

## **Explanatory Memorandum to the Non-Domestic Rating (Miscellaneous and Consequential Amendments to Secondary Legislation) (Wales) Regulations 2024**

This Explanatory Memorandum has been prepared by the Non-Domestic Rates Policy and 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 (Miscellaneous and Consequential Amendments to Secondary Legislation) (Wales) Regulations 2024.

**Rebecca Evans MS**  
**Minister for Finance and Local Government**  
**17 January 2024**

## EXPLANATORY MEMORANDUM

### Description

1. The Non-Domestic Rating Act 2023 (“the 2023 Act”) provides for a range of reforms to the non-domestic rating (“NDR”) system in England and Wales, through amendments to the Local Government Finance Act 1988 (“the 1988 Act”). A legislative consent motion in respect of the provisions which apply to Wales was approved by the Senedd on 12 September 2023.
2. The Non-Domestic Rating Act 2023 (Consequential Amendments to Secondary Legislation) (Wales) Regulations 2023 (“the 2023 Regulations”) provided for necessary consequential amendments to secondary legislation arising from the 2023 Act. The Non-Domestic Rating (Miscellaneous and Consequential Amendments to Secondary Legislation) (Wales) Regulations 2024 (“the 2024 Regulations”) address certain omissions in the 2023 Regulations.

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

3. In accordance with section 11A(4) of the Statutory Instruments Act 1946, the Llywydd has been informed that the 2024 Regulations came into force less than 21 days after the instrument has been laid. The 2024 Regulations came into force the day after they were laid to ensure the omissions in the 2023 Regulations are addressed as quickly as possible.
4. The 2023 Regulations came into force on 27 October 2023. The Legislation, Justice and Constitution Committee’s report of 20 November 2023 ([SL\(6\)402](#)) on the 2023 Regulations raised three technical reporting points, including a request for clarification why certain amendments made by the 2023 Regulations were not expressed as having effect from financial years beginning on or after 1 April 2024. The Welsh Government response to the Committee confirmed that further amending regulations would be brought forward to address the matters raised.
5. Technical points 1 and 2 are addressed by the drafting of regulation 6 of the 2024 Regulations.
6. To address technical point 3 and ensure that the consequential amendments in the secondary legislation take effect from 1 April 2024, it has been necessary to restate the law as it applied immediately prior to 27 October 2023 in one Part of the 2024 Regulations, to come into force as soon as possible, and to then set out the consequential amendments in another Part, which will come into force on 1 April 2024.
7. This is a complex exercise requiring timely completion. In determining whether to amend each affected statutory instrument, the Welsh Government has considered whether not amending certain provisions in the secondary legislation referred to in the 2023 Regulations would have any practical effect in providing for a different outcome with respect to NDR liability, prior to 1 April

2024. Where there is considered to be no material risk of such an effect, the provision is not corrected by the 2024 Regulations and the statute book will read as intended from 1 April 2024, when the relevant sections of the 2023 Act take effect.

8. In accordance with this approach, the 2024 Regulations address the issues arising from the premature coming into force of regulations 2, 4 and 5 of the 2023 Regulations. No changes are made in relation to regulations 3 and 6 of the 2023 Regulations, as the effect of bringing certain consequential changes into force prior to 1 April 2024 does not risk a different outcome than intended with respect to the liability of ratepayers. It has not been necessary to consider changes in relation to regulation 7 of the 2023 Regulations, as it came into force as intended.

### **Legislative background**

9. The 2023 Act gained Royal Assent on 26 October 2023. Sections 1 and 2 of the 2023 Act introduce new Schedules 4ZA and 4ZB to the 1988 Act, respectively, which restate (with amendments) existing provisions in relation to NDR local list liability and reliefs. These provisions came into force on Royal Assent of the 2023 Act, but do not have effect until 1 April 2024.
10. Schedule 4ZA restates provisions for occupied hereditaments on a local rating list that were previously set out in sections 43 and 44 of the 1988 Act. Schedule 4ZB restates provisions for unoccupied hereditaments on a local rating list that were previously set out in sections 45, 45A and 46 of the 1988 Act. Provisions for liability and reliefs are referenced in several places in secondary legislation.
11. The 2023 Regulations came into force on 27 October 2023 and provided for consequential amendments to five sets of Regulations, to update references to provisions in the 1988 Act that had been restated or amended by the 2023 Act. Regulations 2, 4 and 5 of the 2023 Regulations did not expressly state that they took effect from 1 April 2024, in line with when the relevant changes in the 2023 Act also take effect.
12. In addition, the Non-Domestic Rating (Collection and Enforcement) (Miscellaneous Provisions) Regulations 1990 (“the 1990 Regulations”) are amended in consequence to certain provisions in the 1988 Act having been repealed by the Ratings (Empty Properties) Act 2007 (“the 2007 Act”) and the Localism Act 2011 (“the 2011 Act”).
13. The substantive provisions of the 2024 Regulations as listed in the first column of the table below are made under the enabling powers set out in the second column:

<b>Regulation</b>	<b>Enabling powers</b>
2	Conferred on the Secretary of State by paragraphs 1 and 2(2)(a) of Schedule 9 to the 1988 Act and transferred, in relation to Wales, to the National Assembly for Wales by article 2 of the National Assembly for Wales (Transfer of Functions) Order 1999, and subsequently transferred to the Welsh Ministers by section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006.
3	Conferred on the Secretary of State by paragraph 2(ga) of Schedule 9 to the 1988 Act. Transferred, in relation to Wales, to the National Assembly for Wales and subsequently to the Welsh Ministers, as above.
4	Conferred on the National Assembly for Wales by sections 43(4B)(b) and 44(9)(b) of the 1988 Act and transferred to the Welsh Ministers, as above.
5, 6, 8 and 9	Conferred on the Welsh Ministers by section 17(2) of the 2023 Act.
7	Conferred on the Welsh Ministers by section 17(2) of the 2023 Act and paragraph 8(1) and (4)(b) of Schedule 1 to the 2007 Act and section 236(1) of the 2011 Act.

14. Paragraph 8(1) and (4)(b) of Schedule 1 to the 2007 Act gives the Welsh Ministers an order making power to amend, repeal or revoke any enactment to which paragraph 8 applies to such extent as appears necessary or expedient in consequence of the provisions of the 2007 Act. Section 39 of the Legislation (Wales) Act 2019 provides that where the Welsh Ministers have a power or duty to make subordinate legislation in the form of regulations, rules or an order made by statutory instrument, they may exercise the power or duty by making the subordinate legislation in any other of those forms by statutory instrument. The order-making power in paragraph 8(1) in Schedule 1 to the 2007 Act is exercised in the form of regulations, given that the other enabling powers relied upon to make the 2024 Regulations require those provisions to be made in regulations.

15. The 2024 Regulations are subject to the negative procedure.

### **Purpose and intended effect of the legislation**

16. Part 2 of the 2024 Regulations omits certain provisions in regulations 2 and 4, and regulation 5, of the 2023 Regulations and restates references to sections 43, 44, 45, and 45A of the 1988 Act within provisions in the following secondary legislation in relation to Wales as they applied immediately before regulations 2, 4 and 5 came into force:

- The Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 (“the 1989 Regulations”);
- The Non-Domestic Rating (Demand Notices) (Wales) Regulations 2017 (“the 2017 Regulations”); and

- The Non-Domestic Rating (Small Business Relief) (Wales) Order 2017 (“the 2017 Order”).

17. Part 3 of the 2024 Regulations make consequential amendments to the 1989 Regulations, the 1990 Regulations, the 2017 Regulations and the 2017 Order following the 2023 Act, by substituting references to restated provisions in Schedules 4ZA and 4ZB to the 1988 Act. The 2024 Regulations also provide an opportunity to make outstanding consequential amendment to regulation 3(7) of the 1990 Regulations, by omitting references to sections 45(6) and 47(2)(a) of the 1988 Act which were repealed by the 2007 and 2011 Acts, respectively.

18. Copies of the 2024 Regulations will be issued free of charge to all known recipients of the 2023 Regulations to ensure that users who require a copy are not unnecessarily disadvantaged by having to pay for it. The Welsh Government is not aware of any adverse effects arising from the omissions in the 2023 Regulations. Any such impacts would have been brought to the attention of the Welsh Government by stakeholders, particularly local billing authorities.

### **Consultation**

19. No consultation has been undertaken. The 2024 Regulations are essential and needed to be made urgently, in order to ensure the secondary legislation listed above remains effective and the policy intent is preserved, in relation to Wales.

### **Regulatory Impact Assessment (RIA)**

20. An RIA has not been prepared for the 2024 Regulations. The 2024 Regulations have the effect of preserving the existing policy position by ensuring the secondary legislation they amend remains effective and has no other impacts. This is in line with the policy set out in the Welsh Ministers’ code of practice for carrying out RIAs for subordinate legislation.