

Local Government, Housing and Planning Committee

25th Meeting, 2022 (Session 6)

Tuesday, 25 October 2022

SSI cover note for: 2022/272 Council Tax (Exempt Dwellings) (Scotland) Amendment (No. 2) Order 2022

SSI 2022/272

Title of Instrument: 2022/272 Council Tax (Exempt Dwellings) (Scotland) Amendment (No. 2) Order 2022

Type of Instrument: Negative

Laid Date: 9 September 2022

Circulated to Members: 15 September 2022

Meeting Date: 25 October 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? No

Reporting deadline: 31 October 2022

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/2022/272/contents/made>
3. Copies of the Scottish Government’s Explanatory and Policy Notes are included in **Annexe A**.

Purpose

4. The Policy Note states that—

“This instrument amends the Council Tax (Exempt Dwellings) (Scotland) Order 1997 to exempt from liability to council tax dwellings which are used to provide self-contained accommodation to people who were living in Ukraine immediately before 1 January 2022, left in connection with the Russian invasion which took place on 24 February 2022, and, in accordance with section 3ZA of the Immigration Act 1971, do not require leave to enter or remain in the United Kingdom. This captures Irish citizens and ensures that they are treated in the same way as any person who meets the conditions in paragraph 26 of schedule 1 of the Exempt Dwellings (Scotland) Order 1997 by a different route.”

5. The Policy Note further states that “the policy intention is...for persons coming under the Homes for Ukraine scheme not to be liable for council tax. The same also applies to Ukrainian refugees coming otherwise than under the Homes for Ukraine scheme.”

Delegated Powers and Law Reform Committee consideration

6. At its meeting on 20 September 2022 the DPLR Committee considered the instrument and determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.¹

Procedure for Negative Instruments

7. 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.

¹ [Subordinate Legislation Considered by the Delegated Powers and Law Reform Committee on 20 September 2022 \(azureedge.net\)](#)

8. 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 dwelling which are exempt from council tax in Scotland. The classes of dwelling in respect of which no council tax is payable are extended to include dwellings used as the sole or main residence of any person who resided in Ukraine immediately before 1 January 2022, left Ukraine in connection with the Russian invasion which took place on 24 February 2022 and, under section 3ZA of the Immigration Act 1971, does not require leave to enter or remain in the United Kingdom. This captures Irish citizens. The exemption applies only where there is nobody living in the property who does not fall within this category or within another element of paragraph 26(a) of schedule 1 of the 1997 Order or within paragraph 10(a) of schedule 1 of the 1997 Order.

As per purpose above and including:

Scottish Government Policy Note

1. 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.

This instrument amends the Council Tax (Exempt Dwellings) (Scotland) Order 1997 to exempt from liability to council tax dwellings which are used to provide self-contained accommodation to people who were living in Ukraine immediately before 1 January 2022, left in connection with the Russian invasion which took place on 24 February 2022, and, in accordance with section 3ZA of the Immigration Act 1971, do not require leave to enter or remain in the United Kingdom. This captures Irish citizens and ensures that they are treated in the same way as any person who meets the conditions in paragraph 26 of schedule 1 of the Exempt Dwellings (Scotland) Order 1997 by a different route.

Policy Objectives

2. This instrument amends the Council Tax (Exempt Dwellings) (Scotland) Order 1997 to exempt from liability to council tax dwellings which are used to provide self-contained accommodation to people who were living in Ukraine immediately before 1 January 2022, left in connection with the Russian invasion which took place on 24 February 2022 and, in accordance with section 3ZA of the Immigration Act 1971, do not require leave to enter or remain in the United Kingdom. This captures Irish citizens and ensures that they are treated in the same way as any person who meets the conditions in paragraph 26 of schedule 1 of the Exempt Dwellings (Scotland) Order 1997 by a different route.

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 also applies 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 an Irish citizen falling within the description above is exempt from council tax. It also means that properties that have other exempt persons, such as students, and in which a Ukrainian refugee who is an Irish citizen 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. 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.