

Council Tax – Empty Homes

Councillor Nigel Studdert-Kennedy has requested an information note on the definition of unoccupied and substantially unfurnished in the context of charging a 50% premium for Council Tax on Empty Homes.

Local authorities in England may set an ‘empty homes premium’ for long-term empty properties. Properties which have been unoccupied and substantially unfurnished for over two years may be charged up to 150% of the normal liability. Periods of up to 6 weeks where it has been either occupied or furnished can be disregarded when looking at this 2 year period. There are exceptions/exemptions which are beyond the scope of this note.

The government information letter (attached) sets out the position quite succinctly and I don’t intend to repeat its contents verbatim; for completeness I have also attached the guidance for empty homes for sale and lettings.

In short, yes we do have discretion as to how it is applied:

‘Local authorities will have formed their own views on the definitions for the purposes of administering both the discounts and the premium. A property which is substantially unfurnished is unlikely to be occupied or be capable of occupation. A property which is capable of occupation can reasonably be expected to contain some, if not all, items from both of the following categories: furniture such as bed, chairs, table, wardrobe or sofa, and white goods such as fridge, freezer or cooker.’

We must take each matter on a case by case basis and make a subjective decision as to whether or not in our reasonable opinion it is unoccupied and substantially unfurnished.

In terms of case law I have not been able to locate any offering further definition of substantially unfurnished and unoccupied. Council Tax matters are taken to Valuation Tribunal and are generally not reported as widely. I cannot say there have not been matters that have gone to tribunal over this issue; however, I cannot find any that have been reported (within the timeframe given for this note).

I see no legal issue with what our website sets out. My understanding from Simon Killen the Revenue & Benefits Manager is that SDC takes a subjective and risk adverse approach to what is considered unoccupied and substantially unfurnished; if in any doubt my understanding is we send in a property inspector to make an on-site assessment. I also understand as of yet we haven’t had any appeals to tribunal.

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Department for
Communities and
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COUNCIL TAX INFORMATION LETTER: COUNCIL TAX – DEFINITIONS OF EMPTY HOMES AND SECOND HOMES

Since April 2013, local authorities have had the discretion to charge between 50% and 100% council tax on properties which are unoccupied and substantially unfurnished, and are able to charge a premium of up to 50% on properties which have been unoccupied and substantially unfurnished for two years or more.

There has been a suggestion that taxpayers are avoiding paying the premium by installing furniture. This is notionally because property which is unoccupied but which is not 'substantially unfurnished', is a second home rather than an empty home, and the premium does not apply. However, DCLG has no evidence that billing authorities have difficulty applying the legislation, nor that they are experiencing difficulties with avoidance.

Notwithstanding, to assist local authorities and enhance the broader public scrutiny of this issue, this Information Letter outlines the current situation and the Department's informal view on these matters.

- The premium may be applied to properties which have been 'unoccupied' and 'substantially unfurnished' for two years or more. Periods of six weeks or less when the property is occupied/furnished are disregarded for the purposes of calculating the two-year period for the empty homes premium.
- The council tax system provides specific statutory exemptions for properties left empty for a specific purpose, for example when a person goes into care. Council tax is not levied on such properties.
- Under the Council Tax (Prescribed Classes of Dwellings) (England) Regulations 2003, the Government has prescribed two classes of dwellings which are exempt from the premium. These are: (a) a dwelling which would otherwise be the sole or main residence of a member of the armed services, who is absent from the property as a result of such service and (b) a dwelling, which forms part of a single property that is being treated by a resident of that property as part of the main dwelling (i.e. annexes).
- DCLG has also published guidance on empty properties which are for properties for sale and letting.

- There is a misconception that the premium is easy to avoid by simply placing some furniture into a property. We do not have evidence that this is the case. 'Substantially unfurnished' is not defined in council tax legislation, but is used for the purposes of the empty homes discount regime and the empty homes premium (Section 11A & 11B of the Local Government Finance Act 1992).
- Local authorities will have formed their own views on the definitions for the purposes of administering both the discounts and the premium. A property which is substantially unfurnished is unlikely to be occupied or be capable of occupation. A property which is capable of occupation can reasonably be expected to contain some, if not all, items from both of the following categories: furniture such as bed, chairs, table, wardrobe or sofa, and white goods such as fridge, freezer or cooker.
- Where a property is said to be occupied it will be reasonable for the local authority to cross-check with the electoral roll , or ask for evidence, such as utility bills showing usage of services, driving licence as proof of address, or receipts or other proof of moving costs.
- It will ultimately be a matter of fact whether the property is unoccupied and substantially unfurnished. Local authorities will be aware that under Schedule 3 of the Local Government Finance Act 1992, civil penalties can be applied to a person who deliberately supplies false information. In addition, the provisions of the Theft Act 1968 apply to council tax. Where there is a question mark over occupation/furnishings it may be worth bringing this to the attention of residents and asking them to verify these facts in that light.

As mentioned above, this is the Department's informal view; interpretation of legislation is in the first instance, a matter for the local authority, with definitive interpretation the responsibility of the courts. If you have any queries please contact Peter Reilly at peter.reilly@communities.gsi.gov.uk

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23rd September 2014



Department for
Communities and
Local Government

Council Tax - Empty homes premium

Guidance for properties for sale and letting

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Council Tax - Empty homes premium

Guidance for properties for sale and letting

1. In its summary of responses report, *Technical Reforms to Council Tax: when dwellings should not be liable to the empty homes premium* (November 2012), the government made a commitment to issue guidance to help authorities to reflect the state of the housing market in their decision making process for administering the premium.
2. This guidance paper should not be treated as an interpretation of the legislation or as statutory guidance. Billing authorities are free to make their own decisions when administering the premium.
3. From 1 April 2013, billing authorities may charge a premium on a class of property that has been unoccupied and unfurnished for two years or more. The premium can be up to 50% of the council tax on the property.
4. Under the Council Tax (Prescribed Classes of Dwellings) (England) Regulations 2003, the government has prescribed two classes of dwellings which are exempt from the premium. These are:
 - a dwelling which would otherwise be the sole or main residence of a member of the armed services , who is absent from the property as a result of such service
 - a dwelling, which forms part of a single property that is being treated by a resident of that property as part of the main dwelling
5. While the decision to make a determination under Section 11B of the Local Government Finance Act 1992 is for billing authorities to make, the government would expect that due consideration is given to the health of the local housing market when making determinations.
6. 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.
7. 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. When considering the reasons an authority may want to take account of the following:
 - on average, how long are properties in their area been available for sale or rent before completion/occupation
 - what is the average price/rent in the local area?
8. The above list is not exhaustive and billing authorities will want to consider all factors they think are relevant before making a decision.