

EXPLANATORY MEMORANDUM TO
THE NON-DOMESTIC RATING (CONSEQUENTIAL AND OTHER
AMENDMENTS ETC.) (ENGLAND) REGULATIONS 2023

2023 No. 1251

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 His Majesty.

2. Purpose of the instrument

- 2.1 The Non-Domestic Rating Act 2023 delivered various reforms to the business rates system. This instrument implements consequential changes to secondary legislation following the passing of that Act, and other minor drafting changes to correct out of date references. The instrument also gives effect to two outstanding policy commitments: (1) revoking the rules concerning the application of discretionary relief by local authorities (2) providing that relief for unoccupied properties is available to properties on the central rating list as well as local lists.

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 The Local Government Finance Act 1988 (“the 1988 Act”) provides a scheme for levying non-domestic rates on hereditaments. The Non-Domestic Rating Act 2023 (“the 2023 Act”) made a number of changes to the 1988 Act concerning liability and mandatory reliefs, discretionary relief, administration, information, valuation and multipliers. Section 17 of the Act provides a power for the appropriate national authority (defined for England as the Secretary of State) to make further provision that is consequential on the Act, by regulations. This SI makes a number of changes to secondary legislation consequential on the 2023 Act.
- 6.2 The opportunity has been taken to update or omit other out of date references within non-domestic rating secondary legislation. For example, a reference to the Companies

Act 1985 has been updated to the Companies Act 2006. The powers used to make these changes include those within the 1988 Act and the power to make consequential amendments in section 236 of the Localism Act 2011.

- 6.3 Section 3 of the 2023 Act inserted a new Schedule 5A into the 1988 Act concerning the chargeable amount for non-domestic hereditaments on the central list¹. Paragraph 4(1)(c) of Schedule 5A confers a power on the Secretary of State prescribe a class of central list hereditaments which may benefit from unoccupied rate relief. This power is being exercised for the first time.
- 6.4 Under powers provided by section 47 of the 1988 Act, the Non-Domestic Rating (Discretionary Relief) Regulations 1989 (“the 1989 Regulations”) placed administrative requirements on billing authorities connected to the determination, variation and revocation of discretionary relief awards. This instrument revokes those regulations.

7. Policy background

What is being done and why?

- 7.1 The Government reviewed the business rates system in 2020-2021² and Parliament subsequently passed the Non-Domestic Rating Act 2023 to deliver many of the review’s conclusions.

Eligibility of central list hereditaments for unoccupied property relief

- 7.2 The review considered a number of administrative issues with business rates, including the central rating list. This contains properties which by their nature are unsuitable for including in local lists, such as utility networks, which span many local areas.
- 7.3 In 2017, the Government brought forward a Local Government Finance Bill which included reforms to the central list. This Bill did not reach Royal Assent, and so the Government consulted again on reforms to the central list during the Business Rates Review.
- 7.4 One of the reforms consulted on was to correct an anomaly under which charitable rate relief and unoccupied rate relief were not available to properties on the central rating list. In the March 2022 Summary of Responses³, the Government confirmed it would deliver this change, which is achieved by regulation 10. The Government’s policy is that the prescribed class of hereditaments for the central list is the same as the class of hereditaments which benefit from unoccupied rate relief on local lists.

Discretionary rate relief

- 7.5 Another administrative issue the review considered was the rules governing how local authorities can make decisions about, and apply, discretionary business rate relief under section 47 of the 1988 Act and the 1989 Regulations. These provisions set out

¹ See sections 52 to 54 of the 1988 Act.

² Business Rates Review: Final Report:

https://assets.publishing.service.gov.uk/media/6177dda98fa8f52982a861ea/BRR_final.pdfhttps://assets.publishing.service.gov.uk/media/6177dda98fa8f52982a861ea/BRR_final.pdf

³ Business Rates technical consultation: summary of responses:

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

the parameters of local authorities' power to award rate relief and rules governing when they can use, revoke or vary relief and how notices of reliefs should be given.

- 7.6 Section 47(7) of the 1988 Act created a limit of six months after the end of a financial year in which an authority could make a decision to award discretionary relief for that year. The 1989 Regulations created rules requiring authorities to give notice in writing of discretionary relief and the content and timing of such notices.
- 7.7 In a technical consultation⁴, the Government expressed its objective to reform and simplify the rules governing the system of discretionary rate relief, by removing unnecessary administrative restrictions and decentralising control of the rules to local authorities. The consultation stated the Government's belief that it would be inconsistent to continue to operate a devolved and localised system of discretionary relief with a centralised set of rules regarding how that relief should be administered and varied.
- 7.8 In the March 2022 summary of responses⁵ to the technical consultation, the Government confirmed it would remove the constraint on the ability of local authorities to backdate discretionary relief, by amending section 47(7) of the 1988 Act 1988, and would revoke the 1989 Regulations controlling variation of determinations and issuing of notices. The Government stated this would enable local authorities to apply reliefs retrospectively and set their own rules for notifications of reliefs in their area, from 1 April 2024.
- 7.9 The Non-Domestic Rating Act 2023 therefore amended section 47(7) to remove the restriction on backdating relief, and regulation 16 of this instrument fulfils the rest of the commitment by revoking the 1989 Regulations.

Other changes

- 7.10 The other parts of this instrument are consequential and drafting amendments and do not reflect changes in policy. Regulations 2, 5, 7(a) and (c), 8, 9 and 11 to 14 amend several non-domestic rating instruments to update the references to amended provisions of the 1988 Act (consequential on the 2023 Act and the Localism Act 2011). Before these changes come into force, section 17 of the Interpretation Act 1978 will operate to ensure continuity, but this is not a long-term solution given the confusion which could arise for users of the legislation. Regulations 3, 4 and 6 update other out of date statutory references contained within non-domestic rating instruments. These are unrelated to the 2023 Act. Regulation 7(b) revokes a spent provision.

8. European Union Withdrawal and Future Relationship

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

9. Consolidation

- 9.1 There are no plans to consolidate any of the instruments amended by this instrument.

⁴ Technical consultation: <https://www.gov.uk/government/consultations/business-rates-review-technical-consultation/business-rates-review-technical-consultation>

⁵ Summary of responses:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1142759/M5373_-_Business_Rates_Technical_Consultation_Summary_of_Responses_FINAL.pdf

10. Consultation outcome

- 10.1 The policy changes delivered by this instrument were proposed in a technical consultation⁶ in November 2021. A summary of responses⁷ was published in March 2023.
- 10.2 As set out in the summary of responses, respondents were mostly positive about the proposal to extend unoccupied property relief to hereditaments on the central rating list.
- 10.3 Regarding the proposal to localise decisions on discretionary rate relief, the summary of responses set out that local authorities were almost all supportive, while most businesses and representative organisations supported greater local autonomy but were wary of the impact that varying rules between authorities might have on business.

11. Guidance

- 11.1 Guidance is not required for this instrument. However, the Government has provided a notice to billing authorities informing them of the changes that are planned ahead of the billing cycle for the next financial year.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A full Impact Assessment has not been prepared for this instrument because taxation is exempt under the definition of a regulatory provision.

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 approach to monitoring of this legislation is to keep the changes under review as part of wider tax policy.
- 14.2 The instrument does not include a statutory review clause.

15. Contact

- 15.1 Theo Heren at the Department for Levelling Up, Housing and Communities Telephone: 07458112852 or email: theo.heren@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.

⁶ Technical consultation: <https://www.gov.uk/government/consultations/business-rates-review-technical-consultation/business-rates-review-technical-consultation>

⁷ Summary of responses:

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

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