

P-06-1289 Agree 105 day occupancy, not 182 days, to distinguish holiday let businesses from second homes - Petitioner to Committee, 07 October 2022

I attach a further document for the Committee's attention, which arrived just a day or two ago.

We commissioned an *informal* peer review of the Welsh Government's consultation process and supporting EM and RIA, as we had grave concerns about the robustness of the process which led to the making of the Order introducing the 182-day threshold. Depending on the contents, the response would form the basis of a request for a formal review.

As you will see, the concerns appear to be justified. The attached was prepared by two recently retired civil servants (Grade 6) with extensive experience of policy and legislation development in DCLG (particularly housing) and Cabinet Office; it is an England & Wales civil service operating to common standards. Correspondence to the Permanent Secretary is now being prepared on the back of this.

The document speaks to the quality of policy making and opens up areas for further scrutiny which have not yet been examined in the Senedd. We hope that this is of interest.

Many thanks

Suzy Davies

Notes on correspondence and documentation relating to the Non Domestic Rating (Definition of Domestic Property) (Wales) Order 2022

Caveats

- Comments made are based on information available. There may be other publications which have not been seen which contain relevant information
- We have no knowledge of the specific rules around the work conducted by the Welsh Government, which may well be different from the UK Government. However, the flaws identified beg the question why the people of Wales should be subject to much poorer policy making than the people of England.

Headline conclusions

We have been through the detailed questions and answers in the correspondence. There is little point reiterating the detail, but some very clear key points emerge.

- 1) Setting out the problem to be solved

The correspondence states the Explanatory Memorandum sets out the purpose and intended effect of the legislation. But neither it nor the consultation does this in a way that goes beyond a statement in a manifesto pamphlet. At the point at which policy is translated from headline statement to legislation and putting it into operation it requires much more rigorous justification.

Merely saying “we also recognise the impact that higher numbers of second homes and self-catered holiday lets can have on local housing markets and on the sustainability of local communities, particularly in areas where properties are not occupied for parts of the year. We want to ensure that all home owners and businesses make a fair contribution to the communities in which they own or let property. That is why we are reviewing the arrangements for the local taxes, council tax and non-domestic rates.” is not sufficient. There should be visible and sourced material in the RIA to underpin these assertions. There are not. To make a case for intervention – especially fiscal intervention – there should be a bare minimum of supporting data and analysis.

In England, civil servants are required to follow the Treasury Green Book when putting together the case for a policy intervention – even a proposal in a manifesto. The Green Book sets out how to prepare options appraisal and applies to all proposals that concern public spending, taxation, changes to regulations, and changes to the use of existing public assets and resources. It is key in how to make the business case for government interventions and operationalising public policy. The most basic requirement is a clear understanding of the existing arrangements, the business needs (related problems and opportunities), and the potential benefits, risks, constraints and dependencies associated with the proposal. None of that is visible in the documents we have seen.

2) Data/Evidence

The correspondence and RIA are both littered with statements saying there is no data demonstrate the problem (bar the Brookes report, which the author states is limited in scope) and no evidence to show what impact the changes would have. We are actually shocked by how poor a response this is.

Firstly, why isn't there data on things like the housing markets, trends in second homes and self-catering, economic contribution of tourism broken down by place. This kind of basic data should be available and prayed into their case?

Secondly, they seem to conflate data with evidence, but even where data is limited, in any decent policy cost/benefit analysis by the civil service in England, it is possible to do very thorough and sophisticated modelling/scenario planning through in-house or even external statisticians.

Thirdly, this is hardly an issue that affects only Wales. What national and international research has been done on the effectiveness of different tax interventions on housing markets (not least because housing markets are notoriously difficult to affect through policy intervention)?

Interestingly, the one area they appear to have done some modelling work is on the increased costs – and subsequently local authority income – within their chosen policy scenario. But this too is very limited to cash based costs without any real analysis of broader economic effects.

3) Income generation vs housing solution

It is quite clear from the RIA that this policy is about income generation for local authorities and not support for local people trying to access the housing market, despite claims to the contrary in the policy statements. There is one line in the RIA which states “It is not possible to predict how many permanent homes may be made available or whether they would be affordable to locals.” So there is no evidence at all for this. Interestingly, there is no suggestion they have done any behavioural analysis on this. (The former Cabinet Office Behavioural Analysis Unit has been privatised and could easily do some work on this).

On the basis that this is therefore an income generator for local authorities, we would expect there to be a basic analysis of what is meant by “fair contribution” and how this marries up between taxation and the wider economic benefits of tourism income.

4) Impact assessment(s)

The RIA is extremely poor and would not be of an acceptable standard in the civil service in England. The fact that the three options chosen for consideration do not include the option supported by the majority of the consultees is nothing short of breathtakingly arrogant. If the government is sure of its chosen option it should be able to include that middle option and set out its advantages and disadvantages without fear. The fact the government hides behind the lack of data

means it is essentially saying the least favourite option is chosen because of their own incompetence.

But the RIA is even worse in its impact 'analyses'. To describe the disadvantages of their chosen policy without exploring the impact on small and medium sized businesses in a tough market with tight margins is staggeringly irresponsible. How many people that lose SBRR or move to Council Tax will lose their business as a result? We actually can't believe this isn't covered at all.

Equally dismissive is the RIA in terms of Equalities Impact. Essentially saying we don't know how many women or pensioners rely on this income so we don't care. It is NOT acceptable in terms of equalities impact to simply say they have as much chance as anyone else of meeting the new criteria. They should at a minimum explore how many people will suffer if they don't. At the very least they could model it eg, if someone is on a state pension supplemented with let income for the current number of days how much would they lose if they lost the NDR.

5) Consultation

The technical consultation is woefully inadequate. If this were being done by the civil service in England, a technical consultation would be expected to be a consultation on the regulations, setting out in detail the likely costs of the chosen policy and be based on evidence. As it is about a change to the tax base they would be expected to have a full impact assessment, and full economic impact assessment and a full equalities impact assessment.

It only asks 8 questions - two of which are about the clarity of the terminology and two about the impact on the Welsh language. Anything less than 15 -20 questions in a technical consultation is very poor.

In fact only a total of 13 questions in both consultations have been asked which, for a significant change to a tax base affecting a major economic sector in the country, is extraordinarily weak.

6) Review clause

The Minister states that it is not routine practice to build in a formal review. Regardless of routine, the point of reviews is to allow a reassessment in the event of a policy change. Nowhere is this more needed than when the evidence base for a policy change is very limited. Given the lack of data and evidence in this case, it seems like a prime candidate. She states that the impact will be monitored by officials. If these are the same officials who are unable to put together

a decent evidence base policy we would have little faith that they have the capacity to monitor impact adequately.

Conclusion

In short, the reply from the Welsh Minister relies heavily on the consultations, the Explanatory Memorandum and Regulatory Impact Assessment. Each of these is incredibly weak and deeply flawed. There is no robust identification of the problem, no robust data, evidence or analysis supporting an intervention, and no indication that any consideration has been given to the responses to the consultation.