

Report to: Cabinet



Date of Meeting 4 January 2023

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Council Tax Charges for Second homes and Empty properties

Report summary:

- 1 The report sets out the changes that the Levelling Up and Regeneration Bill make to the Council Tax legislation and provides recommendations relating to changes that can be made to the level of charge paid for properties that are not lived in (second homes and empty properties).
- 2 These changes are subject to the Bill becoming law and the report will detail the steps we will need to take once this happens.

Is the proposed decision in accordance with:

Budget Yes No

Policy Framework Yes No

Recommendation:

That Cabinet recommend to Council to approve a resolution to implement the following upon the legislative provisions coming into force:

- (a) The application of a premium of 100% for all dwellings which are unoccupied and substantially unfurnished (empty dwellings) after a period of one year rather than the current 2 with effect from 1st April 2024;
- (b) The application of a premium of 100% for all dwellings which are unoccupied but substantially furnished (second homes) with effect from 1st April 2024; and
- (c) That the Assistant Director for Revenues, Benefits, Corporate Customer Access is given delegated powers to implement the policy in line with the Council's requirements and having regard to any guidance given by the Secretary of State.

Reason for recommendation:

The proposed change in legislation is primarily designed to encourage taxpayers to use premises as their main residence or allow others to use it. It is hoped that this change will allow more empty dwellings and unoccupied dwellings to be brought back into use for the local community.

The changes will provide additional funding to the collection fund which will be shared between the Council, and other precepting authorities in line with their share of the Council Tax.

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Portfolio(s) (check which apply):

- Climate Action and Emergency Response
- Coast, Country and Environment
- Council and Corporate Co-ordination
- Democracy, Transparency and Communications

- Economy and Assets
- Finance
- Strategic Planning
- Sustainable Homes and Communities
- Tourism, Sports, Leisure and Culture

Equalities impact Low Impact

Climate change Low Impact

Risk: Low Risk;

Links to background information <https://publications.parliament.uk/pa/bills/cbill/58-03/0169/220169.pdf>

Link to [Council Plan](#)

Priorities (check which apply)

- Better homes and communities for all
- A greener East Devon
- A resilient economy

1.0 Background

1.1 A large part of the Council Tax legislation is mandatory on all billing authorities within England. Discounts such as single person discounts, disregards and exemption are set by statute with no discretion allowed.

1.2 However, there are an increasing number of areas where each Council may determine the type and level of charge to be made (within prescribed parameters). The Council has previously adopted the maximum level of premiums on empty properties and also on second homes.

1.3 The main discretionary areas are as follows:

- Second homes (premises which are no-one's sole or main residence but are furnished);
- Unoccupied and substantially unfurnished premises;
- Unoccupied and substantially unfurnished premises which require or are undergoing structural repairs; and
- Premiums where premises have been unoccupied and substantially unfurnished for a period of 2 years or more.

Details of the current situation in relation to these discretionary areas is shown in appendix 1.

1.7 This report seeks approval from Members to agree to the proposals in relation to changes to second homes and empty properties set out within the Levelling Up and Regeneration Bill, subject to the provisions becoming law.

1.8 The Levelling Up and Regeneration Bill allows for changes to the level of charge paid in two situations:

- (a) It allows Billing Authorities to bring forward the period from two years to one year when an unoccupied and substantially unfurnished dwelling (empty dwelling) can be charged a premium of 100% (Clause 72 (1) (b) of the Bill)
- (b) To enable the immediate charging of a 100% premium (Clause 72 (2)) for any dwellings which are:
 - No one's sole or main residence; and
 - Substantially furnished.

- 1.9 Government are introducing this legislation in order to help local authorities tackle the housing shortages by encouraging them to be brought back into use and to also address inconsistencies with the current legislation.
- 1.10 The current premiums for leaving a property empty can be avoided by furnishing the property. These changes would address the inconsistencies in the current legislation where an empty homes premium can be avoided by the taxpayer furnishing the property which means it becomes a second home which currently has a maximum charge of 100%.
- 1.11 Members have previously raised concerns over the number of second homes in the District and the negative impact this is having on the supply of homes available to meet local housing needs and the potential harm these can cause to local communities.

2.0 Changes to empty dwelling premiums

- 2.1 The Bill will permit billing authorities in England to impose an empty dwellings premium after one year instead of two. This follows a commitment made by Government in the Levelling up White Paper.
- 2.2 The Bill also provides that billing authorities must have regard to any guidance issued by the Secretary of State when deciding whether to implement an empty dwellings premium and it is expected that the current guidance drafted by Government in 2013 will be updated. This change will come into effect from the 2024/25 financial year. The Council is requested to approve delegated powers to the Assistant Director for Revenues, Benefits and Corporate Customer Access to implement the policy having regard to the guidance when published.

3.0 Introduction of premiums for second homes

- 3.1 Currently the law only permits for Billing Authorities to impose a premium on empty properties (unoccupied and substantially unfurnished) and does not cover properties that are no one's sole or main residence but are furnished, commonly referred to as second homes.
- 3.2 The Bill will permit billing authorities to apply a premium of a 100% to properties that have no resident and are substantially furnished. This means that the Council tax charge would be the standard 100% charge plus a premium of 100% making a total charge of 200%.
- 3.3 There is no requirement for a property to have been used as a second home for a fixed period of time before the premium can apply.
- 3.4 The Bill also specifies that the first decision to impose this class of premium must be taken at least 12 months before the financial year to which it would apply. In effect this means that the earliest the premium can apply is from 2024/25 assuming the decision is approved by Full Council and the Bill receives Royal Assent before 31 March 2023.
- 3.5 The Secretary of State has the power to prescribe certain classes of property that will not be subject to an empty dwelling premium. Currently these are homes that are empty due to the occupant living in armed forces accommodation for job-related purposes, or to annexes being used as part of a main property. It is expected that when regulations are laid, similar exceptions will apply to second homes premiums.

4.0 Premiums – generally

- 4.1 The Council, is required to determine the level of any discounts or premiums which will apply in its area and a decision is required to be made by full Council under Section 11A and 11B of the Local Government Finance Act 1992.
- 4.2 Once determined, the resolution of the Council will need to be published in at least one local newspaper(s) within 21 days of the decision.
- 4.3 Should the Council at any time wish to vary or revoke a decision to impose any type of premium this can be done at any time before the beginning of the financial year to which it would apply.

5.0 Caseload

5.1 Figures taken from the CTB1 as at 03.10.2022 (annual government return)

Premium's currently charged on Empty properties (residents already paying this would not see a change):

Premium	Band A	Band B	Band C	Band D	Band E	Band F	Band G	Band H	Total
100% More than 2 years but less than 5 years	13	11	10	11	7	5	1	0	58
200% More than 5 years but less than 10 years	5	1	2	2	1	1	1	0	13
300% More than 10 years	1	1	2	0	1	0	0	0	5
Total	19	13	14	13	9	6	2	0	76

5.2 Properties currently empty between 1 year and less than 2 years would now pay the 100% premium charge on top:

	Band A	Band B	Band C	Band D	Band E	Band F	Band G	Band H	Total
Empty properties	33	30	26	26	16	13	10	0	154

5.3 Second homes (no one's sole or main residence and furnished) currently paying a full charge and would be subject to the 100% premium charge on top:

	Band A	Band B	Band C	Band D	Band E	Band F	Band G	Band H	Total
Second homes (Class A & B)	329	448	641	584	344	177	147	17	2,687

6.0 Potential additional Council Tax Income

6.1 If agreed a 100% premium would apply to the 2,687 second homes. Assuming these numbers remain and based on this year's average Council Tax charge this has the potential to generate circa £5.7m additional Council Tax. As Council tax is shared across all preceptors, East Devon would retain 7% equating to approximately £399K. The majority of this additional revenue would go to Devon County Council who retains 73%

6.2 Changing when the empty homes premium applies from 2 years to one year would impact those empty properties shown in paragraph 2.2. Again assuming that these numbers remain and based on this year's average Council Tax charge this has the potential to generate circa £317K additional Council Tax. East Devon retains circa £22K.

7.0 Requirements

7.1 The following are conditions that will need to be met once the provisions becomes law in order to apply these recommendations from 1 April 2024:

- A resolution is to be made by full Council by 31 March 2023.
- One year's notice will need to be given meaning that the changes to the charge would start from 01.04.2024
- A notice of the decision will need to be published within 21 days of it being taken in at least one local paper
- Should the council wish to vary or revoke a decision for any type of premium this would need to be done in the year prior to the change and cannot be revised in year
- We would need to comply with any exceptions that the Secretary of State prescribes. Currently these are homes that are empty due to the occupant living in armed forces accommodation for job-related purposes, or to annexes being used as part of a main property.

8.0 Other considerations - Avoidance

- 8.1 Members have previously raised concerns over the increasing number of properties being used as holiday lets (Airbnb, etc) and whether the application of a second home premium might encourage Council Tax "avoidance", for instance transferring the property to business rates.
- 8.2 Currently, properties that are available to let for more than 20 weeks (140) days can be rated as a business by the Valuation Office Agency (VOA). Being business rated can be financially advantageous where they would be entitled to claim up to 100% Small Business Rate Relief (subject to meeting eligibility rules) which mean they don't pay anything. From April 2023 the government are introducing new rules in relation to the rating of holiday lets which will be managed by the VOA. The new eligibility rules mean that in order to be business rated the property must be (all of the following):
- available for letting commercially (with a view to making a profit) for short periods. These short periods must total 140 days or more in the previous, and in the current year.
 - Actually let commercially for 70 days or more in the previous 12 months.
- 8.2 Although the new eligibility rules come into force on 1 April 2023, for assessment purposes the VOA will look at letting information from the previous operating year.
- 8.3 This means that unless the business can meet these new eligibility rules then they will cease to remain business rated and be subject to Council Tax.
- 8.4 Another concern that has been mooted is that a person registers as living at the property in order to avoid the second homes charge and at the same time claim single person discount. For example a couple who own a second home may claim that they are living separately and are single occupants of each respective property. We will be reviewing our procedures and updating our online forms to make it clear that this isn't allowed as liability is determined on sole and main residence. We will also be reviewing the wording of our declarations regarding providing false information. The Council also has existing mechanisms in place for checking the circumstances giving rise to any discount or relief claimed. In addition, we can also impose financial penalties where incorrect information has been provided. Also, if false information is provided then the council can consider taking action under the Fraud Act.

Financial implications:

The financial details are outlined in the report. This additional income would be extremely welcomed to put towards this Council's future budget gap and that of the other preceptors, particularly Devon County Council.

Legal implications:

The recommendations set out within this report are subject to the Levelling Up and Regeneration Bill receiving Royal Assent. There will need to be a review of the legal position once it becomes law in conjunction with any relevant guidance issued by the Secretary of State to ensure the resolution remains appropriate.

Appendix 1

The Council currently has discretionary powers relating to the following situations:

- (a) Second homes (premises which are no-one's sole or main residence but are furnished);
- (b) Unoccupied and substantially unfurnished premises;
- (c) Unoccupied and substantially unfurnished premises which require or are undergoing structural repairs;
- (d) Premiums where premises have been unoccupied and substantially unfurnished for a period of 2 years or more.
- (e) The ability to award a discretionary discount based upon the situation the resident finds them self or something that has affected the property (such as flooding)

The current situation:

	Current policy
Second Homes No one's sole or main residence and which is substantially furnished 28-day planning restriction (Class A) Or no planning restriction (Class B)	0% discount
Class C Unoccupied dwelling with is substantially unfurnished	100% discount for 3 months only after which a full charge applies
Class D structural repairs (unoccupied and substantially unfurnished) (Maximum 12 months)	50% discount for 12 months (or up to six months after the completion of works, to the maximum twelve month period)
Premium - Dwellings which are unoccupied and substantially unfurnished (Empty dwellings premium) After 2 years up to 5 years of becoming empty.	100% premium
Premium - Dwellings which are unoccupied and substantially unfurnished (Empty dwellings Premium) Dwellings empty between 5 years and up to 10 years	200% premium
Premium - Dwellings which are unoccupied and substantially unfurnished (Empty dwellings Premium) Dwellings empty for 10 years or more	300% premium

Where a premium applies it is charged in addition to the standard 100% charge so for example if a 100% premium applies a 200% charge will be due.