

RATING (PROPERTY IN COMMON OCCUPATION) AND COUNCIL TAX (EMPTY DWELLINGS) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Bill as brought from the House of Commons on 16 May 2018 (HL Bill 107).

- These Explanatory Notes have been prepared by the Ministry of Housing, Communities and Local Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

- 1 The Government is legislating to give effect to two of the Chancellor's commitments in the 2017 Autumn Budget to:
 - retrospectively reinstate particular features of business rates valuation practice which applied before the judgment of the Supreme Court in *Woolway (VO) v Mazars [2015] UKSC 53*, and
 - give local authorities in England the discretion to charge a council tax premium of up to 100% on 'long-term empty dwellings'.

Policy background

The Rating of Property in Common Occupation

- 2 For over 50 years the practice of the Valuation Office Agency in identifying the unit of assessment for business rates (known as "the hereditament") was based upon the leading decision of the Court of Appeal in *Gilbert (VO) v S Hickinbottom & Sons Ltd [1956] 2 Q.B. 40*. When considering the question of what a separate hereditament is for rating purposes, Denning LJ said that (absent a definition in statute) the following general rule applied:

"First, take the case where two or more properties are within the same curtilage or contiguous to one another, and are in the same occupation. In that case they are, as a general rule, to be treated for rating purposes as if they formed parts of a single hereditament. There are, however, exceptional cases where for some special reason they may be treated as two or more hereditaments. That may happen for instance, because one part is used for an entirely different purpose (see North Eastern Railway Co v Guardian of York Union). ..."
- 3 Following this general rule, it had been the practice of the Valuation Office Agency that where units of property were contiguous (touching) and in the same occupation then they received one rates bill. For example, this meant that where a business occupied two adjoining floors of a building or two rooms separated by a wall only, then they received one rates bill. Where their units of property were separated by another business or an area in shared use (such as a common corridor), then they received a rates bill for each unit of property.
- 4 This rule was widely understood and accepted by ratepayers, their representatives and the Valuation Office Agency (who are responsible for assessing business rates). However, the rule received negative judicial treatment in the 2015 judgment of the Supreme Court in *Woolway (VO) v Mazars [2015] UKSC 53*, and as a result the Valuation Office Agency has had to change its practice. The practice of the Valuation Office Agency is now that separate units of property in a shared building should be treated as separate rating units and should therefore receive their own rates bills irrespective of whether they are in the same occupation and are contiguous. Normally this will be a self-contained piece of property with its own internal communication such as a storey in a multi-occupied office block. As a result many ratepayers who were previously receiving only one rates bill are now receiving two or more. In some cases they have had to pay more in business rates as a result of this change.
- 5 As explained by Denning LJ in the above extract, there was an exception to the general rule in respect of contiguous properties used for wholly different purposes. This exception has not

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been disturbed by the Supreme Court in *Mazars* and, therefore, two contiguous properties in the same occupation are still treated as separate hereditaments where the two parts are used for wholly different purposes.

- 6 In the 2017 Autumn Budget the Chancellor announced that the government would legislate to reinstate the relevant elements of the Valuation Office Agency's practice in respect of contiguous properties prior to the Supreme Court decision.

In December 2017 the government published for consultation draft provisions of a bill to give effect to the Chancellor's commitment. The Department has since published a [summary](#) of responses and the government's response to that consultation.¹

Higher amount for long-term empty dwellings

- 7 Since 2013, local authorities in England have had the power to charge a council tax premium of up to 50% on 'long-term empty dwellings' – that is, homes that have been unoccupied and substantially unfurnished for two years or more. This premium is in addition to the usual council tax charge that applies to that property.
- 8 The number of properties that have been empty for six months or longer has decreased from 300,000 in 2010 to 205,293 in 2017.
- 9 To help reduce the number of long-term empty properties further, the Chancellor confirmed in the Autumn Budget 2017 that the government would double the cap on the empty homes premium. This would give local authorities the tools to increase council tax on long-term empty homes, and the incentive for owners of such properties to bring them back into use.

Legal background

- 10 Clause 1 of the Bill makes amendments to section 64 of the Local Government Finance Act 1988.
- 11 Clause 2 of the Bill makes amendments to section 11B of the Local Government Finance Act 1992.

Territorial extent and application

- 12 Clause 3(1) sets out the territorial extent of the Bill. The provisions of the Bill extend to England and Wales but apply to England only.
- 13 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding legislative consent motions and matters relevant to Standing Orders Nos. 83J to 83X of the Standing Orders of the House of Commons relating to Public Business.

¹ HMG, Consultation outcome: Business rates in multi-occupied properties:
<https://www.gov.uk/government/consultations/business-rates-in-multi-occupied-properties>

Commentary on provisions of Bill

Clause 1: Hereditaments occupied or owned by the same person

- 14 Clause 1 of the Bill makes amendments to Part 3 of the Local Government Finance Act 1988 (“the 1988 Act”) to introduce a set of circumstances in which two or more hereditaments are treated as one hereditament.
- 15 Subsection 1(1) inserts subsections (3ZA) to (3ZD) into section 64 (hereditaments) of the 1988 Act.
- 16 Subsection (3ZA) provides that two or more hereditaments are to be treated as one hereditament where they are occupied by the same person, meet the contiguity condition and are not used for wholly different purposes.
- 17 Subsection (3ZB) provides that two or more unoccupied hereditaments are to be treated as one hereditament where they are owned by the same person and meet the contiguity condition. These hereditaments must also have become vacant on the same day, each remained unoccupied since that day and previously have been, or been part of, a single hereditament under subsection (3ZA).
- 18 Subsection (3ZC) provides for the contiguity condition. This ensures that two hereditaments which are not contiguous with each other will still meet the contiguity condition if they are in a chain of contiguous hereditaments.
- 19 Subsection (3ZD) provides for the circumstances in which two hereditaments are contiguous for the purpose of the contiguity condition in subsection (3ZB). Hereditaments are contiguous where they are separated by a wall, fence or other means of enclosure or are on consecutive storeys of a building where one of the properties was to some extent directly above the other. The hereditaments are contiguous even if there is a space between them (such as a void or duct for services) in the occupation of another party.
- 20 Subsection (3ZD)(a) provides, for example, that where two hereditaments in a building are next to each other on the same side of a common corridor, they are contiguous because the wall of one room is also the wall of the other. It also provides that where a hereditament comprised of a building is next to another hereditament comprised of a plot of storage land, they are contiguous because the wall of the building is also the wall of the storage land.
- 21 Subsection 1(2) provides for the amendments made by subsection 1(1) to have effect from 1 April 2010.

Clause 2: Higher amount for long-term empty dwellings

- 22 Clause 2 amends section 11B of the Local Government Finance Act 1992 to increase the maximum level of council tax premium that billing authorities can apply to those properties that have been empty and substantially unfurnished for at least two years. The sole change of the amendment is to increase the upper limit from 50% to 100% of the council tax bill. Subsection (2) specifies that the change will take effect from 1 April 2019.

Clause 3: Extent, interpretation and short title

- 23 Subsection (1) sets out the territorial extent of the Act.
- 24 Subsection (2) defines “financial year” for the purposes of the Act.

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Commencement

- 25 The Bill will come into force on the day on which this Bill is passed.

Financial implications of the Bill

- 26 The Bill contains provisions which will allow for changes to the chargeable amounts paid upon both hereditaments in common occupancy and empty dwellings.
- 27 Clause 1 inserts subsections (3ZA) and (3ZB) into section 64 of the Local Government Finance Act. These provisions provide for circumstances in which two or more hereditaments shall be treated as one hereditament. In the majority of cases the effect of Clause 1 is to either reduce ratepayer's liability to pay business rates or leave it unaffected. However, it is possible that a small number of ratepayers will see an increase in their business rates liability.
- 28 Clause 2 amends subsection (1)(b) of section 11B of the Local Government Finance Act 1992 to increase the maximum level of council tax premium that billing authorities can charge. It does not change the categories of properties that the premium can be applied to, so only properties that would already have been affected by an empty homes premium could see their council tax increase. In such cases, the premium that may apply could increase from 50% to 100%.

Parliamentary approval for financial costs or for charges imposed

- 29 As mentioned in paragraph 28, it is possible that a small number of ratepayers will see an increase in their business rates liability as a result of the changes made by Clause 1. Therefore a ways and means resolution is required for the Bill. A ways and means resolution in the House of Commons is required when a bill authorises new charges on the people – broadly speaking, new taxation of other similar charges. The ways and means motion for this Bill was agreed on 23 April 2018.

Compatibility with the European Convention on Human Rights

- 30 Section 19 of the Human Rights Act 1998 requires a Minister in charge of a Bill in either House of Parliament to make a statement about the compatibility of the Bill with the Convention Rights (as defined by section 1 of that Act). Lord Bourne of Aberystwyth, the Parliamentary Under Secretary of State for the Ministry of Housing, Communities and Local Government, has stated in his view that the provisions of the Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Bill are compatible with the Convention rights.

Related documents

31 The following documents are relevant to the Bill and can be read at the stated locations:

- Consultation: *Business rates in multi-occupied properties*:
<https://www.gov.uk/government/consultations/business-rates-in-multi-occupied-properties>
- Local Government Finance Act 1988:
<https://www.legislation.gov.uk/ukpga/1988/41/contents>
- Local Government Finance Act 1992:
<https://www.legislation.gov.uk/ukpga/1992/14/contents>
- Guidance: *The Empty homes premium: Guidance for properties for sale and letting* 2013:
www.gov.uk/government/uploads/system/uploads/attachment_data/file/194389/Empty_home_premium_guidance_-_May.pdf

Annex A – Territorial extent and application in the United Kingdom

The Bill extends to England and Wales and applies to England only.

In the view of the government of the United Kingdom, all of the Clauses in the Bill (as set out in the table below) would be within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly to make corresponding provision.

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Hereditaments occupied or owned by the same person Clause 1	Yes	No	No	No	Yes	Yes	Yes	No
Higher amount for long-term empty dwellings Clause 2	Yes	No	No	No	Yes	Yes	Yes	No
Extent, interpretation and short title Clause 3	Yes	No	No	No	Yes	Yes	Yes	No

Subject matter and legislative competence of devolved legislatures

All Clauses makes provision in relation to local government finance (non-domestic rating and council tax). Local government finance is a devolved matter in Scotland, Wales and Northern Ireland. Local taxes to fund local authority expenditure are exceptions to the fiscal, economic and monetary policy reservation by virtue of Section A1 of Part 2 of Schedule 7A to the Government of Wales Act 2006.² Local taxes to fund local authority expenditure are exceptions to the fiscal, economic and monetary policy reservation by virtue of Section A1 of Part 2 of Schedule 5 to the Scotland Act 1998. Local government finance is not an excepted or reserved matter in Schedule 2 or 3 of the Northern Ireland Act 1998. The Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly could therefore make corresponding provision in respect of these measures.

² This amendment to the Government of Wales Act 2006 by the Wales Act 2017 comes into force on 1 April 2018. See the Wales Act 2017 (Commencement No. 4) Regulations 2017/1179.

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