
SELF-CATERING LEGISLATION CHANGES

Report by Director - Infrastructure & Environment

EXECUTIVE COMMITTEE

12 March 2024

1 PURPOSE AND SUMMARY

- 1.1 The purpose of this report is to outline the impact that changes to the local taxation of self-catering properties have had on the Council's Trade Waste Collection Service and to recommend a way forward.**
- 1.2 The law relating to the local taxation of self-catering properties changed with effect from 1st April 2022.
- 1.3 In order to be classed as a Non-Domestic property and liable for Non-Domestic rates instead of Council Tax, a self-catering property is now required to provide evidence to the Assessor of 70 days of actual letting as well as 140 days of intention to let from 2022-23 onwards.
- 1.4 If the property is not considered by the Assessor to be self-catering it will enter the Council Tax Valuation List, at an appropriate valuation band, and will be liable for Council Tax.
- 1.5 The Assessor has reviewed all Self-Catering Properties against the new conditions for the financial year 2022/23 and a number have failed to meet the new requirements and have been moved from the Valuation Roll to the Council Tax Valuation List.
- 1.6 These properties are now asked to pay Council Tax, which in most cases will be more expensive than paying business rates and claiming business rates relief (SBBS).
- 1.7 As a result a number of these properties are requesting a full refund of their Trade Waste Contracts for the periods 2022/23 and 2023/24.
- 1.8 It is important to recognise this will be an ongoing issue that will change from year to year i.e. in future more Self-Catering Properties may not meet the new criteria and vice versa.
- 1.9 The Council needs to agree how it is going to deal with the requests for Trade Waste refunds in these instances to ensure consistency and fairness.

2 RECOMMENDATIONS

2.1 I recommend that the Executive Committee -

- (a) Notes the findings of the report.
- (b) Agrees to implement Option 3 as outlined in Sections 8 and 9.

3 BACKGROUND

- 3.1 The law relating to the local taxation of self-catering properties changed with effect from 1st April 2022.

4 HISTORIC APPROACH

- 4.1 Prior to the change in legislation:

Properties operated as Self-Catering accommodation were liable for Non-Domestic rates, and therefore required to pay for a separate trade waste collection/disposal service.

Properties not operated as a Self-Catering Property were liable for Council Tax, which includes the provision of domestic waste collection and disposal service.

- 4.2 It is important to note that Non-Domestic rates are significantly cheaper than Council Tax. Particularly where property owners have been able to claim small business rates relief, which for many will provide 100% relief.

5 WHAT HAS CHANGED?

- 5.1 In order to be classed as a Non-Domestic property and liable for Non-Domestic rates instead of Council Tax, a self-catering property is now required to provide evidence to the Assessor of 70 days of actual letting as well as 140 days of intention to let from 2022-23 onwards.
- 5.2 If the property is not considered by the Assessor to be self-catering it will enter the Council Tax Valuation List, at an appropriate valuation band, and will be liable for Council Tax.
- 5.3 The legislation requires that the entry to the Council Tax Valuation List is to be made retrospectively.

6 CURRENT TRADE WASTE POSITION

- 6.1 In 2019 only 41 out of 697 Self-Catering properties on the Valuation Roll for the Scottish Borders had a trade waste contract with the Council. The assumption was that most of these properties were disposing of their waste for free as part of the household waste collection service.
- 6.2 Following a report to APWG in September 2019 it was agreed that Waste Services should contact all Self-Catering Properties shown in the Valuation Roll and require them to arrange a trade waste collection with the Council or an alternative provider.
- 6.3 As a result, we have increased the number of self-catering properties with a Council trade waste contract from 41 (2019) to 563 (2023), which equates to a current income of £144,800 per annum.

7 IMPACT ON TRADE WASTE SERVICE

- 7.1 The Assessor has reviewed all Self-Catering Properties against the new conditions for the financial year 2022/23.
- 7.2 A number have failed to meet the new requirements and have been moved from the Valuation Roll to the Council Tax Valuation List. The property owners are now being asked to pay Council Tax, which in most cases will be more expensive than paying business rates and claiming business rates relief (SBBS).
- 7.3 The challenge for Waste Services is that the property owners are now requesting a full refund of their Trade Waste Contracts for the periods 2022/23 and 2023/24. The view being taken by these property owners is that Council Tax includes a waste collection service so they should not be paying twice for the same service. In short, they would not have taken out Trade Waste Contracts had they known they would be paying Council Tax.
- 7.4 It is important to note that this is an ongoing issue which will change from year to year i.e., in future more Self-Catering Properties may not meet the new criteria and vice versa. To add to the complication this designation will be applied annually in retrospect.

8 OPTIONS

- 8.1 The Council needs to agree an approach to dealing with the requests for Trade Waste refunds, going forwards. Three options have been considered as detailed in the table below.

Option	Pros	Cons
<p>Option 1</p> <p>Refund the Trade Waste Contracts in full.</p>	<p>The property owner is likely to be satisfied with the solution.</p> <p>Unlikely to receive negative press.</p>	<p>Additional workload to refund the trade waste contracts.</p> <p>Ongoing financial impact of around £17k per annum.</p> <p>Refund of £18k for the period 2022/23 payable in 2023/24.</p>
<p>Option 2</p> <p>Do not refund the Trade Waste Contracts on the basis that Council Tax is to cover the disposal of household waste and the trade waste contract is for the disposal of waste generated through the</p>	<p>No financial impact.</p>	<p>Property owners will be unhappy.</p> <p>High likelihood of negative press.</p> <p>The property owner may challenge the legal position of charging a property for trade waste collection which does not</p>

<p>course of operating a business.</p> <p>(Important – It is worth noting that if a third party had provided the trade waste service, they would not refund the contract value)</p>		<p>meet the criteria for Self-Catering.</p> <p>Likelihood that officers will need to spend a significant amount of time dealing with complaints and information requests.</p>
<p>Option 3</p> <p>Refund the Trade Waste Contract for 2022/23 and 2023/24. This is on the basis that trade waste contracts were taken out before the legislation change and before the Council agreed its policy position.</p> <p>IMPORTANT - For all future contracts awarded to Self-Catering Properties explain that no refunds will be provided.</p>	<p>The property owner is likely to be satisfied with the solution for 2022/23 and 2023/24 period.</p> <p>Reduced likelihood of negative press.</p> <p>No financial impact for years 2024/25 onwards.</p> <p>The property owner takes the trade waste contract out at their own risk.</p>	<p>Additional workload to refund the trade waste contracts.</p> <p>Financial impact for example £17k (2022/23) and £18k (2023/24).</p> <p>Property owners likely to be unhappy about the risk of being charged both Council Tax and a Trade Waste Contract from 2024/25 onwards. But ultimately this would be at their own risk.</p>

9 RECOMMENDATION

9.1 The change in legislation has created challenges and uncertainty for property owners and the Council. It is therefore recommended that the Council implement option 3 which gives property owners time to adjust to the new legislation and ensures that they understand the risk of taking out a future Trade Waste Contract with the Council. It also minimises the longer-term financial risk to the Council of lost Trade Waste income. Legal Services have reviewed this paper and agree that due to the retrospective nature of new legislation that upon balance option 3 represents an appropriate response. Legal Services also advise that it is vital that communication is clear for future years to ensure that property owners are aware of the potential implications when entering into a trade waste contract as properties may move from one designation to another retrospectively once the Assessor has received the requisite information.

10 IMPLICATIONS

10.1 Financial

The table below details the number of properties that have been moved from Non-Domestic Rates to Council Tax and the likely cost for refunding the trade waste contracts.

Year	No. of properties moved from Non-Domestic Rates to Council Tax	No. of properties likely to request a refund	Total Refund Value
2022/23	136	68	£17,758
2023/24	136	57	£16,913

Important – A number of the 136 properties which have moved from non-domestic rates to Council tax do not have a trade waste contract with the Council.

Based on this information it would be reasonable to assume that this would be an ongoing financial pressure of around £17k per annum under option 1.

It is worth noting that the income generated from these properties paying Council Tax will be far greater than generated from Non-Domestic Rates and Trade Waste Income.

10.2 Risk and Mitigations

The table below outlines the potential side-effects of the recommended option (option 3)

Risk	Mitigation
<ul style="list-style-type: none"> Property owners unhappy about the risk paying for a Council Trade Waste Contract and subsequently having to pay Council. Associated negative press. Property owners may still request trade waste refunds beyond 2024/25. 	<ul style="list-style-type: none"> Property owners do not have to take out a trade waste contract with the Council they can use other providers. Self-Catering Properties will be informed of the risk when they take out a trade waste contract with the Council and that there will be no refunds. An agreed Council policy will ensure all properties are treated fairly.

The table below outlines the potential side effects of doing nothing.

Risk	Mitigation
<ul style="list-style-type: none"> Property owners will continue to request trade waste refunds. The lack of an agreed Council policy means there will be a lack of clarity for Officers and property owners which in turn may result in miss understanding and lack of fairness. Ongoing financial costs associated with trade waste refunds. Additional resource dealing with refund requests and complaints. Associated negative press. 	<ul style="list-style-type: none"> Implement recommended option i.e. option 3.

10.3 Integrated Impact Assessment

A Stage 1 Integrated Impact Assessment has been undertaken, which confirms that a full assessment is not required, see appendix 1.

10.4 Sustainable Development Goals

An assessment against each of the UN Sustainable Development Goals has been undertaken, which confirms the recommendation has no impact.

10.5 Climate Change

The recommendation has been assessed against the criteria in the checklist on Climate Change. No opportunities have been identified to mitigate and/or enhance the activity in terms of climate change impacts.

10.6 Rural Proofing

The recommendation has been assessed against the criteria in the rural proofing checklist, which identified no impacts.

10.7 Data Protection Impact Statement

There are no personal data implications arising from the proposals contained in this report.

10.8 Changes to Scheme of Administration or Scheme of Delegation

No changes to the Scheme of Administration or the Scheme of Delegation are required as a result of the proposals in this report.

11 CONSULTATION

11.1 The Director (Finance & Procurement), the Director (Corporate Governance), the Chief Officer Audit and Risk, the Director (People Performance & Change) and Corporate Communications have been consulted and comments have been incorporated into the final report.

Approved by

Name
John Curry

Title
Director – Infrastructure & Environment

Author(s)

Name	Designation and Contact Number
Ross Sharp-Dent	Waste & Passenger Transport Manager

Background Papers: NA

Previous Minute Reference: NA

Note – You can get this document on tape, in Braille, large print and various computer formats by contacting the address below. Ross Sharp-Dent can also give information on other language translations as well as providing additional copies.

Contact us at RSharp-Dent@scotborders.gov.uk

Appendix 1

Integrated Impact Assessment (IIA)

Stage 1 Scoping and Assessing for Relevance

Section 1 Details of the Proposal

A. Title of Proposal:	Self-Catering Legislation Changes
B. What is it?	A new Policy/Strategy/Practice <input checked="" type="checkbox"/> A revised Policy/Strategy/Practice <input type="checkbox"/>
C. Description of the proposal: (Set out a clear understanding of the purpose of the proposal being developed or reviewed (what are the aims, objectives and intended outcomes, including the context within which it will operate))	<p>The law relating to the local taxation of self-catering properties changed with effect from 1st April 2022.</p> <p>The Assessor has reviewed all Self-Catering Properties against the new conditions for the financial year 2022/23 and a number have failed to meet the new requirements and have been moved from the Valuation Roll to the Council Tax Valuation List.</p> <p>As a result a number of these properties are requesting a full refund of their Trade Waste Contracts for the periods 2022/23 and 2023/24.</p> <p>The Council needs to agree how it is going to deal with the requests for Trade Waste refunds in these instances to ensure consistency and fairness.</p> <p>The recommendation is to refund the cost of Trade Waste Contracts taken out by the owners of properties who failed to meet the requirements.</p>

D. Service Area: Department:	Waste Services Infrastructure & Environment
E. Lead Officer: (Name and job title)	Ross Sharp-Dent Waste & Passenger Transport Manager
F. Other Officers/Partners involved: (List names, job titles and organisations)	Joyce Dickey – Trade Waste Officer Iain Davidson - HR
G. Date(s) IIA completed:	30 th November 2023

Section 2 Will there be any impacts as a result of the relationship between this proposal and other policies?

Yes / No (please delete as applicable)
If yes, - please state here:

Section 3 Legislative Requirements

3.1 Relevance to the Equality Duty:	
Do you believe your proposal has any relevance under the Equality Act 2010? No (If you believe that your proposal may have some relevance – however small please indicate yes. If there is no effect, please enter “No” and go to Section 3.2.)	
Equality Duty	Reasoning:
A. Elimination of discrimination (both direct & indirect), victimisation and harassment. (Will the proposal discriminate? Or help eliminate discrimination?)	
B. Promotion of equality of opportunity? (Will your proposal help or hinder the Council with this)	

C. Foster good relations? <i>(Will your proposal help to foster or encourage good relations between those who have different equality characteristics?)</i>	
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3.2 Which groups of people do you think will be or potentially could be, impacted by the implementation of this proposal? (You should consider employees, clients, customers / service users, and any other relevant groups)				
Please tick below as appropriate, outlining any potential impacts on the undernoted equality groups this proposal may have and how you know this.				
	Impact			Please explain the potential impacts and how you know this
	No Impact	Positive Impact	Negative Impact	
Age Older or younger people or a specific age grouping	x			
Disability e.g. Effects on people with mental, physical, sensory impairment, learning disability, visible/invisible, progressive or recurring	x			
Gender Reassignment/ Gender Identity anybody whose gender identity or gender expression is different to the sex assigned to them at birth	x			
Marriage or Civil Partnership people who are married or in a civil partnership	x			
Pregnancy and Maternity (refers to the period after the birth, and is linked to maternity leave in the employment context. In the non-work context, protection against maternity discrimination is for 26 weeks after giving birth),	x			
Race Groups: including colour, nationality, ethnic origins, including minorities (e.g. gypsy travellers, refugees, migrants and asylum seekers)	x			

Religion or Belief: different beliefs, customs (including atheists and those with no aligned belief)	x			
Sex women and men (girls and boys)	x			
Sexual Orientation , e.g. Lesbian, Gay, Bisexual, Heterosexual	x			
<p>3.3 Fairer Scotland Duty</p> <p>This duty places a legal responsibility on Scottish Borders Council (SBC) to actively consider (give due regard) to how we can reduce inequalities of outcome caused by socioeconomic disadvantage when making <u>strategic</u> decisions.</p> <p>The duty is set at a strategic level - these are the key, high level decisions that SBC will take. This would normally include strategy documents, decisions about setting priorities, allocating resources and commissioning services.</p>				
<p>Is the proposal strategic? Yes / No <i>(please delete as applicable)</i> If No go to Section 4</p>				
<p>If yes, please indicate any potential impact on the undernoted groups this proposal may have and how you know this:</p>				
	Impact			State here how you know this
	No Impact	Positive Impact	Negative Impact	
Low and/or No Wealth – enough money to meet basic living costs and pay bills but have no savings to deal with any unexpected spends and no provision for the future.		x		If the recommendation is accepted, it will mean property owners faced with a Council Tax bill for the period 2022/23 & 2023/24 will have the costs mitigated by refund of the costs of the Trade Waste contract.
Material Deprivation – being unable to access basic goods and services i.e. financial products like	x			

life insurance, repair/replace broken electrical goods, warm home, leisure and hobbies				
Area Deprivation – where you live (e.g. rural areas), where you work (e.g. accessibility of transport)	x			
Socio-economic Background – social class i.e. parents' education, employment and income	x			
Looked after and accommodated children and young people	x			
Carers paid and unpaid including family members	x			
Homelessness	x			
Addictions and substance use	x			
Those involved within the criminal justice system	x			

3.4 Armed Forces Covenant Duty (*Education and Housing/ Homelessness proposals only*)

This duty places a legal responsibility on Scottish Borders Council (SBC) to actively consider (give due regard) to the three matters listed below in Education and Housing/ Homelessness matters.

This relates to current and former armed forces personnel (regular or reserve) and their families.

Is the Armed Forces Covenant Duty applicable?

No

If "Yes", please complete below

Covenant Duty	How this has been considered and any specific provision made:
The unique obligations of, and sacrifices made by, the armed forces;	
The principle that it is desirable to remove disadvantages arising for Service people from membership, or former membership, of the armed forces;	
The principle that special provision for Service people may be justified by the effects on such people of membership, or former membership, of the armed forces.	

Section 4 Full Integrated Impact Assessment Required

Select No if you have answered “No” to all of Sections 3.1 – 3.3.

No

If yes, please proceed to Stage 2 and complete a full Integrated Impact Assessment

If a full impact assessment is not required briefly explain why there are no effects and provide justification for the decision.

The impact only applies in one specific instance i.e. low and / or no wealth and therefore a full impact assessment is not required.

Signed by Lead Officer:	
Designation:	Waste & Passenger Transport Manager
Date:	1 December 2023
Counter Signature Director:	
Date:	