

SL(6)402 – The Non-Domestic Rating Act 2023 **(Consequential Amendments to Secondary** **Legislation) (Wales) Regulations 2023**

Background and Purpose

The Non-Domestic Rating Act 2023 (“**the 2023 Act**”) implements a number of changes to the system of non-domestic rating in England and Wales.

These Regulations make technical amendments to secondary legislation in relation to Wales which are consequential on sections 1, 2, 3 and 14 of, and Part 1 of the Schedule to, the 2023 Act.

The Regulations were laid before the Senedd at 4:00 pm on 27 October 2023 and came into force at 8:00 pm on that day.

Procedure

Negative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

Technical Scrutiny

The following 3 points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.

The Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 (“**the 1989 Regulations**”) make provision for the collection and enforcement of non-domestic rates under the Local Government Finance Act 1988 (“**the 1988 Act**”).

Regulation 3(1) of the 1989 Regulations includes a definition of “*the amount payable*” for the amount of non-domestic rate liability attributable to a ratepayer in a given financial year by reference to provisions in the 1988 Act.

Regulation 2(2)(a) of these Regulations amends references to the 1988 Act appearing in subparagraph (a) of the definition of “*the amount payable*.” However, regulation 2(2)(a) identifies



the existing text to be replaced in that definition as "*section 43(4) to (6) or section 45(4) to (6) of*" [*emphasis added*]. There is no "*section*" after the conjunction "*or*" in the actual text found in that definition.

2. Standing Order 21.2(v) – that for any particular reason its form of meaning needs further explanation.

The substituted references to provisions of the 1988 Act in the definition of "*the amount payable*" referred to above made by regulation 2(2)(a) of these Regulations include "*paragraphs 1-7 and 10 of Schedule 4ZA*".

Paragraphs 1 to 7 of Schedule 4ZA to the 1988 Act provide for the calculation of the chargeable amount of non-domestic rate liability of occupied hereditaments appearing on a local list, including the application of partial or full reliefs which apply in specified circumstances. Paragraph 10 contains interpretation provisions for the purposes of Schedule 4ZA.

Paragraph 9 of that Schedule sets out the rules to be applied when calculating the "chargeable amount" in specific circumstances where more than one relief in the Schedule applies. The Government is therefore asked to clarify why a reference to paragraph 9 is not included in the substituted text in sub-paragraph (a) of the definition of "*the amount payable*" in regulation 3(1) of the 1989 Regulations.

3. Standing Order 21.2(v) – that for any particular reason its form of meaning needs further explanation.

These Regulations substitute various references in secondary legislation to provisions of the 1988 Act with successor provisions in that Act, primarily found in new Schedules 4ZA, 4ZB and 5A, which were inserted into the 1988 Act by the 2023 Act. The provisions of those Schedules have effect in relation to financial years beginning on or after 1 April 2024 in accordance with section 19(2) of the 2023 Act.

The amendments made by these Regulations came into force at 8pm on 27 October 2023. The Government is therefore asked to clarify why the amendments made by these Regulations referring to those Schedules are not similarly expressed to have effect from financial years beginning on or after 1 April 2024.

Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3 in respect of this instrument.

4. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

We note the breach of the 21-day convention (i.e. the convention that 21 days should pass between the date a "made negative" instrument is laid before the Senedd and the date the instrument comes into force), and the explanation for the breach provided by Rebecca Evans



MS, Minister for Finance and Local Government, in a letter to the Llywydd dated 27 October 2023.

In particular, we note that the letter says:

“Without consequential amendments, numerous provisions within secondary legislation that make references to the 1988 Act would have their effectiveness undermined. In particular, there would be an unintended limitation on the scope of certain non-domestic rating appeals rights for some ratepayers arising from any gap between commencement of relevant sections of the 2023 Act and the coming into force of this statutory instrument. It is, therefore, considered necessary to bring this statutory instrument into force as soon as possible following commencement of the 2023 Act, to ensure the intended policy effect of the relevant secondary legislation is preserved.”

Welsh Government response

Technical Scrutiny point 1: The Government agrees that the existing text identified in regulation 3(1) of the 1989 Regulations should not have included the word “section”.

Technical Scrutiny point 2: We are grateful to the Committee for asking for clarification. Reference to paragraph 9 of Schedule 4ZA to the 1988 Act should have been included in the substituted text in regulation 3(1)(a) of the 1989 Regulations.

Technical Scrutiny point 3: We are grateful to the Committee for asking for clarification. To ensure optimum clarity, the amendments made by regulations 2 to 6 of the 2023 Regulations should have been expressed as having effect from financial years beginning on or after 1 April 2024.

An amending S.I. addressing these points will be made as soon as possible.

Committee Consideration

The Committee considered the instrument and Government response at its meeting on 20 November 2023 and reports to the Senedd in line with the reporting points above.

