

**Non-Domestic Rating Bill**

**Memorandum from the Department for Levelling Up, Housing and Communities to the Delegated Powers and Regulatory Reform Committee**

**A. INTRODUCTION**

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee (the “DPRRC”) to assist with its scrutiny of the Non-Domestic Rating Bill (“the Bill”). The Bill was introduced in the House of Commons on 29 March. 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.

**B. PURPOSE AND EFFECT OF THE BILL**

2. The Bill implements a number of changes to the system of non-domestic rates (known as business rates) in England and Wales. The majority of provisions for England give effect to conclusions of the government’s Business Rates Review which covered the rating system in England. The Welsh Government has requested that a number of measures be applied to Wales. The key measures in the Bill include:
  - a. shortening the business rates revaluation cycle in England from five years to three years,
  - b. in support of a more frequent revaluation cycle, new duties to require ratepayers in England to provide the Valuation Office Agency (“VOA”) with information about themselves, their hereditament (the property or part of the property which is liable for business rates), and their business, underpinned by a new compliance regime,
  - c. new reliefs for improvements to hereditaments and for heat networks with their own business rates bill,
  - d. new information gateways for the VOA to supply valuation information to Northern Ireland rating officials, and to provide ratepayers with information about how their rateable value was calculated,
  - e. joining up existing tax data with business rates data by providing a new information gateway for billing authorities and HMRC to share rating information and a duty on ratepayers to provide a taxpayer reference number (the “digitalisation of business rates”),
  - f. tightening of the scope of Material Change of Circumstances provisions in relation to England such that legislation, licensing regimes and guidance from public bodies should not be grounds for a change in rateable value between revaluations, and
  - g. administrative improvements to the multipliers, main non-domestic rating account, the English central rating list and completion notices, and the removal of restrictions on local authorities in England making retrospective awards of discretionary relief.
3. Provisions applying to Wales as well as England are summarised as:
  - a. the introduction of new improvement and heat networks reliefs, the removal of obsolete reliefs and introduction of charitable rate relief on the

- central rating list,
- b. provision for disclosure of information held by valuation officers to ratepayers,
  - c. certain multiplier rule changes, and
  - d. the provisions relating to the digitalisation of business rates.
4. The Bill amends the provisions of the principal primary legislation for business rates – the Local Government Finance Act 1988 (“the 1988 Act”). Clauses 1 to 3 of the Bill have in large part taken existing provisions and powers concerning chargeable amounts and reliefs in sections 43, 44, 45, 45A, 46, 54 and 54ZA of the 1988 Act and re-enacted them into three Schedules:
- a. clause 1 introduces Schedule 4ZA in respect of occupied hereditaments,
  - b. clause 2 introduces Schedule 4ZB in respect of unoccupied hereditaments, and
  - c. clause 3 introduces Schedule 5A in respect of the central rating list.
5. For example, sections 43(4A) to (4D) of the 1988 Act contain provisions and powers for Small Business Rate Relief. These powers were given approval by Parliament during the passage of the Local Government Act 2003<sup>1</sup>. Those provisions and powers have been re-enacted in clause 1 of the Bill, paragraph 4 of the new Schedule 4ZA.
6. This approach has been taken to improve the accessibility of the legislation rather than to make substantive changes. This memorandum does not consider those powers which are already in legislation and, therefore, have previously been approved by Parliament. The memorandum focuses on those powers which will be new to legislation or where there has been a change in procedure.

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<sup>1</sup> Section 61.

**C. SUMMARY OF POWERS**

<b>Policy matter</b>	<b>Power conferred</b>	<b>Clause</b>	<b>Procedure</b>
<b>Improvement relief</b>	Power for the <b>Secretary of State and the Welsh Ministers</b> to prescribe conditions to be met for improvement relief to apply.	<b>Clause 1(3)</b> inserts Schedule 4ZA (occupied hereditaments). Power contained in paragraph 3(1)(b).	<b>Regulations</b> subject to <b>affirmative resolution</b> procedure in respect of paragraph 3(3) of new Schedule 4ZA and paragraph 3(4) of new Schedule 5A.  Otherwise, <b>regulations</b> subject to the <b>negative resolution</b> procedure.
		<b>Clause 3(3)</b> inserts Schedule 5A (central rating). Power contained in paragraph 3(1)(c)(ii).	
	Power for the <b>Secretary of State and the Welsh Ministers</b> to prescribe the meaning of “qualifying improvement works” for the purpose of the relief.	<b>Clause 1(3)</b> . Paragraph 3(2) of new Schedule 4ZA.	
		<b>Clause 3(3)</b> . Paragraph 3(3) of new Schedule 5A.	
	Power for the <b>Secretary of State and the Welsh Ministers</b> to amend the 1988 Act to extend the application of improvement relief beyond one year from completed works.	<b>Clause 1(3)</b> Paragraph 3(3)(a) of new Schedule 4ZA	
		<b>Clause 3(3)</b> Paragraph 3(4)(b) of new Schedule 5A.	
	Power for the <b>Secretary of State and the Welsh Ministers</b> to amend the 1988 Act to extend the availability of improvement relief beyond 1 April 2029.	<b>Clause 1(3)</b> . Paragraph 3(3)(b) of new Schedule 4ZA.	
		<b>Clause 3(3)</b> . Paragraph 3(4)(a) of new Schedule 5A.	
	Power for the <b>Secretary of State and the Welsh Ministers</b> to prescribe an amount, or means of calculating an amount, to be deducted from a hereditament’s rateable value for the purpose of improvement relief.	<b>Clause 1(3)</b> . Paragraph 10(7) and (8) of new Schedule 4ZA.	
		<b>Clause 3(3)</b> . Paragraph 6(6) and (7) of new Schedule 5A.	
<b>Heat networks relief</b>	Power for the <b>Secretary of State and the Welsh Ministers</b> to prescribe conditions to be met for heat networks relief to apply.	<b>Clause 1(3)</b> . Paragraph 6(1)(b) of new Schedule 4ZA.	<b>Regulations</b> subject to <b>affirmative resolution</b> procedure in respect of
	Power for the <b>Secretary of State and the Welsh Ministers</b> to prescribe the meaning of “heat network” for the purpose of the relief.	<b>Clause 1(3)</b> . Paragraph 6(2) of new Schedule 4ZA.	

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	Power for the <b>Secretary of State and the Welsh Ministers</b> to amend the 1988 Act to extend the availability of heat networks relief beyond 1 April 2035.	<b>Clause 1(3).</b> Paragraph 6(3) of new Schedule 4ZA.	paragraph 6(3) of new Schedule 4ZA.  <b>Otherwise, regulations</b> subject to the <b>negative resolution</b> procedure.
<b>Unoccupied rate relief (central list)</b>	Power for the <b>Secretary of State</b> to prescribe a class of hereditaments for the purpose of the central list unoccupied rate relief.	<b>Clause 3(3).</b> Paragraph 4(1)(c) and (5) of new Schedule 5A.	<b>Regulations</b> subject to the <b>negative resolution</b> procedure.
	Power for the <b>Secretary of State</b> to impose duties or confer powers on the central valuation officer in relation to the certification of unoccupied hereditaments on the central list.	<b>Clause 3(3).</b> Paragraph 4(7) of new Schedule 5A.	
<b>Central list administration</b>	Power for the <b>Secretary of State</b> to direct the central valuation officer to show specified descriptions of hereditaments on the central list in relation to a specified person.	<b>Clause 8</b> inserts section 52A (contents of central lists). Power contained in section 52A(1).	<b>Direction.</b>
	Power for the <b>Secretary of State</b> to direct the central valuation officer to make changes to the central list in relation to any person or description of hereditament.	<b>Clause 8.</b> Subsection (2) of new section 52A.	
	Power for the <b>Secretary of State</b> to direct the central valuation officer to treat all hereditaments falling within a description of hereditament shown on the central list as a single hereditament.	<b>Clause 8.</b> Subsection (4) of new section 52A.	
<b>Multipliers</b>	Power for the <b>Treasury</b> to prescribe which multiplier applies to which hereditaments.	<b>Clause 1(3).</b> Paragraph 10(9) and (10) of new Schedule 4ZA.	<b>Regulations</b> subject to <b>affirmative resolution</b> procedure in respect of
		<b>Clause 2(4)</b> inserts Schedule 4ZB (unoccupied hereditaments). Power contained in paragraph 3(6) and (7).	

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		<b>Clause 3(3).</b> Paragraph 6(8) and (9) of new Schedule 5A.	paragraph 10(9) and (10) of new Schedule 4ZA, paragraph 3(6) and (7) of Schedule 4ZB and paragraph 6(8) and (9) of new Schedule 5A. <b>Regulations</b> subject to the <b>negative resolution</b> procedure in the Commons only in respect of paragraph A10(4)(b) of Schedule 7.
	Power for the <b>Treasury</b> to provide a figure lower than the CPI for the purpose of calculating multipliers.	<b>Clause 15</b> inserts paragraph A10(4)(b) into Schedule 7 to the 1988 Act.	
<b>VOA and HMRC Information duties</b>	Power for the <b>Secretary of State / Commissioners for HMRC</b> to increase or decrease the penalty amount for a ratepayer's failure to comply with a duty to provide information. <sup>2</sup>	<b>Clause 17 and paragraphs 50 and 51 of the Schedule</b> to the Bill, which insert new paragraphs 5FA and 5FB into Schedule 9 to the 1988 Act.	<b>Regulations</b> subject to the <b>affirmative resolution</b> procedure.
<b>Digitalisation of business rates</b>	Power for the <b>Commissioners for HMRC</b> to amend the definition of taxpayer reference.	<b>Clause 13</b> inserts paragraph 4F(2) into Schedule 9 to the 1988 Act.	<b>Regulations</b> subject to the <b>negative resolution</b> procedure.
	Power for the <b>Commissioners for HMRC</b> to disapply the duty to provide a taxpayer reference from a person or a group of persons.	<b>Clause 13</b> inserts paragraph 4G into Schedule 9 to the 1988 Act.	<b>Regulations</b> subject to the <b>negative resolution</b> procedure.

<sup>2</sup> This is a consequential amendment that expands the application of an existing power to the new information duties.

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<p><b>Consequential amendments</b></p>	<p>Power for the <b>Secretary of State and the Welsh Ministers</b> to make further provision consequential on the Bill, including the power to amend, repeal or revoke provision made by or under an Act.</p>	<p><b>Clause 17(2) – (9).</b></p>	<p><b>Regulations</b> subject to the <b>affirmative resolution</b> procedure if they amend or repeal provision made by an Act.</p> <p>Otherwise, <b>regulations</b> subject to the <b>negative resolution</b> procedure.</p>
<p><b>Transitional power</b></p>	<p>Power for the <b>Secretary of State and the Welsh Ministers</b> to make transitional, transitory or saving provision in connection with the coming into force of any provision.</p>	<p><b>Clause 19(6).</b></p>	<p><b>Regulations</b> not subject to Parliamentary procedure.</p>

## D. ANALYSIS OF DELEGATED POWERS

**Clause 1(3) which inserts Schedule 4ZA (occupied hereditaments: chargeable amount) and clause 3(3) which inserts Schedule 5A (central rating: chargeable amount) into the 1988 Act: Powers for the Secretary of State and the Welsh Ministers to make regulations in relation to improvement rate relief**

*Power conferred on: Secretary of State and the Welsh Ministers*

*Power exercised by: Regulations made by statutory instrument*

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

### Context and Purpose

7. In the 2021 Autumn Budget and Final Report of the Business Rates Review (“the Final Report”), the Chancellor announced that the Government would provide a 100% improvement relief, providing 12 months relief from increases in bills for occupiers who make eligible improvements to their existing property. Further details of how the improvement relief will operate were contained in a [technical consultation](#) document published by this Department in November 2021 (“the technical consultation”). Clauses 1 and 3 of the Bill make amendments to various parts of the 1988 Act to set the framework for such a relief.
8. The amendments to the 1988 Act made by the Bill provide for the calculation of non-domestic rating liability where the day concerned falls within the period of one year beginning with the day on which qualifying improvement works are completed. A number of delegated powers are being provided to the Secretary of State and the Welsh Ministers to operate the improvement relief scheme which, for the purposes of the following section on justification for taking the power, are arranged into three groups:
  - a. powers to define the meaning of qualifying improvement works (paragraph 3(2) of the new Schedule 4ZA in relation to the local rating lists and paragraph 3(3) of the new Schedule 5A in relation to the central rating list), and to prescribe conditions to be satisfied (paragraph 3(1)(b) of the new Schedule 4ZA in relation to the local rating lists and paragraph 3(1)(c)(ii) of the new Schedule 5A in relation to the central rating list),
  - b. powers to extend the duration of the award of the relief to more than one year (paragraph 3(3)(a) of new Schedule 4ZA and paragraph 3(4)(b) of new Schedule 5A), and to extend the duration of the relief scheme beyond 1 April 2029 (paragraph 3(3)(b) of new Schedule 4ZA and paragraph 3(4)(a) of new Schedule 5A)<sup>3</sup>, and
  - c. powers to prescribe an amount for G (paragraph 10(7) and (8) of new Schedule 4ZA and paragraph 6(6) and (7) of new Schedule 5A).

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<sup>3</sup> The government has said that the relief will be reviewed in 2028. The current expiry date of 1 April 2029 will allow those eligible ratepayers who complete qualifying works late in 2027/28 to still receive one year’s relief during the financial year 2028/29.

Justification for taking the power

*Paragraph 3(1)(b) and (2) of the new Schedule 4ZA to the 1988 Act and paragraphs 3(1)(c)(ii) and 3(3) of the new Schedule 5A to the 1988 Act: Powers to define the meaning of “qualifying improvement works” and powers to prescribe conditions to be satisfied*

9. Clause 1(3) of the Bill provides power for the Secretary of State and the Welsh Ministers, by regulations, to:
  - a. define the meaning of “qualifying improvement works”, and
  - b. prescribe any other 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.
10. Clause 3(3) inserts identical provision in relation to hereditaments on the central list.
11. The government’s intention is that the relief will apply only where the hereditament meets two conditions:
  - a. the VOA must be satisfied that the improvements meet the definition of qualifying works - the ‘qualifying works’ condition, and
  - b. the relevant local billing authority, or in respect of the central rating list, the Secretary of State, must be satisfied that in the period since the qualifying works commenced the property has remained occupied and that the ratepayer has not changed – the ‘occupation’ condition
12. The technical consultation included more detail of how these conditions will apply. Many of these are concepts 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 qualifying improvement works and the occupation condition in discussion with business, their rating advisers and the VOA. It will also allow the government the flexibility to adapt and maintain these definitions as it monitors the practical implementation of this new relief and reviews its continuation beyond 2028.
13. 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)(a)(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. Similarly, the current provisions in sections 43(4F), 45(4C) and 54ZA(1) of the 1988 Act provide powers to prescribe conditions to be satisfied in relation to telecommunications relief. In its 5<sup>th</sup> Report of Session 2017-19, the DPRRC reviewed these powers and accepted that they were justified given the technical complexity and novelty and the fact they were consistent with powers adopted in earlier rating legislation.<sup>4</sup>

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<sup>4</sup> DPRRC, Telecommunications Infrastructure (Relief from Non-Domestic Rates) Bill: <https://publications.parliament.uk/pa/ld201719/ldselect/lddelreg/26/26.pdf>

*Paragraph 3(3)(a) and (b) of the new Schedule 4ZA to the 1988 Act and paragraph 3(4)(a) and (b) of the new Schedule 5A to the 1988 Act: Powers to extend the duration of the relief beyond one year and 2029*

14. These powers ensure that whilst on the face of the Bill the improvement relief is available for one year from when the qualifying improvement works were completed and that the relief scheme ends on 1 April 2029, the appropriate national authority maintains the ability to, should it desire, allow more than one year of relief on qualifying improvement works and extend the relief scheme beyond 1 April 2029. The government has said that the improvement rate relief will be reviewed in 2028. The power will, therefore, allow the appropriate national authority, in 2028 or earlier, to consider if it wishes to make the relief more generous or extend the rate relief scheme.

*Paragraph 10(7) and (8) of the new Schedule 4ZA to the 1988 Act and paragraph 6(6) and 6(7) of the new Schedule 5A to the 1988 Act: Powers to prescribe an amount (“G”), or means of calculating an amount, to be deducted from a hereditament’s rateable value for the purpose of improvement relief.*

15. Clause 1 of the Bill provides a power for the Secretary of State and the Welsh Ministers, by regulations, to prescribe the amount for the value G, or to prescribe provision for the calculation of the value G. Under paragraph 10(2)(a) of the new Schedule 4ZA the value G is deducted from the rateable value of the hereditament (“A”) when improvement rate relief applies. Paragraph 6(6) and (7) of new Schedule 5A provide a power for the Secretary of State and the Welsh Ministers to prescribe the amount for the value G for the same purposes, but in relation to the central rating list.

16. As set out in the technical consultation, improvement rate relief will only be available in respect of qualifying improvement works to existing hereditaments. To allow for this, the government intends to provide that the value of G is the change in the overall rateable value of the hereditament which is attributable to any qualifying improvement works. This will ensure the relief is only given on the part of the rateable value which is attributable to the qualifying improvement works.

17. As discussed above, these are new concepts in rating. The government would like to develop the definition of G in discussion with businesses, their professional representatives and local government. Therefore taking powers to define G will allow the appropriate national authority the flexibility to adapt and maintain the meaning of G as it monitors the practical implementation of this new relief and reviews it in 2028.

#### Justification for the procedure

18. The government recognises that the powers in paragraph 3(3) of Schedule 4ZA and paragraph 3(4) of Schedule 5A allow the Secretary of State and Welsh Ministers to amend primary legislation using secondary legislation. The power to amend primary legislation is very limited, only allowing the period of one year to be increased or the date of “1 April 2029” to be substituted for a later date. Therefore, no ratepayer would be adversely affected by the use of these powers. Nevertheless, as they amend primary legislation and extend a relief scheme which

will be grounded in primary legislation they will be subject to affirmative resolution procedure.

19. It is the Government's view that the negative resolution procedure provides the most appropriate form of Parliamentary scrutiny for the exercise of the remainder of these powers. The use of powers to prescribe the detailed rules of relief schemes, including the detail of eligibility, are generally through the negative resolution procedure and ensure the government has the flexibility to quickly amend the scheme to meet policy and operational requirements. Furthermore, the government has committed, under the New Burdens principle, to compensate local government for the cost of improvement relief. Therefore, local government will not be adversely affected by the use of this power.
20. 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. Sections 43(4F)(c), 45(4C)(c) and 54ZA(1)(d), which provide powers for the Secretary of State to prescribe conditions in relation to telecommunications relief, are subject to the negative resolution procedure.

***Clause 1(3) which inserts Schedule 4ZA (occupied hereditaments: chargeable amount): Powers for the Secretary of State and Welsh Ministers to make regulations in relation to heat networks rate relief***

*Power conferred on: Secretary of State and Welsh Ministers*

*Power exercised by: Regulations made by statutory instrument*

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

**Context and Purpose**

21. In the 2021 Autumn Budget and Final Report, the Chancellor announced the government would provide a 100% relief to eligible low carbon heat networks that have their own rates bill. Further details of how the heat network relief will operate in England were contained in the technical consultation. In the 2022 Spring Statement the Chancellor announced that the heat network relief would take effect from 1 April 2022 and, ahead of the Bill receiving Royal Assent, would be delivered by local authorities using their powers to award discretionary relief. The guidance for that discretionary relief scheme was published by the government on 21 July 2022<sup>5</sup> and contains the detailed rules for when 100% heat network relief should apply.

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<sup>5</sup> <https://www.gov.uk/government/publications/business-rates-heat-network-relief-local-authority-guidance>

22. Clause 1 of the Bill makes amendments to sections 43 and 44 of the 1988 Act to set the framework for such a relief to apply to hereditaments in England and Wales. The amendments in respect of the Heat Networks Rate Relief provide that where a hereditament meets the conditions for the relief then the chargeable amount for the day is zero. Delegated powers are being taken for the appropriate national authority:
- a. to define the meaning of “heat network” (paragraph 6(2) of the new Schedule 4ZA),
  - b. to prescribe conditions to be satisfied (paragraph 6(1)(b) of the new Schedule 4ZA), and
  - c. to extend the duration of the relief scheme beyond 1 April 2035 (paragraph 6(3) of the new Schedule 4ZA).

Justification for taking the power

23. The government’s intention is that, as with the current heat network discretionary relief scheme, the mandatory relief will be targeted in England at low carbon heat networks which have their own rates bill. The technical consultation included more detail of how these conditions will apply and these were further expanded in the guidance for the discretionary relief scheme. These conditions and how they will operate in practice have been developed with stakeholders and local government.
24. It has not previously been necessary to define for the purposes of business rates either a heat network or low carbon in a way which can be applied easily by local government to existing hereditaments. Taking powers to define the conditions in which the relief applies will, therefore, allow the appropriate national authority the flexibility to develop a definition of low carbon heat network following discussion with the heat network sector, their rating advisers and the VOA. It will also allow the government and Welsh Ministers the flexibility to adapt and maintain these definitions as the practical implementation of this new relief is monitored, and also the ability to respond to technical developments in the heat network sector.
25. 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)(a)(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. Similarly, the powers to prescribe conditions to be satisfied in relation to telecommunications relief – discussed in paragraph 13 above – are relevant here.
26. These powers will also ensure that whilst on the face of the Bill the relief expires in 2035, the government and Welsh Ministers maintain the ability to, if appropriate, extend the relief scheme beyond that date.

Justification for taking the procedure

27. The government recognises that the powers in paragraph 6(3) allow the Secretary of State and Welsh Ministers to amend primary legislation using secondary legislation. The power to amend primary legislation is very limited, only allowing

the date of “1 April 2035” to be substituted for a later date. Nevertheless, as the power is to amend primary legislation and extend a relief scheme which will be grounded in primary legislation, the exercise of the power will be subject to affirmative resolution procedure.

28. The remainder of the powers in relation to detailed rules and eligibility for heat network relief (the content of which can be seen from the rules in the guidance for the discretionary relief scheme) are subject to the negative resolution procedure. The same rationale as adopted for the similar powers in relation to improvement relief is considered appropriate. Negative procedure is consistent with similar powers used for other relief schemes and will give the government the flexibility to quickly amend the relief scheme to meet policy and operational requirements.

***Clause 1(3) which inserts Schedule 4ZA (occupied hereditaments: chargeable amount); Clause 2(4) which inserts Schedule 4ZB (unoccupied hereditaments: chargeable amount); and clause 3(3) which inserts Schedule 5A (central rating: chargeable amount) into the 1988 Act: powers for the Treasury to determine whether the liability for hereditaments in England is to be found by reference to the small business non-domestic rating multiplier or the national non-domestic rating multiplier.***

***Clause 15 which inserts Part A1 into Schedule 7 to the 1988 Act: powers for the Treasury to index the small business non-domestic rating multiplier in England by a value less than the change in Consumer Prices Index.***

*Power conferred on: Treasury*

*Power exercised by: Regulations made by statutory instrument*

*Parliamentary Procedure: Negative and affirmative procedure*

### Context and Purpose

29. In the Final Report, the Government identified several changes which could be made to the business rates system to simplify and improve its administration including:
- a. clarifying which businesses are eligible for the small business multiplier, and
  - b. making the Consumer Prices Index the default measure of inflation used for uprating.
30. The Bill provides that the index to be used in calculating the national non-domestic rating multiplier and the small business multiplier will be the Consumer Prices Index (see new para A10(4) of Schedule 7 to the 1988 Act inserted by clause 15). Under the existing provisions, the Treasury may by order adopt an index which is less than Retail Prices Index. New paragraph A10(4) takes the same power for the Treasury to, by regulations, adopt an index lower than Consumer Prices Index.
31. Currently only those hereditaments to which section 43(4B) of the 1988 Act applies (small business rate relief) are eligible for their chargeable amount to be found using the small business non-domestic rating multiplier (“D”). All others use

the national non-domestic rating multiplier (“B”)<sup>6</sup>. Clause 1 (paragraph 10(9) and (10) of Schedule 4ZA), clause 2 (paragraph 3(6) and (7) of Schedule 4ZB) and clause 3 (paragraph 6(8) and (9) of Schedule 5A) of the Bill make amendments to sections 43, 45 and 54 and take delegated powers to allow the Treasury to prescribe whether B or D apply.

Justification for taking the power

32. The Treasury keeps the business rates system under regular review and considers at each Autumn Budget both the level of the multipliers for the coming financial year and who should be eligible for them. In recent years the Treasury have departed from the statutory default (to the benefit of the ratepayer) and adopted a lower index<sup>7</sup>.
33. Unlike most taxes which are generally paid after an event, after the end of the financial year or (for example for PAYE) at the end of the month, the non-domestic rating bill is calculated in advance for the whole year and issued by local government often several weeks before the start of the financial year. Therefore, changes to liabilities and reliefs for non-domestic rates have to be made in advance and be in place several weeks before the start of the financial year if they are to be included in the initial business rate bills.
34. Non-domestic rates are a local tax and, therefore, cannot be included in the Finance Acts which are reserved for national taxation. And unlike the Finance Acts, local government finance legislation must pass through the full stages of both the House of Commons and the House of Lords and cannot, therefore, follow the faster route to Royal Assent available to the Treasury for other tax changes in primary legislation.
35. Therefore, in order for the Treasury to take decisions on the small business non-domestic rating multiplier at the Autumn Budget and be confident those changes can be in rate bills for the start of the following financial year it is necessary to take delegated powers. This allows the government to change the law in a matter of weeks so that local authorities can then prepare their systems and issue bills.

Justification for the procedure

36. The exercise of the power to under-index the multiplier below Consumer Prices Index can only be used to reduce the multiplier and, therefore, non-domestic rates bills and does not disturb any other aspect of the non-domestic rating multipliers. Therefore, the government considers a negative procedure to be appropriate. This is a change from the current power to under-index below the Retail Prices Index which is affirmative.
37. The government recognises that the powers to prescribe which multiplier applies to which hereditament could have a wide application potentially affecting the rates bill of all ratepayers and, therefore, considers should be exercised through the affirmative resolution procedure.

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<sup>6</sup> The national multiplier is under existing provisions found by adding a supplement to the small business multiplier.

<sup>7</sup> For example, see the Local Government Finance Act 1988 (Non-Domestic Rating Multipliers) (England) (No 2) Order 2021 (S.I. 2021/1495)

**Clause 3(3) which inserts new Schedule 5A (central rating: chargeable amount) into the 1988 Act: power to prescribe a class of hereditaments for the purposes of unoccupied hereditament rate relief on the central rating list in England.**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations made by statutory instrument*

*Parliamentary Procedure: Negative procedure*

### Context and Purpose

38. Clause 3 of the Bill inserts a new Schedule 5A into the 1988 Act in place of sections 54(4) to (7) and section 54ZA. Paragraph 4 of Schedule 5A provides for unoccupied rate relief on the central rating list in England. Paragraph 4(1)(c) provides power for Secretary of State to, by regulations, prescribe a class of unoccupied hereditaments. For the purpose of prescribing a class, paragraph 4(5) provides power for the Secretary of State to, by regulations, prescribe descriptions of persons.

### Justification for taking the power

39. Unoccupied hereditaments shown on local rating lists may be liable for paying a chargeable amount if they meet the conditions in section 45(1). Section 45(1)(d) includes a power for the Secretary of State to prescribe a class of hereditaments as part of those conditions. These powers are used to define a class of unoccupied hereditaments which are liable for non-domestic rates (and therefore by omission a class of unoccupied hereditaments which are not liable for non-domestic rates).

40. Currently, no similar provisions exist on the central rating list and, therefore, any hereditament falling to be shown on the central rating list is liable for non-domestic rates irrespective of whether it is unoccupied. This clause addresses that inconsistency by applying the same provisions to the English central list as currently apply to the local list.

41. In doing so the clause replicates the existing power in section 45(1)(d) to prescribe a class for which unoccupied hereditaments pay non-domestic rates except that, for this clause, the Secretary of State will be able to directly prescribe the hereditaments which will not pay a chargeable amount. As with unoccupied hereditaments on the local list, this will allow the Secretary of State to adjust the types of hereditaments and persons who will not be liable for chargeable amounts on unoccupied hereditaments.

### Justification for the procedure

42. It is the government's view that the negative resolution procedure provides the most appropriate form of Parliamentary scrutiny for the exercise of this power as it will be dealing with technical matters concerning the circumstances in which it would not be appropriate to levy business rates on an unoccupied hereditament and similar powers in section 45(1)(d) are subject to the negative procedure. The government intends to use the powers to replicate for the central rating list the

conditions already prescribed using the powers in section 45(1)(d) for when unoccupied hereditaments are not liable for business rates.

***Clause 3(3) which inserts new Schedule 5A (central rating: chargeable amount) into the 1988 Act: power to make provision imposing duties or conferring powers on the central valuation officer in relation to the certification of hereditaments in England as unoccupied.***

*Power conferred on: Secretary of State*

*Power exercised by: Regulations made by statutory instrument*

*Parliamentary Procedure: Negative procedure*

#### Context and Purpose

43. A description of hereditaments shown on the central rating list in respect of a person may contain more than one hereditament. However, those hereditaments will not be shown separately on the central list – instead the central rating list will show only one rateable value (as a whole) of those hereditaments. In cases where some but not all of these hereditaments are unoccupied, the clause will allow regulations to provide for the Valuation Officer to certify those that are unoccupied. Paragraph 4(4) of the new Schedule 5A provides a formula for calculating a reduced chargeable amount that disregards the rateable value of those unoccupied hereditaments in England which fall within the class prescribed by the Secretary of State (see above).

#### Justification for taking the power

44. The power in paragraph 4(7) of new Schedule 5A will allow the Secretary of State to provide for the administration of those certificates. This may cover, for example, rules for how and when Valuation Officers issue the certificates, who should receive copies and when those certificates could be amended.

#### Justification for the procedure

45. It is the government's view that the negative resolution procedure provides the most appropriate form of Parliamentary scrutiny for the exercise of this power as it will be dealing with administrative matters concerning the use of certificates as explained above. This is consistent with similar powers elsewhere in the 1988 Act associated with certificates from the Valuation Officer such as the power concerning the use of certificates in relation to relief for telecommunication hereditaments (see section 54ZA(4)).

***Clause 8 (central list administration): powers of direction for the administration of the central rating list in England.***

*Power conferred on: Secretary of State*

*Power exercised by: direction*

*Parliamentary Procedure: none*

### Context and Purpose

46. Clause 8 inserts section 52A into the 1988 Act. New section 52A(1) gives the Secretary of State power to direct the central valuation officer in England to show specified descriptions of hereditaments on the central list in relation to a specified person. Section 52A(2) gives the Secretary of State power to direct the central valuation officer in England to make changes to the central list in relation to any person or description of hereditament. Section 52A(4) gives the Secretary of State power to direct the central valuation officer in England to treat all hereditaments falling within a description of hereditament shown on the central list as a single hereditament.

### Justification for taking the power

47. Under the existing provisions, the Secretary of State determines by regulations which persons should appear on the central rating list and the descriptions of hereditaments which should appear on the central rating list. Therefore, under the current arrangements the Secretary of State must make minor administrative regulations – typically changing the name of the person shown in the list or amending the description of the hereditament they occupy - merely to maintain the accuracy of the central rating list. This gives rise to a heavy process and regulatory burden for the government and Parliament for what is essentially an administrative task. Therefore, this clause replaces the regulation-making powers with powers of direction.

### Justification for the procedure

48. The power of direction making is appropriate as this is an administrative matter and the Secretary of State will require flexibility and responsiveness to ensure the central list is kept up to date throughout the year. The existing central list regulation-making provisions were devised in the late 1980s for the utility sector. At that time large blocks of rating assessments could be created for a relatively small number of utility companies and undertakings, with little or no amendments needed from rating list to rating list. Furthermore, at the time most rateable values on the central list were prescribed directly by the Secretary of State rather than by the VOA. Under these circumstances few changes were needed to the central list and the provisions using regulation-making powers proved to be workable.

49. Since introduction of this system in 1990, reforms to the utility sector mean that the central list contains more disaggregated assessment and is subject to more frequent changes in ownership and structure. The government expects this to continue in the future as the central rating list expands.

50. To accommodate this, the government considers it is appropriate to replace the existing central list regulation-making powers with a power of direction. This will avoid the need for frequent and minor regulations to be made for an administrative matter. Alongside this new power, the government intends to consistently operate a transparent policy of how it will operate the central rating list including the type of hereditaments which should appear on the central rating list. That policy was most recently stated in [Annex A](#) to consultation document Business rates revaluation 2023: the central rating list. This provides ratepayers and local government with clarity as to how the powers will be used.

**Clause 13(2) which inserts paragraphs 4F and 4G into Schedule 9 of the 1988 Act: Powers for the Commissioners for HMRC to make regulations in relation to the requirement for ratepayers to make a taxpayer reference notification**

*Power conferred on: Commissioners for HMRC*

*Power exercised by: Regulations made by statutory instrument*

*Parliamentary Procedure: Negative procedure*

51. Following the final report of the Business Rates Review in October 2021, which stated that “modernisation and digitisation, as well as how data can be used to improve administration of relief where feasible, would be an effective way to support firms to navigate the business rates system”, the government issued a public consultation in 2022 on its proposals to digitalise business rates (DBR). The government’s response to that consultation, published in March 2023, set out plans to legislate for DBR. Clauses 12 and 13 of the Bill make provision for DBR.
52. The purpose of DBR is to connect the business rates information held locally by billing authorities with HMRC tax data. This will help to modernise the business rates system and will improve the data available to central and local government.
53. DBR will work by requiring ratepayers (defined in paragraph 4B, inserted into Schedule 9 by new clause 13(2)) to provide to HMRC an up-to-date taxpayer reference number (defined in 4F) using an online service (4E). HMRC will use the information provided via the service to match the ratepayer to their tax data. HMRC and billing authorities will share information with each other (see new clause 12) – for example, billing authorities may provide HMRC with details of which ratepayers are accessing rates-relief schemes (which are all administered at a local level) and HMRC may provide information to billing authorities to help them confirm ratepayers’ eligibility for those schemes.
54. The government expects to introduce DBR, and the duty on ratepayers to provide a taxpayer reference number, from 2026/27, following design, build and testing of the online service and further consultation with stakeholders.
55. Paragraphs 4F and 4G provide the Commissioners for HMRC with two delegated powers in relation to DBR:
- a. the power (4F(2)) to amend, by regulations, the definition of taxpayer reference number given in 4F(1), and
  - b. the power (4G) to provide, by regulations, that the duty to provide a taxpayer reference number, as set out in paragraphs 4C-4E, is not to apply to a person or a group of persons.

56. So far as the regulations will apply to Wales, the Commissioners for HMRC must consult with the Welsh Ministers before making them.

Justification for taking the powers

57. Paragraphs 4C-4E place a duty on ratepayers to make a taxpayer reference notification to HMRC. The notification is made by providing a taxpayer reference number. Subparagraph 4F(1) defines taxpayer reference as any of the

ratepayer's: unique taxpayer reference (including self-assessment, partnership and corporation tax references), VAT registration number, or national insurance number. Subparagraph 4F(2) provides power for the Commissioners to amend this definition by regulations, for example to add another type of acceptable reference number.

58. The government's intention is that (subject to paragraph 4G discussed below) all those who are liable to pay non-domestic rates should provide a taxpayer reference number to HMRC. This is to ensure consistency. Depending on the nature of the ratepayer, though, they may or may not possess a particular type of number listed in 4F(1) – for example, a public body will not usually have a unique taxpayer reference. That is why the government has provided several alternative numbers at 4F(1) – it is of the view that all ratepayers should possess at least one of the numbers listed. For example, while a public body will not usually have a unique taxpayer reference, it should have a VAT registration number.
59. Providing for the list of acceptable reference numbers to be amended using secondary legislation will enable the government to keep the list up-to-date and consistent with the policy intent described above. For example, it will allow the government to add a brand-new type of reference number in the future, should one be developed. It will also allow the government to add a new number if it transpires – following further consultation with stakeholders – that a particular group might have difficulty in providing one of the numbers listed.
60. The Commissioners will also have a power to disapply the duty to provide a number in relation to a person or group of persons (4G). While the government's intention is that the duty should apply to all those who are liable to pay non-domestic rates in the same way, this is subject to the design, build and testing of the online service, as well as to further consultation with stakeholders. Provision may need to be made, for example, for the 'digitally excluded' – those who would find it difficult or impossible to use the online service – and one option for dealing with such a group might be to disapply the duty from them altogether. Similarly, if it transpires that a particular group might have significant difficulty in providing one of the numbers listed at 4F(1) – and there is no obvious alternative number the Commissioners can make provision for using the power at 4F(2) – one option the government could consider would be to disapply the duty from that group. This power would only ever be exercised by the Commissioners following consultation with affected stakeholders and a determination that doing so would be in the best interests of both the group affected and the efficacy of the wider policy.

#### Justification for the procedure

61. The government considers that the power to amend the definition of taxpayer reference (4F(2)) is purely administrative in nature. That is, the power is provided for in order to ensure that the policy intent (that ratepayers are able easily to provide a taxpayer reference number) can continue to be met in the future, as and when wider circumstances (such as the availability of certain numbers) change. Thus, the power would not seek to revise the policy intent as presented to Parliament for scrutiny in this Bill; it would simply seek to continue to give effect to that intent. The government therefore considers a negative procedure to be appropriate.

62. In respect of the power to disapply the duty to provide a number in relation to a person or group of persons (4G), the government considers that since the power provides only for a narrowing of the application of the duty (ie. to disapply it where it might otherwise apply, rather than to apply it where it might otherwise not apply), the negative procedure is appropriate.

**Clause 17(2) (consequential provision): power to make further provision consequential on the Bill.**

*Power conferred on: Secretary of State and Welsh Ministers*

*Power exercised by: Regulations made by statutory instrument*

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

63. Clause 17(2) confers a power for the Secretary of State and Welsh Ministers to, by regulations, make provision consequential on the Bill. While the Bill itself contains as many consequential amendments to primary legislation as possible (see the Schedule to the Bill), there is a considerable amount of secondary legislation that will refer to provisions that have been repealed and re-enacted. Given the number of provisions that will need to be amended, it is possible that there are further consequential amendments to primary legislation 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.

Justification for the delegation

64. The government has made every effort to identify the consequential changes needed to primary legislation and the Bill provides for these. However, the possibility of needing to make further consequential changes cannot be eliminated.

65. Any provision made under this power must be consequential on provisions in the Bill. This is a strict test which means anything done in exercise of these powers must be necessary or clearly desirable to ensure the Bill works as intended. Regulations made under this power which amend or repeal any provision of primary legislation will be subject to the affirmative procedure.

Justification for procedure selected

66. Where the consequential power is used to amend primary legislation, the affirmative procedure will apply. All other amendments will be subject to the negative procedure.

**Clause 17(6): power to make transitional, transitory or saving provision.**

*Power conferred on: Secretary of State and Welsh Ministers*

*Power exercised by: Regulations made by statutory instrument*

*Parliamentary Procedure: None*

67. Clause 17(6) enables the making of transitional or saving provision in connection with the coming into force of any provision of the Bill.

Justification for the delegation

68. Every attempt has been made to include all transitional, transitory and saving provisions in the Bill. However, due to the complexity and significance of the non-domestic rating system, the government considers it prudent to include a regulation-making power in case the need for further provision is identified after Royal Assent.

Justification for procedure selected

69. The transitional power is not subject to any parliamentary procedure, which the government understands is normal because it is only being conferred in connection with commencement.<sup>8</sup>

***Clause 17 and paragraphs 50 and 51 of the Schedule to the Bill (power to increase or decrease a penalty amounts).***

*Power conferred on: Commissioners for HMRC and Secretary of State*

*Power exercised by: Regulations made by statutory instrument*

*Parliamentary Procedure: Affirmative procedure*

70. Clause 13 amends Schedule 9 to the 1988 Act and provides for new duties on ratepayers in England to provide information to HMRC and the VOA and penalties where there is failure to comply. The penalty amounts are provided for in new paragraphs 5ZA to 5ZD. Paragraphs 50 and 51 of the Schedule to the Bill provides powers for the Commissioners for HMRC and the Secretary of State respectively to, by regulations, amend new paragraphs 5ZA, 5ZC or 5ZD to increase or decrease those penalties. This is a consequential amendment to replace a similar power in Schedule 9 which applies for penalties where ratepayers failed to respond to the notice requesting information from the VOA.

71. So far as the regulations will apply to Wales, the Commissioners for HMRC must consult with the Welsh Ministers before making them.

Justification for the delegation

72. The government will wish to keep under review the level of penalties to ensure they act as an effective compliance tool and can also be updated as necessary over time. The power will give the government the flexibility to make any resulting changes to the level of penalties by amending the new paragraphs.

Justification for procedure selected

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<sup>8</sup> Previous examples include section 69(4) of the Economic Crime (Transparency and Enforcement) Act 2022 and section 131(7) of the Public Service Pensions and Judicial Offices Act 2022.

73. The power to amend the penalties in Schedule 9 will also be subject to the affirmative procedure. The government considers this to provide the appropriate level of scrutiny as the power may be used to increase, as well as decrease, monetary penalties to which ratepayers may be subject.

**Department for Levelling Up, Housing and Communities**