

EXPLANATORY MEMORANDUM TO
THE NON-DOMESTIC RATING (ALTERATION OF LISTS) AND BUSINESS RATE
SUPPLEMENTS (TRANSFERS TO REVENUE ACCOUNTS) (AMENDMENT ETC.)
(ENGLAND) REGULATIONS 2018

2018 No. 1193

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Housing Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The purpose of this instrument is to allow for the making of proposals on the 2010 non-domestic rating list for hereditaments affected by section 1 of the Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Act 2018 and the Non-Domestic Rating (Nursery Grounds) Act 2018.

2.2 The instrument also makes an improvement to the “Check Challenge Appeal” system of making proposals on the 2017 non-domestic rating list to ease the burden on businesses wishing to split or merge their rating assessments.

2.3 Finally, the instrument brings forward by one month the date by which billing authorities have to compete their end of year returns for levying authorities informing them how much revenue has been generated by the Business Rate Supplement (BRS). This is to give levying authorities more time to prepare their annual accounts.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 The non-domestic rating system in England and Wales is established by Part 3 of the Local Government Finance Act 1988 (“the 1988 Act”). Section 1 of the Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Act 2018 amends section 64 of the 1988 Act and provides that where two or more hereditaments occupied or owned by the same person meet certain conditions as to contiguity, those hereditaments are treated as one. This change takes effect from 1st April 2010.
- 6.2 Section 1 of the Non-Domestic Rating (Nursery Grounds) Act amends Schedule 5 to the 1988 Act and provides for buildings used as nursery grounds to be exempt from non-domestic rates. This change takes effect from 1st April 2015.
- 6.3 Section 41 and 52 of the 1988 Act requires the valuation officer to compile a rating list on 1st April 2010 (the 2010 rating list) and on 1st April 2017 (the 2017 rating list) showing non-domestic rating hereditaments. The valuation officer is then required to maintain the accuracy of these rating lists. The Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (S.I. 2009/2268) (“the 2009 regulations”) are made under powers in section 55 of the 1988 Act and contain rules for when the valuation officer may amend the rating list and when ratepayers may make a proposal to amend the rating list. The right to make such a proposal on the 2010 rating list has now lapsed as has the valuation officer’s ability to amend the 2010 rating list in the absence of a proposal.
- 6.4 Amendments to the 2009 regulations in 2017¹ introduced a new system for making a proposal to amend the 2017 rating list known as “Check, Challenge Appeal”. Under these changes, ratepayers must first complete a check of the details of their property before they are able to make a proposal to amend the 2017 rating list (in practice known as a Challenge).
- 6.5 The Business Rate Supplements Act 2009 provides powers for top-tier local authorities and the Greater London Authority to levy a supplement (a “BRS”) of up to two pence in the pound of a business property’s rateable value. In areas where a single local authority performs all local authority functions, that local authority will be both the levying authority for BRS and the billing authority. In areas where there are two tiers of local government, the county council or GLA will be the levying authority while the district or London borough will be the billing authority. The Business Rates Supplements (Transfers to Revenue Accounts) (England) Regulations 2009 (S.I. 2009/2543) makes provision in the latter case for transfers of BRS collected by a billing authority to a levying authority. Paragraph 7 specifies the date by which a billing authority must submit a final return to the levying authority (being 31st May following the financial year in question).

7. Policy background

What is being done and why?

Properties in common occupation and nursery grounds

- 7.1 The established and recognised rule in business rates was for many years that businesses which occupied more than one contiguous (touching) unit of property received one rates bill. However, the rule received negative judicial treatment in the 2015 judgment of the Supreme Court in *Woolway (VO) v Mazars [2015] UKSC 53*,

¹ See S.I. 2017/155.

and as a result the Valuation Office Agency has had to change its practice. The practice of the Valuation Office Agency is now that separate units of property in a shared building should be treated as separate rating units and should therefore receive their own rates bills irrespective of whether they are in the same occupation and are contiguous. Normally this will be a self-contained piece of property with its own internal communication such as a storey in a multi-occupied office block. As a result many ratepayers who were previously receiving only one rates bill are now receiving two or more. In some cases they have had to pay more in business rates as a result of this change.

- 7.2 At Autumn Budget 2017 the Chancellor announced that the Government would reinstate the previous practice of the Valuation Office Agency (VOA). The Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Act 2018 delivers upon this commitment.
- 7.3 Since at least 1928 there has been a general exemption for agricultural premises in relation to liability to pay non-domestic rates. It has long been the practice of the VOA to treat both buildings that are (or form part of) market gardens and buildings which are (or form part of) plant nursery grounds as exempt.
- 7.4 However, the Court of Appeal in *Tunnel Tech Ltd v Reeves (VO)* [2015] EWCA Civ 718 found that treating buildings which are plant nursery grounds (which are not occupied with and used solely in connection with agricultural operations on agricultural land) as exempt was an incorrect application of the law. The Non-Domestic Rating (Nursery Grounds) Act 2018 restores in law the previous longstanding practice of the VOA and Government policy in respect of nursery grounds.
- 7.5 Both of these measures have retrospective effect into the 2010 rating list. The properties in common occupation measure takes effect from 1 April 2010 and the nursery ground measure from 1 April 2015 reflecting the earliest point at which the respective court decisions could have been reflected in the 2010 rating list. Without these regulations, those ratepayers affected could not, under current rules, make proposals on the 2010 rating list to give effect to either measure. Therefore, these regulations allow those ratepayers affected to make new proposals on the 2010 rating list. Part 2 provides a new right of proposal for properties in common occupation and Part 3 for nursery grounds.
- 7.6 The new rights of proposal are limited in scope to grounds as a result of the coming into force of the Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Act 2018 and to hereditaments which include buildings which are or form part of a nursery ground and are used solely in connection with agricultural operations at the nursery grounds. This will ensure that only those ratepayers affected by the changes in law in the two Acts can make new proposals on the 2010 rating list and that ratepayers cannot use this new right of proposal to access the 2010 rating list on wider grounds of challenge. The right of proposal is time limited for 12 months. This will allow sufficient time for ratepayers to make new proposals while ensuring the 2010 rating list does not remain open to new proposals indefinitely.

Check of information about historic hereditaments

- 7.7 In 2017 the Government introduced a new system for ratepayers making proposals to amend the 2017 rating list called “Check, Challenge Appeal”. Under this system, ratepayers have to lodge and complete a ‘check’ against a hereditament (checking

information about the hereditament) before they can proceed to make a challenge (referred to in the 2009 Regulations as a proposal).

- 7.8 The VOA has found that this is leading to duplication of Checks where hereditaments are required to be split or merged into new hereditaments (such as where 2 contiguous floors of an office block are to be merged into one hereditament). In these circumstances, and under the current 2009 regulations, ratepayers who have already completed a Check on the hereditaments which were shown in the list before the split or merger (historic hereditaments) must also make a further Check on the new hereditament even though it has been formed from the historic hereditaments. To resolve this, these regulations, in these circumstances, provide for a Check to have been deemed to have been completed on the new hereditament where Checks have been completed on the historic hereditaments. This will, therefore, reduce the burden on the ratepayer and the VOA, and hastening resolution of proposals made by ratepayers.

Business Rate Supplements

- 7.9 The Business Rate Supplement (BRS) is a supplement of up to two pence in the pound of a hereditament's rateable value that top-tier authorities, the Greater London Authority and four mayoral combined authorities can charge to promote economic growth. Currently, billing authorities are required to make BRS return to levying authorities by 31st May in the following financial year. This leaves little time for the information on the BRS to be collated by those authorities before they are required to publish their unaudited annual accounts by the first working day in June. Therefore, these Regulations bring forward the date of the BRS return to 30th April.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

- 9.1 The Department does not intend to consolidate those Regulations.

10. Consultation outcome

- 10.1 A consultation document on business rates in multi-occupied properties was published on 29th December 2017. This included proposals to implement the Government's proposals in respect of the 2010 rating list by allowing a new right of proposal for those affected. A Summary of Responses and Government Response was published in April 2018².
- 10.2 Of those that directly responded to the question of how the measure should be implemented on the 2010 rating list (47), 38 agreed that this should only be made as a result of a proposal from the ratepayer. The main concerns raised in relation to implementation on the 2010 rating list were that a burden will fall on ratepayers to make a new proposal and that the VOA should be more proactively engaging with councils and ratepayers to change the 2010 rating list (4 respondents). There were 3 respondents who said that no new appeal rights should be allowed on the 2010 rating list. The Government, therefore, decided to proceed on the 2010 rating list through the

² <https://www.gov.uk/government/consultations/business-rates-in-multi-occupied-properties>

introduction of a new right of proposal and Part 2 of these Regulations implements this recommendation.

- 10.3 Part 3 of the regulations implements the measures approved by Parliament in The Non-Domestic Rating (Nursery Grounds) Act 2018 and has been agreed in draft with representatives of nursery ground occupiers. Part 4 streamlines the Check Challenge Appeal process which will assist ratepayers with the implementation of The Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Act 2018. Parts 2,3 and 4 have all been discussed and agreed with the VOA. The Government has discussed Part 5 of the regulations with local government for which it received widespread support.

11. Guidance

- 11.1 The Department does not intend to issue formal guidance. The VOA will provide guidance on the operation of Parts 2, 3 and 4 of the Regulations.

12. Impact

- 12.1 There will be an impact for businesses, charities or voluntary bodies who are ratepayers in respect of hereditaments affected by Parts 2 and 3 of the Regulations. In respect of the 2010 rating list we expect the impact upon them to be beneficial. The cost of reductions in rateable values as a result of proposals on the 2010 rating list will be shared between local government and central government under the Business Rates Retention Scheme.
- 12.2 The changes in Parts 4 and 5 of the Regulations will have no impact on business rate bills.
- 12.3 An Impact Assessment has not been prepared for this instrument as it amends a local taxation regime.

13. Regulating small business

- 13.1 The legislative changes contained in these Regulations are intended to support businesses of all sizes.

14. Monitoring & review

- 14.1 The Department's annual national non-domestic rating returns from billing authorities monitor the income from non-domestic rates. The Government continues to keep the system of business rates under review.

15. Contact

- 15.1 Nick Copper at the Ministry of Housing, Communities and Local Government Telephone: 0303 444 3610 or email: nick.copper@communities.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Suzanne Clarke, Deputy Director for Local Government Finance, at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Rishi Sunak at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.