

**2005 No. 51**

**COUNCIL TAX**

**The Council Tax (Discount for Unoccupied Dwellings)  
(Scotland) Regulations 2005**

*Made* - - - - - *28th January 2005*

*Coming into force* - - - - - *1st April 2005*

The Scottish Ministers, in exercise of the powers conferred by section 33(1), (2), (3) and (4) of the Local Government in Scotland Act 2003(a) and of all other powers enabling them in that behalf, and after consultation with such associations of local authorities and such other persons as they think fit in accordance with section 33(7) of that Act, hereby make the following Regulations, a draft of which has, in accordance with section 33(6) of that Act, been laid before and approved by resolution of the Scottish Parliament:

**Citation, commencement and interpretation**

**1.**—(1) These Regulations may be cited as the Council Tax (Discount for Unoccupied Dwellings) (Scotland) Regulations 2005 and shall come into force on 1st April 2005.

(2) In these Regulations—

“empty dwelling” means a dwelling which is both unoccupied and unfurnished;

“major repair work” includes structural repair work;

“second home” means a dwelling which is no one’s sole or main residence and is not an empty dwelling; and

“Schedule” means the Schedule to these Regulations.

**Amendment of section 79 of the Local Government Finance Act 1992**

**2.** Paragraph (a) (daily discount from council tax of twice the “appropriate percentage” for chargeable dwellings of which there is no resident) of subsection (2) of section 79 of the Local Government Finance Act 1992(b) is hereby repealed.

**Discounts for unoccupied dwellings**

**3.** The amount of council tax payable in respect of a chargeable dwelling and any day shall be subject to a discount equal to 50% of that amount if on that day there is no resident of the dwelling.

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(a) 2003 asp 1.  
(b) 1992 c.14.

### **Modification of the application of these Regulations**

4. Local authorities may, subject to regulation 5, modify the application of these Regulations within their areas in relation to—

- (a) the following classes of dwelling—
  - (i) empty dwellings; and
  - (ii) dwellings that are second homes; and
- (b) different parts of their areas.

### **Limitations on local authorities power to modify the application of these Regulations**

5.—(1) The power conferred by regulation 4 shall not permit local authorities to modify the application of these Regulations so as to—

- (a) set the amount of the discount as provided for in regulation 3, for their respective areas, at an amount outwith the maximum and minimum amounts specified in paragraph (2);
  - (b) modify the discount provided for in regulation 3 for the classes of dwelling specified in paragraph (3);
  - (c) make provision, applying to the whole local authority area, for discounts at different amounts in respect of dwellings that fall within one of the classes referred to in regulation 4(a);
  - (d) modify regulation 4 or this regulation; or
  - (e) modify the classes of dwellings specified in the Schedule.
- (2) For the purposes of paragraph (1)(a)—
- (a) the specified maximum amount is 50%; and
  - (b) the specified minimum amount is 10%.
- (3) For the purposes of paragraph (1)(b), the classes of dwelling are—
- (a) dwellings which fall within one of the classes specified in paragraphs 1 and 2 of the Schedule;
  - (b) dwellings which fall within the class specified in paragraph 3 of the Schedule but only for the period of 6 months beginning with the day on which that dwelling was purchased by the person who is liable to pay council tax in respect of that dwelling;
  - (c) dwellings which fall within the class of dwellings specified in paragraph 4 of the Schedule but only for the period of 6 months beginning with the day on which that dwelling ceased to be an exempt dwelling in terms of the Council Tax (Exempt Dwellings) (Scotland) Order 1997(a).

*TAVISH SCOTT*

Authorised to sign on behalf of the Scottish Ministers

St Andrew's House,  
Edinburgh  
28th January 2005

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(a) S.I. 1997/728.

## SCHEDULE

Regulation 5(1) and (3)

### CLASSES OF DWELLINGS

#### **Purpose-built holiday homes**

##### **1. A dwelling—**

- (a) which is used for holiday purposes; and
- (b) which either—
  - (i) in accordance with any licence or planning permission regulating the use of the site, or for any other reason, is not allowed to be used for human habitation throughout the whole year; or
  - (ii) by reason of its construction or the facilities which it does, or does not, provide, is unfit so to be used.

#### **Job-related dwellings**

**2.—**(1) A dwelling which is owned or tenanted by a person whose sole or main residence is a dwelling which for that person is job-related.

(2) A dwelling which is job-related for a person whose sole or main residence is a dwelling which is owned or tenanted by that person.

(3) For the purposes of paragraphs (1) and (2), a dwelling is job-related if it falls within the description set out in paragraphs (4), (5) or (6).

- (4) (a) Subject to sub-paragraph (b), a dwelling is job-related for a person if it is provided for that person by reason of that person's employment or for that person's spouse by reason of the spouse's employment, in any of the following cases—
  - (i) where it is necessary for the proper performance of the duties of the employment that the employee should reside in that dwelling;
  - (ii) where the dwelling is provided for the better performance of the duties of the employment, and it is one of the kinds of employment in the case of which it is customary for employers to provide dwellings to employees;
  - (iii) where, there being a special threat to the employee's security, special security arrangements are in force and the employee resides in the dwelling as part of those arrangements.
- (b) If the dwelling is provided by a company and the employee is a director of that or an associated company, paragraph (i) or (ii) of sub-paragraph (a) shall not apply unless either—
  - (iv) the employment is as a full-time working director;
  - (v) the company is non-profit making, that is to say, it does not carry on a trade nor do its functions consist wholly or mainly in the holding of investments or other property; or
  - (vi) the company is established for charitable purposes only.
- (5) A dwelling is job-related for a person if that person or that person's spouse is a minister of religion and the dwelling is inhabited by that person as a residence from which that person performs the duties of that person's office.
- (6) (a) Subject to sub-paragraph (b), a dwelling is job-related for a person if that person or that person's spouse is required, under a contract to which this sub-paragraph applies, to live in that dwelling.

- (b) Sub-paragraph (a) does not apply if the dwelling concerned is in whole or in part provided by any other person or persons together with whom the person or spouse carries on a trade or business in partnership.
- (c) A contract to which sub-paragraph (a) applies is a contract entered into at arm's length and requiring the person concerned or that person's spouse (as the case may be) to carry on a particular trade, profession or vocation in a property provided by another person and to live in a dwelling provided by that other person.

(7) For the purposes of paragraphs (4) to (6)–

a company is an associated company of another person if one of them has control of the other or both are under the control of the same person;

“director”, “full-time working director” and “control”, in relation to a body corporate have the same meanings as they have in sections 67 and 69 of the Income Tax (Earnings and Pensions) Act 2003(a) in relation to the benefits code;

“provided” means provided under a tenancy or otherwise; and

references to a person's spouse include references to another person living together with that person as husband and wife or in a relationship which has the characteristics of the relationship between husband and wife except that the persons are of the same sex.

### **Dwellings under repair**

**3.** A dwelling which–

- (a) is undergoing or requires major repair work to render it habitable; or
- (b) is undergoing structural alteration.

### **Empty dwellings**

**4.** The class of dwelling specified in paragraph 4 (empty dwellings) of Schedule 1 to the Council Tax (Exempt Dwellings) (Scotland) Order 1997(b).

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(a) 2003 (c.1); for the meaning of benefits code, see section 63.

(b) S.I. 1997/728. In paragraph 4, an empty dwelling is specified as being “A dwelling–

(a) which is both unoccupied and unfurnished; and

(b) in respect of which less than 6 months have elapsed since the end of the last period of 6 weeks or more throughout which it was continually occupied or furnished.”.

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations repeal paragraph (a) (daily discount from council tax of twice the “appropriate percentage” for chargeable dwellings of which there is no resident) of section 79(2) of the Local Government Finance Act 1992 and make new provision in relation to council tax discounts for dwellings which have no resident.

Regulation 3 provides that there shall be a discount of 50% of the amount of council tax payable in respect of a chargeable dwelling where there is no resident of the dwelling.

Regulation 4 gives local authorities the power to modify the application of these Regulations within their areas in relation to certain classes of dwelling (i.e. empty dwellings and dwellings that are second homes) and in relation to different parts of their areas.

Regulation 5 places certain limitations on the power to modify provided for at Regulation 4.

Regulation 5(1)(a) provides that local authorities cannot modify the application of these Regulations to set the amount of the discount as provided for in regulation 3 at an amount outwith the specified maximum and minimum amounts. Regulation 5(2) specifies the maximum amount to be 50% and the minimum amount to be 10%.

Regulation 5(1)(b) prevents local authorities from modifying the discount provided for in regulation 3 for the classes of dwelling specified in regulation 5(3). Regulation 5(3) refers to classes of dwelling specified in the Schedule. These classes of dwelling are purpose-built holiday homes, job-related dwellings, dwellings under repair and empty dwellings.

Regulation 5(1)(c) prevents local authorities from modifying so as to make provision, applying to the whole local authority area, for discounts at different amounts in respect of dwellings falling within one of the classes referred to in regulation 4(a).

Regulations 5(1)(d) and (e) prevent local authorities from modifying regulations 4 and 5 and from modifying the classes of dwellings specified in the Schedule respectively.

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