Local Government and Communities Directorate
Local Government Division

E- mail: Council_Tax_Empty_Homes@scotland.gsi.gov.uk

The Scottish Government
Riaghaltas na h-Alba

LEGACY 2014
XX COMMONWEALTH GAMES
SCOTLAND

Directors of Finance of Scottish Local Authorities

21 May 2013

Dear Sir/Madam

GUIDANCE ON LOCAL AUTHORITY DISCRETION TO:

- **REDUCE COUNCIL TAX DISCOUNT ON SECOND AND LONG-TERM UNOCCUPIED HOMES; AND**
- **APPLY AN INCREASE TO LONG-TERM UNOCCUPIED HOMES**

1. Introduction

This note provides guidance for Local Authorities to cover the new powers enabled by the Local Government Finance (Unoccupied Properties etc.) (Scotland) Act, and related regulations:

- The Council Tax (Variation for Unoccupied Dwellings) (Scotland) Regulations 2013
- The Council Tax (Administration and Enforcement) (Scotland) Amendment Regulations 2012
- The Council Tax (Exempt Dwellings) (Scotland) Amendment Order 2012

The provisions can be applied from 1 April 2013.

This guidance note replaces that issued on 5 February 2009 by the Scottish Government on local authority discretion to reduce council tax discount on second homes and long-term empty properties.

It will be kept under review. Comments, questions and suggestions can be provided by email at Council_Tax_Empty_Homes@scotland.gsi.gov.uk.

References in this guidance to “Council Tax Increase” relate to the new provision to allow a maximum 100% additional council tax increase on certain long-term empty homes.

2. Background

The legislative changes provide local authorities with a discretionary power to remove the empty property discount or set a council tax increase of 100% on certain properties which have been empty for 1 year or more. Previously, local authorities were only able to vary the level of discounts, with a minimum discount of 10% for empty and second homes.

It is important to note that the provision only applies to long-term unoccupied properties. Properties which are second homes will continue to be entitled to a discount which authorities may set at between 10% and 50%.

This greater flexibility is intended as an additional tool to help local authorities encourage owners to bring empty properties back into use, both to increase the supply of housing for those who need homes and to reduce the blight on communities caused by houses being left empty and allowed to fall into disrepair. The council tax increase could be used as part of a wider approach to tackle long-term empty homes including support and guidance to owners and provision of loans or grants if available.

For eligible unoccupied properties, local authorities can set a discount of between 50% and 0% or an increase of up to 100%. The provision also gives local authorities discretion to vary the council tax charged for different circumstances, and to apply discounts or increases in all or part of their areas. This can be done by using either postcode boundaries, council wards or datazones. This could include charging different rates for a variety of different reasons as a local authority considers appropriate, and is intended to recognise that different pressures and factors will affect different areas.

2.1. Relationship with sums passed to Scottish Water

The additional income from reducing the council tax discount or applying an increased level of council tax payable remains council tax income, and as such should be factored into the ABCD formula in full. So for the purposes of calculating the amount of money to be passed to Scottish Water, in the “ABCD” formula, A will be the total amount paid to a local authority as council tax or water services charges including the amount paid as a consequence of properties that are subject to a reduced discount or council tax increase, and D will be the total amount of council tax payable in that particular year including any amounts that are due as a consequence of the reduced discount or council tax increase.

2.2. Strategic Planning

When determining policy in relation to discounts or increases, local authorities may refer to their Housing Need and Demand Assessments and their Local Housing Strategy (LHS) to determine the effect of second home ownership and long-term empty properties in their areas. This will allow them to decide whether increased levels of council tax would help to address any problems arising from these types of properties.

3. How the money can be used

Council tax income generated from second and unoccupied homes falls into 2 categories:

- Existing powers where income is received from reducing the discount anywhere between 50% and 10% for both long-term empty homes and second-homes. Income generated in this category will continue to be ring-fenced for affordable housing and should be used in accordance with section 4 of this guidance below.
- Any new income received from the new legislation through reducing the discount on long-term empty properties below the previous 10% limit or increasing council tax. This income is not ring-fenced and can be used as the local authority sees fit on housing or other priorities.

4. Housing projects to be funded or supported from reduced discounts

Income that is received under the previous flexibility of reducing long-term empty and second-homes discount between 50% and 10% will remain subject to existing arrangements.

This means that local authorities may continue to use this income themselves and have flexibility to disburse these funds to other organisations and individuals including RSLs. This income can be used by local authorities to support revenue and capital expenditure related to a range of affordable housing activity including (but not limited to):

- providing new-build affordable housing through Registered Social Landlords (RSLs) or new council house building
- funding of specified elements of water and sewerage infrastructure for new homes,
- Bringing empty properties back into affordable housing use – including topping up or establishing an Empty Homes Loan Fund;
- Land acquisition for affordable housing development;
- Purchasing off-the-shelf houses from private developers for affordable housing use – including the purchase of developers part-exchange properties.

Advice on a proposed project's suitability for funding can be sought from Council_Tax_Empty_Homes@scotland.gsi.gov.uk.

4.1. Use of income on existing Council or RSL houses

Scottish Government does not expect local authorities to use the income to pay for routine maintenance and refurbishment of existing social rented stock, including improvement made towards meeting the Scottish Housing Quality Standard (SHQS).
Both local authorities and RSLs, as responsible landlords, should have robust programmes in place to ensure that their stock is maintained and refurbished to a high standard expected by tenants.

The income could, however, be used towards a particularly innovative scheme involving existing stock. An example could be to fund a scheme which sought to improve the energy efficiency of homes significantly beyond the SHQS. Such a scheme would contribute toward climate change targets, reduce utility bills for tenants and potentially lift some tenants out of fuel poverty. Advice on a project's suitability can be sought from Scottish Government at Council_Tax_Empty_Homes@scotland.gsi.gov.uk.

4.2. Diligence in relation to potential projects

In making decisions on the funding of organisations and individuals, local authorities will clearly wish to assess the financial viability of projects and issues related to security of tenure and affordability.

Local Authorities may use the additional income to fund or support discrete projects or top up funding from other sources and will need to ensure that expenditure complies with European Commission State Aid rules.

A local authority may use this income to support prudential borrowing for new council house building and any of the housing activities listed above is permitted. This could mean a local authority taking on long term commitments that it will need to be able to service even if the additional income from reducing council tax discount disappears. It is for local authorities to administer this in line with the prudential code for capital finance.

4.3. Strategic Planning

Local Authorities should set out future plans for expenditure of the income in their Strategic Housing Investment Plans, which reflect the key objectives set out in their Local Housing Strategies.

5. Council Tax Increase

5.1. Unoccupied dwellings

The council tax increase can be applied to homes which have been unoccupied for 1 year or more. An unoccupied dwelling is any dwelling which is not someone's sole or main residence, but does not fall within the definition of a second home as shown below. An unoccupied dwelling may be either furnished or unfurnished but is either not lived in at all or is lived in for less than 25 days in any twelve month period.

5.2. Second Homes

The council tax increase will not apply to second-homes. In general, second-homes are maintained well and are occupied for periods of the year when their owners contribute to the local economy.

Under the new legislation, a second home is defined as being furnished and lived in for at least 25 days in any twelve month period, but not as someone's sole or main residence. This aims to ensure that only homes which are likely to be reasonably well maintained and which the owner is likely to visit regularly (and therefore make some contribution to the local economy) can qualify as a second home. Local authorities will not be able to charge a council tax increase for second homes but will, as was previously the case, have flexibility to set a discount level of between 10-50%.

It will be for owners to prove that their property is a genuine second home and local authorities will need to decide what evidence that they require to see. Decisions may include evidence in the form of utility bills, TV license and anything else that a local authority deems appropriate. Visiting officers may be utilised to follow up on individual properties. It is important to note that local authorities are free to use income generated by any increase or further reduced discount (from the 10% level) to fund enforcement and identification work. An empty homes officer (or other officers who maintain empty homes databases), for example, can assist in monitoring the distinction between long-term empty homes and second homes.

6. Exclusions from the increase

6.1. Existing Mandatory Discounts and Exemptions

The new flexibility will not affect an owner's eligibility to claim council tax exemptions under the Council Tax (Exempt Dwellings) (Scotland) Order 1997 ('the 1997 Order'). There are a number of exemptions in place for unoccupied dwellings, such as where the owner is:

- in long-term residential care,
- in hospital long term,
- in prison,
- where a dwelling has been repossessed by a lender,
- where a dwelling is being structurally repaired (for up to one year after it becomes unoccupied)
- where the owner has died (in which case the exemption is for up to six months after the owner's estate has settled).

As long as an owner is eligible for an exemption, they would not be charged any council tax, regardless of how long the dwelling has been unoccupied. However, where a dwelling becomes no longer eligible for the exemption, but remains unoccupied, it will become eligible for the council tax increase after the property has been empty for 1 year.

6.2. Homes actively being marketed for sale or rent

Homes being marketed for sale or let will be exempt from the council tax increase until they have been unoccupied for 2 years or more, these homes will remain liable for council tax and will attract a discount of between 50% and 10%. New build properties can also qualify for this exemption from the increase. This exemption is conditional on the home being genuinely marketed for sale or let at a realistic market price. In considering whether a home is genuinely being marketed for sale or let, local authorities can have regard to any unduly restrictive conditions being attached to the sale or let as well as the sales price/ rent level. In coming to their decision on whether or not the property is being genuinely marketed for sale or let, local authorities can request and take into account evidence including:

6.2.1. Home Report

If the property is being marketed for sale, does it have a valid home report? Most houses for sale in Scotland require a home report which also includes a valuation of the property. If the home report valuation is significantly below the advertised price, it may be that the owner is not making a genuine attempt to sell their property.

6.2.2. Marketing

Is the owner's marketing efforts providing adequate exposure to the market? Is the property being actively marketed by an agent and/or property sale/letting website?

6.3. Additional flexibility to vary discount/increase

The new legislation also gives local authorities discretion to vary the council tax charged for different cases. This could include charging different rates according to, for example, the area the dwelling is in; the length of time that the dwelling has been unoccupied and other circumstances as a local authority considers appropriate.

This additional flexibility is included so that local authorities can modify provision by

- not charging a council tax increase,
- charging a reduced level of increase,
- offering a higher level of discount.

This allows a local authority to avoid charging a council tax increase, or to charge a lower level of council tax than for other unoccupied dwellings, where it considers there are reasons why the owner is justified in leaving the dwelling unoccupied and/or reasons why the dwelling could not be lived in, sold or let.

For all cases, the maximum discount of 50% and a maximum increase of 100% as set in the legislation must not be exceeded. Under the legislation, local authorities are prevented from using their discretion to vary council tax charges in a way that gives more favourable treatment to unoccupied social rented dwellings just because they are owned by a social landlord. It is important that all owners take steps to bring unoccupied homes back into use as soon as possible, rather than leaving them empty.

7. Treatment of Additional Income

7.1. Effect on central Government grant

The council tax base is used in calculating local authorities' grant from the Scottish Government. As second homes and long-term empty properties are counted as half a dwelling in the calculation of the council tax base, regardless of what a local authority does with setting a discount or increase the level of central government grant is not affected as a result of local authorities reducing the level of discount or charging an increase.

7.2. Accounting for income received through reduced discounts

Local Authorities are required to ensure that a sum equal to the additional income, collected as a result of reducing discount between 50% and 10% for second-homes and long-term empty properties is used in accordance with the broad outline as set out under section 4 above. The funds can either be transferred to an RSL, another organisation, individual or used by the local authority itself. In calculating the amount to be spent, authorities are required to take into account all income received as a result of reducing the level of discount, irrespective of the year to which the income relates.

Where resources are being allocated to RSLs, they will need a firm commitment regarding funding levels due to the fact that once project costs are legally committed, they cannot be withdrawn. It may be difficult for local authorities to be certain of the amounts to be allocated at the beginning of any financial year. This being the case, local authorities can wait until the following financial year, when actual funding levels are known, before allocating this funding to RSLs, in partnership with their housing colleagues and the Scottish Government Housing Supply Division. The deadline for finalising the levels of funding each local authority will provide from previous years is no later than 30 June after the end of the preceding financial year.

Nothing in the above precludes local authorities from allocating funding to relevant projects at any point during the course of the year within which it is being collected.

8. Accounting

Accounting for reduced discount should be on an income and expenditure basis. Any payments to RSLs or other organisations/individuals should be treated as General Fund expenditure in accordance with proper accounting practice.

A sum equal to the additional income collected but not yet spent by the local authority or paid to RSLs or other organisations/individuals should form part of the annual accounts. Any sum not represented by a year-end creditor or provision will be required to be held as an earmarked reserve in the General Fund. All accounting entries relating to the additional income collected but not yet spent by the local authority or paid to RSLs or other organisations/individuals should be in accordance with proper accounting practice.

Where reduced discount money has not been spent, it should accrue interest from the start of the financial year following the year of collection. Interest should accrue at the same rate applied to other savings held by local authorities.

9. Monitoring

9.1. Broad Policy

Each local authority will be required to submit a CTAS return to Scottish Government in March each year. CTAS will include details of the local authorities policy in relation to the discounts (second-homes and/or long-term empty) and increases (long-term empty only) for the forthcoming year.

9.2. Notification of Income

Local Authorities will be required to provide details of the additional income collected on an annual basis to the Scottish Government through the March CTRR return. Where this resource is being allocated to RSLs or other organisations/individuals, this will allow the project planning and housing approval processes to be agreed as early as possible between local authorities, the Scottish Government Housing Supply Division and other strategic partners.

The income collected from reducing the long-term empty homes discount below 10% or charging an increase is not ring fenced for housing and can be used at the discretion of local authorities. As this income is treated separately from that received by reducing the discount between 50% and 10%, it will be recorded in a separate column on the March CTRR return.

Each authority will be required to provide, on the March CTRR return, details of the amount billed and amount received through the additional revenue generated by reducing the discount and applying the council tax increase; and, on an amended Local Financial Return, the amount designated either for local authority expenditure and/or transfer to RSLs, and other organisations or individuals.

9.3. Numbers of Properties

The CTAXBASE return will be amended to capture the number of properties being charged an increase and the number of properties being provided with exemption to the increase for property being marketed for sale or let. As stated above, homes in receipt of a reduced discount, or a council tax increase will still be counted as half a dwelling for Revenue Support Grant calculation purposes.

10. Enforcement

By the end of August each financial year, the Scottish Government will compare reported expenditure against reported additional income which local authorities expect to generate from reducing the discount between 50% and 10%. If the two amounts do not match, an explanation will be sought from the local authority concerned. If, following this explanation, the Scottish Government considers the money has not been directed, or will not be in the future, towards the housing activities set out under section 4 then this will be reflected within that local authority's grant via a re-determination within the following financial year's Local Government Finance Order, which sets out grant levels for local authorities. The money taken from the grant will then be provided to the Scottish Government Housing Supply Division for housing projects with the area of the local authority concerned.

11. Publicity

Local Authorities should consider how they will publicise their policy in relation to the council tax variation for second-homes and long-term empty, prior to the financial year to which the policy relates. One way of doing this would be to announce the policy alongside the announcement regarding council tax levels, however this is left at the discretion of each local authority.

12. Enquiries

If you have any questions or comments regarding this guidance, please e-mail Council_Tax_Empty_Homes@scotland.gsi.gov.uk.

Yours faithfully,

Ross Lindsay