

Explanatory Memorandum to the Non-Domestic Rating (Persons Required to Supply Information and Service of Notices) (Wales) Regulations 2022

This Explanatory Memorandum has been prepared by Local Government Finance Reform Division and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Non-Domestic Rating (Persons Required to Supply Information and Service of Notices) (Wales) Regulations 2022. I am satisfied that the benefits justify the likely costs.

Rebecca Evans MS
Minister for Finance and Local Government
15 November 2022

PART 1: EXPLANATORY MEMORANDUM

1 Description

- 1.1 The Non-Domestic Rating (Persons Required to Supply Information and Service of Notices) (Wales) Regulations 2022 (“the Regulations”) define third parties from whom a local authority may request information, to help them carry out their non-domestic rating (NDR) billing functions, and provide for service of relevant notices.

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

- 2.1 None.

3 Legislative background

- 3.1 Paragraph 5(1B) of Schedule 9 to the Local Government Finance Act 1988 (“the 1988 Act”) provides that a county council or county borough council in Wales (a “billing authority”) may serve a notice on certain persons, requiring them to supply information in relation to a hereditament in that billing authority’s area. Those persons include a person who is carrying on a business in relation to that hereditament, of a description specified in regulations made by the Welsh Ministers under paragraph 5(1D)(c) of Schedule 9 to the 1988 Act.
- 3.2 Paragraph 5F of Schedule 9 to the 1988 Act provides Welsh Ministers with the power to make provision in regulations in relation to notices served under paragraphs 5 and 5A of Schedule 9. Such provision includes enabling a notice to be served on a person either by name or by such description as may be prescribed.
- 3.3 The Regulations are made under these powers and are subject to the draft affirmative resolution procedure.

4 Purpose and intended effect of the legislation

- 4.1 On 16 October 2018, following a [consultation](#), the Cabinet Secretary for Finance [announced](#) a package of measures that would be taken forward to tackle NDR fraud and avoidance. Several of the announced measures have since been implemented. The Regulations give practical effect to one of these measures, by defining the third parties from whom billing authorities may request information, to assist them in discharging their NDR billing functions.
- 4.2 Implementation of this measure began with the Local Government and Elections (Wales) Act 2021 (“the 2021 Act”). The 2021 Act specified relevant timeframes and penalties relating to the provision of information and introduced a power under which the Regulations are made, enabling the relevant third parties to be defined.

- 4.3 The intention of the legislation is to enable billing authorities to serve a notice on a third party, requiring them to provide information relevant to a hereditament. This would enhance the billing authority's ability to accurately calculate liability and minimise the risk of the need to rebill ratepayers. Changes would also ensure that, where information was being withheld for the purposes of avoidance, billing authorities would have powers to gather relevant information from persons who would hold that information.
- 4.4 Third parties may be providing a service in relation to a hereditament and, in turn, hold information that would assist in the billing process. For example, information held by a third party supplying a service in relation to a hereditament may be able to help billing authorities identify whether the hereditament is occupied, by whom, and how it is being used. Currently, billing authorities can request information, but third parties are not under any obligation to respond to the request.
- 4.5 The Regulations define third parties carrying out a business in relation to a hereditament from whom billing authorities are able to request information. These are a person providing services relating to NDR (eg a rating agent), as well as utility companies providing water, sewerage, gas, electricity and communications services.
- 4.6 By creating a legal requirement, people who do not cooperate with billing authorities will have less incentive to continue this behaviour, with a risk of being subject to a penalty for either non-compliance or for the provision of false information. It will also make information-sharing easier, on the basis that there is a legal requirement attached to it.
- 4.7 To provide clarity as to how third parties would meet an obligation, billing authorities shall serve a notice on the relevant third party. A range of methods are set out in the Regulations as to how a billing authority may effect service of a notice on an owner, occupier or a third party in relation to the hereditament.
- 4.8 The Regulations will come into force and take effect from 1 April 2023.

5 Consultation

- 5.1 A policy [consultation](#) took place between 4 April and 7 June 2018. The consultation sought views on the Welsh Government's proposals to tackle issues of fraud and avoidance within the NDR system in Wales. The consultation focused on a broad package of measures. A [summary of responses](#) was published on 16 October 2018 alongside an [announcement](#) setting out the package of measures to be taken forward, one of which was to introduce a new legal power for billing authorities to request information from third parties to aid in the discharging of the billing and collection function.

- 5.2 The consultation sought views on third parties being obliged to provide information following the request of a billing authority, the time period within which third parties should provide requested information, and a penalty regime at Level 1 on the standard scale where a third party has withheld information or knowingly provided false information.
- 5.3 Responses to the consultation supported the introduction of an obligation, provided mixed views on the suggested timeframe of 21 days, and broadly supported the proposed penalty, with numerous calls for a higher level of penalty. As a result, some changes were made to the arrangements introduced by the 2021 Act. The timeframe for responding to a request for information was increased to 56 days and the associated penalty regime was amended to be tiered over time, not exceeding the greater of the daily rateable value or £500.
- 5.4 The consultation received 42 responses. Respondents included property agents, wider representative bodies, sector specific representatives, billing authorities, ratepayers, and citizens.
- 5.5 A draft of the Regulations was the subject of a [technical consultation](#) between 24 June and 16 September 2022. The consultation received eight responses. Respondents included property agents, representative bodies, billing authorities, and individuals. No changes to the detail of the draft Regulations were considered necessary following the technical consultation. The draft Regulations were consulted on for making in 2023, following consultation it has now been possible to make the regulations in 2022 with the title amended accordingly. A summary of responses has been [published](#).

PART 2: REGULATORY IMPACT ASSESSMENT

6 Options

6.1 This Regulatory Impact Assessment (RIA) presents two options in relation to persons required to supply information and the service of related notices. All costs and benefits quantified in this RIA are based on information available to the Welsh Government leading up to publication.

6.2 The options considered are as follows:

Option 1 – Do nothing. Retain the existing practice, with billing authorities' ability to request information from third parties remaining constrained.

Option 2 – Make the Regulations. Legislate to define the persons from whom billing authorities may request information and set out the manner in which information may be requested.

7 Costs and benefits

Option 1 – Do nothing

7.1 Option 1 would not require any legislative change. Billing authorities would carry out their billing functions in line with existing procedures and would be unable to draw on relevant information from certain persons.

Costs

7.2 No direct costs would be associated with this option. Avoidance behaviour relating to withholding information would continue to occur, representing a loss in NDR revenue which is a source of funding for local government services. It is not possible to accurately estimate the extent of financial loss resulting from this prevailing behaviour. Extracts from billing authority data in 2017 were used to estimate that various avoidance methods equated to up to £20 million of lost revenue annually.

7.3 The withholding of information was not considered to constitute a major contribution to the total estimate of lost revenue, but this method of avoidance acts as a contributing factor resulting in inaccurate billing. There are additional administrative costs of rebilling, if information were to be corrected where previously withheld.

Benefits

7.4 Existing procedures would be retained, avoiding any uncertainty or new administrative burdens associated with the Regulations.

Disadvantages

- 7.5 Doing nothing would not address the Welsh Government's policy aims and the decision announced following consultation. It would fail to ensure billing authorities had sufficient access to information in carry out all their billing functions.

Option 2 – Make the Regulations

- 7.6 Option 2 would be to make the Regulations to define third parties from whom billing authorities may request information in order to carry out their NDR billing functions. It would enable more accurate billing and ensure accurate information could be obtained when otherwise withheld. The changes would come into force from 1 April 2023, in line with the next rating list, and apply going forward.

Costs

- 7.7 No direct costs have been identified. There may be an increased cost for billing authorities in the administering of notices to persons required to supply information, as well as increased administrative costs for the persons on which a notice is served. No accurate estimations of these costs are available, although they are expected to be minimal as requests made of third parties will be limited and targeted.
- 7.8 The provision of information may result in changed liability for NDR ratepayers, increasing their costs. It could also materialise as a reduction in liability.

Benefits

- 7.9 The Regulations will enable billing authorities to better target situations where a lack of information creates difficulties in carrying out their billing functions. The overall impact on the tax-base would be bills more accurately reflective of the exact circumstances of ratepayers. There would be increased fairness throughout the NDR system, and a reduction in scenarios where withholding of information enabled an unduly low liability to be charged.
- 7.10 The Regulations will make information-sharing easier and clearer, on the basis that there is a legal requirement attached to it.
- 7.11 By better enabling accurate information to be held by billing authorities, this would reduce the need for rebilling, which would reduce billing authority administrative costs as well as provide additional certainty for ratepayers.
- 7.12 Making the Regulations would address the Welsh Government's policy aims and the decision announced following consultation.

Disadvantages

7.13 There could be increased administrative costs for billing authorities and persons required to supply information by carrying out information-sharing under the regulations. It is anticipated this would be offset for billing authorities by the benefits of the removal of the need for rebilling. This is also not thought to place undue burden on the third parties concerned, as similar requirements exist in other areas of law and requests for information will be limited and targeted.

Option summary

7.14 Doing nothing would result in no changes to the existing practice whereby the powers of billing authorities to request information from certain persons that may assist in billing functions are constrained by a lack of legal requirement for defined third parties to comply with such requests. This would not deliver on the Welsh Government's decision to ensure billing authorities had access to relevant information in carrying out their functions. Option 1 is, therefore, not the preferred approach.

7.15 The approach described by Option 2 would enable better provision of information and was announced by the Welsh Government as part of a package of measures on 16 October 2018. The Regulations were published in draft for [technical consultation](#) on 24 June 2022.

7.16 Option 2 is, therefore, the preferred approach.

8 Duties

- 8.1 ***Well-being of Future Generations (Wales) Act 2015***. Ensuring that billing authorities are able to request information from persons who may have knowledge about a hereditament would enable more accurate billing. The increased certainty around billing will support stability and clarity in the NDR tax-base, and consequently local government funding, and contribute to the wellbeing objective of a prosperous Wales.
- 8.2 ***UNCRC***. No particular impact on the rights of children has been identified.
- 8.3 ***Welsh language***. No direct effect on the opportunities to use the Welsh language or the equal treatment of the language has been identified in connection with this legislation.
- 8.4 ***Equalities***. No specific impacts, positive or negative, on persons who share a protected characteristic (as determined by the Equality Act 2010) have been identified. I have considered the socio-economic duty in the development of these regulations: no direct manner in which inequalities can be addressed has been identified. However, the increased stability for local government funding will contribute towards the effectiveness of local authorities carrying out of their socio-economic duty in the use of their resources to address inequalities.
- 8.5 ***Voluntary sector***. No particular impact on the voluntary sector has been identified.

9 Competition assessment

- 9.1 A competition filter test has been applied to the Regulations and the risk of a significant detrimental impact on competition is considered to be low.

10 Post-implementation review

- 10.1 The Welsh Government will monitor the impact of the change on the NDR tax-base as well as specific impacts on ratepayers, sectors, billing authorities and other stakeholders. The Welsh Government will carry out this work through its regular representative fora and working groups.