

**Explanatory Memorandum to
The Non-Domestic Rating (Collection and Enforcement) (Local Lists)
(Amendment) (Wales) Regulations 2011**

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

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Non-Domestic Rating (Collection and Enforcement) (Local Lists) (Amendment) (Wales) Regulations 2011.

Carl Sargeant

Minister for Social Justice and Local Government

26 March 2011

1. Description

The Non-Domestic Rating (Collection and Enforcement) (Local Lists) (Amendment) (Wales) Regulations 2011 amend the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 (“the 1989 Regulations”) to extend the right of certain businesses to pay certain backdated rates bills by instalments over 8 years.

2. Matters of special interest to the Constitutional Affairs Committee

There are no matters of special interest.

3. Legislative background

3.1 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 of the 1988 Act, 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 1 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 31 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 rating list is altered and the effective date of the alteration, significant backdated liability can accrue.

3.2 These Regulations will be made under sections 143(1) and (2) of, and paragraph 1 of Schedule 9 to, 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 and therefore are subject to annulment.

4. Purpose & intended effect of the legislation

4.1 In 2009 a new Schedule 1A was inserted into the 1989 Regulations 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 applied to backdated list alterations to the 2005 rating list made on or before 31 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 are:

- 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 31 March 2010;
- The backdated liability arises as a consequence of new properties being added to the 2005 compiled 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).

4.2 This amendment would extend the right of ratepayers to pay the backdated elements of their rates bills over 8 years to those whose alteration to the 2005 rating list was made before 1 April 2011.

4.3 If this legislation is not made, a small number of ratepayers who incurred a backdated liability in respect of the 2005 list on the same basis as ratepayers described in para 4, but whose alteration to the 2005 rating list was not made until after 31 March 2010, would not qualify for the right to pay by instalments.

5. Consultation

No formal consultation has been carried out, but representatives from one the businesses affected have welcomed this measure, as it enables them to pay their backdated liability on the same basis as their competitors.

6. Regulatory Impact Appraisal

A regulatory impact appraisal has not been completed as this legislation confers a benefit a small number of businesses in Wales at no cost to other sectors.