

EXPLANATORY MEMORANDUM TO
THE NON-DOMESTIC RATING (HEAT NETWORKS RELIEF) (ENGLAND)
REGULATIONS 2023

2023 No. 1247

1. Introduction

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

2. Purpose of the instrument

- 2.1 Business rates are a recurrent tax paid on most non-domestic properties. The Non-Domestic Rating Act 2023 provided for a new 100% mandatory business rate relief for heat networks to take effect from 1 April 2024. This instrument provides, for the purposes of that relief, the meaning of heat networks and the conditions that must be met for the relief to apply. The conditions are that the energy for the heat network must be from a low carbon source.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) 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 Section 1 of the Non-Domestic Rating Act 2023 inserted a new Schedule 4ZA into the Local Government Finance Act 1988 (“the 1988 Act”) concerning the chargeable amount for non-domestic rates for occupied properties (known in rating law as occupied “hereditaments”) on rating lists held by local authorities. The new Schedule takes effect from the financial year 2024/25. It repeals and re-enacts existing provisions for determining chargeable amounts in section 43.
- 6.2 Schedule 4ZA also includes a new relief for heat networks not previously in section 43. Paragraph 6 of Schedule 4ZA provides that a hereditament wholly or mainly used for the purposes of a heat network is entitled to full relief provided any conditions prescribed by the Secretary of State are met. Paragraph 6 allows for heat network to be defined in regulations. This is the first use of those powers. The heat network rate relief runs until 1 April 2035 but the government may amend that date by regulations.

6.3 Section 47 of the 1988 Act gives local authorities the discretion to reduce the chargeable amount for a hereditament on their rating list. Section 47 allows them to set aside the rules in the 1988 Act and determine a different chargeable amount (or rules for chargeable amounts).

7. Policy background

What is being done and why?

7.1 In its Final Report of the Business Rates Review published in October 2021¹, the government announced a 100% relief for eligible low-carbon heat networks that have their own rates bill. Further details were provided in November 2021 in a technical consultation² including the conditions that the relief was to be targeted at hereditaments being used wholly or mainly as a heat network and, to support decarbonisation, limited to those networks generating from a low carbon source.

7.2 For the financial years 2022/23 and 2023/24 the heat network rate relief has been provided by local authorities using their discretionary relief powers in section 47 of the 1988 Act. The relief has been provided in line with guidance published by the Department for Levelling Up, Housing and Communities³. However, the government remained committed to putting heat network relief on a statutory and mandatory relief footing and was able to do this using the Non-Domestic Rating Act 2023.

The meaning of a heat network

7.3 The relief is available to hereditaments wholly or mainly used for the purposes of a heat network. The instrument defines a heat network in regulation 3. As a result, hereditaments wholly or mainly providing heat for a different purpose (such as an industrial process) are not eligible. The government will keep under review the incidence of heat networks in any industrial process context and whether they should benefit from the relief.

7.4 The wholly or mainly test is applied to the hereditament as a whole, and heat network relief is not available on part of a hereditament. If the eligibility criteria are met for the hereditament as a whole then full relief is applied even if, for example, the hereditament contains some plant (such as a back-up boiler) which may not in isolation be eligible. Equally, a hereditament which overall does not meet the eligibility criteria cannot receive partial relief on an individual item of plant which in isolation may have passed the tests.

7.5 Many small and medium scale heat networks, such as common heating systems in multi-occupied buildings or estates, do not give rise to a separate hereditament and business rates bill. In these cases, the heat network forms part of the services of the hereditaments which overall are used for a different purpose (e.g. offices) and therefore would not be eligible for the relief. Therefore, the government anticipates those networks eligible for the relief to be the larger facilities which have their own business rates assessment⁴.

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>

³ <https://www.gov.uk/government/publications/business-rates-heat-network-relief-local-authority-guidance-2023-24/business-rates-heat-network-relief-local-authority-guidance-2023-24>

⁴ Although some large heat networks may also be assessed as part of a wider hereditament such as a university.

- 7.6 Regulation 3 defines a heat network as a facility which supplies thermal energy meaning that the purposes of generating electricity does not count towards meeting the wholly or mainly test. As a result, the government does not anticipate hereditaments comprising power stations and a heat recovery and network system to qualify. Nor would the government expect a hereditament comprising a Combined Heat and Power (CHP) facility where the generation of electricity at the hereditament was more significant than the generation and supply of heat to qualify for the relief. However, if a heat recovery and network system taking heat from a power station was, for whatever reason, in a separate hereditament from the power station then it may still qualify subject to meeting the low carbon test of eligibility.
- 7.7 Similar considerations will apply where the heat is being taken from an incinerator or Energy from Waste (EfW) Plant. If the heat network forms part of the same hereditament as the incinerator or EfW plant then, unless it has been designed specifically as a heat network, it is unlikely to pass the test of wholly or mainly used for the purposes of a heat network (its primary purpose more likely being incineration of waste or generation of electrical power). However, it may qualify (subject to the low carbon test of eligibility) if the heat network forms its own hereditament (i.e. if the heat is coming in from a different hereditament such as the case of a heat network which purchases heat from a separately assessed EfW plant).

The low-carbon test

- 7.8 Regulation 2 provides a condition which must be met for the relief to apply. This is that, for the next 12 months, it appears to the local authority that the thermal energy supplied by the heat network will be generated from a low carbon source. This condition is included to ensure the relief supports decarbonisation.
- 7.9 In practice the government anticipates that local authorities will apply the low carbon test based on a forecast at the start of each financial year and, generally, not revisit that forecast unless they have reason to believe it has changed. Nevertheless, local authorities may still review the eligibility for relief mid-year if, for example, there are changes to the type of plant installed at the facility.
- 7.10 The definition in regulation 2 is largely based on Article 2 of the Directive 2012/27/EU of the European Parliament and of the Council⁵, is widely recognised and understood in the heat network sector and used for other purposes (such as the Heat Networks Investment Project (HNIP)⁶. Therefore, local authorities can expect the operators of potentially eligible heat networks to understand this definition and be able to declare and evidence whether they consider they meet the test of a low carbon source. For these purposes the government anticipates a much simpler declaration than the information provided as part of the HNIP application. The government anticipates that local authorities will seek such a declaration from the ratepayer to inform them as to whether they meet the low carbon test.
- 7.11 Waste heat is included in regulation 2 as a low carbon source and defined in regulation 2(3). This may include heat generated through the incineration of waste (although as noted at paragraph 7.7 above) hereditaments which are wholly or mainly for the purposes of the incineration of waste or generation of electricity from waste would not pass the test of being wholly or mainly for the purposes of a heat network.

⁵ <https://www.legislation.gov.uk/eudr/2012/27/article/2>

⁶ <https://www.gov.uk/government/collections/heat-networks-investment-project-hnip-overview-and-how-to-apply>

7.12 Cogeneration heat is also included in regulation 2 as a low carbon source and defined in regulation 2(3). The government anticipates that Combined Heat and Power (CHP) sources will qualify as sources of cogeneration heat including gas CHP. However, as noted in paragraph 7.6 above, a hereditament comprising a CHP facility would still have to meet the test of being wholly or mainly used for the purposes of a heat network (and not for example wholly or mainly for the purpose of generating and selling electricity).

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.

10. Consultation outcome

10.1 In December 2021 the government issued a technical consultation paper as part of the review of business rates. Proposals for the heat network rate relief were included at paragraphs 5.9 to 5.12 of the consultation⁷.

10.2 A summary of responses was published in March 2023⁸. In total 144 written responses were received including from ratepayers, business groups and the local government sector across all aspects of the consultation. In relation to the proposals for a heat network rate relief, respondents were positive about the proposals although many asked for the relief to be more wide-ranging. Business groups asked for more clarity on the criteria for the scheme. Since the consultation the government has provided guidance for the discretionary form of the relief.

11. Guidance

11.1 Guidance for the discretionary form of the heat network relief scheme has been published by the Department for Levelling Up, Housing and Communities⁹.

12. Impact

12.1 The impact on business, charities or voluntary bodies is to provide rate relief for the ratepayers of eligible heat networks.

12.2 There is no, or no significant, impact on the public sector. The government will compensate local government for the revenue forgone as a result of the heat network rate relief.

⁷ <https://www.gov.uk/government/consultations/business-rates-review-technical-consultation/business-rates-review-technical-consultation#chapter-5-green-measures>

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1142759/M53_73 - Business Rates Technical Consultation Summary of Responses FINAL.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1142759/M53_73_-_Business_Rates_Technical_Consultation_Summary_of_Responses_FINAL.pdf)

⁹ <https://www.gov.uk/government/publications/business-rates-heat-network-relief-local-authority-guidance-2023-24>

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 provision¹⁰.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The government continues to keep the administration of business rates under review¹¹.

15. Contact

15.1 Nick Cooper at the Department of 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 Simon Hoare at the Department for Levelling Up Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.

¹⁰ Section 22(4)(a) of the Small Business, Enterprise, and Employment Act 2015.

¹¹ The instrument, which is in connection with a local taxation regime, is not subject to the duty to review regulatory provisions in secondary legislation in section 28 of the Small Business, Enterprise, and Employment Act 2015.