



Llywodraeth Cymru
Welsh Government

GUIDANCE

Council Tax on empty and second homes

Guidance for local authorities on council tax premiums on long-term empty properties and second homes.

First published: 9 March 2023

Last updated: 9 March 2023

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Introduction

Since 1 April 2017, local authorities in Wales have been able to charge a premium of up to 100% of the standard rate of council tax on long-term empty dwellings and dwellings occupied periodically (more commonly referred to as second homes) in their areas. From 1 April 2023, the maximum level at which local authorities can set council tax premiums will increase to 300%. The powers given to local authorities are discretionary so whether to charge a premium on long-term empty properties or second homes (or both) is, therefore a decision to be made by each local authority.

The purpose of this guidance is to ensure a fair and consistent approach is applied across Wales and assist local authorities:

- in their decisions to charge or amend a premium in their local area
- with the administration and enforcement of premiums
- the application of the exceptions
- monitoring and reporting the use of premiums

All local authorities in Wales must have regard to any guidance issued by Welsh Ministers when determining a premium on the standard rate of council tax as set out in sections 12A (3) and 12B (4) of the Local Government Finance Act 1992 ('the 1992 Act') as inserted by the Housing (Wales) Act 2014 ('the 2014 Act').

This guidance should not be treated as an interpretation of the legislation. The interpretation of legislation is in the first instance a matter for the local authority, with definitive interpretation being the responsibility of the courts.

Part 1: implementation of the council tax premium on long term empty dwellings and

dwelling periodically occupied in Wales

Legal framework for the council tax premiums

This section sets out the legal framework which is common to both the premium on long-term empty dwellings and on dwellings periodically occupied. Specific requirements for long-term empty properties are set out in Section 12A, and those specific to dwellings periodically occupied are detailed Section 12B.

Sections 12A and 12B to enable a billing authority (a county council or county borough council) in Wales to disapply any discount granted to long-term empty dwellings and dwellings occupied periodically and apply a higher amount of council tax (a premium).

The Council Tax (Long-term Empty Dwellings and Dwellings Occupied Periodically) (Wales) Regulations 2022 ('the 2022 Regulations') amended sections 12A and 12B of the 1992 Act increasing the higher amount of council tax a billing authority (a county council or county borough council) in Wales can apply to long-term empty dwellings and dwellings occupied periodically to 300% for the 2023 to 2024 financial year and for subsequent years.

Where a determination to charge a premium is made, a local authority must publish a notice of the determination in at least 1 newspaper circulating in its area within 21 days of the date of the determination.

A determination by a billing authority to charge a premium will also disapply any discount that is granted under section 11(2)(a) of the 1992 Act for dwellings in which there are no residents.

A billing authority can make, vary, or revoke a determination made under sections 12A and 12B of the 1992 Act, but only before the beginning of the financial year to which the determination applies. In using these powers, a billing

authority can also determine the types or classes of properties within the categories of long-term empty dwellings or second homes to which they will apply a premium. This enables each authority to tailor its determination to local circumstances.

The Welsh Ministers also have powers under section 12A(4) and 12A(5), and 12B(5) and 12B(6) of the 1992 Act to prescribe through regulations certain classes of dwelling which may not be subject to a premium. The Council Tax (Exceptions to Higher Amounts Wales) Regulations 2015 prescribe the exceptions and are detailed later in this guidance.

The council tax system already provides several specific exemptions from council tax. The exempt groups are set out in the Council Tax (Exempt Dwellings) Order 1992 (as amended). There are several exemptions in place for unoccupied dwellings, for example:

- where the resident is in long-term residential care or hospital
- where a dwelling is being structurally repaired (for up to 1 year)
- where the resident has died (for up to 6 months after the grant of probate or letters of administration)

A dwelling that is exempt from council tax is not liable for a premium. However, where a dwelling is no longer eligible for an exemption, but remains unoccupied, it will become liable for the premium where 1 is applied. In the case of an empty dwelling, it will become liable for a premium after it has been empty for a continuous period of 1 year, and this will include the period that any exemption has been applied.

Section 12A: higher amount for long-term empty dwellings

A long-term empty dwelling is defined for the purpose of this section as a

dwelling which is both unoccupied and substantially unfurnished for a continuous period of at least 1 year.

The furnishing or occupation of a dwelling for 1 or more periods of 6 weeks or less during the year will not affect its status as a long-term empty dwelling. In other words, a person cannot alter a dwelling's status as a long-term empty dwelling by taking up residence or installing furniture for a short period.

Where a local authority makes a determination to charge a premium on long-term empty dwellings, it may specify different percentages for different dwellings based on the length of time for which they have been empty. This enables local authorities to take a stepped approach, with incremental increases applying over time.

Section 12B: higher amount for dwellings periodically occupied

A second home is defined for the purpose of this section as a dwelling which is not a person's sole or main home and is substantially furnished. These dwellings are referred to in the 1992 Act as dwellings occupied periodically but they are commonly referred to as 'second homes'.

For a premium to apply to dwellings occupied periodically, a billing authority must make its first determination under section 12B at least 1 year before the beginning of the financial year to which the premium relates.

From here on the guidance will refer to long-term empty properties and second homes.

Making a determination to charge the council tax premiums on long-term empty properties and/or second

homes

The discretion given to local authorities to charge a premium is intended to be a tool to help:

- bring long-term empty properties back into use to provide safe, secure and affordable homes
- support local authorities in increasing the supply of affordable housing and enhancing the sustainability of local communities

Local authorities can apply premiums to long-term empty properties or second homes or both and can set different levels of premium for each class.

The powers were deliberately designed as discretionary powers to allow local authorities to tailor their use to address local priorities and reflect the different patterns of housing availability and need across Wales.

There are a range of factors which could help inform local authorities in deciding whether to charge a premium. Whilst some factors will be specific to either long-term empty properties or second homes, others will be common to both. A list of these factors is set out below to assist local authorities. It is not intended to be exhaustive.

- Numbers and percentages of long-term empty properties and/or second homes in the local area.
- Distribution of long-term empty properties and/or second homes and other housing throughout the authority and an assessment of their impact on property values in particular areas.
- Potential impact on local economies and the tourism industry.
- Patterns of demand for, and availability of, affordable homes.
- Potential impact on local public services.
- Potential impact on the local community.

- Potential impact on the Welsh language.
- Other measures that are available to authorities to increase housing supply and the availability of affordable housing.
- Other measures that are available to authorities to help bring empty properties back into use.

The determination by a local authority to charge a premium under section 12A or 12B of the 1992 Act will usually be part of the budget-setting process as it is likely to affect tax-setting and spending decisions. It will therefore normally be a decision made by full Council. Prior to doing so, a local authority must give due consideration to its statutory duties to carry out equality impact assessments under the Equality Act 2010 and the Welsh public sector equality Duty which came into force in 2011 and to all other relevant considerations. This will include consideration of how its policy meets the requirements of the Well-being of Future Generations (Wales) Act 2015 and contribute specifically to the objectives of a prosperous Wales; a more equal Wales; and a Wales of cohesive communities.

Local authorities should also be mindful of the timing of any decisions to introduce or vary a premium for a financial year. Any change to a premium will alter an authority's revenue plans and should be taken into account in its budget-setting. A local authority is normally expected to reflect its proposed tax-base, including all discounts and premiums, by the end of December for the forthcoming financial year, so any decisions made after this point pose risks to the credibility of published data and could lead to criticism.

A local authority should consider how it engages and consults with key stakeholders, including the local electorate and second homeowners, before taking a decision to charge a premium.

Local authorities are strongly encouraged to consult before making a first determination to charge a premium. For second homes, the first determination to charge a premium must be made at least 12 months before the beginning of the

financial year to which the proposed premium relates. The same does not apply to empty properties but as a dwelling must be empty for at least 12 months before a premium can apply, the Welsh Government recommends that a first determination to apply a premium to long-term empty dwellings should be made at least 6 months before the beginning of the financial year to which the premium relates. A local authority should make a full assessment of possible impacts, including on the local population, its communities, and the local economy.

Any decision to vary or revoke a determination to apply a premium must be made before the beginning of the financial year to which it applies. Local authorities are also strongly encouraged to consult before making a determination to increase a premium to a level above 100% and to do so at least 6 months before the beginning of the financial year to which the proposed premium increase relates. This will enable the premium to be taken into account when setting council tax levels for the forthcoming year and allow taxpayers sufficient time to consider the impact of a higher premium on their own personal financial circumstances and make choices regarding their property.

Having decided to introduce or vary a premium, in addition to the requirement to publish a notice in a local newspaper within 21 days, a local authority should consider how its decision is communicated more widely, particularly to those who might be affected. This may be through the publication of press notices, providing information on website pages or via other avenues to raise awareness such as, for example, direct communication with council taxpayers who are likely to be liable for the premium. A local authority should also give consideration as to how they advise or inform those who may be affected but may reside outside the local area.

Exceptions to the council tax premiums on long-term empty properties and second homes

Sections 12A and 12B of the 1992 Act provide Welsh Ministers with powers to make regulations to prescribe 1 or more classes of dwellings in relation to which a billing authority may not make a determination to apply a premium. The Council Tax (Exceptions to Higher Amounts) (Wales) Regulations 2015 are made under these powers a premium may not be charged on a dwelling that falls within an exception. A local authority must have regard to these exceptions before deciding to implement a premium.

The regulations prescribe 7 classes of exempt dwellings. Classes 1, 2, 3 and 4 apply to both long-term empty properties and second homes. Classes 5, 6, and 7 apply only to second homes. The classes of dwelling are outlined below.

Class 1: dwellings being marketed for sale or where an offer to buy the dwelling has been accepted, time-limited for 1 year

Application

Long-term empty properties and second homes.

Class 2: dwellings being marketed for let or where an offer to rent has been accepted, time-limited for 1 year

Application

Long-term empty properties and second homes.

Class 3: annexes forming part of, or being treated as part of, the main dwelling

Application

Long-term empty properties and second homes.

Class 4: dwellings which would be someone's sole or main residence if they were not residing in armed forces accommodation

Application

Long-term empty properties and second homes.

Class 5: occupied caravan pitches and boat moorings

Application

Second homes.

Class 6: dwellings where by virtue of a planning condition, year-round or permanent occupation is prohibited or has been specified for use as holiday accommodation only or prevents occupancy as a person's sole or main residence

Application

Second homes.

Class 7: job-related dwellings

Application

Second homes.

Class 1: dwellings being marketed for sale

This exception applies to both the premium on long-term empty properties and

on second homes. It excepts dwellings that are being marketed for sale. It also covers dwellings where an offer to buy the dwelling has been accepted but the sale has not yet been completed.

To qualify for this exception a dwelling must be on the market for sale at a reasonable price for that dwelling. In considering whether a price is reasonable, regard should be given to the sale price of comparable dwellings in the area. Additional guidance is provided in Part 2 Administration and Enforcement to assist local authorities in the application of this exception.

The exception period runs for up to 1 year from the granting of the exception. After an exception has ended, a dwelling being marketed for sale will not be eligible for a further exception period unless it has been sold.

Class 2: dwellings being marketed for let

This exception applies to both the premium on long-term empty properties and second homes. It excepts dwellings that are being marketed for let. It also covers dwellings where an offer to rent has been accepted but the tenant is not yet entitled to occupy the property because the tenancy has not yet started.

To be eligible for this exception, a dwelling must be on the market for let at a reasonable rent, that is, the rent the property would be expected to fetch having regard to the rent raised on comparable dwellings. Additional guidance is provided in Part 2 Administration and Enforcement to assist local authorities in the application of this exception.

The exception period runs for up to 1 year from the granting of the exception. After the end of the exception period, a dwelling being marketed for let will not be eligible for a further exception period unless it has been subject to a tenancy that was granted for a term of 6 months or more.

Class 3: annexes forming part of, or being treated as part of, the main dwelling

This exception applies to both the premium on long-term empty properties and on second homes.

This exception applies where an owner has adapted their dwelling to provide an annexe and the annexe is now being used as part of the main dwelling.

Class 4: dwellings which would be someone's sole or main residence if they were not residing in armed forces accommodation

This exception applies to both the premium on long-term empty properties and on second homes.

This exception applies to dwellings that would be a person's sole or main residence but which is unoccupied because that person resides in armed forces accommodation.

This exception is also intended to cover armed forces personnel whose homes are unoccupied because they are living in armed forces accommodation overseas.

Class 5: occupied caravan pitches and boat moorings

This exception applies to the second home premium. It covers dwellings that consist of a pitch occupied by a caravan or a mooring occupied by a boat where the caravan or boat currently has no resident, but when next in use will be a

person's sole or main residence.

Class 6: seasonal homes or holiday lets where year-round or permanent occupation is prohibited

This exception applies to the second home premium. It is applicable to dwellings that are subject to planning conditions that prevent occupancy for a continuous period of at least 28 days in any 12 month period.

This exception is often applied to purpose-built holiday homes or chalets which are subject to planning conditions restricting year-round occupancy or to protect local features, for example where the site is near a fragile habitat which requires protection at particular times of year. The exception is based on the definition of the existing discretionary discount for seasonal homes (Class A) in The Council Tax (Prescribed Classes of Dwellings) (Wales) Regulations 1998.

From 1 April 2023, Class 6 is extended to include every dwelling restricted by a planning condition which:

- prevents occupancy for a continuous period of at least 28 days in any 1 year period
- specifies its use as a holiday let only
- prevents occupancy as a person's sole or main residence

Class 7: job-related dwellings

This exception applies only in relation to the second home premium and applies to dwellings occupied by a person who is:

- a qualifying person in relation to the dwelling, but who is resident in another dwelling which is job-related (as defined in Schedule 1 to the Regulations)

- a qualifying person in relation to a job-related dwelling

A qualifying person is defined as:

- a person who is liable for council tax in respect of a dwelling on a particular day, whether or not jointly with another person
- a person who would be liable for the council tax in respect of a dwelling on a particular day, whether or not jointly with another person if that dwelling did not fall within Class O of the Council Tax (Exempt Dwellings) Order 1992 or Class E of the Council Tax (Liability for Owners) Regulations 1992

This exception applies where a person is required to reside in a job-related dwelling. It applies to a second home that is occupied periodically because a person is required to live in job-related accommodation elsewhere. It also applies where the job-related accommodation is a person's second home.

The definition of a job-related dwelling is given in the Schedule to the Regulations. Although this exception is similar to the job-related discount under the Council Tax (Prescribed Classes of Dwellings) (Wales) Regulations 1998, it differs because the discount only applies if the job-related dwelling is a person's sole or main residence.

Another difference from the job-related dwelling discount is that there is no requirement for the taxpayer to be liable for council tax in respect of 2 dwellings, meaning that a person who has either a main home abroad or a job-related dwelling abroad can also benefit from the exception.

Additional guidance is provided in Part 2 Administration and Enforcement to assist local authorities in the application of this exception.

Reducing liability for the council tax premiums on long-term empty properties and second homes

In exercising the power under section 12A and 12B of the 1992 Act, a billing authority may determine the particular types or classes of properties within the categories of long-term empty properties or second homes to which it will or will not apply a premium. In addition, under section 13A of the 1992 Act, billing authorities have discretionary powers to reduce council tax liability to such extent as the billing authority thinks fit. The power can be exercised in particular cases or by determining a class of cases. The power may be used to reduce council tax liability by any amount, including in circumstances where a local authority may otherwise charge a premium. Local authorities may use these powers for example to reduce or disapply a premium, and potentially as a means to target the use of premiums.

Some illustrative examples of where a local authority might consider using its powers include:

- where there are reasons why the dwelling could not be lived in as a permanent residence
- where there are reasons why a dwelling could not be sold or let
- where an offer has been accepted on a property but the sale has not yet been completed and the exception period has run out
- where the owner's use of a property is restricted by circumstances not covered by an exception from the premium
- where charging a premium might cause hardship

The above list is not exhaustive and billing authorities will want to consider all factors they think are relevant when deciding to reduce the council tax liability for a particular property or class of properties and to make an assessment of the potential impact.

Self-catering accommodation

From 1 April 2023, if a self-catering property does not meet the new letting thresholds established by the Non-Domestic Rating (Amendment of Definition of Domestic Property) (Wales) Order 2022, it will be classified as a domestic property and will be liable for council tax. Where the local authority has determined to apply a premium to second homes, the owner will also be liable to pay the additional charge unless their property falls within an exception, or the local authority has determined not to charge a premium for the type or class of property.

There may be instances where some self-catering properties that would be considered unsuitable for permanent living will become subject to council tax and a premium because they do not fall within an exception. In such instances, local authorities are encouraged to consider using their discretionary powers to tailor a determination or to reduce council tax liability to moderate the impact, in effect, reducing the premium. Retaining liability for standard rate council tax, for properties which do not meet the letting criteria, would be consistent with the aim of ensuring all property owners 'make a fair contribution' to their local communities. Some illustrative examples of where a local authority might consider using these powers include:

- outbuildings or barns converted to holiday lets as part of farm diversification
- annexes or garage conversions that form part of an owner's primary residence
- lodges, caravans or chalets

It is a matter for a local authority as to whether it uses the discretionary powers in sections 12A, 12B or 13A to reduce council tax liability in respect of a premium or to reduce the standard council tax liability, or both, as appropriate. This policy should cover a range of situations in which a local authority would consider using its discretionary powers, including properties which do not meet

the criteria to be classed as non-domestic. In the interest of fairness and transparency, a local authority should have a clear policy on whether, and how, these powers will be used. The authority should, however, consider each case on its merits having considered the circumstances of the case.

It should be noted that deliberations around the use of the discretionary section 13A powers are likely to be different when they are considered to reduce council tax liability resulting from a premium compared to reducing liability from the standard rate of council tax. This is because dwellings liable to a premium are already liable for the standard rate of council tax.

Use of additional revenue generated from the council tax premiums

A local authority will be able to retain any additional funds generated by implementing the premiums and amendments to the calculation of the council tax tax-base have been made to facilitate this. Adjustments will be made to allow for the increase in the maximum premium which may be applied from 1 April 2023. Authorities may use the additional revenue for any purpose, but they are encouraged to use it to help to meet local housing needs, in line with the policy intentions for the premiums.

Specific requirements in relation to reporting on any additional revenue generated and its subsequent use are set out in Part 3 Monitoring and Evaluation.

Part 2: administration and enforcement

Determining liability for the council tax premiums and eligibility for exceptions

In deciding to charge a premium, a local authority will need to identify whether a dwelling is a long-term empty property or a second home and whether it would therefore be liable for a premium.

It is reasonable for a local authority to request evidence such as utility bills showing use of services, a driving licence as proof of address, or receipts or other evidence of moving costs if a property is said to be occupied (not empty) or occupied as a sole or main home (not a second home). The process will be similar to existing practices used to assess eligibility for council tax exemptions and discounts.

The Welsh Ministers have prescribed certain exceptions to the council tax premiums and it will be a liable person's responsibility to apply to a local authority for an exception if they believe they are eligible, and to provide evidence in support of their application. Each local authority should clearly set out and explain the evidence required in the interests of transparency and fairness.

As with the monitoring and enforcement of existing council tax exemptions and discounts, it is expected that local authorities will take steps to verify the evidence provided in support of an application for an exception. A local authority may also conduct regular inspections or site visits to verify continued eligibility.

Local authorities will be aware that under the Local Government Finance Act 1992, civil penalties can be applied to a person who deliberately supplies false information.

The following sections provide additional information to assist local authorities in applying the exceptions specifically for:

- dwellings being marketed for sale
- dwellings being marketed for let
- job-related dwellings

Class 1: dwellings being marketed for sale

This exception applies to both the premium on long-term empty properties and second homes. It excepts dwellings that are being marketed for sale. It also covers dwellings where an offer to buy the dwelling has been accepted but the sale has not yet been completed.

To qualify for this exception a dwelling must be on the market for sale at a reasonable price for that dwelling. A liable owner must demonstrate to the satisfaction of a local authority that they are actively marketing their property for sale at a reasonable price, ie what it would reasonably be expected to fetch on the open market.

In considering an application for an exception, a local authority may wish to consider a range of factors relating to the sale of dwellings, such as the following:

- how long properties in the area have been available for sale
- the average price and time on the market of similar properties in the local area
- whether unduly restrictive conditions, such as the price, are being placed on the dwelling to impede its sale
- any other reasonable factors

To determine whether a dwelling is genuinely on the market for sale a local

authority may wish to consider different types of evidence which could include the following:

- listing on advertised websites, for example estate agent websites, Rightmove and Zoopla, or evidence of other ways in which the property is being marketed
- a contract with an estate agent
- estate agent listings or sales particulars if privately marketed
- an Energy Performance Certificate (required when a property is built or sold)

The exception period runs for up to 1 year from the granting of the exception but can be extended should the property sale have been agreed but not completed beyond the 1 year anniversary of the exception period commencing. The exception would end on the date of the sale of the property. After an exception has ended, a dwelling being marketed for sale will not be eligible for a further exception period unless it has been sold.

Class 2: dwellings being marketed for let

This exception also applies to both the premium on long-term empty properties and second homes. It excepts dwellings that are being marketed for let. It also covers dwellings where an offer to rent has been accepted but the tenant is not yet entitled to occupy the property because the tenancy has not yet started.

To be eligible for this exception, a liable owner must demonstrate to the satisfaction of a local authority that they are actively marketing the property for let at a reasonable price, ie the rent the property would reasonably be expected to fetch having regard to the rent raised on comparable dwellings.

In considering whether the exception applies, a local authority may wish to consider a range of factors relating to the letting of dwellings, such as the following:

- how long properties in their area have been available for rent
- the average rent and time on the market for similar rental properties in the local area
- whether unduly restrictive conditions such as the rent is being placed on the property to impede its letting
- any other reasonable factors

For a local authority to determine whether a liable owner is actively or genuinely marketing their property for let, a local authority may wish to consider different types of evidence which could include the following:

- a contract with a letting agency
- estate agent listings or letting agent brochures
- registration and licensing of a landlord and agent for a dwelling being marketed for let, via Rent Smart Wales
- housing lists of properties being offered for rent provided by Registered Social Landlords
- an Energy Performance Certificate (required when a property is built or let)
- a valid gas safety certificate required for homes being let

The exception period runs for up to 1 year from the granting of the exception. After the end of the exception period, a dwelling being marketed for let will not be eligible for a further exception period unless it has been subject to a tenancy that was granted for a term of 6 months or more.

Exceptions 3 to 6 are more specific classes and are not covered further in this part of the guidance.

Class 7: job-related dwellings

This exception applies only in relation to the second home premium and applies to dwellings occupied by a qualifying person. The criteria for a qualifying person

are set out under Class 7 in Part 1.

In considering eligibility for this exception, a local authority may request certain types of evidence, to prove that a liable person is required to live in a job-related dwelling. This could include the following:

- a contract of employment
- a council tax demand notice (to show liability in respect of another property if the main or second home is in the UK)
- tax returns or pay statements
- Denomination Letter (in respect of a Minister of Religion)
- Ministry of Defence letter or written contract (in respect of the Armed Forces)

Part 3: monitoring and reporting council tax premiums

During the summer of 2021, the Welsh Government consulted on local taxes for second homes and self-catering accommodation. This considered the effectiveness of the discretionary powers given to local authorities to apply council tax premiums to second homes and long-term empty properties. Many responses called for local authorities to be more transparent about how they spend the funds raised from the premium.

To assess the effectiveness of the premiums and ensure information on their use is clearly made available to local council taxpayers, the Welsh Government expects local authorities to report on the implementation of the premiums and the additional revenue generated.

In having regard to this guidance, local authorities should also give due consideration to publishing information to assist members of the public and must provide information to the Welsh Ministers when requested.

Local authorities already report through the existing statutory CT1 (Council Tax Dwellings) Return the following information relating to premiums. This informs the annual statistical releases on council tax collection:

- number of properties liable for the premiums
- percentage of premium applied to long-term empty homes
- percentage of premium applied to second homes

From 1 April 2023, local authorities will be encouraged to publish on their websites, details relating to the income generated from charging a premium for the previous financial year.

As a minimum this should include the following:

- the total numbers of (i) long-term empty properties and (ii) second homes
- the numbers of properties liable for each premium (i) long-term empty properties and (ii) second homes
- the amount of income generated from charging a premium on long-term empty properties
- the amount of income generated from charging a premium on second homes
- how the additional income raised has been used to tackle the problems caused by long-term empty properties and second homes, or to address other local housing issues

Part 4: appeals

If a person is dissatisfied with their local authority due to a decision made regarding the calculation of their council tax liability, including their liability to pay a premium, they should, in the first instance, contact their local authority to discuss the decision.

If a person remains dissatisfied after a discussion with their local authority, they may make an appeal to their local authority.

If a person disagrees with the outcome of the local authority appeals process or if the local authority does not provide a decision within the required timescales, the person may instigate an appeal to the Valuation Tribunal for Wales. A person may only do this only after they have exhausted the local authority's appeals process and complied with any processes required by the VTW before an appeal may be instigated.

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