EXPLANATORY MEMORANDUM TO

THE VALUATION FOR RATING (PLANT AND MACHINERY) (ENGLAND) (AMENDMENT) REGULATIONS 2022

2022 No. 405

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Levelling Up, Housing and Communities and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The instrument will implement an exemption from non-domestic rates for plant and machinery used in connection with renewable generation and also plant and machinery used for storage at Electric Vehicle Charging Points (EVCP). The exemption will apply from 1 April 2022 until 31 March 2035.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The instrument comes into force two days after the day on which it was laid. Therefore, the instrument will break the convention that negative statutory instruments should not come into effect until a minimum of 21 calendar days after they are laid. The Department recognises that this has reduced the time Parliament will have to scrutinise the instrument and regrets and apologises that it was unable to comply with the 21-day rule.

3.2 Firstly, the Department was unable to make the instrument any sooner. The business rates exemption contained in this instrument was first announced in the Autumn Budget of 2021 as part of the conclusions of the review of business rates but was due to take effect from 1 April 2023[1]. A technical consultation running between 30 November 2021 and 22 February 2022 sought views on the implementation of the exemption (along with several other aspects of the business rates review)[2]. The Department planned to then make the instrument during the course of 2022 in good time ahead of 1 April 2023.

3.3 However, in order to bring forward investment in energy efficiency and clean heat, and to support the security of energy supply, the Chancellor decided as part of his Spring Statement to accelerate the delivery of the exemption by one year to 1 April 2022. Budget announcements of this nature are generally not made outside of the key fiscal events of the Autumn Budget or, as in this case, the Spring Statement. Therefore, the change of delivery date was not announced until the Spring Statement on 23 March 2022. The instrument could not, therefore, be made before that date and

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[1] https://www.gov.uk/government/consultations/hm-treasury-fundamental-review-of-business-rates-call-for-evidence

[2] https://www.gov.uk/government/consultations/business-rates-review-technical-consultation

in practice required a few further days after the Spring Statement to finalise the technical details with a wider audience within government.

3.4 Secondly, in order for the instrument to be brought into force at the start of the financial year on 1 April 2022 there has not been the normal 21 days between laying the instrument and it coming into force. The exemption, when taken together with a 100% relief for heat networks, will save businesses around £35 million in 2022/23. Allowing 21 days would have meant delaying that support going to ratepayers. Whilst we recognise the importance of allowing Parliament time to scrutinise instruments such as these, the Department concluded, given the need to support energy efficiency and security of energy supply, it was judged very important to deliver as much support as possible to ratepayers as quickly as possible.

3.5 Therefore, whilst breaking the 21 day rule is not a step the Department takes lightly, it is a step we felt was necessary in this case. The exemption will be implemented by the Valuation Office Agency (VOA) who will automatically remove the eligible items from rateable values. The Department has been able to give the VOA some advance warning of this measure and steps are already being taken to ensure rateable values are updated as quickly as possible. Once rateable values have been updated then existing local government systems will automatically re-issue rate bills. Local government will be compensated for the loss of income from the exemption. Therefore, ratepayers and local government will not be disrupted by breaking the 21 day rule in this case and eligible ratepayers will benefit from lower bills.

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 Schedule 6 to the Local Government Finance Act 1988 (“The 1988 Act”) contains rules for Valuation Officers to determine the rateable value of rating assessments (known as hereditaments). Broadly speaking, the rateable value represents the annual rental value of the hereditament at a set date – currently 1 April 2015. Paragraph 2(8) of Schedule 6 allows the Secretary of State to make regulations prescribing assumptions as to the hereditament or otherwise.

6.2 Under those powers the Secretary of State has made the Valuation for Rating (Plant and Machinery) (England) Regulations 2000 SI 2000 No. 540 (“the plant and machinery regulations”). These provide assumptions as to plant and machinery – in general they provide that plant and machinery falling within the four classes of the plant and machinery regulations is assumed to be part of the hereditament and that all other plant and machinery should have no effect on the rateable value.

6.3 Class 1 of the plant and machinery regulations concerns power and provides that any of the listed items in class 1 are assumed to be part of the hereditament where they are used or intended to be used mainly or exclusively in connection with the generation, storage, primary transformation or main transmission of power in or on the hereditament. An exception applies to class 1 (in class 1(d)(i)) where the power is mainly or exclusively for distribution to consumers. This provides an exemption from class 1 for occupiers who are generating power for sale off site (i.e. power stations) – this is known as "the tools of the trade exemption".

7. Policy background

What is being done and why?

7.1 In March 2020 the government announced a business rates review with the object of reducing the overall burden on business, improving the system and considering more fundamental change in the medium to long term[3]. In March 2021 it published an interim report and in October 2021 a final report[4]. In the final report the government concluded (at paragraph 2.20) that

> "the majority of plant and machinery (P&M) is not rateable – only those items that are listed in the regulations are rateable, and a 'tools of the trade' exemption applies to most items used in connection with an occupier's specific manufacturing operations or trade processes.", and "The government is therefore not pursuing fundamental reform of the P&M system.".

7.2 However, the final report did say (at paragraph 2.22) that:

> "The government also recognises specific concerns raised by ratepayers that businesses who install renewable energy for their own use can face significantly higher bills – while businesses producing renewable energy for use elsewhere get to benefit from the tools of the trade exemption. **The government will therefore introduce an exemption for eligible plant and machinery used in onsite renewable energy generation and storage, such as rooftop solar panels and battery storage used with renewables and electric vehicle charging points, from 2023 until 2035**."

7.3 The object of this exemption is to support green investment and the decarbonisation of buildings.

7.4 In November 2021 the Department published a technical consultation considering how the government intends to give effect to a number of measures arising from the business rates review including (at paragraphs 5.2 to 5.8) the exemption for renewable and EVCP plant and machinery[5]. In the technical consultation the government explained:

- that the new exemption would apply to class 1 of the plant and machinery regulations so that on-site renewable generation would be brought into line with off-site generation which already benefitted from the existing tools of the trade exemption from class 1, and

that the exemption would be subject to a wholly or mainly test so that only items used wholly or mainly in relation to renewable generation or storage for EVCP would

[3] https://www.gov.uk/government/consultations/hm-treasury-fundamental-review-of-business-rates-call-for-evidence

[4] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1028478/BRR_final.pdf

[5] https://www.gov.uk/government/consultations/business-rates-review-technical-consultation/business-rates-review-technical-consultation#chapter-5-green-measures

benefit. (The instrument has adopted the wording "mainly or exclusively" for consistency with similar tests in the existing plant and machinery regulations).

7.5 At the Spring Statement 2022 the Chancellor announced that the green business rates measures announced at Autumn Budget 2021 will be brought forward by one year to April 2022[6].

8. European Union Withdrawal and Future Relationship

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

9. Consolidation

9.1 No consolidation is planned. The regulations are implemented by the Valuation Office Agency who are aware of the change.

10. Consultation outcome

10.1 The instrument follows a series of consultations as part of the review of business rates. The government sought views in a Call for Evidence across all areas of business rates including the rating of plant and machinery and published a summary of responses as part of its Interim Report in March 2021. These documents are available at the review of business rates website[7].

10.2 A common point made by respondents to the Call for Evidence was the difference in treatment between on-site and off-site consumption of energy generation considered to be a disincentive to green energy[8]. 40% of respondents argued for an exemption for Green Energy[9].

10.3 Following the conclusion of the review, the Department published a technical consultation setting out how it intends to give effect to a number of measures arising from the review of business rates including (at paragraphs 5.2 to 5.8) the P&M exemption for renewables and EVCP[10]. In respect of the measures implemented by this instrument:

- of those who commented on the measure, most responses were positive,
- some respondents felt the duration of the exemption (up to 1 April 2035) was too short to adequately incentivise behaviour and investment. These respondents said that the capital payback period for such investment was 25 years and the incentive from the exemption would diminish as the 1 April 2035 approached,
- some respondents felt that the exemption should go beyond renewables and extend support to other technologies argued to be favourable to decarbonisation such as biofuel, hydrogen, carbon capture and more generally equipment where energy was being exported to the grid,

[6] Paragraph 2.22 of the Spring Statement 2022 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1062486/Spring_Statement_2022_Web_Accessible.pdf
[7] https://www.gov.uk/government/consultations/hm-treasury-fundamental-review-of-business-rates-call-for-evidence
[8] Paragraph 3.33 of the Interim Report.
[9] Paragraph 3.37 of the Interim Report.
[10] https://www.gov.uk/government/consultations/business-rates-review-technical-consultation/business-rates-review-technical-consultation#chapter-5-green-measures

- some respondents felt that the exemption should apply to all P&M used for renewable generation and not just those items falling within class 1 of the P&M regulations concerning power (i.e. extend the exemption to items such as foundations), and
- some respondents felt that the government should go beyond P&M for power generation and provide support for wider energy efficiency measures in buildings. Some also argued for similar exemptions in other sectors such a telecoms and some called for a complete review of the P&M regulations.

10.4 The government had regard to these responses, where relevant, when making this instrument. The government continues to believe the measure should be targeted at renewable technologies and apply until 31 March 2035. The government's assessment is that the current plant and machinery regulations are still sound. The Department will publish a full summary of responses for the technical consultation shortly.

11. Guidance

11.1 The Valuation Office Agency is responsible for implementing this measure and publishes guidance in its Rating Manual on the assessment of rateable values and plant and machinery[11].

12. Impact

12.1 The impact on business, charities or voluntary bodies is that those with P&M falling within the exemption may see a reduction in their business rates bill.

12.2 There is no, or no significant, impact on the public sector. The government will compensate local government for the cost of the exemption in this instrument.

12.3 A full Impact Assessment has not been prepared for this instrument because it amends a local taxation regime and amendments to any tax are excluded from the definition of a regulatory provision[12].

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

13.3 The basis for the final decision on what action to take to assist small businesses is that the instrument will, where applicable, reduce business rates bills and these reductions will be updated automatically in bills.

14. Monitoring & review

14.1 The government continues to keep the administration of the business rates system under review.

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[11] https://www.gov.uk/guidance/rating-manual-section-6-chhallenges-to-the-rating-list/part-5-plant-and-machinery

[12] Section 22(4)(a) of the Small Business, Enterprise, and Employment Act 2015

15. Contact

15.1 Nick Cooper at the Department for Levelling Up, Housing and Communities Telephone: 0303 444 3610 or email: nick.cooper@levellingup.gov.uk can be contacted with any queries regarding the instrument.

15.2 Chris Megainey, Deputy Director for Local Taxation, at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.

15.3 Kemi Badenoch MP at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.