

EXPLANATORY MEMORANDUM

Explanatory Memorandum to the Non-Domestic Rating (Collection and Enforcement) (Local Lists) (Amendment) (Wales) Regulations 2009

This Explanatory Memorandum has been prepared by the Local Government Finance Division and is laid before the National Assembly for Wales in accordance with Standing Order 24.1.

(i) **Description**

These Regulations amend the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 (“the 1989 Regulations”) to make special provision in relation to the collection of certain backdated liability to rates. They replicate in Wales the Non-Domestic Rating (Collection And Enforcement) (Local Lists) (England) (Amendment) Regulations 2009

(ii) **Matters of special interest to the Subordinate Legislation Committee**

None

(iii) **Legislative Background**

Under section 41 of the Local Government Finance Act 1988 (“the 1988 Act”), most non domestic properties appear on a rating list compiled for the area in which they are situated Under section 43, the occupiers of such properties are liable to non-domestic rates for each financial year.

The 1989 Regulations govern the practicalities of billing for rates in respect of locally listed properties. They require the billing authority (unitary authority for the area the property is situated in) to issue to the ratepayer for each financial year a demand notice, setting out their liability to rates. Demand notices are usually served on or around 1st April in each year in respect of which it appears to the authority that the conditions for being liable to rates set out in section 43 or 45 of the 1988 Act are met. Where those conditions are not met on the first day of the financial year but are subsequently met, the demand notice must be served as soon as possible after the day on which they are first satisfied.

Where a demand notice is issued, regulation 7 of the 1989 Regulations provides for liability under the notice to be discharged either in instalments calculated in accordance with Part 1 of Schedule 1 or in accordance with an agreement reached between the billing authority and the ratepayer. Where Schedule 1 applies, the number of instalments is ten or, if less, the number of whole months remaining in the year, less one. Where the demand notice is issued after 31st December, rates for the year are payable in a single instalment.

Where the demand notice is issued after the end of the financial year, Schedule 1 does not apply and instead regulation 7(5) provides that the notice shall require payment of the amount payable for the year in a single instalment.

One of the circumstances in which a demand notice can be issued after the end of a financial year is where, pursuant to his or her duty to maintain an accurate list, the valuation officer for the billing authority area enters a non-domestic property on the rating list for the first time after the end of the year but with an earlier effective date. The effective date of an alteration to a rating list – including by way of adding properties to it – is governed by the Non-Domestic Rating (Alteration of Lists and Appeals) (Wales) Regulations 2005. Until a property is shown in a list, the conditions in sections 43 and 45 of the 1988 Act are not met and so no demand notice can be issued. Once those conditions are met, a demand notice will be issued in respect of liability from the effective date of the list entry.

In some cases where there is a difference between the day a rating list is altered and the effective date of the alteration, significant backdated liability can accrue.

These Regulations will be made under sections 143(1) and (2) of, and paragraph 1 of Schedule 9 of the Local Government Finance Act 1988. These powers were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 and are now vested in the Welsh Ministers by virtue of section 162 and paragraph 30 of Schedule 11 to the Government of Wales Act 2006

The Regulations will follow the negative procedure.

(iv) **Purpose and intended effect of the legislation**

These Regulations insert a new Schedule 1A into the 1989 Regulations (and make associated amendments) which allows – in certain circumstances – billing authorities to agree with the ratepayer that the liability which accrued between the effective date of the list alteration and the date it was actually made can be discharged in instalments over up to 8 years.

This new power is will apply to backdated list alterations made on or before 31st March 2010.

The criteria under which a ratepayer may qualify to pay backdated rates bills via a schedule of payments over up to 8 years will be:

- The backdated liability arises from 33 months or more having elapsed between the effective date of the list alteration and the ratings list update date;
- The backdated liability arises as a result of an update to the 2005 compiled list only;

- The backdated liability arises from an update to the rating list made on or before 31st March 2010;
- The backdated liability arises as a consequence of new properties being added to the 2005 complied list;
- The backdated liability arises as a result of action by the Valuation Office Agency (properties that are newly identified by notification from the billing authority to, or discovery by, the Valuation Office Agency) ;
- An occupier has occupied one or more eligible properties within the billing authority area, between the effective date and the ratings list update date, for a period totalling more than 33 months; and
- The occupier was not previously liable for rates on a property “preceding” the new property assessment (i.e. not occupying previous property that forms a part of a new merged property – or not occupying a part of a property that has been split into two or more properties).

(v) **Implementation**

If this legislation is not made in Wales, owners and occupiers of affected properties would immediately become liable for rates bills backdated to 1 April 2005. They would also have less favourable repayment terms than ratepayers in England, where the UK Government has made similar regulations.

(vi) **Consultation**

There has not been a formal consultation on these Regulations which were announced in respect of England as part of the Pre-Budget Report 2008. The Welsh Ministers were aware that the same issues applied in Wales consequential to the rating review of ports, and undertook to implement the same measures in Wales. Representations on the issue have been received from businesses that have been affected,

Regulatory Impact Assessment –

(a) **Options (for achieving the policy objective – as set out in paragraph (iv) above) –**

Other options were to set either a longer or shorter timescale to apply to schedules of repayments.

If a longer timescale had been set, the Treasury is unlikely to underwrite the costs of loss of interest and, or the event that that a ratepayer defaulted after 8 years, the subsequential shortfall of revenue, as it will not fund any non domestic measure in Wales that is more generous than that in England.

If a shorter threshold had been set, backdated rates bills would have had to be paid more quickly and in higher instalments.

(b) **Benefits**

In the current economic climate, it could be harder for businesses to discharge their liabilities when they are faced with significant unexpected backdated bills.

The ability to discharge backdated liability over a period has clear beneficial effects for the finances of a business in the short term; some of the affected businesses may not have the financial reserves to discharge these unexpected backdated liabilities immediately. In the longer term the affected businesses are able to plan ahead for the impact of their backdated liabilities.

Therefore, to reduce the cash flow impact on businesses, and given the current economic difficulties, these Regulations will allow businesses faced with certain unexpected backdated rates bills up to 8 years to pay the total amount due in respect of the period starting on the effective date of a rating list alteration and ending on the date the alteration was actually made.

Although a recent review of the rating of ports and the subsequent separate entry of a number of new properties within ports on local rating lists highlighted the impact of backdated liability, the amendments will apply to all ratepayers occupying properties that meet the qualifying criteria.

(c) **Costs**

There are no costs to the Assembly Government as the Treasury effectively underwrites the cost of any rates relief provided in Wales that replicates that it has agreed to fund in England.

(d) **Competition Assessment**

This has been scored against the competition filter test which indicated that there should be no detrimental effect on competition,

(e) **Consultation**

See paragraph vi of the explanatory memorandum.

(f) **Post implementation review**

The policy will be reviewed after its end date on 31 March 2010.