

**Explanatory Memorandum to the Non-Domestic Rating Act 2023
(Consequential Amendments to Secondary Legislation) (Wales) Regulations
2023**

This Explanatory Memorandum has been prepared by the 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 Act 2023 (Consequential Amendments to Secondary Legislation) (Wales) Regulations 2023.

**Rebecca Evans MS
Minister for Finance and Local Government
27 October 2023**

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.
2. The Non-Domestic Rating Act 2023 (Consequential Amendments to Secondary Legislation) (Wales) Regulations 2023 (“the 2023 Regulations”) provide for necessary consequential amendments to secondary legislation arising from the 2023 Act.

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 2023 Regulations came into force less than 21-days after the instrument has been laid. The sections of the 2023 Act giving rise to the 2023 Regulations came into force on Royal Assent. The 2023 Regulations came into force on the day they were made to ensure the consequentially affected secondary legislation remains effective.
4. In particular, an unintended limitation on the scope of certain NDR appeals rights for some ratepayers would arise from any significant gap between commencement of relevant sections of the 2023 Act and the coming into force of the 2023 Regulations.

Legislative background

5. The 2023 Act gained Royal Assent on 26 October 2023. The 2023 Regulations are made under powers set out in Section 17(2) of the 2023 Act, which enables the appropriate national authority, in this case the Welsh Ministers, to make further provision that is consequential on the 2023 Act.
6. The 2023 Regulations are subject to the negative resolution procedure, in accordance with Section 17(9) of the 2023 Act.
7. Sections 1 to 3 of the 2023 Act introduce new Schedules 4ZA, 4ZB, and 5A to the 1988 Act, respectively, which restate (with amendments) existing provisions for NDR liability and reliefs. 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. Schedule 5A restates provisions for hereditaments on a central rating list that were previously set out in sections 54 and 54ZA of the 1988 Act. Paragraphs 3 of Schedules 4ZA and 5A to the 1988

Act provide for a new improvement relief. Provisions for liability and reliefs are referenced in several places in secondary legislation.

8. The Schedule to the 2023 Act amends section 58(3) of the 1988 Act as a consequence of the new Schedules introduced by 2023 Act.
9. Section 14(1) of the 2023 Act amends paragraph 2(7) of Schedule 6 to the 1988 Act, which prescribes matters that, for valuation purposes, are to be taken as they are assumed to be on the day on which a rating list must be compiled. The matters previously prescribed in subparagraph 2(7)(d) are now split into subparagraphs 2(7)(d) and 2(7)(da). Although the amendments to paragraph 2(7) do not alter its overall effect, they do affect the scope of existing references to paragraph 2(7)(d) in the Non-Domestic Rating (Alteration of Lists and Appeals) (Wales) Regulations 2023 (“the Alteration of Lists and Appeals Regulations”). The Alteration of Lists and Appeals Regulations set out the procedures for NDR ratepayers to propose changes to and appeal the content of rating lists. Regulations 12 and 14 include provision for differences to the procedures applicable in specific circumstances, with reference to subparagraph 2(7)(d) of Schedule 6 to the 1988 Act.

Purpose and intended effect of the legislation

Primary purpose of the legislation

10. The 2023 Regulations make necessary consequential amendments to secondary legislation following the coming into force of sections 1 to 3 and 14 of, and Part 1 of the Schedule to, the 2023 Act, to ensure the provisions remain effective and existing policy effects are preserved.
11. There are numerous references in secondary legislation to sections 43, 44, 45, 45A, 54 and 58(3)(a) of the 1988 Act, which require amendment to reflect the restatement of relevant provisions by sections 1 to 3 of, and the Schedule to, the 2023 Act. Consequential amendments are required to five sets of regulations to ensure that provisions in section 58(3) and new Schedules 4ZA, 4ZB, and 5A to the 1988 Act are appropriately referenced. These regulations are:
 - The Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989;
 - The Non-Domestic Rating (Collection and Enforcement) (Miscellaneous Provisions) Regulations 1990;
 - The Non-Domestic Rating (Demand Notices) (Wales) Regulations 2017;
 - The Non-Domestic Rating (Small Business Relief) (Wales) Order 2017; and
 - The Non-Domestic Rating (Chargeable Amounts) (Wales) Regulations 2022 (“the Chargeable Amounts Regulations”).
12. Regulations 2 to 5 and 6(4) and (5) of the 2023 Regulations amend the secondary legislation listed in the above paragraph by substituting references to provisions previously contained in sections 43, 44, 45, 45A, 54 and 58(3)(a)

of the 1988 Act. This will ensure the provisions remain effective and preserve the existing policy effect.

13. Additional consequential amendments are required to the Chargeable Amounts Regulations, to ensure that transitional relief following the 2023 NDR revaluation interacts as intended with the new improvement relief, introduced by sections 1 and 3 of the 2023 Act. Regulation 6(2) and (3) of the 2023 Regulations amends regulation 7 of the Chargeable Amounts Regulations, to take account of any adjustment to the rateable value of a hereditament arising from improvement relief in the calculation of the notional chargeable amount. This will ensure that the appropriate amount of transitional relief is provided, where improvement relief also applies to a hereditament.
14. Consequential amendments are required to the Alteration of Lists and Appeals Regulations, to take account of the changes to paragraph 2(7) of Schedule 6 to the 1988 Act made by section 14 of the 2023 Act. Regulation 7 of the 2023 Regulations amends references to subparagraph 2(7)(d) in regulations 12(1) and 14(3) and (4) of the Alteration of Lists and Appeals Regulations, to also cover new subparagraph 2(7)(da). This will ensure that the policy effect of the relevant provisions, including in relation to specific appeal rights of ratepayers, is preserved.

Consultation

15. No consultation has been undertaken. The 2023 Regulations are essential and needed to be made urgently, in order to ensure that secondary legislation applicable in Wales remains effective and the policy intent is preserved.

Regulatory Impact Assessment (RIA)

16. An RIA has not been prepared for the 2023 Regulations. The 2023 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.