

Telecommunications Infrastructure (Relief from Non-Domestic Rates) Bill
DELEGATED POWERS MEMORANDUM BY THE DEPARTMENT FOR
COMMUNITIES AND LOCAL GOVERNMENT

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Introduction

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Telecommunications Infrastructure (Relief from Non-Domestic Rates) Bill (“the Bill”). This memorandum identifies the provisions of the Bill that confer powers to make delegated legislation. It explains in each case why the power has been taken and explains the nature of, and the reason for, the procedure selected.
2. In summary the Bill will provides powers to allow for relief for telecommunication hereditaments. We intend the use the powers to provide relief to new fibre for a period of 5 years.
3. In this memorandum:

“the 1988 Act” means the Local Government Finance Act 1988;

“the Department” means the Department for Communities and Local Government;

“Hereditament” means property which is or may become liable to a non-domestic rate, being a unit of such property which is, or would fall to be, shown as a separate item on a local non-domestic rating list;

“Non-domestic rates” means rates payable under Part 3 of the Local Government Finance Act 1988 by the occupier or owner of property shown on a local non-domestic rating list or central non-domestic rating list.

Delegated Powers created by the Telecommunications Infrastructure (Relief from Non-Domestic Rates) Bill

Clauses 1 to 3: Power for the Secretary of State to make Regulations in relation to the telecommunications relief

Power conferred on: Secretary of State or the Welsh Ministers

Power exercised by: Regulations made by statutory instrument

Parliamentary Procedure: Negative procedure

Context and Purpose

4. In the 2016 Autumn Statement the Chancellor announced the Government will provide a new 100% non-domestic rates relief for new full-fibre infrastructure for a five year period from 1 April 2017 to support rollout of new full-fibre broadband infrastructure and future 5G communications to homes and businesses.

5. Clause 1 to 3 of the Bill makes amendments to various parts of the 1988 Act to set the framework for such a relief to apply to hereditaments. Since the relief is to be a mandatory relief in respect of both the central rating list and the local rating list, and not one that relies on the discretion of individual local authorities on the local rating list, it is appropriate to make provision for it in primary legislation.
6. The amendments to the 1988 Act made by the Bill provide for the calculation of non-domestic rating liability for hereditaments wholly or mainly used for the purpose of facilitating the transmission of communication by any means involving the use of electrical or electromagnetic energy. Delegated powers are being taken by the appropriate national authority (in England, the Secretary of State; in Wales, the Welsh Ministers):
 - a. to prescribe conditions to be satisfied (*new sections 43(4F)(b), 45(4C)(b) and 54ZA(1)(c) of the 1988 Act*).
 - b. to prescribe an amount for F and T (*new sections 44(10), 45(4D) and 54ZA(3) of the 1988 Act*), and
 - c. to impose duties or confers powers on valuation officers and make provision as to appeals (*new sections 44(11), 45(4E) and 54ZA(4) of the 1988 Act*)

Justification for delegation

New sections 43(4F)(b), 45(4C)(b) and 54ZA(1)(c) to the 1988 Act: Power to prescribe conditions to be satisfied

7. Clause 1(3) of the Bill inserts subsection 43(4F) into 1988 Act. It provides power for the appropriate national authority, by regulations, to prescribe the conditions to be satisfied in order for relief to apply to the calculation of a chargeable amount for an occupied hereditament on a local rating list. Clauses 2(3) and 3(3) insert identical provision at sections 45(4C) (in relation to unoccupied hereditaments on a local rating list) and section 54ZA(1) (in relation to hereditaments on the central list).
8. The Government's intention is that the relief will apply only to those parts of telecom networks which have been upgraded to new full-fibre infrastructure. These are concepts which have never before been described in rating legislation. Taking powers to define the conditions in which the relief applies will, therefore, allow the Government the flexibility to develop a definition of new full fibre infrastructure in consultation with the telecom industry, their rating advisers and the Valuation Office Agency. It will also allow the Government the flexibility to adapt and maintain that definition in light of continuing technical advances and changes in industry practice.
9. Using secondary legislation for these matters is consistent with how existing procedures setting out the circumstances in which a relief is to be applied are

prescribed. For example, section 43(4B)(ii) of the 1988 Act allows the Secretary of State to prescribe in regulations conditions that must be satisfied for a different chargeable amount to apply to a hereditament.

New sections 44(10), 45(4D) and 54ZA(3): Power to prescribe an amount for F and T

10. Clause 1(3) of the Bill inserts subsection 44(10) which provides a power for the appropriate national authority, by regulations, to prescribe the amount for the value F, or to prescribe provision for the calculation of the value F. The value F appears in the formula in new subsection 43(4E) which is used to calculate the chargeable amount for an occupied hereditament on a local rating list where the telecommunications relief will apply. New subsection 45(4D) and section 54ZA(3) (inserted by clause 2(3) and 3(3) respectively) provide power for the Secretary of State to prescribe the amount for the value T for the same purposes but in relation to unoccupied hereditaments on a local rating list and hereditaments on the central rating list.
11. As announced at the 2016 Autumn Statement, the Government intends that the relief for telecommunication infrastructure will be available for new full fibre infrastructure for 5 years from 1 April 2017. Such infrastructure will typically comprise only part of a telecommunication rating assessment. To allow for this, the Government intends to adopt a formula for F (or for unoccupied hereditaments and hereditaments on the central list, T) which will provide a value which reduces the chargeable amount of the whole rating assessment consistent with the proportion of its rateable value attributable to new full fibre infrastructure. This will ensure the relief is only given on the part which is new full fibre infrastructure.
12. As discussed above, these are new concepts in rating and may need to adapt to changing and advancing technology in the sector, as with the conditions to be satisfied for the relief. Therefore taking powers to define F (or T) will allow the Government the flexibility to develop a definition and formula for F (or T) in consultation with the telecom industry, their rating advisers, local government and the Valuation Officer Agency.

New sections 44(11), 45(4E) and 54ZA(4): Power to impose duties or confers powers on valuation officers and make provision as to appeals

13. Clause 1(3) of the Bill inserts subsections 44(11) into the 1988 Act which provides powers for the Secretary of State to impose duties or confer powers on the valuation officer for a billing authority (whether as regards determinations, certificates or otherwise) in relation to the ascertainment of rateable values for occupied hereditaments on local rating lists; and make provision as to appeals relating to things done or not done by valuation officers. Similar provisions are made in new subsection 45(4E) and new section 54ZA(4) (inserted by clause 2(3) and 3(3) respectively) in

relation to unoccupied hereditaments on local rating lists and hereditaments on the central list.

14. The Government expects to include in the formula for F (or T) values certified by the Valuation Officer which represent that part of the rateable value attributable to new full fibre infrastructure. Therefore, the powers allow for the imposition of duties or conferral of powers to the Valuation Officer to issue a certificate of rateable value, for the administration of those certificates and also for appeals to be made against that certificate or the refusal to issue a certificate.

Justification for procedure selected

15. It is the Government's view that the negative resolution procedure provides the most appropriate form of Parliamentary scrutiny for the exercise of these powers. The exercise of the powers relates to a relief to be applied to non-domestic rating liability and can only be used to reduce non-domestic rates bills. Furthermore, the Government has committed, under the New Burdens principle, to compensate local government for the cost of the relief for new telecom fibre. Therefore, neither ratepayers nor local government will be adversely affected by the use of this power.
16. The use of the negative procedure follows similar existing powers in the 1988 Act:
 - a. Section 43(4B)(ii), which provides a power for the Secretary of State to prescribe conditions for the small business relief to apply, is subject to the negative procedure;
 - b. Section 44(9), which provides a power for the Secretary of State to prescribe an amount for E which is used to calculate non-domestic rating liability when the small business relief is applied, is also subject to the negative procedure; and
 - c. Section 57A(8), which provides a power to impose duties and confer powers on valuation officers as well as make provision as to appeals in relation to transitional relief, is also subject to the negative procedure.

Clause 4: General power to make consequential provision in consequence of any of the provisions of the Act

Power conferred on: Secretary of State or the Welsh Ministers

Power exercised by: Regulations made by statutory instrument

Parliamentary Procedure: Negative procedure (or affirmative if amending primary legislation)

Context and Purpose

17. Clause 4 confers a power for the Secretary of State in relation to England (or in relation to Wales, the Welsh Ministers), by regulations, to make provision consequential on the Bill. While the Bill itself contains as many consequential amendments as possible (see the Schedule to the Bill), it is possible that there are further consequential amendments that need to be made. As such it is considered prudent for the Bill to contain a power to deal with these in secondary legislation.
18. The power in clause 4 allows for the Secretary of State to amend both legislation made by the UK Parliament and the National Assembly for Wales. The subject matter of the Bill is devolved and just as Acts of the UK Parliament contain cross-references to legislation that Secretary of State needs to amend, it is possible that Measures or Acts of the National Assembly for Wales will contain cross-references to the same legislation. The Secretary of State needs to be able to amend those references. Equally, Welsh Ministers have the power to make consequential amendments in relation to Acts of Parliament.

Justification for delegation

19. There are recent examples of provisions such as that in clause 4, including section 92 of the Immigration Act 2016 and section 213 of the Housing and Planning Act 2016. Any provision made under this power is narrowed by the requirement that the provision be consequential on provisions in the Bill. This restricts the use of the power to only achieving the policy endorsed by Parliament when it approves the Bill.

Justification for procedure selected

20. Where this power is used to amend primary legislation, the affirmative procedure will apply. All other amendments will be subject to the negative procedure. The Government consider that this provides the appropriate level of Parliamentary scrutiny for what will be consequential provisions.
21. Extending the use of this power to legislation made by the National Assembly for Wales reflects a well-established reciprocal arrangement. Two-thirds of Acts passed by the Assembly in 2015 and 2016 include a power for the Welsh Ministers to make consequential amendments to Acts of Parliament without any requirement for consultation with the UK. These reciprocal arrangements ensure that the legislative programmes of both the Welsh Government and the UK Government run smoothly. In practice, the UK Government would liaise with the Welsh Government about the use of this power as necessary.

**Department for Communities and Local Government
30 June 2017**