

NON-DOMESTIC RATING (PUBLIC LAVATORIES) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Non-Domestic Rating (Public Lavatories) Bill as brought from the House of Commons on 7 September 2020 (HL Bill 131).

- These Explanatory Notes have been prepared by the Ministry of Housing, Communities and Local Government in order to assist the reader of the 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 This Bill implements the commitments made by the Chancellors of the Exchequer at Budget 2018 and Budget 2020 to introduce a 100% mandatory business rates relief for public lavatories.

Policy background

- 2 All non-domestic properties publicly or privately owned are liable for non-domestic rates (otherwise known as “business rates”), unless they have been specifically exempted or otherwise removed from liability to business rates. This includes public lavatories.
- 3 Public lavatories are valuable community amenities, particularly in town centres and areas with high numbers of visitors. There has been concern from local authorities, Members of Parliament, local organisations and members of the public about the rate at which public lavatories have been closing. The Budget commitment will reduce the cost of running public lavatories, and therefore help support their continued operation, by providing 100% relief from business rates.
- 4 At Budget 2018, the Government committed to provide a 100% relief for public lavatories. A Bill was introduced to provide this relief but fell when Parliament was prorogued. The Chancellor subsequently re-committed to introduce this relief at Budget 2020 and announced that it would apply retrospectively from 1st April 2020. The relief will not apply to toilets of a larger unit of rateable property (a “hereditament”), for example, toilets in public libraries.
- 5 This Bill implements the Budget 2020 commitment and will help reduce the cost of running public lavatories. It amends Part 3 of the Local Government Finance Act 1988 to ensure that, in relation to an eligible hereditament which consists wholly or mainly of a public lavatory, the chargeable amount will be zero. This provides, in effect, a 100% mandatory relief for eligible public lavatories in England and Wales.

Legal background

- 6 Part 3 of the Local Government Finance Act 1988 (the “1988 Act”) concerns non-domestic rating. Section 41 of the 1988 Act provides for lists of units of rateable property (“hereditaments”) to be compiled by certain local authorities (known as billing authorities). These lists are known as local rating lists.
- 7 Sections 43 and 44 of the 1988 Act establish when an occupied hereditament on a local rating list attracts liability for business rates, how that liability is calculated, and when various reliefs which remove that liability in whole or in part apply.
- 8 Section 57A of the 1988 Act provides powers for the creation of transitional arrangements schemes in England, which phase in increases and decreases in the rateable values used to calculate liabilities for hereditaments after a revaluation. Such regulations are made in relation to a “relevant period” between revaluations. The most recent example of regulations made under section 57A in England is the Non-Domestic Rating (Chargeable Amounts) (England) Regulations 2016 (S.I. 2016/1265) (the “2016 English Chargeable Amounts Regulations”).
- 9 In addition to their main business rates liabilities, ratepayers in England can be liable for business rates supplements (“BRS”) in relation to a hereditament under section 11 of the Business Rate Supplements Act 2009 (the “BRS Act 2009”). This liability is then calculated under section 13 of the BRS Act 2009, by reference to the rateable value of the hereditament. The substantive provisions of the BRS Act 2009 are currently not in force in relation to Wales.

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Territorial extent and application

- 10 The provisions of the Bill extend to England and Wales. Clauses 1, 2(1) and (2), 3 and 4 of the Bill apply to both England and Wales. Clause 2(3) to (7) applies to England only.
- 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: Relief from non-domestic rates for public lavatories

- 12 Clause 1 amends Part 3 of the 1988 Act by inserting a new relief into section 43, at subsection (4I). This provides that the chargeable amount in relation to a hereditament which consists wholly or mainly of a public lavatory is zero and makes a consequential change at section 43(4) to the general formula used to calculate a hereditament's chargeable amount, in order to ensure that it is subject to the new relief. The amendment in subsection (4) has the effect that, where more than one relief applies to the hereditament, it is the relief in section 43(4I) that has effect.

Clause 2: Consequential amendments

- 13 Clause 2 makes consequential amendments which reflect the changes made to the 1988 Act by clause 1:
- a. Subsection (1) amends section 67(7) of the 1988 Act to ensure that, as is the case for certain other business rates reliefs, the new relief applies on a particular day if (and only if) it applies immediately before the day ends.
 - b. Subsection (2) amends section 13 of the BRS Act 2009 (liability to business rate supplements: chargeable amounts) to provide a 100% relief from BRS liability for hereditaments that qualify for the new public lavatories rates relief. As set out in paragraph 9 of these Explanatory Notes, the substantive provisions of the BRS Act 2009 are not in force in relation to Wales, so this change will have no practical effect in that country until they are commenced.
 - c. Subsections (3) to (6) amend the currently applicable regulations made under section 57A of the 1988 Act (the 2016 English Chargeable Amounts Regulations). Those regulations provide for the application of alternative measures of liability to business rates for certain hereditaments for a transitional period following the revaluation that took place on 1st April 2017. The amendments add references to section 43(4I) of the 1988 Act to provisions which already contain references to hereditaments which have a chargeable amount of zero, to ensure consistency of treatment.
 - d. Subsection (7) puts beyond doubt that the changes made to the 2016 English Chargeable Amounts Regulations by clause 2(3) to (6) may themselves be amended or revoked using the power to make such regulations granted by section 57A(1) of the 1988 Act, despite being made by primary legislation. It does not confer a delegated power in and of itself.

Clause 3: Financial Provision

- 14 Clause 3 makes provision for money to be paid out to cover lost business rates income to local authorities as a result of the new relief. This compensation will be provided to local authorities through section 31 of the Local Government Act 2003, which allows for the UK Government and the Welsh Government to pay (out of money provided by Parliament) a grant to local authorities towards expenditure incurred, or to be incurred, by local authorities.

Clause 4: Extent, application and short title

- 15 Clause 4 provides that the Act extends to England and Wales only and that the amendments made by the Act have effect from 1st April 2020. This means that the amendments will have retrospective effect.

Commencement

- 16 The Bill will come into force on Royal Assent.

Financial implications of the Bill

- 17 The Bill contains provisions which provide for properties to be exempt from non-domestic rating.
- 18 The estimated cost of the relief to central government is no more than £6 million in England. This includes payments to authorities to cover losses in business rates income resulting from the relief. MHCLG will process compensation to local authorities in line with existing processes, with the necessary funding to be provided by HMT.
- 19 The estimated cost of the relief in Wales is expected to be no more than £0.45 million, with equivalent savings for operators of qualifying hereditaments. Any necessary adjustments to rates income and distribution will be managed through the existing processes for calculating payments to and from the non-domestic rating pool for Wales.
- 20 Any compensation will be provided to local authorities through section 31 of the Local Government Act 2003, which allows for the UK Government and the Welsh Government to pay (out of money provided by Parliament) a grant to local authorities towards expenditure incurred, or to be incurred, by local authorities.

Parliamentary approval for financial costs or for charges imposed

- 21 The House of Commons approved a money resolution in respect of the Bill on 3 September 2020. A money resolution is required where a Bill authorises new charges on the public revenue – broadly speaking, new public expenditure. The money resolution was required in this case to authorise the payment out of money provided by Parliament of any increase attributable to the Bill in the sums payable under any other Act out of money so provided, namely under 31 of the Local Government Act 2003.

Compatibility with the European Convention on Human Rights

- 22 The Government has examined the compatibility of the provisions in the Bill with the Convention and does not consider that the provisions engage the Convention rights.
- 23 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 Greenhalgh, Minister of State at the Ministry of Housing, Communities and Local Government, has stated in his view that the provisions of the Non-Domestic Rating (Public Lavatories) Bill are compatible with Convention rights.

Related documents

- 24 The following documents are relevant to the Bill and can be read at the stated locations:
 - The Local Government Finance Act 1988:
<http://www.legislation.gov.uk/ukpga/1988/41/contents>
 - The Business Rate Supplements Act 2009
<http://www.legislation.gov.uk/ukpga/2009/7/contents>
 - The Non-Domestic Rating (Chargeable Amounts) (England) Regulations 2016
<http://www.legislation.gov.uk/uksi/2016/1265/contents/made>

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Annex A – Territorial extent and application in the United Kingdom

25 The territorial extent and application of the Bill is summarised as follows. The Bill extends to England and Wales. Different provisions within the Bill apply to both England and Wales or to England only. There are no provisions which have minor or consequential effect outside England. Please see the table below for further details.

26 In the view of the Government of the United Kingdom, all of the Clauses in the Bill (as set out within the table below) would be within the legislative competence of the Scottish Parliament, Senedd Cymru 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 Senedd Cymru?	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 (Wales)
Clause 2	Yes	In part	No	No	N/A	N/A	N/A	Yes (Wales)
Clause 3	Yes	In part	No	No	N/A	N/A	N/A	Yes (Wales)
Clause 4	Yes	In part	No	No	N/A	N/A	N/A	Yes (Wales)

Subject matter and legislative competence of devolved legislatures

27 Clause 1 of the Bill makes provision in relation to local government finance (non-domestic rating). Local government finance is a devolved matter in Scotland, Wales and Northern Ireland. Local taxes to fund local authority expenditure are an exception to the fiscal, economic and monetary policy reservation by virtue of Schedule 7A, Part 2, Section A1 of the Government of Wales Act 2006 (as amended). Local taxes to fund local authority expenditure are exceptions to the fiscal, economic and monetary policy reservation by virtue of Schedule 5, Part 2, Section A1 of 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, Senedd Cymru 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, Senedd Cymru 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.

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