

Local Government, Housing and Planning Committee

13th Meeting, 2021 (Session 6)

Tuesday 26 April 2022

SSI cover note for: SSI 2022/124: The Council Tax (Exempt Dwellings) (Scotland) Amendment Order 2022

SSI 2022/124

Title of Instrument: [The Council Tax \(Exempt Dwellings\) \(Scotland\) Amendment Order 2022](#)

Type of Instrument: Negative

Laid Date: 31 March 2022

Circulated to Members: 13 April 2022

Meeting Date: 26 April 2022

Minister to attend meeting: No

Motion for annulment lodged: No

Drawn to the Parliament's attention by the Delegated Powers and Law Reform Committee? Yes

Reporting deadline: 23 May 2022

Recommendation

1. The Committee is invited to consider any issues which it wishes to raise on this instrument which is subject to the negative procedure. Further information on the negative procedure can be found at paragraphs 9 and 10 below.

Background

2. This instrument amends the Council Tax (Exempt Dwellings) (Scotland) Order 1997. In this Policy Note the term ‘Ukrainian refugees’ means persons who were residing in Ukraine immediately before 1 January, left Ukraine in connection with the Russian invasion which took place on 24 February 2022, and have leave to enter or remain in the United Kingdom granted under or outside the Immigration Rules, or who have a right of abode in the United Kingdom. (Those “residing” in Ukraine immediately before 1 January 2022 may include those who consider Ukraine to be their home, but who were temporarily absent immediately before 1 January 2022.)

3. An electronic copy of the instrument is available at: <https://www.legislation.gov.uk/ssi/2022/124/contents/made> .

4. Copies of the Scottish Government’s Explanatory and Policy Notes, along with a letter to the Presiding Officer explaining why the instrument was not laid at least 28 days before it came into force, are included in **Annexe A**.

Purpose

5. The purpose of these Regulations is to exempt from liability council tax dwellings which are used to provide self-contained accommodation for certain persons coming to the UK from Ukraine. These are persons who were residing in Ukraine immediately before 1 January 2022, left in connection with the Russian invasion, and who have leave to enter or remain in the UK under or outside the immigration rules, or who have a right of abode in the UK.

Delegated Powers and Law Reform Committee consideration

6. At its meeting on 19 April 2022, the Delegated Powers and Law Reform Committee considered the instrument and determined that it wished to draw the attention of the Parliament to the instrument under reporting ground (j) for failure to lay the instrument in accordance with the laying requirements in section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010.

7. However, the Delegated Powers and Law Reform Committee was content with the explanations provided by the Scottish Government for failure to comply with the laying requirements as set out in the letter to the Presiding Officer which is included in the annexe to this paper.

8. The Delegated Powers and Law Reform Committee’s Report on the instrument can be accessed via the following link: <https://sp-bpr-en-prod-cdnep.azureedge.net/published/DPLR/2022/4/21/6268e8d7-aed8-445a-8c23-b64c1473771e/DPLRS062022R24.pdf>

Procedure for Negative Instruments

9. 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 or not 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.

10. 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 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

This Order amends the Council Tax (Exempt Dwellings) (Scotland) Order 1997 (“the 1997 Order”), which lists those classes of dwellings which are exempt from council tax in Scotland. The Order inserts a new paragraph 26 into schedule 1. The effect is that no council tax is payable in respect of dwellings used as the sole or main residence of certain persons who left Ukraine in connection with the Russian invasion which took place on 24 February 2022 and who have either been granted leave to enter or remain in the United Kingdom or have a right of abode in the United Kingdom. The exemption applies only where there is nobody living in the property who does not fall within this category or within paragraph 10(a) of schedule 1 of the 1997 Order

As per purpose above and including:

Scottish Government Policy Note

The above instrument is made in exercise of the powers conferred by section 72(6) and (7) of the Local Government Finance Act 1992. It is subject to the negative procedure.

The purpose of these Regulations is to exempt from liability council tax dwellings which are used to provide self-contained accommodation for certain persons coming to the UK from Ukraine. These are persons who were residing in Ukraine immediately before 1 January 2022, left in connection with the Russian invasion, and who have leave to enter or remain in the UK under or outside the immigration rules, or who have a right of abode in the UK.

Policy Objectives

2. This instrument amends the Council Tax (Exempt Dwellings) (Scotland) Order 1997. In this Policy Note the term ‘Ukrainian refugees’ means persons who were residing in Ukraine immediately before 1 January, left Ukraine in connection with the Russian invasion which took place on 24 February 2022, and have leave to enter or remain in the United Kingdom granted under or outside the Immigration Rules, or who have a right of abode in the United Kingdom. (Those “residing” in Ukraine immediately before 1 January 2022 may include those who consider Ukraine to be their home, but who were temporarily absent immediately before 1 January 2022.)

3. Under the UK Government’s Homes for Ukraine scheme property owners can offer to house persons coming to the UK under that scheme in a property that they own but do not live in (such as a second home or a long-term empty property). Under the council tax system such persons living in a property would ordinarily become liable for paying the council tax on that property. The policy intention is for that not to be the case, and for persons coming under the Homes for Ukraine scheme not to be liable for council tax. The same will also apply to Ukrainian refugees coming otherwise than under the Homes for Ukraine scheme.

4. This instrument therefore amends the Council Tax (Exempt Dwellings) (Scotland) Order 1997, so that a property that is used exclusively as “the sole or main residence” of persons coming from Ukraine and falling within one of these descriptions is exempt from council tax. It also means that properties that have other exempt persons, such as students, and in which a Ukrainian refugee is housed, will also continue to be exempt. A property that houses Ukrainian refugees and other persons who are not exempt will not be exempt from council tax.

Consultation

5. No formal consultation was required to be carried out in relation to these Regulations.

Impact Assessments and Financial Effects

6. Latest available figures (September 2021) show there are 23,890 second homes (67% of them in bands A-D), and 43,766 long term empty properties (84% of them in bands A-D), in Scotland. We do not know how many of these properties could be, or will be, used as accommodation for Ukrainian refugees.

7. The policy decision implemented by this instrument therefore has the potential to reduce the council tax income of local authorities, but it is not possible to robustly

determine the exact level of reduced council tax income it will cause due to the large number of factors that are unknown at this stage. However to provide an illustrative figure if 1,000 council tax properties which are currently second homes or empty properties were to be occupied by eligible Ukrainian refugees for a period of 1 year, then based on available data it is probable that the total cost in terms of council tax income foregone across Scotland would be between £650,000 and £950,000. This estimate is scalable to a certain degree with respect to the actual number of properties occupied by Ukrainian refugees, but there are a number of factors that will determine the actual level of council tax income foregone. These include factors such as the local authority area of the properties concerned, the council tax band of such properties, and what existing discounts and exemptions are in place for such properties (which range from 10% to 50%).

8. The potentially lower level of income from council tax due to such properties accommodating Ukrainian refugees has been considered by COSLA. As they view the income foregone from this change to be minimal COSLA is content with the Scottish Government's approach.

Letter to the Presiding Officer

Dear Presiding Officer

The Council Tax (Exempt Dwellings) (Scotland) Amendment Order 2022

The Council Tax Reduction and Council Tax (Discounts) (Miscellaneous Amendment) (Scotland) Regulations 2022

The Council Tax (Exempt Dwellings) (Scotland) Amendment Order 2022, SSI 2022/124, and the Council Tax Reduction and Council Tax (Discounts) (Miscellaneous Amendment) (Scotland) Regulations 2022, SSI 2022/125, were made by the Scottish Ministers under section 72(6) and (7) of the Local Government Finance Act 1992 in the case of the Order, and sections 80 and 113(1) and (2), and paragraph 11 of schedule 1 and paragraph 1 of schedule 2 of the Local Government Finance Act 1992 in the case of the Regulations, on 31 March 2022. Both of these instruments are subject to negative procedure. The Regulations and Order are being laid before the Scottish Parliament today, 31 March 2021 and come into force on 1 April 2022.

Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 sets out that a negative SSI must be laid before the Scottish Parliament at least 28 days before the instrument comes into force. On this occasion, this has not been complied with and to meet the requirements of section 31(3) that Act, this letter explains why.

On the 14 March 2022 the UK Government launched its Homes for Ukraine scheme, under which sponsors can accommodate those who left Ukraine in connection with the Russian invasion which began on 24 February 2022. Under the scheme members of the public can accommodate Ukrainian refugees in their property (or properties), and receive an optional 'thank you' payment of £350 a month.

The nature of the scheme means it has the potential to increase the level of council tax liability of those who accommodate Ukrainian refugees. It was not until the scheme was launched that the Scottish Government was able to fully assess the nature of those impacts and decide how best to address them.

Given the urgent nature of the need to change the law on this occasion, and the short time frame from when the Homes for Ukraine scheme was launched and the beginning of the 2022-23 council tax year, it has not been possible to meet the 28 day requirement on this occasion.

I am copying this letter to Ariane Burgess, Convener of the Local Government, Housing and Planning Committee and Stuart McMillan, Convener of the Delegated Powers and Law Reform Committee.

Ben Haynes