

NON-DOMESTIC RATING (NURSERY GROUNDS) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Non-Domestic Rating (Nursery Grounds) Bill as brought from the House of Commons on 11 July 2018 (HL Bill 124).

- 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 provide that buildings which are, or form part of, a plant nursery ground are exempt from non-domestic rates if they are used solely in connection with agricultural operations at the nursery ground.

Policy background

- 2 Since at least 1928 there has been a general exemption for agricultural premises in relation to liability to pay non-domestic rates. The Valuation Office Agency (“VOA”) is responsible for applying exemptions to hereditaments that qualify for them by not including them on the non-domestic rating list. It has long been the practice of the VOA to treat both buildings that are (or form part of) market gardens and buildings which are (or form part of) plant nursery grounds as exempt.
- 3 A nursery ground is a property where small plants or trees are propagated or sown in their initial stages of growth with a view to selling them to someone else for progression onto their mature state. This is in contrast to garden centres, where plants are displayed and sold to the public, which are and will continue to be rateable (including garden centres sometimes called “nurseries”).
- 4 The Court of Appeal in *Tunnel Tech Ltd v Reeves (VO)* [2015] EWCA Civ 718 found that treating buildings which are plant nursery grounds (which are not occupied with and used solely in connection with agricultural operations on agricultural land) as exempt was an incorrect application of the law.
- 5 On 30 March 2017, a Written Ministerial Statement set out the Government’s policy on the treatment of plant nursery grounds in England (HCWS585). A further Written Ministerial Statement on 28 March 2018 restated the Government’s intention to legislate at the next suitable opportunity to make these changes and announced that the legislation would have retrospective effect from 1 April 2015 (HCWS606).
- 6 The Government intends to ensure that, for the purpose of the agricultural exemption, market gardens and plant nursery grounds are treated equally. This Bill amends Schedule 5 to the Local Government Finance Act 1988 to provide for an exemption for buildings which are, or form part of, plant nursery grounds if they are used solely in connection with agricultural operations at the nursery ground. This ensures that the ratepayers of such hereditaments will continue not to pay non-domestic rates, and aligns the law with the previous longstanding practice of the VOA and Government policy.
- 7 Since the Court of Appeal’s judgment in *Tunnel Tech*, the VOA have assessed some plant nursery grounds and included them on the non-domestic rating list in England with effect from 1 April 2015. This Bill will have effect from 1 April 2015 in relation to England to allow the VOA to remove from the non-domestic rating list any plant nursery grounds which have been assessed.
- 8 In Wales the VOA has not assessed any plant nursery grounds. The Bill will have effect from 1 April 2017 in relation to Wales to ensure that no plant nursery grounds are assessed and included on the current non-domestic rating list (compiled on 1 April 2017).

Legal background

- 9 Section 51 of, and Schedule 5 to, the Local Government Finance Act 1988 determine the extent to which hereditaments are exempt from non-domestic rates. Clause 1 of the Bill makes an amendment to paragraph 3 of Schedule 5 to the Local Government Finance Act 1988.

Territorial extent and application

- 10 Clause 2(1) sets out the territorial extent of the Bill. The provisions of the Bill extend and apply to England and Wales.
- 11 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.

Commentary on provisions of Bill

Clause 1: Exemption for buildings used as nursery grounds

- 12 Subsection (1) of Clause 1 of the Bill amends Schedule 5 to the Local Government Finance Act 1988 (non-domestic rating: exemption). The amendment provides that a building which is, or forms part of, a nursery ground and is used solely in connection with agricultural operations is an agricultural building for the purposes of paragraph 1 of the Schedule. This has the effect that such buildings are exempt from non-domestic rating under section 51 of the 1988 Act.
- 13 Subsection (2) provides for the amendments to have retrospective effect from 1 April 2015 (in relation to England) and 1 April 2017 (in relation to Wales).

Clause 2: Extent, interpretation and short title

- 14 Subsection (1) provides that the Bill extends to England and Wales.
- 15 Subsection (2) defines 'financial year' for the purpose of the Bill.

Commencement

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

Financial implications of the Bill

- 17 The Bill contains provisions which provide for properties to be exempt from non-domestic rating.

Parliamentary approval for financial costs or for charges imposed

- 18 No money or ways and means resolution was required for this Bill. The Bill will not result in any increased expenditure for central government, and no ratepayer will be liable to any increase in non-domestic rates as a result of this Bill.

Compatibility with the European Convention on Human Rights

- 19 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 Non-Domestic Rating (Nursery Grounds) Bill are compatible with the Convention rights.

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- 20 The Bill does not engage any of the Convention rights. In particular, the Bill does not engage Article 1 Protocol 1 of the European Convention on Human Rights (Protection of Property) since it removes a tax liability from ratepayers rather than creating or increasing such a liability.

Related documents

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

- Business Rates: Written statement – March 2018:
<https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2018-03-28/HCWS606/>
- Business Rates: Plant Nurseries: Written statement – March 2017:
<https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2017-03-30/HCWS585/>

Annex A – Territorial extent and application in the United Kingdom

The Bill extends and applies to England and Wales.

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.¹

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?
Clause 1	Yes	Yes	No	No	Yes	Yes	Yes	Yes (W)
Clause 2	Yes	Yes	No	No	Yes	Yes	Yes	Yes (W)

Subject matter and legislative competence of devolved legislatures

Clause 1 makes provision in relation to non-domestic rating. 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.

¹ References in this Annex to a provision being within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly are to the provision being within the legislative competence of the relevant devolved legislature for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

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

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