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Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Bill 2017-19

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Summary

The *Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Bill 2017-19* was introduced into the House of Commons on 28 March 2018. Second Reading took place on 23 April 2018, Committee Stage on 1 May 2018, and Report Stage and Third Reading on 15 May 2018. The Bill was introduced into the House of Lords on 16 May 2018 and is scheduled to have its Second Reading there on 4 June 2018.

The Bill was not amended during its passage through the House of Commons. The Bill and Explanatory Notes can be found on the Parliamentary website.

The Bill would give effect to two separate Government policy commitments made in the November 2017 Budget. These are:

- To reverse the effects on the business rates system of the Supreme Court decision *Woolway v Mazars*, commonly referred to as the 'staircase tax';
- To increase the level of 'empty homes premium' that local authorities can charge through the council tax system, from a total of 150% of the normal rate to a total of 200%.

Judgment in *Woolway v Mazars* was given in July 2015, and has affected business rates on a number of properties since the VOA began to change their practice as a result of the judgment in 2016. The Bill provides for the reversal of the effects of the case to have retrospective effect, back as far as 1 April 2010. A consultation on this commitment, and a draft Bill to implement it, were published in late December 2017. It was subject to extensive correspondence between the MHCLG and the chair of the Housing, Communities and Local Government Select Committee in February and March 2018.

The provisions regarding the empty homes premium did not form part of the consultation or draft Bill. These appeared in the Bill introduced to the House in March 2018.

The Bill extends to England and Wales, but it has territorial effect in England only.

1. Introduction

The *Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Bill 2017-19* was introduced into the House of Commons on 28 March 2018. Second Reading took place on 23 April 2018, Committee Stage on 1 May 2018, and Report Stage and Third Reading on 15 May 2018. The Bill was introduced into the House of Lords on 16 May 2018 and is scheduled to have its Second Reading there on 4 June 2018.

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- To reverse the effects on the business rates system of the Supreme Court decision *Woolway v Mazars*, commonly referred to as the 'staircase tax';
- To increase the level of 'empty homes premium' that local authorities can charge through the council tax system.

The first of these commitments was subject to a Government consultation, which ran from 29 December 2017 to 23 February 2018. The consultation also included a draft Bill, which was similar in content to clause 1 of the Bill as introduced. The Housing, Communities and Local Government Committee scrutinised the draft Bill via correspondence between the Chair, Clive Betts MP, and the Ministry of Housing, Communities and Local Government.

The second of these commitments has not been subject to consultation. It can be found in clause 2 of the Bill.

The Bill extends to England and Wales, but it has territorial effect in England only. The *Woolway vs Mazars* case took place in the England and Wales courts and thus has effect in both countries. If the Bill passes in its current form, the effects of the case will remain in place in Wales. Clause 3 provides the territorial extent and short title of the Bill.

2. Rating of contiguous properties in common occupation

2.1 Background: the *Mazars* case

A Supreme Court judgment, *Woolway v Mazars* (2015 UK SC53), given on 29 July 2015, caused a significant change in the valuation of properties for the purposes of business rates. The judgment had effect in England and Wales.

The case (henceforward *Mazars*) affected how valuation officers determine whether contiguous properties (i.e. those that are physically next to one another) should be valued as a single property or multiple properties for the purposes of business rates. In the judgment, Lord Neuberger stated that a self-contained property (i.e. a property all parts of which are physically accessible from all other parts, without having to go onto other property) is a single hereditament. Previously, where two units of property were contiguous and in the same occupation they would be assessed as one hereditament even where they could only be accessed via a common area.

Box 1: Business rates

Business rates are a tax on non-domestic property. The Valuation Office Agency (VOA) assigns a 'rateable value' to all non-domestic properties ('hereditaments') in England and Wales. This is normally based on the annual rental value of the property. The UK Government then sets a national 'multiplier' for England, and the Welsh Government sets one for Wales. The business rates due on a property are determined by multiplying the rateable value by the multiplier. Hence a property with a rateable value of £20,000, with a multiplier of 46.4p, will pay £9,280 (£20,000 * 46.4p). Further information on the business rates system is available in the Library briefing paper Business rates.

The effect of *Mazars* is to require that where a business occupies, for instance, more than one consecutive floor of an office block, and access between the consecutive floors is only via communal areas, the VOA must now treat those individual floors as separate properties for business rates purposes. They must have their own rateable value and rate bill. The same applies for contiguous offices that can only be accessed by a communal corridor.[1]

The *Mazars* judgment, and this Bill, affect **how the VOA values properties** in England. This is separate from the billing and collection of business rates, which remains the responsibility of 'billing authorities' (district and unitary councils).

[1] In the Mazars case itself, Mazars rented the second and sixth floors of an office block but not the intervening floors. They had sought to have the two floors valued as a single property. The Supreme Court rejected this but made broader comments on the treatment of contiguity: it is those comments that have caused subsequent changes in VOA practice.

2.2 Government policy

At the 2017 Budget, the Government committed to legislating to reverse the impact of *Mazars* in respect of contiguous properties in the same occupation:

> [The Government will legislate] retrospectively to address the so-called "staircase tax". Affected businesses will be able to ask the Valuation Office Agency (VOA) to recalculate valuations so that bills are based on previous practice backdated to April 2010 – including those who lost Small Business Rate Relief as a result of the Court judgement. The government will publish draft legislation shortly…[2]

The Government published a consultation, together with a draft Bill, on 29 December 2017.[3] This ran for eight weeks, as the Government sought to change the law as quickly as possible.[4] A summary of responses and Government response was published on 28 March 2018.[5] The Communities and Local Government Committee published the responses to the consultation on 18 April 2018.

The chair of the Communities and Local Government Committee corresponded with the Ministry of Housing, Communities and Local Government on the subject on 23 January, 19 February, 26 February, and 8 March 2018. The Committee published a short report on the Bill on 18 April 2018.

2.3 The legal background

Valuation officers must follow legislation and case law in considering how they arrive at a rateable value for a non-domestic property, and also how they determine the dividing line between one property and another. Their practice must take account of the effects of case law.

The existing definition of a non-domestic property, or 'hereditament', is in section 64 (1) of the *Local Government Finance Act 1988*: "A hereditament is anything which, by virtue of the definition of hereditament in section 115(1) of the 1967 Act, would have been a hereditament for the purposes of that Act". This refers back to the *General Rate Act 1967,* which states that a hereditament is "property which is or may become liable to a rate, being a unit of such property which is, or would fall to be, shown as a separate item in the valuation list".[6] These very general statutory definitions mean that case law plays a significant role in valuation practice.

Previous practice

The VOA's previous practice with regard to contiguous properties relied on the 1956 case *Gilbert v Hickinbottom*. This case found that two or more properties that are contiguous and occupied by the same

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2 HM Treasury, Budget, November 2017, p34
3 DCLG, *Business rates in multi-occupied properties*, 29 December 2017
4 See the letter from the Minister, Marcus Jones MP, to the chair of the Communities and Local Government Committee on 3 January 2018.
5 See MHCLG, Business rates in multi-occupied properties, 2018
6 *General Rate Act 1967* s 115 (1). Though the definition of a 'hereditament' cited here is still used, the 1967 Act is no longer extant.

occupant should, as a general rule, be assessed as one property. The *Mazars* case overturned this general rule, and this Bill seeks to reinstate it.

Gilbert also provided that two contiguous properties in the same occupation, but used for entirely different purposes, *could* be rated separately: for instance, a hotel and a railway. This point was not changed by the *Mazars* judgment, and it is preserved in new sub-section 3ZA (c) of the Bill. In the relevant part of the *Gilbert* judgment, Lord Denning said:

> ….where two or more properties are within the same curtilage or contiguous to one another, and are in the same occupation. …they are, as a general rule, to be treated for rating purposes as if they formed parts of a single hereditament. There are, however, exceptional cases where for some special reason they may be treated as two or more hereditaments. That may happen for instance, ... because one part is used for an entirely different purpose…[7]

Non-contiguous properties

The normal rule where properties are *not* contiguous – i.e. they are physically separate - is that they are separately assessed for business rates. A business that occupies two properties that are nearby one another but not contiguous will receive two rateable values and two rate bills. An exception to this rule is where the two properties in the same occupation have a sufficiently strong functional connection: this is known as the 'functional test'. An example is a golf course located on two sides of a road. The 'functional test' was not affected by the *Mazars* case. Lord Sumption said:

> …the primary test is…geographical. It is based on visual or cartographic unity ….Secondly, where in accordance with this principle two spaces are geographically distinct, a functional test may nevertheless enable them to be treated as a single hereditament, but only where the use of the one is necessary to the effectual enjoyment of the other. This last point may commonly be tested by asking whether the two sections could reasonably be let separately.[8]

This principle was reinforced in the 2017 case *Harding and Clements v Secretary of State*. In this case, a property used for training horses was located on either side of a public highway. The occupants successfully argued that their business could not be effectively run from either one or the other side of the road, and thus the property should be treated as a single unit.

The Government's consultation reiterated that its plans to legislate:

> are not intended to disturb established case law under which two non-contiguous properties separated by a public highway or common area (such as a common corridor) would still be assessed as a single hereditament where a sufficiently strong functional connection could be shown to exist between the two parts…[9]

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7 See Explanatory Notes, 2018, p2
8 Woolway v Mazars, 2015 UKSC 53, 29 July 2015, p9
9 DCLG, *Business rates in multi-occupied properties*, 29 December 2017, paragraph 31

2.4 The Bill

Clause 1 (1) of the Bill would insert four new sub-sections into section 64 of the *Local Government Finance Act 1988*.

New section 3ZA defines circumstances in which 'two or more hereditaments' should be treated for valuation purposes as a single hereditament. These circumstances are where they are occupied by the same 'person' (sub-section (a)); where they meet the 'contiguity condition' (sub-section (b)); and where they are not used for a 'wholly different' purpose from one another (sub-section (c)).

The term 'person' refers to the business occupying the properties. Sub-section (c) provides a statutory requirement for valuation officers to value two properties separately where they are used for different purposes.[10] This sub-section ensures that current practice in this regard is not disturbed by the Bill.

Unoccupied properties

The draft Bill published on 29 December 2017 did not apply to unoccupied properties. In the response to consultation, the Government stated:

> The Government …has amended the Bill to include unoccupied properties. The normal approach in the Valuation Office Agency was to not change how the property was assessed when it fell vacant. The new provisions in the Bill seek to reinstate this previous practice as much as is practicable.[11]

New section 3ZB defines circumstances in which two or more unoccupied properties should be valued as a single property. Sub-section (a) provides that such properties must be owned by the same person (business rates on unoccupied properties are payable by the owner). Sub-section (b) provides that, to be treated as a single hereditament, the properties must have ceased to be occupied on the same day and that they must have remained unoccupied since. Sub-section (c) provides that they must have previously been valued as a single hereditament under new section 3ZA. Sub-section (d) provides that the two (or more) hereditaments must meet the 'contiguity condition'.

This avoids the prospect of the VOA being required to change its assessment of a property every time its status switched from being occupied to unoccupied, or vice versa.

Contiguity

New section 3ZC defines the 'contiguity condition'. This is that the hereditaments in question must be contiguous with at least one other

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10 Rating practice had always been to value contiguous properties separately where they were used for wholly different purposes by the same occupier. *Mazars* did not affect this element of the law. Sub-section (c) prevents new section 3ZA from affecting this element of the law.

11 MHCLG, *Business rates on multi-occupied properties: summary of responses and Government response*, 2018, p5

hereditament in order to be treated as one single property. Thus a series of rooms in a building would be treated as contiguous, although they would not all be contiguous with one another.

New section 3ZD defines 'contiguity'. Sub-section (a) states that properties are contiguous if "some or all of a wall, fence or other means of enclosure of one hereditament forms all or part of a wall, fence or other means of enclosure" of the other. Sub-section (b) provides that, if the floor and ceiling of two hereditaments are contiguous, they are treated as contiguous. This is the case even if a space (e.g. a roof void providing services) exists between the two floors, to which the occupants have no right of access. The Government's response to consultation said:

> 8 respondents … were concerned that service voids within walls or between floors or ceilings might mean hereditaments would not be considered to be contiguous. Respondents felt this did not reflect the previous practice of the Valuation Office Agency. In light of these concerns, the Government has amended the [draft] Bill to make it clear that spaces in walls or ceilings do not prevent two properties in the same occupation being considered contiguous.[12]

Retrospective effect

Clause 1 (2) of the Bill provides that clause 1 (1) has retrospective effect 'for financial years beginning on or after 1 April 2010'. This is included because it is possible for alterations that have been made as a result of *Mazars* to have backdated effects. This would occur if the VOA determined that one property should have been valued as two or more from a particular date in the past. The earliest date to which a *Mazars*-related change could have been backdated is 1 April 2010.[13] This means that, in addition to changes going forward, *Mazars* caused backdated rate bills to be issued to replace single valuations with multiple ones, applying over several years.

Many ratepayers will therefore have seen a rise in their business rate liability, potentially backdated for several years, as a result of *Mazars*. This in turn provides the Government's rationale for legislating retrospectively via this Bill.

2.5 Extent

Clause 1 has effect in England but not in Wales. This is by virtue of the clause being drafted to refer to properties in England. At Committee Stage, the Minister, Rishi Sunak MP, stated "My officials are in contact with their counterparts in the Welsh Government, who are considering whether to request that we extend the Bill to Wales. As soon as we hear from them, I will inform the Committee and the House and adjust as required".[14]

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12 MHCLG, *Business rates on multi-occupied properties: summary of responses and Government response*, 2018, p4

13 This date was the beginning of the '2010 rating list': see further discussion of rating lists under section 2.6 below.

14 HC PBC Debates, 1 May 2018, c12

2.6 What effects has the case had on ratepayers?

The effects of *Mazars* attracted some media comment in July – August 2017. It was at this point that the changes were dubbed the 'staircase tax'. The BBC reported:

> …business rates in England and Wales are being set depending on how many rooms are being used and how they are linked. Those with more than one office linked by a communal lift, corridors or stairs are being charged more.

On 13 September 2017, in response to a letter from Nicky Morgan MP, chair of the Treasury Select Committee, the VOA stated that:

- 50% of affected businesses have seen their overall rateable value rise;
- 13% have experienced a rise of over 10%;
- 32% have seen their overall rateable value reduce.

Later correspondence from the Government stated that these figures did not represent an accurate indication of the effects of *Mazars*. They were based on a sample of properties where the rateable value had been reviewed between spring 2016 and autumn 2017. However, the changes to these properties' rateable values did not necessarily result from the effects of *Mazars*:

> ….the VOA may have also identified other considerations which would also have needed to be reflected in the revised assessment. For example, they may have identified common areas which would have needed to be treated differently, they may have identified changes to the use of space in the office or they may have found improvements or other changes of which they were previously unaware. Changes such as these would have been made to the rateable value at the same time as the split of the one assessment into three but would not have been as a direct result of the Mazars decision and would not have been reversed as a result of the draft Bill.[15]

The VOA produced guidance for ratepayers on the implications of the case, including a number of examples of consequences of the ruling for particular situations.

Many ratepayers will find themselves with separate valuations for properties that had previously been valued as one. For instance, consecutive floors of an office block in the same occupation would previously have been valued together are now valued floor by floor. And contiguous rooms in a business centre on the same side of a common corridor would previously have been valued as one would now be valued separately. These changes interact with two further effects:

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[15] See the Government's letter to the chair of the Select Committee of 8 March 2018, paragraph 7&ff. The figures provided to the Treasury Select Committee were based on a selection of 'flagged' properties identified between 'spring 2016 and autumn 2017'. They were not based on a comprehensive review, nor were they necessarily a representative sample of properties affected by *Mazars*.

- Valuation of linked properties as a single 'hereditament' (unit of property) often results in a 'quantity discount' for the ratepayer. Many of the businesses whose overall rateable value has risen will, in effect, have lost a quantity discount;
- Small business rate relief is only available on one property per business. Thus a business that was eligible for small business rate relief, but is now deemed to occupy more than one property may have to pay business rates on its additional 'properties' even if there had been no physical change.

Car parking spaces

Some respondents to the Government consultation in early 2018 also raised concerns that car parking spaces which were previously assessed as part of a shop or office have now been separately assessed. The Government's consultation response said:

> ….the stated practice of the Valuation Office Agency prior to the Supreme Court decision, in line with previous case law, was that car parking which was not contiguous with a property should be separately assessed for business rates. Therefore, amending the Bill in the way suggested by respondents would retrospectively change the stated previous practice of the Valuation Office Agency in respect of car parking.[16]

The Valuation Office Agency's *Rating Manual* (the guidance document for valuers) states:

> Car parks used and occupied with adjoining premises will generally together form the hereditament. However, where separated from these other premises by a public highway, or other property, they will in most cases form separate hereditaments.
>
> …
>
> Car parks not within the same rateable occupation as adjoining premises should be separately assessed.
>
> ….
>
> Single spaces, or groups of spaces, are sometimes let separately on terms which show that the owner no longer exercises control and that the actual user can be considered to be in exclusive occupation. Provided that they can be identified, such spaces may be treated as separate hereditaments.[17]

Parking spaces that are not contiguous to another property, such as a shop, should therefore always have been treated as separate hereditaments and have received a separate rateable value. The Bill does not affect this situation.

2.7 Administering *Mazars* appeals

If Parliament passes this Bill, affected ratepayers will be able to seek consequent changes to their property's rateable value. This will take the form of an appeal in the business rates appeals system. Details of the

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16 MHCLG, *Business rates on multi-occupied properties: summary of responses and Government response*, 2018, p6

17 VOA, Rating Manual, section 6 part 3, section 200, paragraph 6.4

current appeals process can be found in the Library briefing paper *Reviewing and reforming business rates*.

Appeals that concern rateable values on the 2017 rating list will be processed through the 'Check, Challenge, Appeal' system. This was introduced on 1 April 2017.[18] The Government's response to consultation stated that ratepayers wishing to change their rateable value if the Bill is passed will be prioritised by the VOA:

> Ratepayers affected on the 2017 list who believe that the reinstated practice should apply to them, will be able to submit "checks" in relation to the affected assessments. The Valuation Office Agency will prioritise dealing with these checks to apply the effect of the legislation to the 2017 list. This will ensure that ratepayers will also have the opportunity to ask the Valuation Office to amend their assessment quickly in the 2017 list where they believe it is now inaccurate due to the coming into force of the draft Bill.[19]

The Government has stated that appeals that concern rateable values on the 2010 valuation list will be made via the appeals process that applied to that list.[20] That is, the new "Check, Challenge, Appeal" process will *not* be used for appeals against rateable values arising from *Mazars* in respect of the 2010 list.[21]

The Government plans, in due course, to make secondary legislation reopening the right of appeal in respect of the 2010 rating list for property rateable values affected by the *Mazars* case. This is necessary because the 2010 rating list was 'closed' on 1 April 2018 – i.e. regulations provide that no further proposals for change could be lodged after that date.[22] The Government said:

> To resolve this we will introduce a new right of appeal on the 2010 rating list for those affected. Our early discussions with stakeholders have shown widespread support for this approach although we recognise the need to provide more detail on the precise terms of this new right of appeal. We intend to prepare draft regulations for discussion with the sector alongside the passage of the Bill. We consider the existing powers in section 55 of the Local Government Finance Act 1988 to be sufficient for these purposes but we will review the position before introduction.[23]

The VOA will only be able to amend the 2010 rating list following an appeal by the ratepayer. Normally, either a ratepayer or the VOA can propose a change to the rating list. This will ensure retrospective changes to the 2010 rating list are only made when desired by ratepayers:

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18 The '2017 rating list' is the new list of rateable values resulting from the 2017 revaluation. This list took effect on 1 April 2017.

19 MHCLG, *Business rates on multi-occupied properties*, 2017, p13

20 The '2010 valuation list' is the set of rateable values that applied between 1 April 2010 and 31 March 2017: i.e., the list in effect prior to the '2017 list'.

21 MHCLG, *Business rates on multi-occupied properties*, 2017, paragraph 36

22 See the *Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009* (SI 2009/2268), regulation 14 (8). The Government does not require the powers in this Bill in order to make these regulations.

23 Letter from DCLG to Communities and Local Government Committee, 19 February, p3

> …the Government will provide a right to make a proposal to amend the 2010 rating list.
>
> This right will be limited to those affected by the Mazars decision who believe that two or more hereditaments in the 2010 rating list ought to be merged to form one hereditament as a result of provisions in the draft Bill. ….Ratepayers (or previous ratepayers) will then be able to discuss with the Valuation Office Agency the implications of a backdated change to the 2010 rating list and only proceed if they wish. This will ensure that the previous Valuation Office Agency practice is only applied to the 2010 list where the outcome is desired by the ratepayer. [24]

Some responses to the Government consultation believed that the VOA should make alterations automatically, without a requirement to use the appeals process:

> Concerns raised in relation to implementation on the 2010 list were that the appeal system was too burdensome, the possibility of negative impacts on ratepayers, and that the VOA should be more pro-active in automatically restoring its previous practice without the need for an appeal.[25]

2.8 Financial impacts on local authorities

The November 2017 Budget document, which introduced the commitment to reverse the effects of *Mazars*, stated that "Local government will be fully compensated for the loss of income as a result of these measures".[26] This statement was made with reference to a number of other alterations to business rates to be made alongside reversing the effects of Mazars.

The Government stated on 24 November 2017, in one of its regular Business Rates Information Letters, that local authorities would not receive compensation in respect of reversing the effects of *Mazars*:

> Any additional business rates revenue to local authorities from the ruling will be offset by the reinstatement of the VOA's previous practice. The overall impact on local authorities will therefore be nil, and we do not plan to compensate local authorities in relation to any income lost as a result of this measure.[27]

This was reiterated in the Government's response to the consultation in March 2018:

> The change following the Supreme Court decision was fundamental to the meaning of a hereditament, was not sought by either party to the appeal and was unexpected. The Government therefore views the additional revenue flowing from that decision as an unexpected windfall. Accordingly, the Bill will return this windfall to ratepayers and no compensation will be payable to local government.[28]

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24 DCLG, *Business rates in multi-occupied properties*, 29 December 2017, paragraphs 35-37

25 Letter from DCLG to Communities and Local Government Committee, 8 March 2018, p3

26 HM Treasury, *Budget*, November 2017, p34

27 DCLG, *Business Rates Information Letter 8/2017*, 24 November 2017

28 MHCLG, *Business rates on multi-occupied properties: summary of responses and Government response*, 2018, p6

The reference to a 'windfall' refers to any business rate revenue obtained by local authorities that resulted from increases in rateable value caused by the VOA's application of the *Mazars* case.

The Bill would mean that ratepayers could be entitled to refunds from billing authorities, if the changes of the Bill lead to a reduction in their rateable value. Just as the effects of *Mazars* could be backdated to 1 April 2010, ratepayers could benefit from reductions to their rateable value backdated as far as April 2010. Local authorities will have to make financial provision for such refunds. This implies putting aside money that would otherwise be spent on local services until any backdated refunds have been made. A number of local authority respondents to the consultation stated their belief that the Government should compensate losses resulting from the provisions of the Bill via section 31 grants.[29]

Additionally, some local authorities are participating in pilots of 100% business rate retention. It is possible that these authorities will therefore be required to pay 100% of any backdated refunds in the future (as opposed to 50% in non-pilot authorities). However, in previous years, both billing authorities and central government will have benefited from additional revenue due to *Mazars*, as 50% of rate revenue goes to central government under the 'standard' rate retention system.

[29] 'Section 31 grants' refers to funding passed to local authorities by central government for any purpose, under section 31 of the *Local Government Act 2003*.

3. Empty Homes Premium

3.1 Empty homes: background

Billing authorities in England, Scotland and Wales have the power to increase council tax on properties which have been 'unoccupied and substantially unfurnished' for a long period of time. This is known as the 'empty homes premium'. The power in respect of England was introduced in the *Local Government Finance Act 2012*. It is for the billing authority (the district or unitary council) to decide whether to levy an empty homes premium.[30] Further information is available in the Library briefing paper *Council tax: empty properties*.

In England, billing authorities can charge up to 150% on properties which have been unoccupied and substantially unfurnished for at least two years. In Scotland, billing authorities can charge up to 200%; the qualifying period is one year. Wales introduced equivalent powers to those in Scotland in 2017, alongside a power to charge up to 200% council tax on second homes with no permanent resident.

A period of occupation of over six weeks in England and Wales (over three months in Scotland) qualifies as a break in the empty period, 'resetting the clock' for the purposes of the empty homes premium.[31]

Calculating the empty period

Liability for the empty homes premium is determined by the length of time that **the property** has been empty. An individual who purchases a property in England which has **already** been empty for two years may be required to pay the premium as soon as they take ownership. Billing authorities are not required to apply a discount or exemption if the buyer subsequently renovates the house without living in it.

Where an empty property has benefited from a discount or exemption from council tax, the two-year qualifying period for the empty homes premium begins from the date **on which the property became empty**, not from the date at which the discount or exemption ended.

Exemptions from empty homes premium

In England, the empty homes premium cannot apply to 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.[32]

In Wales and Scotland, properties which are being marketed for sale or rent are exempt from the empty homes premium, if the property has

30 See section 12 (2) of the Local Government Finance Act 2012

31 See the *Council Tax (Prescribed Classes of Dwellings) (England) (Amendment) Regulations 2012* (SI 2012/2964).

32 See the *Council Tax (Prescribed Classes of Dwellings) (England) (Amendment) Regulations 2012* (SI 2012/2964)

been empty for less than two years.[33] This amounts to one year's additional grace before the premium applies to such properties.

The consultation paper on the English regulations suggested that demonstrable attempts to sell the property could be grounds for exemption from the premium. In the event, in England, no such requirement was introduced.[34] However, guidance for local authorities in England, published in May 2013, stated:

> The government's intention behind the decision to provide billing authorities with the power to charge a premium was not to penalise owners of property that is genuinely on the housing market for sale or rent.
>
> The government expects billing authorities to consider the reasons why properties are unoccupied and unfurnished, including whether they are available for sale or rent, and decide whether they want such properties to be included in their determination.[35]

3.2 The Bill

At the November 2017 Budget, the Chancellor announced the Government's intention to legislate to bring the maximum in England up to 200%:

> I want to address the issue of empty properties. It cannot be right to leave property empty when so many are desperate for a place to live, so we will legislate to give local authorities the power to charge a 100% council tax premium on empty properties.[36]

The Bill implements this commitment. Currently, the maximum empty homes premium that a local authority in England may set is 50% (making a bill of 150% of the normal amount). **Clause 2 (1)** amends this figure to 100% (making a maximum bill of 200% of the normal amount).

It remains for billing authorities (district and unitary) to decide whether to charge an empty homes premium, and what rate it should be set at. Local authorities can set different empty homes premiums for different parts of their areas.[37]

Clause 2 (2) provides that the 100% ceiling on the empty homes premium will come into force for the 2019-20 financial year. It also provides that the 100% ceiling can apply to long-term empty properties as of 1 April 2019 irrespective of when they became empty.

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33 *Council Tax (Variation for Unoccupied Dwellings) (Scotland) Regulations 2013* (SI 2013/45), schedule 2; *Council Tax (Exceptions to Higher Amounts) (Wales) Regulations 2015 (SI 2015/2068),* paragraph 4

34 See DCLG, *Technical Reforms to Council Tax: Determining the circumstances in which dwellings should not be liable to the empty homes premium - Consultation,* November 2012

35 DCLG, *Council Tax empty homes premium: guidance for properties for sale and letting*, 2013, p.3

36 HCDeb 22 Nov 2017 c1056-7; see also HM Treasury, *Budget 2017*, p64

37 See section 11B (1) of the *Local Government Finance Act 1992*, inserted by section 12 of the *Local Government Finance Act 2012*

3.3 Lords amendments

In the House of Lords, extensive debates took place regarding extending the rates of council tax that can be charged on properties that are 'unoccupied and substantially unfurnished'. Opposition peers pressed for this, in the light of perceptions that many properties continue to remain empty despite the introduction of the 50% premium in 2013. During the debate, the proposed changes were occasionally referred to as the 'council tax escalator': this is because they envisaged the maximum rate of council tax rising over time. Baroness Pinnock stated that the escalator would:

> increase the financial incentive to owners who have empty properties to encourage those same owners to take action so that their empty property can be brought back into use. This financial incentive can, of course, also be seen as a financial penalty. The purpose is clear: to ensure that the many thousands of long-term empty homes become homes for families once more.[38]

For the Government, Lord Bourne of Aberystwyth replied:

> I of course understand the rationale behind the amendments, and as homes are remaining empty for longer and longer, the logic of that is obvious: the figure goes up after five years and after 10 years. In addition, empty properties can be a nuisance to local residents, and potentially sites of crime or squatting. I share the concern about the need for robust measures to tackle what may become, and often are, blots on the landscape, to the benefit of those seeking a place to live as well as of local communities as a whole. I think we all understand that.[39]

The Government brought forward an amendment at Third Reading that would alter the maximum percentage of council tax that billing authorities may charge on properties that are 'unoccupied and substantially unfurnished'. The Bill provides that the maximum *additional* rates would become:

- 100% extra (for properties empty for 2-5 years)
- 200% extra (for properties empty for 5-10 years) [commencing in 2020]
- 300% extra (for properties empty for 10+ years) [commencing in 2021]

In other words, council tax-payers may be required to pay 200% of the standard bill after two years; 300% of the standard bill after five; and 400% after ten. Introducing the amendment, Lord Bourne of Aberystwyth said:

> Having reflected carefully on arguments advanced by noble Lords in previous debates, the Government consider that this amendment will further strengthen the incentive for owners of properties that have been empty for excessively long periods of time to bring them back into use. Although such properties are likely to be relatively few in number, they can be a blight on their surrounding communities and the site of crime and anti-social behaviour. It is right that we equip local authorities with greater

38 HL Deb 19 Jun 2018 c1961
39 HL Deb 19 Jun 2018 c1964

> powers in such difficult cases where a 100% premium might not be sufficiently effective.
>
> …
>
> In light of this amendment, it will be even more important to ensure that the premium is applied fairly. We published guidance in 2013, and will now take the opportunity to look at it afresh, with the aim of publishing revised guidance ahead of the introduction of 200% and 300% premiums. …
>
> In particular, we will look to ensure, through the revised guidance, that premiums are applied with due consideration to issues facing low-demand areas and cases of hardship. We anticipate that we will look to strengthen the wording of the guidance to set out the Government's clear expectation that premiums are not applied where home owners can demonstrate that their properties are genuinely on the market for rent or sale and appropriately priced. We will also look to ensure that the guidance takes account of individuals who are struggling to complete or to afford renovations that are necessary before the property can be occupied or sold on, and where progress or hardship can be demonstrated.
>
> More generally, we will also look to set out clearly the range of factors local authorities should have regard to when deciding whether to charge a premium in their area. These could include the average property prices in the area, local demand for affordable homes versus their availability and any other measures that may be available to local authorities to help bring empty homes back into use, which might be more effective in that particular area. Such revisions would, of course, be subject to consultation.[40]

The amendment was agreed without a division.

The phrase 'unoccupied and substantially unfurnished' is not defined in council tax legislation, and its definition is subject to case law. However, it would not automatically include all properties that are not regularly occupied. For instance, a 'holiday home' that is furnished and used at regular intervals may not be caught by the provisions in the Bill.

The Minister's remarks about the guidance allude to the fact that, in Scotland and Wales, properties are exempt from the empty homes premium if their owners can demonstrate that genuine attempts are being made to sell or let them. The provisions in this Bill will only apply to England.

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40 HL Deb 18 Jul 2018 c1222

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