

Council Tax on Second Homes and Long Term Empty Properties Consideration of Discretionary Charging Policy

Executive of the Council

12 December 2006

Purpose of report

- 1 The purpose of this report is to advise on the status of the guidance issued by the Scottish Executive.

Main report

2 Background

2.1 In May 2005 the Executive agreed:

- a) To introduce a reduced Council Tax discount of 10% for second homes and long-term empty properties with the exception of mandatory exemptions; and
- b) That the discounted rate be implemented from 1 July 2005.

2.2 The matter was subsequently considered by the Resource Management and Audit Scrutiny Panel before being referred back to the Executive when it was further agreed:

To ask the Council Solicitor to report to the Executive and the Resource Management and Audit Scrutiny Panel on the status of the guidance issued by the Scottish Executive on the local authority discretion to reduce Council Tax discount on second homes and long-term empty properties.

2.3 Guidance was issued by the Minister for Finance and Public Services on 13 December 2004. In the introductory letter to the Guidance the Minister indicated that it had been decided to give local authorities discretion to reduce or retain the Council Tax discount on second homes and long-term empty properties to between 10% and 50%.

Whilst this guidance purported to describe a discretionary power it is necessary to consider the detailed terms of the subsequent Regulations.

- 2.4 Scottish Ministers made the Council Tax (Discount for Unoccupied Dwellings) (Scotland) Regulations 2005/51 which came into force on 1 April 2005. These Regulations (a copy of which is attached at Appendix 1) set out the power available to local authorities to modify the application of these Regulations within their areas in relation to certain classes of dwelling. There are, however, certain limitations on the power to modify. Local Authorities cannot modify the application of these Regulations to set the amount of the discount outwith the specified maximum and minimum amounts. Regulation 5(2) specifies the maximum amount to be 50% and the minimum amount to be 10%.
- 2.5 Whilst the Guidance must be considered by the local authority in the exercise of its statutory power, the terms of the Regulations are more prescriptive. The Council is therefore bound by the terms of the Regulations whereas it simply has to have regard to the Guidance.
- 2.6 The reason for delay in reporting back on this is due to a legal challenge on application of the new regulations. A taxpayer lodged an appeal against the amendment to the empty property discount. After a lengthy procedure, which was only concluded at a hearing of the Valuation Appeals Committee on 24 October, the Council's application of the regulations was upheld. It was considered appropriate to hold back the present report until these proceedings were concluded.

3. Recommendation

It is recommended that the Executive notes that the status of the Guidance is advisory and that the terms of the Regulations must be followed.


Jim Inch
Director of Corporate Services

28/11/06

Appendices	1. The Council Tax (Discount for Unoccupied Dwellings) (Scotland) Regulations 2005/51.
Contact/tel	Colin MacKenzie – 0131-529-4369
Wards affected	City-wide
Background Papers	1. Report to Executive of 24 May 2005. 2. Executive of the Council 24 May 2005 Minute (Item 11). 3. Resource Management and Audit Scrutiny Panel 23 June 2005 Minute. 4. Report to Executive of the Council 26 July 2005.

APPENDIX ONE

Scottish Statutory Instrument 2005 No. 51

The Council Tax (Discount for Unoccupied Dwellings) (Scotland) Regulations 2005

© Crown Copyright 2005

Scottish Statutory Instruments printed from this website are printed under the superintendence and authority of the Queen's Printer for Scotland.

The legislation contained on this web site is subject to Crown Copyright protection. It may be reproduced free of charge provided that it is reproduced accurately and that the source and copyright status of the material is made evident to users.

It should be noted that the right to reproduce the text of Scottish Statutory Instruments does not extend to the Queen's Printer for Scotland imprints which should be removed from any copies of the Scottish Statutory Instrument which are issued or made available to the public. This includes reproduction of the Scottish Statutory Instrument on the Internet and on intranet sites. The Royal Arms may be reproduced only where they are an integral part of the original document.

The text of this Internet version of the Scottish Statutory Instrument has been prepared to reflect the text as it was Made. A print version is also available and is published by The Stationery Office Limited as the **The Council Tax (Discount for Unoccupied Dwellings) (Scotland) Regulations 2005**, ISBN 0110694120. The print version may be purchased by clicking [here](#). Braille copies of this Scottish Statutory Instrument can also be purchased at the same price as the print edition by contacting TSO Customer Services on 0870 600 5522 or e-mail:

customer.services@tso.co.uk.

Further information about the publication of legislation on this website can be found by referring to the [Frequently Asked Questions](#).

To ensure fast access over slow connections, large documents have been segmented into "chunks". Where you see a "continue" button at the bottom of the page of text, this indicates that there is another chunk of text available.

SCOTTISH STATUTORY INSTRUMENTS

2005 No. 51

COUNCIL TAX

The Council Tax (Discount for Unoccupied Dwellings) (Scotland) Regulations 2005

Made

28th January 2005

Coming into force

1st April 2005

The Scottish Ministers, in exercise of the powers conferred by section 33(1), (2), (3) and (4) of the Local Government in Scotland Act 2003^[1] and of all other powers enabling them in that behalf, and after consultation with such associations of local authorities and such other persons as they think fit in accordance with section 33(7) of that Act, hereby make the following Regulations, a draft of which has, in accordance with section 33(6) of that Act, been laid before and approved by resolution of the Scottish Parliament:

Citation, commencement and interpretation

1. - (1) These Regulations may be cited as the Council Tax (Discount for Unoccupied Dwellings) (Scotland) Regulations 2005 and shall come into force on 1st April 2005.

(2) In these Regulations-

"empty dwelling" means a dwelling which is both unoccupied and unfurnished;

"major repair work" includes structural repair work;

"second home" means a dwelling which is not one's sole or main residence and is not an empty dwelling; and

"Schedule" means the Schedule to these Regulations.

Amendment of section 79 of the Local Government Finance Act 1992

2. Paragraph (a) (daily discount from council tax of twice the "appropriate percentage" for chargeable dwellings of which there is no resident) of subsection (2) of section 79 of the Local Government Finance Act 1992[2] is hereby repealed.

Discounts for unoccupied dwellings

3. The amount of council tax payable in respect of a chargeable dwelling and any day shall be subject to a discount equal to 50% of that amount if on that day there is no resident of the dwelling.

Modification of the application of these Regulations

4. Local authorities may, subject to regulation 5, modify the application of these Regulations within their areas in relation to-

(a) the following classes of dwelling-

(i) empty dwellings; and

(ii) dwellings that are second homes;
and

(b) different parts of their areas.

Limitations on local authorities power to modify the application of these Regulations

5. - (1) The power conferred by regulation 4 shall not permit local authorities to modify the application of these Regulations so as to-

(a) set the amount of the discount as provided for in regulation 3, for their respective areas, at an amount outwith the maximum and minimum amounts specified in paragraph (2);

(b) modify the discount provided for in regulation 3 for the classes of dwelling

specified in paragraph (3);

(c) make provision, applying to the whole local authority area, for discounts at different amounts in respect of dwellings that fall within one of the classes referred to in regulation 4(a);

(d) modify regulation 4 or this regulation; or

(e) modify the classes of dwellings specified in the Schedule.

(2) For the purposes of paragraph (1)(a)-

(a) the specified maximum amount is 50%;
and

(b) the specified minimum amount is 10%.

(3) For the purposes of paragraph (1)(b), the classes of dwelling are-

(a) dwellings which fall within one of the classes specified in paragraphs 1 and 2 of the Schedule;

(b) dwellings which fall within the class specified in paragraph 3 of the Schedule but only for the period of 6 months beginning with the day on which that dwelling was purchased by the person who is liable to pay council tax in respect of that dwelling;

(c) dwellings which fall within the class of dwellings specified in paragraph 4 of the Schedule but only for the period of 6 months beginning with the day on which that dwelling ceased to be an exempt dwelling in terms of the Council Tax (Exempt Dwellings) (Scotland) Order 1997[3].

TAVISH SCOTT

Authorised to sign on behalf of the Scottish Ministers

St Andrew's House, Edinburgh
28th January 2005

SCHEDULE
Regulation 5(1) and (3)

CLASSES OF DWELLINGS

Purpose-built holiday homes

1. A dwelling-

(a) which is used for holiday purposes; and

(b) which either-

(i) in accordance with any licence or planning permission regulating the use of the site, or for any other reason, is not allowed to be used for human habitation throughout the whole year; or

(ii) by reason of its construction or the facilities which it does, or does not, provide, is unfit so to be used.

Job-related dwellings

2. - (1) A dwelling which is owned or tenanted by a person whose sole or main residence is a dwelling which for that person is job related.

(2) A dwelling which is job related for a person whose sole or main residence is a dwelling which is owned or tenanted by that person.

(3) For the purposes of paragraphs (1) and (2), a dwelling is job related if it falls within the description set out in paragraphs (4), (5) or (6).

(4)

(a) Subject to sub paragraph (b), a dwelling is job related for a person if it is provided for that person by reason of that person's employment or for that person's spouse by reason of the spouse's employment, in any of the following cases-

(i) where it is necessary for the proper performance of the duties of the

employment that the employee should reside in that dwelling;

(ii) where the dwelling is provided for the better performance of the duties of the employment, and it is one of the kinds of employment in the case of which it is customary for employers to provide dwellings to employees;

(iii) where, there being a special threat to the employee's security, special security arrangements are in force and the employee resides in the dwelling as part of those arrangements.

(b) If the dwelling is provided by a company and the employee is a director of that or an associated company, paragraph (i) or (ii) of sub paragraph (a) shall not apply unless either-

(iv) the employment is as a full time working director;

(v) the company is non profit making, that is to say, it does not carry on a trade nor do its functions consist wholly or mainly in the holding of investments or other property; or

(vi) the company is established for charitable purposes only.

(5) A dwelling is job related for a person if that person or that person's spouse is a minister of religion and the dwelling is inhabited by that person as a residence from which that person performs the duties of that person's office.

(6)

(a) Subject to sub paragraph (b), a dwelling is job related for a person if that person or that person's spouse is required, under a contract to which this sub paragraph applies, to live in that dwelling.

(b) Sub paragraph (a) does not apply if the dwelling concerned is in whole or in part

provided by any other person or persons together with whom the person or spouse carries on a trade or business in partnership.

(c) A contract to which sub paragraph (a) applies is a contract entered into at arm's length and requiring the person concerned or that person's spouse (as the case may be) to carry on a particular trade, profession or vocation in a property provided by another person and to live in a dwelling provided by that other person.

(7) For the purposes of paragraphs (4) to (6)-

a company is an associated company of another person if one of them has control of the other or both are under the control of the same person;
"director", "full time working director" and "control", in relation to a body corporate have the same meanings as they have in sections 67 and 69 of the Income Tax (Earnings and Pensions) Act 2003[4] in relation to the benefits code;
"provided" means provided under a tenancy or otherwise; and
references to a person's spouse include references to another person living together with that person as husband and wife or in a relationship which has the characteristics of the relationship between husband and wife except that the persons are of the same sex.

Dwellings under repair

3. A dwelling which-

(a) is undergoing or requires major repair work to render it habitable; or

(b) is undergoing structural alteration.

Empty dwellings

4. The class of dwelling specified in paragraph 4 (empty dwellings) of Schedule 1 to the Council Tax (Exempt Dwellings) (Scotland) Order 1997[5].

(This note is not part of the Regulations)

These Regulations repeal paragraph (a) (daily discount from council tax of twice the "appropriate percentage" for chargeable dwellings of which there is no resident) of section 79(2) of the Local Government Finance Act 1992 and make new provision in relation to council tax discounts for dwellings which have no resident.

Regulation 3 provides that there shall be a discount of 50% of the amount of council tax payable in respect of a chargeable dwelling where there is no resident of the dwelling.

Regulation 4 gives local authorities the power to modify the application of these Regulations within their areas in relation to certain classes of dwelling (i.e. empty dwellings and dwellings that are second homes) and in relation to different parts of their areas.

Regulation 5 places certain limitations on the power to modify provided for at Regulation 4.

Regulation 5(1)(a) provides that local authorities cannot modify the application of these Regulations to set the amount of the discount as provided for in regulation 3 at an amount outwith the specified maximum and minimum amounts. Regulation 5(2) specifies the maximum amount to be 50% and the minimum amount to be 10%.

Regulation 5(1)(b) prevents local authorities from modifying the discount provided for in regulation 3 for the classes of dwelling specified in regulation 5(3). Regulation 5(3) refers to classes of dwelling specified in the Schedule. These classes of dwelling are purpose built holiday homes, job related dwellings, dwellings under repair and empty dwellings.

Regulation 5(1)(c) prevents local authorities from modifying so as to make provision, applying to the whole local authority area, for discounts at different amounts in respect of dwellings falling within one of the classes referred to in regulation 4(a).

Regulations 5(1)(d) and (e) prevent local authorities from modifying regulations 4 and 5 and from modifying the classes of dwellings specified in the Schedule respectively.

Notes:

[1] 2003 asp 1.[back](#)

[2] 1992 c.14.[back](#)

[3] S.I. 1997/728.[back](#)

[4] 2003 (c.1); for the meaning of benefits code, see section 63.[back](#)

[5] {d1}{t1}S.I. 1997/728. In paragraph 4, an empty dwelling is specified as being{d2}{t2}A dwelling - {d3}{n3}(a){t3}which is both unoccupied and unfurnished; and{d3}{n3}(b){t3}in respect of which less than 6 months have elapsed since the end of the last period of 6 weeks or more throughout which it was continually occupied or furnished."[back](#)

ISBN 0 11 069412 0

[Other Scottish Statutory Instruments](#) | [UK Statutory Instruments](#) | [Home](#) | [Her Majesty's Stationery Office](#)

We welcome your comments on this site

© Crown copyright 2005

*Prepared 4 February
2005*

Agenda item:**Report title: Council Tax on Second Homes and Long Term
Empty Properties
Consideration of Discretionary Charging Policy**

In accordance with the Council's Standing Orders, the contents of this report have been noted by the appropriate Executive Member.

Without prejudice to the integrity of the report, and the recommendations contained within it, the Executive Member expresses his/her own views as follows:

Signed: *Mauveen M. Chid* Date: 28/11/06

For information – Standing Order 57(1) states:

"Heads of Department will prepare reports, with professional advice and recommendations, on matters requiring decisions by the Executive:

- a report seeking decisions on matters of corporate strategy, corporate policy and corporate projects will be submitted direct to the Executive
- a report seeking decisions on matters relating to the special responsibilities allocated to an individual member of the Executive will be submitted, in the first instance, to that member. The member will add his or her own recommendation to it before submission to the Executive. Where the Executive member disagrees with the advice and the recommendation of the officers, the Executive member will also state his or her reasons."