

## **Explanatory Memorandum to the Non-Domestic Rating (Amendment of Definition of Domestic Property) (Wales) Order 2026**

This Explanatory Memorandum has been prepared by the Non-Domestic Rates Policy and Reform Division and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

### **Cabinet Secretary's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Non-Domestic Rating (Amendment of Definition of Domestic Property) (Wales) Order 2026. I am satisfied that the benefits justify the likely costs.

**Mark Drakeford MS**  
**Cabinet Secretary for Finance and Welsh Language**  
**21 January 2026**

## **PART 1: EXPLANATORY MEMORANDUM**

### **Description**

1. The Non-Domestic Rating (Amendment of Definition of Domestic Property) (Wales) Order 2026 (“the 2026 Order”) makes refinements to the application of the criteria used to classify a self-catering property as non-domestic within the local taxation system and, therefore, liable for non-domestic rates. Such properties must be available to let for at least 252 days and actually let for at least 182 days within any 12-month period. They are otherwise classified as domestic and liable for council tax.
2. The 2026 Order enables an average of days let over two or three years to be taken as evidence that the criteria have been met, where 182 days were not achieved in the previous year. It also enables an allowance of up to 14 days per year for charitable donations of short breaks to count towards the letting criteria.

### **Matters of special interest to the Legislation, Justice and Constitution Committee**

3. None.

### **Legislative background**

4. Section 66(2BB) of the Local Government Finance Act 1988 (“the 1988 Act”) set outs the criteria, in relation to Wales, which a property providing self-catering accommodation must meet to be classified as non-domestic, rather than domestic, for local taxation purposes. The criteria, which constitute an exception to the domestic definition of property providing self-catering accommodation, were inserted by the Non-Domestic Rating (Definition of Domestic Property) (Wales) Order 2010.
5. The Non-Domestic Rating (Definition of Domestic Property) (Wales) Order 2016 amended the criteria to provide that, where multiple units of property in very close proximity are operated by the same or connected business, an average for the number of days actually let may be taken.
6. The Non-Domestic Rating (Amendment of Definition of Domestic Property) (Wales) Order 2022 amended the criteria to provide that self-catering property is classified as non-domestic if:
  - a. the property is intended to be made available for letting commercially as self-catering accommodation for short periods totalling 252 days or more in the following 12-month period;
  - b. in the 12 months prior to assessment, the property has been made available for letting commercially as self-catering accommodation for short periods totalling 252 days or more; and
  - c. during that period:

- i. the short periods it has actually been commercially let for amounted to at least 182 days; or
  - ii. for self-contained units of property in very close proximity and operated by the same or connected business, the short periods each individual unit of property has actually been commercially let for amounted, when taken together, to an average of at least 182 days.
7. The appropriate national authority (in this case, the Welsh Ministers) may, by Order in accordance with section 66(9) of the 1988 Act, amend or substitute another definition for any definition of domestic property within section 66.
8. In accordance with section 143A(4) of the 1988 Act, Orders made under section 66 are subject to the Senedd annulment procedure.

### **Purpose and intended effect of the legislation**

9. The 2026 Order provides for two specific refinements to the application of the letting criteria used to classify self-catering properties for local tax purposes. Section 66 of the 1988 Act is amended for this purpose. The amendments apply in respect of assessment days which fall on or after 1 April 2026.
10. Article 2 of the 2026 Order amends section 66(2BB) and inserts new section 66(2BBA) and (2BBB) of the 1988 Act. Section 66(2BBA) and (2BBB) provide for the two refinements to the way the criteria specified in section 66(2BB) are applied in assessments.
11. Section 66(2BBA) provides that, if a self-catering property was not let for at least 182 days in the previous year, it is taken to have met the criterion if it was let for an average of at least 182 days per year over the previous two or three years. An assessment in respect of 1 April 2026, for example, could take account of the days a property has been let since 1 April 2023 (where it is necessary to consider a three-year average to assess whether the criterion has been met). This also applies to multi-unit businesses, whereby an average may be taken across multiple properties and years.
12. The change recognises that a self-catering property may meet the letting criteria in most years, but occasionally fall short by a narrow margin (e.g. due to a temporary drop in demand or late cancellations). This has the potential to result in frequent changes of classification for the same property over time, where the intended levels of occupancy are generally achieved (i.e. on average). The intention is to support stability in the domestic and non-domestic tax-bases and minimise the impacts which could otherwise arise from frequent changes of classification.
13. Section 66(2BBB) provides for an allowance of up to 14 days per year for donations to charity of short breaks to count towards the letting criteria. This allowance relates to lettings provided through a registered charity for use free of charge by beneficiaries of the charity. The provision applies in relation to lettings on or after 1 April 2026, to avoid any change to the treatment of previous letting activity of this type.

14. The change is intended to avoid disincentivising charitable donations provided by self-catering operators which support a broader public benefit for disadvantaged people. As the criteria to classify self-catering properties relate specifically to commercial letting activity, some operators had been reluctant to make such donations in case they may jeopardise their ability to meet the letting criteria. The requirement for eligible donations to be made through a registered charity is intended to ensure the allowance is not open to exploitation.

## **Consultation**

15. A [consultation](#) on proposed refinements to the classification of self-catering properties for local tax purposes took place from 28 August to 20 November 2025. The consultation received 1,211 responses from a range of stakeholders. A [summary of responses](#) was published on 21 January 2026.

## PART 2: REGULATORY IMPACT ASSESSMENT

### Options

16. This Regulatory Impact Assessment (“RIA”) presents two options in relation to the application of the letting criteria used to classify self-catering properties for local tax purposes. The options considered are as follows:

- ***Option 1 – Retain the existing application of the criteria (do nothing)***. This option would retain the existing criteria as they have applied since 1 April 2023. No legislation would be required.
- ***Option 2 – Legislate to refine the application of the criteria (make the Order)***. This option would refine the application of the letting criteria to enable days let to be averaged over two or three years and an allowance of up to 14 days per year for charitable donations to count towards the letting criteria.

### Costs and benefits

#### ***Option 1 – Retain the existing application of the criteria (do nothing)***

17. Option 1 would not require any legislative change. The existing criteria for classifying self-catering properties for local taxation purposes would continue to be applied as they have been since the letting thresholds were increased from 1 April 2023.

18. Following full implementation of the existing letting criteria, 60% of self-catering properties have continued to be classified as non-domestic. This exceeds the levels predicted by the self-catering sector and historical occupancy estimates available when the changes were introduced. The number of self-catering properties now in the rating list is similar to the number listed in 2019, prior to the substantial increase during the early 2020s. Numbers increased by 60%, from 7,000 to over 11,000, between April 2019 and April 2023. This followed an almost doubling between 2013 and 2019, which had led to concerns about an over-supply and the ease with which owners of second homes could escape council tax liability.

19. Many properties in all parts of Wales have met the new letting criteria, demonstrating that this is achievable where supply does not exceed demand. The increased lettings achieved by many operators will support the benefits to local communities intended by the policy change. It is not currently known whether the number of self-catering properties classified as non-domestic would stabilise, increase again, decrease further, or fluctuate over time, in the absence of any refinements to the application of the letting criteria.

20. This option would provide clarity for operators of the requirements that need to be met in each year and avoid the risk that adding complexity may result in confusion for operators. It would also recognise the effectiveness of the 2023 policy changes, in returning the number of self-catering properties classified as

non-domestic to a more sustainable level and ensuring all operators make a fair contribution to the communities where they own or let property. Although consultation responses generally supported the proposals reflected in option 2, many operators were of the view that they would provide limited benefit for the self-catering sector and not address their main request that the 182-day letting criterion is reduced.

21. All self-catering properties which remain classified as non-domestic have met the letting criteria as they currently apply. The requirement to be let for at least 182 days must be met every year for a property to avoid reclassification as domestic. It is recognised that a self-catering property may comfortably exceed 182 days letting in most years, but occasionally fall short by a narrow margin (e.g. due to a temporary drop in demand or late cancellation). In this scenario, the property would be liable for council tax for the period when compliance had lapsed. It would then be re-listed for non-domestic rates if the criteria were met again from a future date.
22. This has the potential to result in frequent changes of classification for the same property over time, where the intended levels of occupancy are generally achieved (i.e. on average). That outcome would, in turn, result in financial uncertainty for the operator and local authorities. Properties defaulting to domestic classification would be subject to backdated council tax bills, which may include premiums. Local authorities would need to adjust the local tax treatment of affected properties and account for backdated billing and collection of revenue. There is not currently sufficient evidence available from ongoing routine compliance checks to determine the scale and impact of this potential source of instability in the relevant parts of the domestic and non-domestic tax-bases.

***Option 2 – Legislate to refine the application of the criteria (make the Order)***

23. Option 2 would require an Order to implement the proposed refinements to the application of the letting criteria. The refinements would enable days let to be averaged over two or three years and an allowance of up to 14 days per year for charitable donations to count towards the letting criteria.
24. The primary benefit of this option would be greater stability in the relevant part of the domestic and non-domestic tax-bases, minimising the potential issues described for option 1 which could arise from frequent changes of classification for properties over time. Where changes of classification would otherwise occur, this would result in greater financial certainty for operators and local authorities. It would also limit the administrative impact on local authorities associated of processing movements between the non-domestic rating and council tax lists.
25. The allowance for charitable donations would support a broader public benefit for charity beneficiaries, by ensuring operators are not discouraged from donating short breaks. More recipients would benefit if this practice became more common among operators (e.g. making donations at time of year where demand is lower to help maintain compliance with the letting criteria). The

scope and total duration of the allowance are intentionally limited to ensure it is not open to exploitation.

26. Although there is uncertainty with respect to the scale of the impact of these changes, the number of self-catering properties achieving and sustaining non-domestic classification would be higher than the baseline scenario (option 1). This may support relative stability or contribute to greater 'bounce back' in the number of properties classified as non-domestic. There is a risk that a substantial 'bounce back' could undermine the success of the changes introduced on 1 April 2023, but the proposals have been designed to ensure that they do not undermine the policy intent for the letting criteria.
27. This option would increase administrative complexity for the Valuation Office Agency (VOA) in their role applying the letting criteria to maintain non-domestic rating and council tax lists. The greatest potential for complexity relates to the averaging of days let over a period of up to three years, although this will only be relevant to the minority of properties which do not continue to achieve 182 days in each individual year. Increased stability across the non-domestic rating and council tax lists would provide an administrative benefit for the VOA, reducing the need for changes of property classification due to lapses in compliance. These impacts will be managed through the Welsh Government's Service Level Agreement with the VOA, which supports the delivery of the associated statutory duties in Wales.
28. The increases to the letting criteria from 1 April 2023 have resulted in increased council tax revenues (from properties classified as domestic) and reduced expenditure through Small Business Rates Relief (for properties classified as non-domestic). This option may stabilise or partially and modestly reverse these trends. There is not sufficient information available to estimate how many properties might be affected, but it will be much lower than the number re-classified for council tax over recent years and well within the tolerances of inherent uncertainty about changes to the domestic and non-domestic tax-bases over time.

### **Option selection**

29. Doing nothing would not deliver against Welsh Government's confirmed intention to refine the application of the letting criteria. Option 1 is, therefore, not the preferred option.
30. Option 2 would support self-catering operators generally operating at a level which aligns with the policy intent for the letting criteria and help to ensure stability in the domestic and non-domestic tax-bases. It would also respond directly to matters raised by the self-catering sector, without undermining the established policy intent.
31. Option 2 is, therefore, the preferred option. It reflects the approach announced by the Welsh Government on 21 January 2026.

## Duties

32. **Well-being of Future Generations (Wales) Act 2015.** The local taxes are a vital revenue stream to support the funding of local government services. A stable and sustainable self-catering sector makes an important contribution to the visitor economy in Wales. Supporting stability for local government funding and self-catering operators will contribute to the wellbeing objective of a prosperous Wales.
33. **UNCRC.** No particular impact on the rights of children has been identified.
34. **Welsh language.** No effect on the opportunities to use the Welsh language or the equal treatment of the language has been identified.
35. **Equalities.** No specific impacts, positive or negative, on persons who share a protected characteristic (as determined by the Equality Act 2010) have been identified.
36. **Voluntary sector.** There may be positive impacts for charity beneficiaries if more self-catering operators make charitable donations of short breaks, supporting the aims of the relevant charities.
37. **Justice.** No specific impacts on the justice system have been identified.
38. **Competition assessment.** A competition filter test has been applied to the 2026 Order. As the criteria apply equally to all self-catering properties, the 2026 Order is unlikely to have a significant detrimental effect on competition.
39. **Post-implementation review.** The Welsh Government will monitor the impact of the legislation by continuing to analyse data on the numbers of self-catering properties classified as non-domestic.