

## **EXPLANATORY MEMORANDUM TO**

### **THE NON-DOMESTIC RATING (COLLECTION AND ENFORCEMENT) (LOCAL LISTS) (ENGLAND) (AMENDMENT) REGULATIONS 2010**

**2010 No. 1507**

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
  - 2.1 These Regulations amend Schedule 1A to the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 (SI 1989/1058) (“the 1989 Regulations”). Schedule 1A was inserted by the Non-Domestic Rating (Collection and Enforcement) (Local Lists) (Amendment) (England) Regulations 2009 (SI 2009/204) (“the 2009 Regulations”).
  - 2.2 The 1989 Regulations provide for annual non-domestic rates liability to be discharged in instalments in many cases. However, where a rating list is altered with retrospective effect by a valuation officer this can lead to backdated liability which, rather than being payable in instalments, is payable straightaway. In certain cases Schedule 1A allowed backdated liability to be discharged in instalments over a period of up to eight years.
  - 2.3 These Regulations further amend the 1989 Regulations to allow ratepayers the ability to agree with the billing authority an immediate moratorium on payment of the instalments of backdated liability until 31st March 2011, although the total period of the agreement may not extend longer than eight years in total. If ratepayers and billing authorities have already entered into an agreement, these Regulations enable them to enter into a further agreement to take advantage of that moratorium.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1 The Regulations come into force less than 21 days from the date of laying because of the need to take urgent action to further assist businesses with the payment of their backdated non-domestic rates liability arising from retrospective list alterations.
  - 3.2 The Government has announced that it is exploring options to offer relief to businesses facing certain backdated rates liabilities that is a workable solution and is cost effective. In the meantime, these Regulations are being made urgently in order to assist businesses facing an outstanding backdated non-domestic rates liability, who may not be able to make payments of that backdated liability at this time. Such businesses that meet the criteria in the amended 1989 Regulations will now be able to agree immediately with authorities that they can benefit from a moratorium from payment of their outstanding backdated rates liability until 31st March 2011, within the existing eight year scheme.
4. **Legislative Context**
  - 4.1 Under section 41 of the Local Government Act 1998 (“the 1988 Act”), most non-domestic properties appear on a rating list compiled for the area in which they are situated. Under section 43, the occupiers of such properties are liable to pay non-domestic rates for each financial year (which, for the purposes of local government finance, runs from 1st April to 31st March). In certain cases where the property is unoccupied, the owner is liable to rates under section 45. Certain properties, which are not suitable to be shown on a local rating

list, are shown on the central rating list and rates are paid directly to the Secretary of State. However, these Regulations are not relevant to centrally listed properties.

- 4.2 The 1989 Regulations govern the practicalities of billing for rates in respect of locally listed properties. They require the billing authority (the district or 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 (the contents of demand notices is governed by the Council Tax and Non-Domestic Rating (Demand Notices) (England) Regulations 2003 (S.I. 2003/2613)). Broadly speaking, demand notices are served on or around 1st April in each year in respect of those ratepayers and properties which the authority considers meet the conditions set out in sections 43 or 45 of the 1988 Act are met. Where those conditions are subsequently met, the demand notice must be served as soon possible after the day on which they are first satisfied.
- 4.3 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 31st December, liability for the year is payable in a single instalment.
- 4.4 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.
- 4.5 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) (England) Regulations 2009 (S.I. 2009/2268) (“the ALA Regulations”). 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.
- 4.6 In some cases where there is a difference between the day a rating list is altered and the effective date of the alteration, significant backdated liability can accrue. The 2009 Regulations inserted a new Schedule 1A into the 1989 Regulations (and make associated amendments) 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 eight years. This power is time limited and only relates to backdated list alterations made on or before 31st March 2010.
- 4.7 These Regulations make amendments to Schedule 1A of the 1989 Regulations by allowing agreements under the Schedule to include a moratorium on payments of instalments until 31 March 2011. Ratepayers who have already entered into an agreement with authorities may also enter into a new agreement to take advantage of the moratorium. The Regulations also permit agreements to relate to backdated liability where the demand notices were issued in the financial year beginning on 1st April 2010.

## **5. Territorial Extent and Application**

- 5.1 This instrument applies to England.

## 6. European Convention on Human Rights

- 6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

## 7. Policy background

- *What is being done and why*

- 7.1 Non-domestic properties are all valued in a consistent way to ensure that the burden of contributions to funding local government is shared fairly amongst businesses around the country. Non-domestic rating lists are maintained in order that the local authority can issue demands for payment of business rates liability.
- 7.2 Regulation 14(2) of the ALA Regulations provides that “where an alteration is made to correct any inaccuracy in the list or on after the day it is compiled, the alteration shall have effect from the day on which the circumstances giving rise to the alteration first occurred”.
- 7.3 The issue of the impact of backdated liability was highlighted by the review of the rating in ports completed by the Valuation Office Agency in 2008 to ensure the correct rating of properties within ports, including the land and buildings occupied by the port authority as well as other businesses within the port that should have been separately assessed
- 7.4 Rates are collected under the 1989 Regulations. Although they provide for the payment of rates by instalments, this does not apply where the demand notice for a financial year is issued after the year has ended. In these circumstances, regulation 7(5) of the 1989 Regulations provides that the relevant demand notice shall require payment of the amount payable on the expiry of such period (being not less than 14 days) after the day of issue of the notice as is specified in it. In principle, this does give local authorities some discretion as to when backdated liability is to be collected, but the discretion is limited and the entire amount due must be collected together.
- 7.5 The previous Government amended the 1989 Regulations so that businesses facing such bills for certain significant unexpected backdated liability of more than 33 months from 1 April 2005 would be able to discharge that liability in equal interest-free instalments over 8 years.
- 7.6 Whilst the eight year schedule of payments scheme reduced the amount of backdated rates liability due straight away by 87.5%, ratepayers still have to reflect this liability to their balance sheet. Any impact on the solvency of the business will depend on the individual circumstances of each business, in particular, the level of existing assets and liabilities when the backdated rates bill is received and the company’s reasonable expectations of being able to meet the liabilities as they fall due in the future.
- 7.7 However, the Government remains concerned that businesses continue to be at risk of insolvency from the backdated rates liability. Following this further consideration, the Government has announced that it is exploring options to offer relief to businesses facing certain backdated rates liabilities, subject to finding a workable and cost-effective solution. In the meantime, in order to ensure that any businesses facing an outstanding backdated liability which meets the criteria set out in the 1989 Regulations, as amended by the 2009 Regulations, are not subject to collection or enforcement procedures against their backdated liability, the Government is making further amendments to the 1989 Regulations to allow an enhancement to the current eight year schedule of payments scheme. Such businesses that meet the criteria will be able to benefit from a moratorium

from payment of their outstanding backdated rate liability until 31st March 2011, within the existing eight year scheme

7.8 Local authorities and ratepayers that have already entered into an agreement can enter into a new agreement so that the ratepayer may benefit from the enhanced scheme. However in this instance any monies already paid by the ratepayer in respect of the backdated liability have been discharged and cannot be deferred, so it will only be remaining liabilities that can be subject to the enhanced payment scheme.

7.9 Although the review of ports and the subsequent separate assessment of a number of new properties within ports highlighted the issue of the impact of backdated liability, the legislative changes implemented will apply to all ratepayers occupying properties that meet the criteria, including those in ports who meet the criteria, to benefit from a schedule of payments for backdated liability.

- ***Consolidation***

7.10 As all the substantive provisions being added to the 1989 Regulations by these Regulations are included in amendments to a single Schedule (Schedule 1A), the Government does not consider that consolidating the 1989 Regulations is necessary for this amendment.

## **8. Consultation outcome**

8.1 No formal consultation has taken place in relation to these Regulations. There was also no formal consultation on the earlier amendments to the 1989 Regulations, which were announced as part of the Pre Budget Report 2008. The Government became aware of the policy issue now being addressed as a result of the review of the rating of ports and the subsequent separate entry of a number of new properties within ports on ratings lists. The Government has received numerous representations on the issue from businesses that have been affected.

## **9. Guidance**

9.1 The Government has issued a Business Rates Information Letter (a copy of which is available at <http://www.local.communities.gov.uk/finance/busrats/bus2009.htm>) setting out the criteria which will have to be met before a ratepayer and their local authority can agree to reschedule backdated rates liability and this will act as guidance for billing authorities and ratepayers. A further Business Rates Information Letter available at the same website address has been issued to local authorities to provide guidance for this enhancement to the existing scheme.

## **10. Impact**

10.1 The impact of these amendments to the 1989 Regulations on businesses will be that, where the criteria are satisfied, backdated liabilities may be deferred until 31 March 2011. The ability to defer payments of backdated liability for a period of time has clear beneficial effects for the finances of a business in the short term; some of the affected businesses may not have the financial reserves to pay these unexpected backdated liabilities up front. Businesses will also have time to complete any formal appeals regarding the backdated liability, ensuring that local authorities are not forced to take enforcement action during the deferred period for the backdated liability and the Government can continue to explore options to offer relief to businesses facing certain backdated rates liabilities, subject to finding a workable and cost-effective solution.

10.2 We do not envisage the amendment will impact significantly on local authorities who will have to collect the backdated rates payments on top of ongoing rates liability using existing collection and enforcement mechanisms.

10.3 An Impact Assessment is attached to this memorandum.

## **11. Regulating small business**

11.1 The changes to the 1989 Regulations are applicable to all businesses, irrespective of their size, and will benefit small businesses where the criteria are met.

11.2 Accordingly, it would not be appropriate to minimise the impact of these Regulations on firms employing up to 20 people.

11.3 The basis for the final decision was to assist all eligible businesses.

## **12. Monitoring & review**

12.1 The policy will be reviewed after its end date on 31st March 2011.

## **13. Contact**

Nageen Haroon at the Department for Communities and Local Government, telephone 030 344 41758 email [nageen.haroon@communities.gsi.gov.uk](mailto:nageen.haroon@communities.gsi.gov.uk), can answer any queries regarding the instrument.

<b>Title:</b> <b>Moratorium for certain backdated rates liabilities</b>  <b>Lead department or agency:</b> Communities and Local Government  <b>Other departments or agencies:</b>	<b>Impact Assessment (IA)</b>
	<b>IA No:</b> CLG 003
	<b>Date:</b> 01/01/2010
	<b>Stage:</b> Enactment
	<b>Source of intervention:</b> Domestic
	<b>Type of measure:</b> Secondary legislation
	<b>Contact for enquiries:</b> Nageen Haroon, 030 344 41758

**Summary: Intervention and Options**

**What is the problem under consideration? Why is government intervention necessary?**

Alterations may be made to the Non-Domestic Rating list by the Valuation Office Agency (VOA) with effect from the point a property should first be rated or when a change to a property occurs. These alterations can be backdated to 1 April 2005, which can lead to a backdated rates liability. The Government is exploring options for a permanent relief for certain backdated rates bills that is a workable solution and cost effective. In the mean time a moratorium is to be implemented within the current eight year schedule of payment scheme to ensure that any businesses facing an outstanding backdated liability which meets the criteria set out in the 2009 regulations, which allows them to pay certain backdated rates liabilities over 8 years, are not subject to collection or enforcement procedures against their backdated liability up to 31 March 2011.

**What are the policy objectives and the intended effects?**

The impact of these amendments to the 2009 Regulations on businesses will be that, where the criteria are satisfied, backdated liabilities may be deferred up to 31 March 2011. The ability to suspend payments of backdated liability has beneficial effects for the finances of a business in the short term and businesses will also have time to complete any formal appeals regarding the backdated liability, ensuring that local authorities are not forced to take enforcement action during the deferred period for the backdated liability. The Government will, in the mean time, continue to explore options for offering permanent relief for certain backdated rates bills. This is a complex area and the Government needs to be sure any solution works and is cost effective.

**What policy options have been considered? Please justify preferred option (further details in Evidence Base)**

The policy options considered were:

- 1) Do nothing and keep the existing eight year Schedule of Payments scheme;
- 2) Introduce a moratorium up to 31 March 2011 for ratepayers to defer payment of the backdated liabilities within the current eight year Schedule of Payments scheme to allow Government to explore options for offering permanent relief; and
- 3) Introduce a two year deferral period for the same purpose.

The preferred option is option 2 because it provides legislative cover for local authorities to cease collecting and ratepayers from making payments towards their backdated rates liability within the 8 year payment scheme whilst giving the Government sufficient time to explore options for offering permanent relief for certain backdated rates bills that is a workable solution and cost effective.

**When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?** It will be reviewed after 31/03/2011

**Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?** Yes

**Ministerial Sign-off** For final proposal stage Impact Assessments:

***I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.***

Signed by the responsible Minister: Bob Neill ..... Date: 27 May 2010 .....

**Summary: Analysis and Evidence**      Policy Option 1

**Description:**

Price Base Year 2010-11	PV Base Year 2010-11	Time Period Years 8	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: 0

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	£16 million	-£3 million	£2 million
High	£30 million	-£5 million	£8 million
Best Estimate	£22 million	-£4 million	£4 million

**Description and scale of key monetised costs by 'main affected groups'**

There is a total present value (PV) cost to the Government of £4m associated with the proposed preferred option. The deferral to the end of 2010-11 with six yearly instalments to repay the liability will decrease the PV of the total rates paid back (over the lifetime of this policy) relative to the current eight year schedule of payments scheme.

**Other key non-monetised costs by 'main affected groups'**

There will be minimal administrative costs involved with revising the current policy.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	£16 million	-£3 million	£2 million
High	£30 million	-£5 million	£8 million
Best Estimate	£22 million	-£4 million	£4 million

**Description and scale of key monetised benefits by 'main affected groups'**

There is a total PV benefit to rate payers of £4m. The total PV of the rates paid back will be lower (over the lifetime of this policy) relative to the current 8 year schedule.

**Other key non-monetised benefits by 'main affected groups'**

This policy will allow the affected ratepayers a period up to 31 March 2011 in which they do not have to discharge their backdated liabilities. This will stop these ratepayers from making payments towards the backdated liability and provides legislative cover for local authorities not to collect and not be forced into taking enforcement action for the backdated liability. This also allows the Government to explore options for offering permanent relief for certain backdated rates bills. This is a complex area and the Government needs to be sure any solution works and is cost effective.

**Key assumptions/sensitivities/risks**

Discount rate (%) 3.5

- All eligible properties receive a deferral period within the eight year schedule of payments scheme
- Further assumptions are set out in the Evidence Section below.
- The sensitivity analysis is based upon all the worst case scenarios and best case scenarios occurring set out in the evidence section below.

Impact on admin burden (AB) (£m): De minimis			Impact on policy cost savings (£m):	In scope
New AB:	AB savings:	Net:	Policy cost savings:	Yes/No

## Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			England		
From what date will the policy be implemented?			27 May 2010		
Which organisation(s) will enforce the policy?			Local Authorities		
What is the annual change in enforcement cost (£m)?			De Minimis		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			No		
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			Traded: N/A	Non-traded: N/A	
Does the proposal have an impact on competition?			N/A		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			Costs: None	Benefits: None	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro N/A	< 20 N/A	Small N/A	Medium N/A	Large N/A
Are any of these organisations exempt?	No	No	No	No	No

### Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
<b>Statutory equality duties</b> <sup>1</sup> <a href="#">Statutory Equality Duties Impact Test guidance</a>	NO	11
<b>Economic impacts</b>		
Competition <a href="#">Competition Assessment Impact Test guidance</a>	NO	11
Small firms <a href="#">Small Firms Impact Test guidance</a>	Yes	11
<b>Environmental impacts</b>		
Greenhouse gas assessment <a href="#">Greenhouse Gas Assessment Impact Test guidance</a>	NO	11
Wider environmental issues <a href="#">Wider Environmental Issues Impact Test guidance</a>	NO	11
<b>Social impacts</b>		
Health and well-being <a href="#">Health and Well-being Impact Test guidance</a>	NO	11
Human rights <a href="#">Human Rights Impact Test guidance</a>	NO	12
Justice system <a href="#">Justice Impact Test guidance</a>	NO	12
Rural proofing <a href="#">Rural Proofing Impact Test guidance</a>	NO	11
<b>Sustainable development</b> <a href="#">Sustainable Development Impact Test guidance</a>	NO	12

<sup>1</sup> Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.



## Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

### References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

#### No. Legislation or publication

- 1 Impact Assessment attached to Explanatory Memorandum To The Non-Domestic Rating (Collection And Enforcement) (Local Lists) (England) (Amendment) Regulations 2009 – SI 204 –available at [http://www.opsi.gov.uk/si/si2009/uksi\\_20092268\\_en\\_2](http://www.opsi.gov.uk/si/si2009/uksi_20092268_en_2)
- 2 Business Rates Information Letter – Number 2 – 2009 available at the Communities and Local Government website  
<http://www.communities.gov.uk/localgovernment/localgovernmentfinance/businessrates/busratesinformationletters>
- 3 Business Rates Information Letter – Number 7 – 2010 available at the Communities and Local Government website  
<http://www.communities.gov.uk/localgovernment/localgovernmentfinance/businessrates/busratesinformationletters>

4

+ Add another row

### Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Table below indicates the change in payments received under the proposed Option 2 as compared to the do-nothing option, before discounting.

#### Annual profile of monetised costs and benefits\* - (£m) constant prices

	Y <sub>0</sub>	Y <sub>1</sub>	Y <sub>2</sub>	Y <sub>3</sub>	Y <sub>4</sub>	Y <sub>5</sub>	Y <sub>6</sub>	Y <sub>7</sub>	Y <sub>8</sub>	Y <sub>9</sub>
<b>Transition costs</b>										
<b>Annual recurring cost</b>										
<b>Total annual costs</b>	22									
<b>Transition benefits</b>										
<b>Annual recurring benefits</b>										
<b>Total annual benefits</b>		4	4	4	4	4	4	1		

\* For non-monetised benefits please see summary pages and main evidence base section



Microsoft Office  
Excel Worksheet

## Evidence Base (for summary sheets)

### Problem

1. The Government has announced its intention to explore options for offering permanent relief for certain backdated rates bills. This is a complex area and the Government needs to be sure any solution works and is cost effective. In the mean time, the Government wants to ensure that any businesses facing an outstanding backdated liability that meets the criteria set out in the 2009 schedule of payment regulations are not subject to collection or enforcement procedures against their backdated liability up to 31 March 2011.

### Rationale and Policy Objective

2. The Government believes that in the current economic climate, it is right to provide assistance to those businesses/ratepayers that are in receipt of certain backdated rates liabilities. The Policy objective of this regulation is to ensure that any businesses facing an outstanding backdated liability that meets the criteria set out in the current 2009 schedule of payment regulations are not subject to collection or enforcement procedures against their backdated liability up to 31 March 2011, whilst the Government explores options for offering permanent relief for certain backdated rates bills that is a workable solution and cost effective. Any further action in this area would be announced before the moratorium ends.

### Background

3. Alterations may be made to the Non-Domestic Ratings list (held by the Valuation Office Agency (VOA) <http://www.voa.gov.uk>) which may reflect changes which take place on that day or prior to it. We are aware that that some of the changes made to the previous (2005) list have caused some businesses to receive unexpected bills, backdated over several years.
4. All non-domestic properties are liable for business rates and should all be assessed consistently to ensure that the burden of contributions to funding local government is shared fairly amongst businesses around the country.
5. Regulation 14(2) of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 ([http://www.opsi.gov.uk/si/si2009/uksi\\_20092268\\_en\\_2](http://www.opsi.gov.uk/si/si2009/uksi_20092268_en_2)) states that “where an alteration is made to correct any inaccuracy in the list or on after the day it is compiled, the alteration shall have effect from the day on which the circumstances giving rise to the alteration first occurred”.
6. The collection of these liabilities is through the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 (SI 1989/1058) (“the C & E Regulations”) made under paragraphs 1-4 of Schedule 9 to the Local Government Finance Act 1988. Although this provides for the payment of rates by instalments, this does not apply where the demand notice for a financial year is issued after the year has ended. In these circumstances, regulation 7(5) provides that the relevant demand notice shall require payment of the amount payable on the expiry of such period (being not less than 14 days) after the day of issue of the notice as is specified in it. In principle, this does give local authorities some discretion as to when backdated liability is to be collected, but the discretion is limited and the amount due must be collected in one go. The local authority must act diligently to collect the backdated liability within the financial year the demand is issued.
7. Although a review of ports and the subsequent separate assessment of a number of new properties within ports highlighted the issue of the impact of backdated liability, the eight year schedule of payments put in place in 2009 applies to all ratepayers occupying properties that meet the criteria to benefit from a schedule of payments for backdated liability.

8. As with the current eight year schedule of payment scheme in place, this policy is restricted to the 2005 ratings list, and applicants must meet a number of criteria (set out in a Business Rates Information Letter 2 for 2009.)
- a. 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;
  - b. The backdated liability arises as a result of an update to the 2005 complied list only;
  - c. The backdated liability arises from an update to the rating list made on or before 31<sup>st</sup> March 2010;
  - d. The backdated liability arises as a consequence of new properties being added to the 2005 complied list;
  - e. The backdated liability arises as a result of unilateral 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) ;
  - f. An occupier has occupied one or more eligible properties (meeting criteria 10(a) to (e)), within the billing authority area, between the effective date and the ratings list update date, for a period totalling more than 33 months; and
  - g. 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).

### **Options**

9. The following options were considered:
- a. Do nothing
    - i. Under this option the Government would explore options for offering permanent relief, that is a workable solution and is cost effective, but those in a schedule of payment policy who may be a future beneficiary would be liable for the ongoing collection of their backdated rates.
  - b. Allow a moratorium until the end of 2010-11
    - i. Under this option the Government would explore options for offering permanent relief that is a workable solution and is cost effective. However, in the mean time, in order to ensure that any businesses facing an outstanding backdated liability that meets the criteria set out in the 2009 Regulations, are not subject to collection or enforcement procedures against their backdated liability, the Government would make an amendment to the 2009 Regulation so that businesses that meet the criteria will be able to benefit from a moratorium from payment of their outstanding backdated rate liability for remainder of the current financial year within the existing eight year scheme; and
  - c. Allow a moratorium for two years
    - i. As under the option above, except that the moratorium from payment of their outstanding backdated rate liability would extend for two years within the existing eight year scheme.

### **Costs and Benefits**

10. We have used aggregated data from the VOA to cost this policy. When properties are assessed by the VOA they receive a classification as to how they entered the ratings list;
- a. ‘New build’ – this is when a property has been newly built, i.e. it did not exist before.
  - b. ‘Split’ – this is where a property was created from one or more existing properties, for example one office is split into two new offices which need to be distinct entities on the ratings list.
  - c. ‘Merger’ – this is where a property is created from two or more existing properties joining together, i.e. three small offices are reformed to make one larger office.
  - d. ‘New (other)’ – this is where a property which was previously on the ratings list, but removed for some reason and then subsequently re-added to the list. For example, if a building is made exempt because it is classed as being used for agricultural purposes, and then the use changes so that it is no longer exempt (eg it is converted into an office unit), it should be added to the ratings list again.

11. The estimated backdated liabilities can be seen in Table 1 below. Below is a list of the assumptions we used in the analysis (full methodology is at annex B):
- a. We have used the actual number of new properties that have a backdated assessment identified by the VOA that could meet the criteria for a schedule of payments.
  - b. The proposal is to assist those businesses who are facing certain, unexpected liabilities from unilateral action by the VOA. As such one of the criteria is that an occupier was not previously liable for rates on a property “preceding” the new property assessment (at the ratings list alteration date) (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). As such we have estimated that:
    - i. Merged properties would be unlikely to receive a schedule of payments for the reasons given at 8 g above. It cannot be said to be an unexpected backdated bill where 2 or more properties liable for rates form a new merged property and are outside the criteria for a schedule of payments and so have not been included in estimates of eligible properties; and
    - ii. Rateable value of splits is reduced by 50% (the maximum) as one new property form a split property, would have been the previous ratepayer and would not under the criteria (8 g above) be entitled to a schedule of payments as payment of rates cannot be said to be unexpected.
  - c. We have reduced backdated liabilities by the proportion by which national non-domestic rates are reduced due to reliefs (apart from transitional reliefs as this is designed to be revenue neutral and would therefore not impact on aggregate percentages and it would not be possible to work out the impact for each year), such as small business rate relief to represent properties that qualify for other reliefs.

12. Table 1 below sets out the estimated extent of the backdated liability that could be subject to a schedule of payments between 1 January 2008 and 31 March 2010.

**Table 1: Showing the extent of the backdated liabilities**

	Estimated liabilities (to nearest £5m)
Jan 08 to March 08	30
April 08 to March 09	135
April 09 to March 10	145
<b>Total</b>	<b>315</b>

**Impact on Government Revenue from the enhanced Schedule of Payments**

13. Table 2 below shows the costs to Government and the benefit to ratepayers from the existing eight year schedule of payment scheme, within its life time. This is the baseline against which the costs and benefits of option 2 are measured.

**Table 2: Costs/Benefits in Option1 ‘Do-Nothing Option’**

	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18
Backdated liabilities introduced (loss)	30	135	145	0	0	0	0	0	0	0	0
Payments received (including immediate settlements)	6	27	53	31	31	31	31	31	31	31	7
<b>Net cost</b>	<b>-25</b>	<b>-108</b>	<b>-93</b>	<b>31</b>	<b>31</b>	<b>31</b>	<b>31</b>	<b>31</b>	<b>31</b>	<b>31</b>	<b>7</b>
Net present value	-25	-108	-93	31	30	28	26	25	23	22	5

**Table 3: Costs/benefits in Option 2 – freeze in payments to end of 2010/11**

14. Table 3 below shows the costs to Government and benefit to ratepayers under the revised scheme, within its life time.

	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18
Backdated liabilities introduced (loss)	30	135	145	0	0	0	0	0	0	0	0
Payments received (including immediate settlements)	6	27	53	9	35	35	35	35	35	35	8
<b>Net cost</b>	<b>-25</b>	<b>-108</b>	<b>-93</b>	<b>9</b>	<b>35</b>	<b>35</b>	<b>35</b>	<b>35</b>	<b>35</b>	<b>35</b>	<b>8</b>
Net present value	-25	-108	-93	9	33	31	29	28	26	25	5

**Table 4: Costs/benefits in Option 3 – freeze in payments for two years from July 2010**

15. Table 3 below shows the costs to Government and benefit to ratepayers under the second revised scheme, within its life time.

	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18
Backdated liabilities introduced (loss)	30	135	145	0	0	0	0	0	0	0	0
Payments received (including immediate settlements)	6	27	53	9	0	31	44	44	44	44	10
<b>Net cost</b>	<b>-25</b>	<b>-108</b>	<b>-93</b>	<b>9</b>	<b>0</b>	<b>31</b>	<b>44</b>	<b>44</b>	<b>44</b>	<b>44</b>	<b>10</b>
Net present value	-25	-108	-93	9	0	27	37	35	33	31	7

**Table 5: Total NPV costs for each option**

16. Table 5 below summarises the costs relative to the do-nothing scenario

Option	Option 1 (do nothing)	Option 2	Option 2 relative to do nothing	Option 3	Option 3 relative to do nothing
NPV Cost (£ million)	36	40	4	47	11

## **Risks and Assumptions**

### ***Sensitivities around estimates***

17. The tables above include figures for immediate repayment of backdated liabilities by businesses. In the tables above the totals paid back in 2008/09 and 2009/10 are larger than the future years to take account of the fact that in some cases, rate payers may make immediate repayments of backdated liabilities. The extent of immediate payback was based upon the proportion of immediate repayment reported by authorities identified in ports in 2008/09. If this rate is lower for the liability identified in 2008/09 and forecast for 2009/10, then the present value (PV) benefit to rate payers and the PV costs to Government of this policy will increase. Conversely, a higher rate of immediate repayment will reduce the PV benefits to rate payers and PV costs to Government.

18. The estimate of liability assumes the VOA continues to identify hereditaments with backdated liability for the remainder of 2009/10 at the rate of the first quarter.

19. It was assumed that the same proportion of newly identified backdated liability would be immediately repaid in 2009-10 as was in 2008-09.

20. The extreme case for an increase in cost would be if no backdated liability was immediately repaid. Conversely, the position would improve if more of the backdated liability was immediately repaid.

21. The estimated costs of these two scenarios are given below.

**Table 6: Sensitivity Analysis if more immediate payments are made by ratepayers (all figures in £million)**

	<b>If Less pay (worst Case)</b>	<b>Current Working Assumption</b>	<b>If More pay (improved case)</b>
	No immediate repayment in 2009-10	20% immediate repayment in 2009-10	30% immediate repayment in 2009-10
Option 1	41	36	34
Option 2	45	40	38
Option 3	53	47	44

22. Initial reports from local authorities indicate that some ratepayers have fully discharged their backdated-liabilities immediately, so the no-immediate-repayment scenario represents a boundary worst-case.

23. Another possibility is that the annual rate of losses due to insolvency or other bad debts varies from 2.5%.

**Table 7: Sensitivity Analysis on losses due to insolvency or other bad debts (all figures in £million)**

	<b>If percentage of bad debt increases</b>	<b>Current Working Assumption</b>	<b>If percentage of bad debt decreases (improved scenario)</b>
	5.0% bad debts rate	2.5% bad debts rate	1.5% bad debts rate
Option 1	48	36	31
Option 2	54	40	35
Option 3	63	47	40

24. The 2.5% figure used is a conservative estimate based upon the 97.8% collection rate for NNDR and the annual business insolvency rate of around 1%.

25. Another possibility is that the percentage of splits that would be liable for backdated liability is not 50%.

**Table 8: Sensitivity Analysis on percentage of splits liable for backdated liability (all figures in £million)**

	<b>If percentage of liable splits is greater</b>	<b>Current Working Assumption</b>	<b>If percentage of liable splits is fewer (improved scenario)</b>
	70% liable	50% liable	30% liable
Option 1	45	36	28
Option 2	50	40	31
Option 3	58	47	36

### **Key assumptions, sensitivities & risks**

- As we only know the aggregate numbers of properties and rateable values who could potentially fulfil the eligibility criteria listed above. A decrease in the numbers of people who are eligible for the schedule of payments will decrease the cost of the scheme.
- Properties added to the list with an effective date of 1<sup>st</sup> April 2005 may be eligible for transitional arrangements. We have made no provision for this in our above analysis, unless where stated.
- We have made the assumption in our analysis that 50% of the rateable value of properties resulting from 'splits' will apply for a schedule of payments. An increased rateable value share of 'splits'

applying for a schedule of payments will increase the value of the backdated liabilities, but a smaller share will lower this value.

- We have assumed that all properties that have backdated liability will pay the large business multiplier (the small business multiplier with the small business supplement added). This may overestimate the true cost of the backdated liability. It is possible that some of the hereditaments within this analysis would be eligible to pay the small business multiplier, but we do not have any information about the individual RVs for these properties and whether they meet the sole occupation criteria for Small Business Rate Relief. We therefore cannot 'guess' the split between those that would pay the small/large business rate multiplier.
- We do not have information about the identity of the occupiers, we have assumed that all the rate payers will have been in occupation of the property and all will face the backdated liability. If fewer than all rate payers are in occupation then some of the backdated liability will be lost, and the cost of the schedule of payments will go down.
- We have assumed that all properties will be granted the ability to pay their backdated liabilities over a period of eight years including the moratorium to 31 March 2011. We have also assumed that all properties eligible to apply for a schedule of payments will take it up.
- We have assumed that businesses will make immediate payment for the remainder of the backdated liability in the same proportion as has been received for already-identified backdated liabilities. A higher rate of immediate repayment will reduce the cost of the scheme, while a lower rate of immediate repayment will raise it.
- We have assumed a non-payment rate of 2.5% per annum, including bad debts due to insolvency.
- No adjustment is made for future inflation (which would increase the costs to government and the benefits to businesses).

### **Admin Burden & Hampton Principles**

26. This policy will amend an existing process on Local Authorities who can introduce a deferral period within the schedule of payments period that has already been set up for the eight year scheme. It will be up to the ratepayer to request to take advantage of the moratorium up to 31 March 2011. We do not envisage that setting up a moratorium for applicable businesses will have a significant administrative burden for businesses.
27. If a ratepayer, who meets the criteria, requests a moratorium, then, the local authority should set allow the moratorium. The ongoing rates liability for the property will need to be met in the deferral period. We do not therefore envisage that this additional administrative requirement will be significant to implement or impact greatly upon the annual allowance for the collection of rates.
28. This policy adheres to the important Hampton Principle of allowing economic progress by increasing the protection made to businesses; in this case shown by allowing businesses to stop making payments whilst giving the Government sufficient time to bring forward primary legislation during that time to waive certain backdated liabilities.

### **Social Costs & Benefits**

29. This policy is aimed at ratepayers who have received an unexpected and significant back dated bill and is a temporary measure to stop them for being forced to make payments towards the backdated liability whilst the Government explores options for offering permanent relief that is a workable solution and is cost effective.
30. Having a deferral period within the schedule of payments scheme, rather than paying in one instalment, will alleviate the tax burden on affected businesses, and guard against financial difficulties for those businesses who do not have reserves. Supporting businesses in being able to trade, and keeping employees employed, has many social and economic benefits for the areas surrounding the business.

## **Impact on 'main affected groups'**

31. *Businesses*, and other occupiers of non-domestic property, are the main group affected by this policy. Therefore, if they meet the criteria, these groups will be able to obtain a deferral period within the schedule of payments scheme, from their Local Authority. The ability of these businesses to have a rate free period has clear beneficial effects for the finances and the cashflow of the business in the short term; some of the affected businesses may not have the financial reserves to pay their liabilities up front.
32. *Local Authorities* are the other main group that this policy will affect. It is assumed that local authorities will diligently collect business rates for non domestic properties. If an authority does not collect the correct amount from the ratepayer, it cannot offset this amount against their contribution to the central non-domestic rates pool.
33. Although an authority is allowed to make a deduction from the gross amount for bad debts, the legislation does not allow the authority to make a deduction for sums which it cannot recover because it has not acted diligently to collect them. So under the current system, if a local authority did not take the steps currently available to collect the payments from backdated liabilities in the current financial year it would be faced with paying that liability into the pool itself.
34. However, under the eight year schedule of payments, the authorities which collect backdated liability in accordance with a schedule of payments are acting diligently and need not take account of sums outstanding but which will be collected in a future year under the schedule in calculating their gross contribution to the central non-domestic rating pool.

## **EU Requirements**

35. The proposal for one year moratorium on backdated liabilities within the current eight year schedule of payments scheme does not relate to any EU Legislation.

## **Greenhouse emissions and Wider Environment**

36. The proposal for one year moratorium on backdated liabilities within the current eight year schedule of payments scheme will not, in itself, have any effect on greenhouse emissions.

## **Competition Assessment**

37. The initial screening test was completed and we do not anticipate this policy proposal having an adverse impact upon fair and open business competition. We concluded that this policy would not require a full competition assessment.

## **Small Business Impact Test**

38. The proposal for this policy is expected to have broadly equivalent beneficial for both large and small businesses who may meet the criteria for the current scheme, including the moratorium, within the eight year schedule for payments. The increase in liquidity from not having to make payments for backdated rates, means these revenues may be used for other purposes which may be of particular benefit to small businesses.

## **Rural proofing**

39. The proposal for one year moratorium on backdated liabilities within the current eight year schedule of payments scheme is expected to have broadly equivalent impacts in rural and urban areas.

## **Race equality**

40. The initial screening test was completed and concluded that this policy would not require a full race equality impact assessment.



## **Disability equality**

41. The initial screening test was completed and concluded that this policy would not require a full disability equality impact assessment.

## **Gender equality**

42. The initial screening test was completed and concluded that this policy would not require a full gender equality impact assessment.

## **Health Impact Test**

43. The initial screening test was completed and concluded that this policy would not require a fully health impact test as this policy does not have a significant impact on human health.

## **Human rights and Justice**

44. There are two provisions of the European Convention which could be relevant to the amendment - Article 1 of the First Protocol and Article 14.
45. Article 1 of the First Protocol provides that everyone is entitled to the peaceful enjoyment of his possessions, and may not be deprived of them except in the public interest and subject to the conditions provided for by law and by the general principles of international law. There is an exception for the right of the State to secure the payment of taxes and discretion for the State to impose taxes in the public interest. The Department is confident that this policy is in the public interest and proportionate to the policy aims.
46. The second provision is Article 14 of the Convention which provides that the enjoyment of the rights and freedoms set out in the Convention shall be secured without any discrimination. This means that any differential treatment in terms of the right to peaceful enjoyment of property, protected by Article 1 of the First Protocol, including differential treatment for tax purposes, is in principle unlawful. The European Court has, however, consistently said that differential treatment is not unlawful provided that it is objectively and reasonably justified.

## **Sustainable Development**

47. This policy does not impact upon sustainable development.

## **Implementation/next steps**

48. This Impact Assessment is attached to the regulations that will implement the proposal for the moratorium to the current eight year schedule of payments scheme in place. We will be issuing a Business Rates Information Letter to local authorities to inform them of the moratorium. Local Authorities who are responsible for the collection and enforcement of business rates will be able to liaise with affected businesses.

## **Summary**

49. Alterations may be made to the Non-Domestic Rating list by the Valuation Office Agency (VOA) with effect from the point a property should first be rated or the point when a change to a property occurs. These alterations can be backdated to 1 April 2005, which can lead to a backdated rates liability for ratepayers.
50. The Government continues to explore options for offering permanent relief that is a workable solution and is cost effective. The ability to suspend payments of backdated liability has beneficial effects for the finances of a business in the short term and businesses will also have time to complete any formal appeals regarding the backdated liability, ensuring that local authorities are not forced to take enforcement action during the deferred period for the backdated liability.
51. The preferred option is option 2 because it provides legislative cover for local authorities to cease collecting and ratepayers from making payments towards this scheme whilst giving the

Government sufficient time to explore options for offering permanent relief that is a workable solution and is cost effective. Any further action in this area would be announced before the moratorium ends.

## **Annex 1: Post Implementation Review (PIR) Plan**

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

### **Basis of the review:**

The Government is currently exploring options for a permanent relief for certain backdated rates liabilities that is a workable solution and is cost effective.

The Post Implementation Review scope, which will include the impact of the moratorium, will be finalised after the Government has explored options and come to a decision on any further action. Any further action in this area is likely to be announced during the summer and in any case before the moratorium ends.

The Government will then be in a position to determine the scope of the review, the objective of the final policy, rationale and what it considers to be a success and therefore the appropriate methods for assessing the full policy proposal, which could include the impact on businesses and economic impacts,

In the mean time the take-up rate of properties applying for the 2009 schedule of payments policy and the amount of rates deferred will be monitored through the annual National Non-Domestic Rates (3) form that is returned by the authorities after the end of the financial year (published usually in September). We should for September 2010 have data on the number of properties that were granted an 8 year schedule of payments. We will through this process also monitor take up of the moratorium in 2010/11.

**Review objective:** This will be finalised after the Government has explored options for a permanent relief for certain backdated rates liabilities that is a workable solution and is cost effective.

**Review approach and rationale:** This will be finalised after the Government has explored options for a permanent relief for certain backdated rates liabilities that is a workable solution and is cost effective

**Baseline:** This will be finalised after the Government has explored options for a permanent relief for certain backdated rates liabilities that is a workable solution and is cost effective.

**Success criteria:** This will be finalised after the Government has explored options for a permanent relief for certain backdated rates liabilities that is a workable solution and is cost effective

**Monitoring information arrangements:** This will be finalised after the Government has explored options for a permanent relief for certain backdated rates liabilities that is a workable solution and is cost effective

**Reasons for not planning a PIR: N/A**

## **Annex 2 - Methodology for calculating backdated liability estimates**

1. Backdated liability has been estimated by CLG from a series of reports on new assessments to the Rating List supplied by the VOA. Each excerpt from a report contains figures for New, Splits, Merged and New (Other) assessments over its period.
2. To estimate the rateable value potentially eligible for the schedule of payments, the rateable values for New and New (Other) were counted in full; Splits was counted at 50% to allow for the hereditaments that had paid no NNDR; while Merged was counted at 0% as the joined properties would have paid NNDR before backdating.
3. Figures for 2007-08, 2008-09 and 2009-10 were separately calculated, as these would be subject to different rateable periods and multipliers.
4. For a worst-case estimate, we have assumed all the liability is liable back to the beginning of 2005-06.
5. As the RV identified in each year would start paying NNDR, their liability before this point is the amount that can be backdated, so the potential backdated liability in the year of identification (2007-08, 2008-09 or 2009-10 respectively) was reduced by half.
6. The newly assessed rateable value that could be eligible for a schedule of payments was multiplied by the higher business rate multiplier for each year up until identification. As noted in the paragraph above, only half the backdated liability was counted in the year of identification.
7. The gross revenue each year after this calculation was reduced by 7%, to take account of the national reduction in gross rates yield due to reliefs as calculated from NNDR1 2009-10 returns (the most recent available as at 20 May 2010).
8. Responses from local authorities, compared to their estimate for national liabilities eligible for the schedule of payments, give a proportion of around 20.0%<sup>2</sup> of backdated liability paid up-front in 2008-09. We applied the same figure to estimate the proportion of liability paid off immediately in other years. This assumption does not impact upon the overall cost of backdating liability but will have effect the short term revenue costs of the scheme. For example, reducing the assumption to 10%, would raise the short term revenue cost by £8m.
9. This gives an estimated national backdated liability of around £380m. Note that we are still working on improving the assumption on the Splits assumption of 50%. This is a fairly significant assumption in these costings which may be improved upon following some work we have commissioned by VOA. For instance, if we used a range of 30% to 70% for this assumption, overall costs would be around £280m to £480m.

---

<sup>2</sup> BRV carried out a survey in 2008/09 of port authorities to establish (1) estimated liability and (2) combined total of amounts repaid (under schedule of payments and full discharge. (2) as a proportion of (1) is 25%. However, applying the 25% would be too high as it would also take account of the payments collected under schedule of payments. We have therefore assumed that 20% is paid in full. This assumption will be updated once we have more recent information.

10. The remaining liability was then spread over a repayment schedule of eight years, with the net present value calculated by applying a discount rate of 3.5% from 2011-12, and at HMT's request a figure of 2.5% for annual losses to bad debts and insolvency.
11. The liability for 2009-10 would continue into 2017-18, later than that from 2007-08 and 2008-09, as hereditaments would join the schedule of payments throughout year 2009-10 as they were reported.
12. The cost of the policy of deferring the backdated liability being the difference between the backdated liability and the net present value of the payments over the schedule, recalculated each of the many times the policy was revisited. We have modelled a 1 year freeze and a 2 year freeze. Both freezes are assumed to start in July 2010/11, meaning that they would pay 3 instalments of their liability in 2010/11, and 7 instalments in 2011/12 for the 1 year option or 3 instalments of their liability in 2010/11, and 0 instalments in 2011/12 and 7 instalments in 2012/13 for the 2 year option.