



Ministry of Housing,  
Communities &  
Local Government

# Consultation on the Business rates treatment of self-catering accommodation



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# Scope of the consultation

Topic of this consultation:	This consultation seeks views on the council tax and business rates treatment of holiday lets. It considers options to strengthen the criteria for holiday lets to be liable for business rates, and therefore potentially at a financial advantage due to the Small Business Rate Relief scheme. Such measures could help to ensure that only owners of properties that are genuine businesses are liable for business rates, rather than council tax.
Scope of this consultation:	This consultation seeks views from all interested parties, including the owners of holiday lets, trade representatives of the self-catering and tourism industry and local authorities.
Geographical scope:	These proposals relate to England only.
Impact Assessment:	<p>No impact assessment has been prepared.</p> <p><u>Equalities</u> Under section 149 of the Equality Act 2010, the Ministry is required to give due regard to the impact of any policy decisions that it enacts on persons with protected characteristics. The protected characteristics are:</p> <ul style="list-style-type: none"> <li>• Age;</li> <li>• Disability;</li> <li>• Gender Reassignment;</li> <li>• Pregnancy and Maternity;</li> <li>• Race;</li> <li>• Religion or belief;</li> <li>• Sex;</li> <li>• Sexual Orientation; and</li> <li>• Marriage and Civil Partnership (but only in respect of the first aim of the Equality Duty: eliminating unlawful discrimination).</li> </ul> <p>The general public sector equality duty requires public authorities to have 'due regard' to the need to:</p> <ol style="list-style-type: none"> <li>a) Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;</li> <li>b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and</li> <li>c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.</li> </ol> <p>None of the proposals in this consultation would adversely impact on a protected group, and all of the protected groups and people not in a protected group will benefit from the amendments equally.</p>

## Basic Information

To:	This consultation is aimed at all interested parties.
Body/bodies responsible for the consultation:	The Secretary of State for Housing, Communities and Local Government.
Duration:	This consultation will last for 10 weeks from 7 November 2018, with all comments to be received by 16 January 2019.
Enquiries:	For any enquiries about the consultation please contact <a href="mailto:rosie.pearce@communities.gov.uk">rosie.pearce@communities.gov.uk</a>
How to respond:	<p>Please email your response to the questions in this consultation to <a href="mailto:ndr@communities.gov.uk">ndr@communities.gov.uk</a>, making clear which questions you are responding to.</p> <p>When you reply it would be very useful if you confirm whether you are replying as an individual or submitting an official response on behalf of an organisation and include:</p> <ul style="list-style-type: none"><li>- your name,</li><li>- your position (if applicable),</li><li>- the name of organisation (if applicable),</li><li>- an address (including post-code),</li><li>- an email address, and</li><li>- a contact telephone number</li></ul>

# The current position

1. Under current arrangements, owners of second homes are generally liable for council tax, including where they might carry out a degree of short-term letting. However, where a property is considered to be used predominantly for self-catering accommodation purposes ('holiday lets'), then it may be valued for non-domestic rates ('business rates') instead.<sup>1</sup>
2. If the property will be available for letting commercially for short periods totalling at least 140 days per year, then it will be assessed for business rates and added to the non-domestic rating list.
3. Many such properties are likely to qualify for Small Business Rate Relief (SBRR), which provides 100% relief from business rates – meaning no tax is due – on properties with a rateable value of £12,000 or less, provided the business uses only one property (though relief may still be available under certain circumstances). For properties with a rateable value of £12,001 to £15,000, the rate of relief decreases gradually from 100% to 0%. Following the doubling of SBRR, the Government compensates local authorities for the additional cost for providing the relief.
4. The Government does not collect data on the number of holiday lets in receipt of SBRR, but as of April 2018 there were c.47,000 holiday lets in England liable for business rates, of which c.96% have rateable values of £12,000 or less.
5. The Government takes a positive approach to holiday lets, encouraging individuals to take an entrepreneurial approach (as long as it is safe and legal). Short-term lettings enable households to contribute to the economy, offering more choice to visitors, helping to share the benefits of tourism regionally and providing hosts with the opportunity to use their property more productively.
6. However, the Government is concerned that owners of properties that are not genuine businesses may reduce their tax liability by declaring that a property is available for let, but making little or no realistic effort to actually let it out. It has been suggested, for example, that a property-owner may restrict the periods during which bookings can be accepted, ask for unrealistic rents or fail actively to market the property at all.
7. The precise impact of the switch from council tax to business rates will vary between local authorities, but we consider this could have a material impact on local authorities' income, and will have an impact on the Exchequer where SBRR is paid.

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<sup>1</sup> Section 66(2B) of the 1988 Local Government Finance Act.

# Options for strengthening the criteria for holiday lets' liability for business rates

8. In light of these concerns, the Government proposes to strengthen the criteria for a holiday let to be liable for business rates. One such option could be to allow a property to be liable for business rates rather than council tax only if:
  - a) In relation to the year being considered, the property will be available for letting commercially as self-catering accommodation for short periods totalling at least 140 days;
  - b) During the year immediately prior to the year being considered, the property was available for letting commercially as self-catering accommodation for short periods totalling at least 140 days; and
  - c) During the year immediately prior to the year being considered, the property was actually commercially let as self-catering accommodation for short periods totalling at least 70 days.

**Question 1 – Do you have any views on the current criteria?**

**Question 2 – Do you have any views on the possible criteria set out above?**

**Question 3 – Do you have any views on how the criteria set out above could be evidenced?**

**Question 4 – Do you have any alternative suggestions that would similarly strengthen the criteria?**

9. Requirements b) and c) set out above would be additional to the existing criteria.
10. The possible criteria in paragraph 8 mirror those introduced in Wales.<sup>2</sup> The Scottish Government has also published a consultation which includes a proposal to implement a similar condition by 2020, as recommended by the Barclay review.<sup>3</sup> In addition, strengthening the criteria to include a letting condition, as well as an availability condition, would reflect the approach to defining holiday accommodation for corporation, capital gains and income tax purposes.<sup>4</sup>
11. Any change that introduces a 'letting condition' would require ratepayers to take into account letting patterns in the previous 12 months. Therefore the Government's intention would be that such criteria would take effect 12 months after the passing of the relevant amendment to legislation in order to give sufficient notice to ratepayers that will need to take into account availability and letting patterns in the previous 12 months.

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<sup>2</sup> The Non-Domestic Rating (Definition of Domestic Property) (Wales) Order 2010 amended section 66 of the Local Government Finance Act 1988, and was subsequently amended by the The Non-Domestic Rating (Definition of Domestic Property) (Wales) Order 2016.

<sup>3</sup> [https://consult.gov.scot/local-government-and-communities/non-domestic-rates/user\\_uploads/00537324.pdf](https://consult.gov.scot/local-government-and-communities/non-domestic-rates/user_uploads/00537324.pdf)

<sup>4</sup> Sections 265-268 of the Corporation Tax Act 2009.

12. A new or existing property that became available as a holiday let, and a property previously available as a holiday let that changes ownership, would be liable for council tax until it could satisfy all of these criteria, at which point it would become liable for business rates. However, if and when the criteria are satisfied, it would be possible to backdate the business rate bill and have council tax reimbursed in respect of the previous year.

**Question 5 – Do you have any views on the option of backdating business rate bills and reimbursing council tax payments?**

13. 'Commercially' is understood to mean with a view to making a profit. Under normal circumstances, this would mean that the property is let at market rates and actively advertised in the usual places, such as tourism and hospitality company websites. Consequently, lettings to friends or relatives at zero or nominal rents are unlikely to be covered.
14. 'Short periods' is normally understood to mean periods of a month or less, so a property that is let on a long-term basis would be liable for council tax, rather than business rates. This is because it would become a domestic property as it is someone's sole or main residence.
15. Some properties are subject to planning restrictions for use as self-catering businesses. Such properties would also have to meet these criteria to be liable for business rates, rather than council tax. Planning and local taxation regimes operate independently of each other; a property can be classed as a self-catering property for planning purposes while being subject to council tax.
16. A property that fails to meet the criteria would be classed as domestic and therefore liable for council tax. However, as a domestic property, such a property would then be subject to any relevant exemptions and discounts that may be available under council tax arrangements. For example, local authorities may decide to offer a discount of up to 100% for homes that are vacant, substantially unfurnished and which require or are undergoing major repair work or structural alteration.<sup>5</sup> Homes that are unoccupied due to the previous occupier having to leave for the purposes of receiving personal care due to old age, disablement or illness are not subject to council tax.<sup>6</sup> In addition, local authorities have powers to reduce the amount of council tax a person (or group of people) is liable to pay.<sup>7</sup> This may be reduced to such an extent as the local authority sees fit.
17. Furthermore, additional flexibility may be required in the case of business owners with multiple holiday lets at the same location or within very close proximity. To assist these business owners in meeting the criteria, one option would be to allow such owners to use the average number of letting days across their properties when establishing whether the 70-day criterion is met.

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<sup>5</sup> Such properties are Class D Properties in regulation 8 of the Council Tax (Prescribed Classes of Dwellings) (England) Regulations 2003. A billing authority may make determinations to make such discounts under section 11A(4A) of the Local Government Finance Act 1992.

<sup>6</sup> Section 4 of the Local Government Finance Act 1992 and regulation 3 of the Council Tax (Exempt Dwellings) Order 1992.

<sup>7</sup> Section 13A(1)(c) of the Local Government Finance Act 1992.

**Question 6 - Are there any issues regarding the administration and enforcement of the approach outlined in paragraphs 8 - 17?**

**Question 7- Do you have any other comments on the options set out above to strengthen the criteria for holiday lets to become liable for business rates rather than council tax?**

## About this consultation

This consultation document and consultation process have been planned to adhere to the Consultation Principles issued by the Cabinet Office.

Representative groups are asked to give a summary of the people and organisations they represent, and where relevant who else they have consulted in reaching their conclusions when they respond.

Information provided in response to this consultation, including personal data, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA), incoming data protection legislation, and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, as a public authority, the Department is bound by the Freedom of Information Act and may therefore be obliged to disclose all or some of the information you provide. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Ministry of Housing, Communities and Local Government will process your personal data in accordance with the law and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties. A full privacy notice is included at Annex A.

Individual responses will not be acknowledged unless specifically requested.

Your opinions are valuable to us. Thank you for taking the time to read this document and respond.

Are you satisfied that this consultation has followed the Consultation Principles? If not or you have any other observations about how we can improve the process please contact us via the [complaints procedure](#).

# Annex A

## Personal data

The following is to explain your rights and give you the information you are be entitled to under the Data Protection Act 2018. Note that this section only refers to your personal data (your name address and anything that could be used to identify you personally), not the content of your response to the consultation.

### **1. The identity of the data controller and contact details of our Data Protection Officer**

The Ministry of Housing, Communities and Local Government (MHCLG) is the data controller. The Data Protection Officer can be contacted at [dataprotection@communities.gsi.gov.uk](mailto:dataprotection@communities.gsi.gov.uk)

### **2. Why we are collecting your personal data**

Your personal data is being collected as an essential part of the consultation process, so that we can contact you regarding your response and for statistical purposes. We may also use it to contact you about related matters.

### **3. Our legal basis for processing your personal data**

The Data Protection Act 2018 states that, as a government department, MHCLG may process personal data as necessary for the effective performance of a task carried out in the public interest. i.e. a consultation.on changes to legislation.

### **4. With whom we will be sharing your personal data**

In order to enable potential legislative development and associated enforcement, we will be sharing all data with Her Majesty's Treasury and the Valuation Office Agency. We will also publish a government document summarising consultation responses, in which we may mention organisations and public bodies, but will only anonymously refer to individual responses.

### **5. For how long we will keep your personal data, or criteria used to determine the retention period.**

Your personal data will be held for two years from the closure of the consultation

### **6. Your rights, e.g. access, rectification, erasure**

The data we are collecting is your personal data, and you have considerable say over what happens to it. You have the right:

- a. to see what data we have about you
- b. to ask us to stop using your data, but keep it on record
- c. to ask to have all or some of your data deleted or corrected
- d. to lodge a complaint with the independent Information Commissioner (ICO) if you think we are not handling your data fairly or in accordance with the law. You can contact the ICO at <https://ico.org.uk/>, or telephone 0303 123 1113.

### **7. Your personal data will not be sent overseas**

### **8. Your personal data will not be used for any automated decision making.**

### **9. Your personal data will be stored in a secure government IT system.**