

Item: 15

Policy and Resources Committee: 20 September 2022.

Council Tax – Charging on Empty Properties.

Report by Corporate Director for Enterprise and Sustainable Regeneration.

1. Purpose of Report

To consider an amendment to the policy on the Council Tax surcharge applied to empty properties.

2. Recommendations

The Committee is invited to note:

2.1.

That, on 11 December 2018, when considering recommendations from the Policy and Resources Committee regarding policy on the level of Council Tax discount or surcharge applied to empty properties and second homes, the Council resolved:

- That, from 1 October 2019, an additional surcharge of 100% be applied to empty properties that had been unoccupied for a period exceeding 12 months, with delays beyond the 12-month period for certain categories of property.

2.2.

That the current policy links any exception to the empty property surcharge to the length of time a property has been unoccupied.

2.3.

That, as an unintended consequence of the current policy, a small number of cases have since arisen where the surcharge is applied immediately to a property inherited by the next of kin where the owner of the property passed away in a hospital or care home setting, having been absent from the property for some time.

It is recommended:

2.4.

That the authority delegated to the Head of Finance to delay introduction of the 100% surcharge in Council Tax chargeable on empty properties be extended to allow a delay of up to 12 months from the date of death of the owner, where the owner was being cared for in a hospital or care home immediately prior to their death.

2.5.

That the use of discretion to allow this delay take into account the intention of any inheritor(s) of the property, and prioritises the existing aim of the policy, i.e. that empty properties are brought back in to use.

3. Introduction

3.1.

At the General Meeting held on 11 December 2018, when considering recommendations from the Policy and Resources Committee regarding policy on the level of Council Tax discount or surcharge to be applied to empty properties and second homes, the Council resolved:

- That, from 1 October 2019, an additional surcharge of 100% be applied to empty properties that had been unoccupied for a period exceeding 12 months.

3.2.

On 24 November 2020, when considering extending the introduction of Council Tax surcharge applied to empty properties in exceptional circumstances, the Policy and Resources Committee recommended:

- That, while restrictions relating to the COVID-19 pandemic remained ongoing, the discretion afforded to the Head of Finance to delay introduction of the 100% surcharge in Council Tax chargeable on empty properties be increased, from 12 months to up to 36 months, where the Head of Finance was satisfied that exceptional circumstances, relating to the COVID-19 pandemic, existed.

3.3.

The information leaflet 'Council Tax charges on empty properties and second homes' produced for members of the public, which outlines exceptions to the additional charge, is attached as Annex 1 to this report.

4. Background

4.1.

Section 79 of the Local Government Finance Act 1992 provides that unoccupied properties are entitled to a discount of 50%. This remains the default position, but subsequent secondary legislation allows the level of discount to be reduced or removed at the discretion of the Council.

4.2.

From 1 April 2005, the Council Tax (Discount for Unoccupied Dwellings) (Scotland) Regulations 2005 gave local authorities the discretion to vary the level of discount on second homes and empty properties to between 50% and 10%, with the additional revenues raised being ring-fenced for affordable housing. Current Orkney Islands Council policy reduces the level of discount to 10%.

4.3.

From 1 April 2013, the Council Tax (Variation for Unoccupied Dwellings) (Scotland) Regulations 2013 gives local authorities the discretion to vary the level of discount on empty properties from 50% to 10% and, once an empty property has been unoccupied for a continuous period exceeding 12 months, to reduce the discount from 10% to 0% and to make an additional surcharge of up to 100%.

4.3.1.

Additional revenue raised from removing the 10% discount or making an additional surcharge of up to 100% can be used as the Council sees fit on housing or other priorities.

5. Empty properties – Application of Discount or Surcharge

5.1.

For Council Tax purposes the legislative definition of an empty property is “a property that is no one’s sole or main residence and is not a second home”. A long-term empty property is a property which has been empty for more than 12 months. There are currently around 220 properties in Orkney that fall within that definition.

5.2.

Empty properties that are being genuinely marketed for sale or let at a realistic market price may be exempt from any additional surcharge, as may properties where the owner is carrying out repair work with the intention of bringing the property back into use.

5.3.

When the empty property surcharge was introduced, linking the delay in introducing the surcharge to the length of time a property was empty produced the unintended consequence that properties left empty for a substantial period of time while the owner was in hospital or residential care before passing away could see a surcharge introduced as soon as the owner passed away.

5.4.

This unintended consequence has created scenarios where the inheritor(s) of a property have not been allowed the time to carry out repair work or put a property on the market for sale, without also having to pay the surcharge.

5.5.

It is not possible to allow a further delay in these cases under the existing policy and for this reason authority to extend the Head of Finance’s discretion is now sought.

5.6.

Adopting the recommendation outlined would equalise the treatment of the inheritor(s) of property, regardless of where the property's owner resided at the time of death.

6. Equalities Impact

An Equality Impact Assessment was undertaken and presented to Committee with the initial policy report in November 2018. An updated Equality Impact Assessment in relation to the proposed change is attached at Annex 2 to this report.

7. Corporate Governance

This report relates to the Council complying with its financial processes and therefore does not directly support and contribute to improved outcomes for communities as outlined in the Council Plan and the Local Outcomes Improvement Plan.

8. Financial Implications

In financial year 2022/23 it is anticipated that allowing further delays to the introduction of the empty property surcharge might result in a reduction in revenue of approximately £5,000.

9. Legal Aspects

The legal aspects are contained within the body of the report.

10. Contact Officers

Gareth Waterson, Corporate Director for Enterprise and Sustainable Regeneration, extension 2103, Email gareth.waterson@orkney.gov.uk.

Erik Knight, Head of Finance, extension 2127, Email erik.knight@orkney.gov.uk.

William Moore, Service Manager (Revenues and Benefits), extension 2104, Email william.moore@orkney.gov.uk

11. Annexes

Annex 1: OIC leaflet - Council Tax charges on empty properties and second homes.

Annex 2: Equality Impact Assessment.

Council Tax charges on empty properties and second homes



1. Introduction

This leaflet sets out the Council's policy on the level of Council Tax charges applied to empty properties and second homes.

2. What is an empty property?

For Council Tax purposes the definition of an empty property is "a property that is no one's sole or main residence and is not a second home". This includes both furnished or unfurnished properties.

2.1. Can I get a discount on an empty property?

You can apply for a Council Tax discount of 10%, which will last for up to 12 months from the date the property was last occupied. The discount will not apply to any water or waste water charges. If your property is a new build property, and has never been occupied, you can still apply for a discount of 10%.

2.2 Surcharge of 100% after 12 months since last occupation

From 1 October 2019, once a period of 12 months has passed since the property was last occupied, a Council Tax surcharge of 100% will become payable. For example, if the full Council Tax on the property is £1,000 per annum you will be liable to pay £2,000 per annum. The surcharge will not apply to any water or waste water.

2.2.1 Why is a surcharge of 100% being applied after 12 months?

The Scottish Government has given local authorities the power to apply a surcharge to encourage owners to bring empty properties back into use and to increase the supply of housing.

2.2.2 Instances where the 100% surcharge will be delayed

There are instances where the surcharge will be delayed and the standard empty property discount of 10% will remain in place, for a limited period, as follows:

- An empty property that is being genuinely marketed for sale or let at a realistic market price will be exempt from any additional surcharge of up to 100% until the property has been unoccupied for two years or more. This will also apply to a new build property that has never been occupied.
- There is also a list of additional discretionary circumstances where the surcharge may be delayed. Please refer to Appendix 1 of this document for more details.

2.3 Can I get exemption on an empty property?

Some empty properties may qualify for an exemption and do not have to pay Council Tax for a period of time. A summary of such exemptions is shown at Appendix 2 to this document and more details, including how to apply, can be found on the

Council's website at <http://www.orkney.gov.uk/Service-Directory/C/Council-Tax---Exemptions.htm>

2.4 Getting advice to bring an empty property back into use

Advice on all aspects of getting an empty home back into use can be found on the Council's website at <http://www.orkney.gov.uk/Service-Directory/H/empty-homes.htm>. A great starting point is the Orkney Empty Homes Advice Pack. If you want any further information or advice regarding empty homes, please contact the Development and Empty Homes Officer, on 01856873535 extension 2193, or by e-mail rachael.batty@orkney.gov.uk

3. What is a second home?

For Council Tax purposes the definition of a second home is a property that is "no ones' sole or main residence but is furnished and evidence is produced to establish that it is lived in for at least 25 days during any 12 month period".

3.1. Can I get a discount on a second home?

You can apply for a Council Tax discount of 10% which, from 1 October 2019, will last for up to 12 months from the date the property was last occupied as someone's sole or main residence (the discount will not apply to any water or waste water charges). The onus is on property owners to prove that the property is a genuine second home and is lived in for at least 25 days in any 12 month period.

3.2. Are second homes subject to a surcharge of 100%?

As long as a property is considered to be a second home, as noted in the preceding paragraph, no additional surcharge of 100% will apply. However, if the property is not lived for at least 25 days in any 12 month period, the property will instead be treated as an empty property and the surcharge of 100% will apply.

4. Can the discount be more than 10%

There are a small number of empty properties and second homes that are entitled to receive a discount of 50% and will not be subject to a surcharge of 100%. From 1 April 2019, this includes a second home where a person's sole or main residence in Orkney is separated from their place of work by a body of water, the transport provision over which does not permit daily commuting between their sole or main residence and their place of work, and they occupy a second home in Orkney to enable them to maintain that employment. More information, and details of how to apply, can be found on the Council's website at <http://www.orkney.gov.uk/Service-Directory/C/Council-Tax---Reduction.htm>

5. Finding out more

- Contact the Council Tax Section, Orkney Islands Council, Council Offices, Kirkwall, Orkney, KW15 1NY.
- Telephone: 01856873535 Extension 2133 or Direct Dial 01856886322.
- Email: revenues@orkney.gov.uk

Document date – June 2021

Appendix 1 – Council discretion to delay 100% surcharge on an empty property

From 1 October 2019 the Council has the discretion to not charge the Council Tax increase of up to 100% where the property has been empty for more than 1 year. The Council's policy may apply in the following circumstances and is time limited.

- Where the owner is finishing renovations prior to moving in/selling/letting and can demonstrate that these works are progressing – discount of 10% to remain in place for period not exceeding two years since the property was last occupied.
- A long-term second home where the owner is unable to meet the 25 day occupancy criteria in the previous 12 months due to personal circumstances, but where a history of 25 day occupancy can be shown in previous years.
- An empty property that has been unoccupied for more than 1 year and has been purchased or inherited by a new owner and requires major repair work (this does not apply to routine decoration) to bring the property back into use – delay of up to 1 year before applying surcharge of up to 100%, but also allow extension of a further year if there have been delays in the process, for example in obtaining Planning Permission or Building Warrants.
- An empty property, the estate of which remains in the name of an Executor, but the Council Tax exemption period has ended - allow 10% discount for up to 1 year before applying surcharge of up to 100%.
- Having due regard to Orkney's isles communities and the demand for housing, empty properties situated in the North and South Isles (excluding Burray and South Ronaldsay), that are being genuinely marketed for sale or let at a realistic market price may be exempt from any surcharge of up to 100% in the amount payable until they have been unoccupied for three years, rather than the standard two years.
- Any other circumstances where the owner has agreed with the Council's Empty Homes Development Officer to take positive steps to re-occupy their property and it is in the view of the Empty Homes Development Officer that a time-limited council tax increase "holiday" would encourage the property to be brought back into use sooner – discount of 10% to remain in place for period not exceeding two years since the property was last occupied.
- To allow, in exceptional circumstances, discretion by the Head of Finance to delay application of up to 100% surcharge by up to 12 months, or up to 36 months where the exceptional circumstances are a result of the Coronavirus pandemic.

Appendix 2 – Council Tax Exemptions

There are some categories of empty properties that may qualify for an exemption and do not have to pay Council Tax, which in some instances may be time limited. A summary of such exemptions is noted below and more details, including how to apply, can be found on the Council's website.

- A new unoccupied and unfurnished dwelling - exemption will apply for no more than 6 months from the date of entry in the Valuation List.

- An unoccupied dwelling which is undergoing major repair - exemption will apply for no more than 12 months after the last day of occupation.
- An unoccupied dwelling last occupied by a charitable body - exemption will apply for no more than 6 months from date of last occupation.
- An unoccupied and unfurnished dwelling - exemption will apply for no more than 6 months from the date the dwelling was last occupied.
- An unoccupied dwelling, which was last occupied by a person who is now in prison - exemption is not time limited.
- An unoccupied dwelling, which was previously the sole or main residence of a person who is now living elsewhere to receive personal care – not time limited.
- An unoccupied dwelling, which was previously the sole or main residence of a person who is now living elsewhere to provide personal care for someone – exemption is not time limited.
- Deceased owners - applies to an unoccupied dwelling in respect of which the liability to pay council tax would fall to be met solely out of the estate of a deceased person. Exemption will apply for no more than 6 months from the date of the grant of confirmation.
- An unoccupied dwelling, the occupation of which is prohibited by law – exemption is not time limited.
- An unoccupied dwelling awaiting demolition, owned by a Local Authority or Scottish Homes.
- An unoccupied dwelling awaiting occupation by a minister – exemption is not time limited.
- An unoccupied dwelling, which within the last four months was last occupied by a full-time student(s) – exemption limited to four months.
- An unoccupied dwelling which is owned or tenanted by a full-time student(s) who now has their sole or main residence elsewhere – exemption time limited to student status.
- A repossessed unoccupied dwelling – exemption not time limited.
- An unoccupied and unfurnished agricultural dwelling, situated on agricultural land, and which when last occupied was used in connection with agricultural or pastoral purposes - exemption is not time limited.
- A dwelling held by a Housing Association as a 'trial flat' for the disabled or pensioners – exemption is not time limited
- An unoccupied dwelling which is difficult to let due to the proximity of your own sole or main residence – exemption is not time limited.
- Unoccupied dwelling of person made bankrupt and where property is vested with the permanent trustee – exemption is not time limited.



Equality Impact Assessment

The purpose of an Equality Impact Assessment (EqIA) is to improve the work of Orkney Islands Council by making sure it promotes equality and does not discriminate. This assessment records the likely impact of any changes to a function, policy or plan by anticipating the consequences, and making sure that any negative impacts are eliminated or minimised and positive impacts are maximised.

1. Identification of Function, Policy or Plan	
Name of function / policy / plan to be assessed.	Council Tax – charging on empty properties and second homes.
Service / service area responsible.	Chief Executive's – Finance.
Name of person carrying out the assessment and contact details.	William Moore, Service Manager Revenues & Benefits Telephone: 01856 873535 Extension 2104. Email: william.moore@orkney.gov.uk
Date of assessment.	8 June 2022
Is the function / policy / plan new or existing? (Please indicate also if the service is to be deleted, reduced or changed significantly).	The existing policy on Council Tax charges for empty properties is being reviewed (no change to provisions on second homes in the policy).

2. Initial Screening	
What are the intended outcomes of the function / policy / plan?	To increase the Head of Finance's discretion to waive the additional surcharge of 100% on the council tax payable in respect of empty properties, where the owner passed away in a hospital or residential care setting. The surcharge is intended as a tool to encourage property owners to bring their empty properties back into use and extended discretion is being requested due to an unintended consequence of the existing policy.

<p>Is the function / policy / plan strategically important?</p>	<p>The policy will contribute towards the Council's Empty Homes Strategy and the additional revenues raised will impact on the Council's annual budget setting process.</p>
<p>State who is, or may be affected by this function / policy / plan, and how.</p>	<p>Inheritor(s) of empty properties within Orkney, who plan to bring their property back in to use once works are carried out.</p> <p>This could include those who intend to live in, rent or sell the property.</p> <p>There may also be an effect on those seeking privately rented accommodation in Orkney, if property owners were to delay making empty properties available for let.</p> <p>Given the small number of property owners granted a discretionary delay to the introduction of the surcharge, the numbers affected in each group would likely be low, estimated below 10 individuals.</p>
<p>How have stakeholders been involved in the development of this function / policy / plan?</p>	<p>The revised policy has been developed in accordance with legislative powers brought in by the Scottish Government to permit Councils to increase Council Tax charges on second homes and empty properties, with the aim of bringing such properties back into use.</p> <p>The revised policy has also been developed to assist the aims of the Council's Empty Homes Strategy to bring empty properties back in to use.</p>
<p>Is there any existing data and / or research relating to equalities issues in this policy area? Please summarise. E.g. consultations, national surveys, performance data, complaints, service user feedback, academic / consultants' reports, benchmarking (see equalities resources on OIC information portal).</p>	<p>No known specific equalities research in this area. There have been surveys to, and feedback from, property owners but this has been in the context of bringing properties back into use. The specific issue of increasing Council Tax charges to assist the aim of bringing empty properties back into is generally one which is applied equally across all sectors and property types.</p>
<p>Is there any existing evidence relating to socio-economic disadvantage and inequalities of outcome in this policy area? Please summarise.</p>	<p>There is no known evidence relating to socio-economic disadvantage and inequalities of outcome in this policy area.</p> <p>Any increased Council Tax charges applies only to empty properties and does not impact on the</p>

E.g. For people living in poverty or for people of low income. See The Fairer Scotland Duty Interim Guidance for Public Bodies for further information.	property in which a Council Tax payer occupies as their main residence. Property owners who are disadvantaged by the current policy would benefit but the effect would be marginal given the small numbers, and there is no evidence of socio-economic disadvantage within this group at present.
Could the function / policy have a differential impact on any of the following equality areas?	(Please provide any evidence – positive impacts / benefits, negative impacts and reasons).
1. Race: this includes ethnic or national groups, colour and nationality.	No differential impact.
2. Sex: a man or a woman.	No differential impact.
3. Sexual Orientation: whether a person's sexual attraction is towards their own sex, the opposite sex or to both sexes.	No differential impact.
4. Gender Reassignment: the process of transitioning from one gender to another.	No differential impact.
5. Pregnancy and maternity.	No differential impact.
6. Age: people of different ages.	No differential impact.
7. Religion or beliefs or none (atheists).	No differential impact.
8. Caring responsibilities.	No differential impact.
9. Care experienced.	No differential impact.
10. Marriage and Civil Partnerships.	No differential impact.
11. Disability: people with disabilities (whether registered or not).	No differential impact.
12. Socio-economic disadvantage.	No differential impact.

3. Impact Assessment

Does the analysis above identify any differential impacts which need to be addressed?	None.
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How could you minimise or remove any potential negative impacts?	Not Applicable.
Do you have enough information to make a judgement? If no, what information do you require?	Yes.

4. Conclusions and Planned Action

Is further work required?	Yes.
What action is to be taken?	Updating of policy documents on the OIC website, consideration of further delay requests, issue of written notices to property owners.
Who will undertake it?	Revenues team, with authorisation from Head of Finance to use discretion requested where applicable.
When will it be done?	Updating of website immediately where amendment to policy agreed. Other actions demand-led.
How will it be monitored? (e.g. through service plans).	Revenues Manager to include statistics on the number of discretionary delays authorised and the financial cost. Formal review of the change is not planned as the policy itself will be reviewed and this particular policy aspect will be considered as part of wider review.

Signature:



Name: WILLIAM MOORE

Date: 8 June 2022

(BLOCK CAPITALS).

Please sign and date this form, keep one copy and send a copy to HR and Performance. A Word version should also be emailed to HR and Performance at hrrsupport@orkney.gov.uk