**A Technical Consultation on the draft Non-Domestic Rating (Amendment of Definition of Domestic Property) (Wales) Order 2022**

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Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here: 

## Question 1

Does the amending of subsection (2BB) altering reference to ‘70 days’ to now read ‘182 days’, used to define the period a property or aggregated property is required to be actually let, provide clarity? If not, how can it be improved?

The threshold is too high and is unattainable by a majority of genuine self-catering businesses in Wales. We suggest parity with HMRC’s availability criteria at 105 days.

It needs to be noted that the original consultation did not warn that a new threshold to define an FHL business would be as high as 182 days, or that it was even under consideration. The process has been highly flawed. Only an insignificant sample of respondents suggested the 182-day threshold. The announcement was also only made on the 2nd of March which is not enough time given for a proper Economic Impact Survey.

## Question 2

Does the amending of subsection (2BB) altering reference to ‘105 days’ to now read ‘252 days’, used to define the period a property is required to be intended to be available to let and have been available to let provide clarity? If not, how can it be improved?

Yes, that is clear and we have no objections.

## Question 3

Does the wording in Article 3 provide clarity that properties assessed prior to 1 April 2023 are treated on the basis of meeting the current thresholds?

No, does this mean that properties assessed prior to the 1st April 2023 do not have to meet the new thresholds?

Whilst the new proposed thresholds will come into effect on the 1st April 2023, is it correct that businesses will need to be meeting the thresholds from the 1st April 2022? If this is the case it is highly unfair and extremely unlikely given the current state of the economy post Pandemic and the impact of the cost-of-living crises.

We also see no flexibility in the proposals to address Properties that are limited by (i) planning permission to only be short term commercial lets and (ii) lie within the curtilage of an owner’s primary residence are not made liable to pay the additional council tax premiums if they do not hit 105 days let;

We would also request that allowances can be made when whatever threshold that is finally determined upon, allows for factors such as, carrying out repairs, property improvements, closure due to ill-health or caring responsibilities, we would be pleased to work with the Welsh Government in determining what these might be.

A statutory registration scheme needs to be introduced to ensure all short term lets, including those trading as 'Airbnb’s are included and that all properties are operated on a legally compliant safe and legal manner

## Question 4

Are there any other issues regarding the practical application of the Draft Order?

Yes, we do not believe the amendments are based on economic reality. The 182-day threshold has been based on:

* *9 responses to the previous consultation, ignoring the majority view. Of key note are the responses to Q9 ‘If the self-catering thresholds were to be changed, what do you suggest the new thresholds should be’.*

*Of the 155 responses suggesting a rise on the* ***availability*** *criterion, 149 proposed thresholds higher than the current 140 days, ranging from 150 to 365 days. The most common specific suggestion was 210 days a year.*

*The most common specific suggestion for commercial* ***occupancy*** *was 105 days. Only 9 responses supported a range of between 182 days or 6 months (9 responses).*

* *The historic occupancy data which we believe this proposal is based on is a much smaller sample size than we have presented with PASC UK and UKH Cymru. We also believe that the sample size is too small and the effect of the weighting for certain regions or size bands can therefore be exaggerated.*
* *No economic impact assessment has been presented to demonstrate that there will be no significant damaging impact on the Welsh Economy.*

## Question 5

Do you have any other comments about the drafting of the Draft Order?

This one size fits all approach will not work (please refer to our Body of Evidence report submitted 8th April 2022). This can be found here: <https://www.wta.org.uk/uploads/8/3/7/1/83716138/ukh.wta.pasc_boe_1500_080422f.pdf>

This proposed threshold needs to be abandoned immediately and a proper Economic Impact Survey carried out.

## Question 6

The Welsh Government would like your views on the effects these proposals would have on the Welsh language, specifically on:

1. opportunities for people to use Welsh; and
2. on treating the Welsh language no less favourably than English.
3. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

## Businesses which close will not necessarily release affordable residential property onto the market. Those units on an owner's own property or with commercial-only planning permission will close or fall into the council tax regime.

## Owners who do decide to sell will not be looking to sell at an undervalue, especially if they have invested in the standard of the property. They will advertise their properties in parts of the country where incomes are higher and sell to people from outside the area for whom the higher price and higher tax costs are not a deterrent.

## These will not be Welsh-speaking areas. This applies to second home owners but, more crucially, it applies to FHLs which lose their business status because of these proposals. While some of these properties will have been bought by non-locals to run as businesses, some will be owned by local, Welsh-speaking families through inheritance or investment. These proposals could mean local families having to give up their erstwhile businesses in favour of providing a new second home to wealthy non-Welsh speakers. This is not the effect on affordability, community sustainability and security of the Welsh language that Welsh Government is seeking.

## Question 7

Please also explain how you believe the proposals could be formulated or changed

so as to have:

1. positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language; and
2. no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

In broad figures, there are currently 1.5mn dwellings (ONS, 2020) in Wales. Wales needs around 20,000 new dwellings a year. There are around 25,000 second homes and a further estimated 8,000 self-catering units. At least a third of those units are only suitable as self-catering properties, ex agricultural, annexes, etc and only have planning permission for self-catering.

Therefore, even if you converted 25% of all the self-catering units, this barely scratches the surface of Wales housing needs and inflicts a disproportionate economic impact on the GDP of Wales. This measure simply adds to the burden on the diminishing Welsh budget, making more people dependent on the state and damaging the revenue raising potential of the tourism industry in Wales, which is under-pinned by Self-Catering.

There are much more significant measures that can be utilised:

* A programme of Welsh government first time buyer home building that meets the needs of Wales

* More private land needs to be released for the building of homes for first time buyers with a cap on the price that can be charged as a percentage of the anticipated end-value of a completed property, so that first time buyers and even those who are higher up the ladder can affordably buy or self-build properties in Wales.
* The acquisition of abandoned properties which currently litter Wales, including derelict public buildings such as primary schools and the bringing back into use of long abandoned private dwellings.

## Question 8

We have asked a number of specific questions. If you have any related points which we have not specifically addressed, please use this space to record them.

The original consultation secured only **nine** responses which agreed with the proposal of 182 days. It is clearly unacceptable to introduce such a substantial change on such a small respondent base.

The majority of respondents to that ‘original consultation’ proposed an increase to more than 70 days let, with the majority suggesting aligning with the HMRC FHL threshold of 105 days occupancy. This alternative threshold of 105 days is attainable by a high majority of businesses and also represents a 50% increase in the occupancy threshold availability and is readily understood by FHLs familiar with HMRC’s criteria.

This would by aligning with the HMRC tax criteria for FHL’s and begin to establish for the first time a definition of a Business Holiday let as opposed to starting from the basis that all properties, if not residential, are second homes.

The majority response to the Original Consultation was not reflected in the proposals put forward in the current technical consultation.

The Welsh government has proposed legislation that does not reflect the consultation responses. Analysis of the data presented in the published response document is shown below. In each case, the proposed legislation takes no account of the majority views expressed by those who took part in the consultation, and in many cases creates legislation that represents the opinion of just a tiny fraction of the respondents who took part.

*Q. How effective are premiums in addressing housing issues?*

A. 79% said little or no effect, 9% said positive effect.

Result: go with the 9% and push forward with council tax premiums as a means of addressing housing issues.

*Q. Is current max of 100% appropriate?*

A. 64% said appropriate or too high, 20% said too low.

Result: go with the 20% and raise the maximum.

*Q. Should self-catering accommodation thresholds be higher?*

A. 75% said either no change or no support for higher thresholds, 22% supported higher.   
Result: go with the 22% and raise the thresholds.

*Q. If thresholds changed, what should new available to let threshold be?* A. 149 replies suggested greater than the current 70 days (15% of respondents), 38 suggested 210 days (4% of respondents).

Result: go with the 15% of all respondents who supported an increase and set the level in line with the 4% of all respondents who suggested 210 days.

*Q. If thresholds changed, what should new actually let threshold be?*

A. 118 replies suggested greater than the current 70 days (12% of respondents), 38 suggested 105 days (4% of respondents), 9 suggested 182 days (0.9% of respondents).

Result: go with the 12% of respondents who supported an increase and set the level **in line with the 0.9% of respondents** who suggested 182 days.

Of key note are the responses to Q9 ‘If the self-catering thresholds were to be changed, what do you suggest the new thresholds should be’.

*Of the 155 responses suggesting a rise on the* ***availability*** *criterion, 149 proposed thresholds higher than the current 140 days, ranging from 150 to 365 days. The most common specific suggestion was* ***210 days*** *a year. The most common specific suggestion for* ***commercial occupancy*** *was* ***105 days****. Only 9 responses supported a range of between 182 days or 6 months (9 responses).*

Finally, we recommend that:

1. Welsh Government observes the majority response to the Original Consultation and Increase the threshold from 70 Days to 105 Days (that’s a 50% increase) and align with FHL HMRC taxation rules;
2. We adopt the term ‘Holiday Let Businesses’ for FHLs that comply with 105 days letting and full HMRC tax compliance;
3. Properties that are limited by (i) planning permission to only be short term commercial lets and (ii) lie within the curtilage of an owner’s primary residence are not made liable to pay the additional council tax premiums if they do not hit 105 days let;
4. Allowances can be made when whatever threshold is finally determined upon, accommodating limitations on availability (as opposed to occupancy) such as, carrying out repairs, property improvements, closure due to ill-health or caring responsibilities. We would be pleased to work with the Welsh Government in determining what these might be;
5. We work with Visit Wales to drive quality and nightly yield up to improve profitability and sustainability of this sector of the industry;
6. We work with Visit Wales, Welsh Government and other partners to push forward the green, low-zero carbon agenda in the self-catering business sector.

Thank you for taking these points into consideration.