financial year; and when an entry or deletion on the valuation roll related to this has effect.

Finally, the regulations clarify that the unit of measurement for the letting requirement for premises to be classed as self-catering holiday accommodation is the number of *nights* which it is available to let, and actually let, rather than the number of *days*.

Policy Objective

The intention of these regulations is to provide clarity around the requirement that in order to be entered on the valuation roll and therefore liable for non-domestic rates, self-catering holiday accommodation must be available for letting for 140 days or more *and* actually be let for a period of at least 70 days in the financial year.

The regulations provide for a time period within which evidence of intention to let, and/or actual letting, of self-catering holiday accommodation must be supplied to the assessor in order for a determination to be made over whether it is a non-domestic property, and the consequences of not complying with this timeframe. This is to provide clarity to self-catering accommodation providers that on receipt of any such request they must provide the evidence requested within 56 days of the end of the financial year to which the evidence relates, or within 56 days of the request for evidence, whichever is the later, failing which the assessor will deem the property to be a dwelling, liable for Council Tax, and will remove it from the valuation roll. In the interests of transparency and fairness, the regulations also require that when assessors request evidence, that request must specify the time period within which the evidence must be returned, and the consequence if the evidence is not provided or is insufficient for assessors to establish that the criteria have been met.

As noted, the regulations provide that where evidence is not returned within this period, or where the evidence does not enable assessors to confirm that the relevant

requirement(s) are met, the premises will be treated as if the criteria had not been met and will be removed from the valuation roll. This clarification will provide greater certainty for both assessors and ratepayers in respect of the action which will follow an information request after the specified timeframe if evidence is not returned, or does not enable assessors to confirm that either or both of the requirements are met. The non-return of evidence impacts on assessors' ability to determine whether a premises remains liable for non-domestic rates, or whether it should be moved to the Council Tax list if it no longer meets the thresholds. This therefore has the intention of enabling assessors to maintain an up-to-date Valuation Roll and/or Council Tax list and ensure that only self-catering accommodation which meets the criteria is on the valuation roll.

The Council Tax (Dwellings and Part Residential Dwellings and Part Residential Subjects (Scotland) Regulations 1992 as amended by the Council Tax (Dwellings and Part Residential Subjects) (Scotland) Amendment Regulations 2021 continue to provide Councils, who administer and collect the tax, with discretionary powers which enable them to treat properties as self-catering accommodation in exceptional circumstances. These regulations introduce a new requirement that when a council informs assessor of such a determination, they must indicate the financial year in relation to which the determination is made, to avoid any ambiguity and ensure that Assessors have all the information they require to treat the property accordingly. For the avoidance of doubt, these regulations also stipulate that when Assessors are notified of such a determination, they must treat the premises as if the criteria for self-catering holiday accommodation are met in that particular financial year.

The regulations also enable assessors to make an entry on the valuation roll for self-catering accommodation even if the financial year to which this relates has passed. At present, under the Council Tax (Dwellings and Part Residential Subjects) (Scotland) Regulations 1992, as amended by the Council Tax (Dwellings and Part Residential Subjects) (Scotland) Amendment Regulations 2021, assessors can only enter a property on the valuation roll in respect of the financial year in which they are seeking to make the entry. This amendment ensures that a property can be entered onto the valuation roll with effect from the start of the financial year to which the assessment decision relates, even if that year has passed. A property used for self-catering accommodation would never be entered on the valuation roll before the date the property was first let.

Finally, to reflect that accommodation providers generally take bookings and charge on the basis of a number of nights, the regulations change the unit of measurement from days to nights. This seeks to make it easier for self-catering accommodation providers to respond to evidence requests, and avoid the risk of confusion or miscalculation in respect of whether the criteria have been met.

The above changes seek to support an efficient and effective process by providing further clarity and transparency in the provision of information and actions which will be taken.

Background

The Council Tax (Dwellings and Part Residential Subjects) (Scotland) Regulations 1992, as amended by the Council Tax (Dwellings and Part Residential Dwellings and Part Residential Subjects) (Scotland) Amendment Regulations 2021, introduced a requirement that, to be classed as self-catering holiday accommodation and entered on the valuation roll, premises must be available for letting for 140 days or more, and

must actually be let for a period of at least 70 days in any given financial year. They also enable assessors to request evidence of

intention to let, or of actual letting, or both, be supplied to determine whether the requirement is met that a property falls within the class of self-catering holiday accommodation to be entered on the Valuation Roll and liable for non-domestic rates.

The Council Tax (Dwellings and Part Residential Dwellings and Part Residential Subjects (Scotland) Amendment Regulations 2021 amended the Council Tax (Dwellings and Part Residential Subjects) (Scotland) Regulations 1992 with effect from 1 April 2022, and these amendment regulations seek to provide greater clarity and address operational challenges which have been identified during the first two years of operation.

EU Alignment Consideration

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

There is no statutory obligation to consult on these Regulations.

Impact Assessments

No Business and Regulatory Impact Assessment is required because the regulations will not impose new regulatory burdens on businesses, charities or the voluntary sector.

Financial Effects

It is not expected that the introduction of a deadline by which assessor information requests must be responded to in relation to self-catering holiday accommodation will have a material fiscal effect. These regulations are not expected to create any additional administrative burdens for local authorities.

Scottish Government
Local Government and Housing Directorate
January 2024