

RATING (EMPTY PROPERTIES) BILL

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Rating (Empty Properties) Bill as brought from the House of Commons on 14th June 2007. They have been prepared by the Department for Communities and Local Government in order to help the reader of the Bill and to assist debate. They do not form part of the Bill and have not been endorsed by Parliament.
2. These notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the clauses. Therefore, where a clause or a part of a clause does not seem to require any explanation or comment, none is given.

BACKGROUND

3. The Rating (Empty Properties) Bill gives effect to the Government's proposals to reform relief from business rates in respect of empty property. Those proposals followed the recommendations of the Barker Review of Land-Use Planning and the Lyons Inquiry into Local Government, which were commissioned by the Chancellor of the Exchequer and the Deputy Prime Minister.
4. The Barker Review was asked to consider how planning policy and procedures can better deliver economic growth and prosperity alongside other sustainable development goals. The report on the outcome of the Review was published on 5th December 2006, recommending that the Government should make better use of fiscal incentives to encourage efficient use of urban land and, in particular, the reform of relief from business rates in respect of empty property.
5. The report of the Lyons Inquiry, published on 21st March 2007, recommended the reform and reduction of the existing reliefs from business rates in respect of empty property.
6. In response to the recommendations of the Barker Review and the Lyons Inquiry, the Chancellor of the Exchequer announced in his Budget report of 21st March 2007 the Government's intention to modernise the existing system of reliefs from business rates for owners of unoccupied property.

SUMMARY

7. The proposed reforms increase liability to business rates for unoccupied properties to the same basic level of liability as for occupied properties (although the Bill provides for liability for unoccupied properties to be reduced by order). The reforms also provide that charities and community amateur sports clubs (CASCs) which own empty property will not be liable to rates for that property, as long as it appears it will next be used for charitable purposes or the purposes of the club.

8. The Bill also makes consequential amendments to legislation. This includes inserting into the Local Government Finance Act 1988 (the 1988 Act) a new section allowing the Secretary of State and the Welsh Ministers to make regulations to prevent changes in the state of property operating as a means of avoiding unoccupied property rates.

TERRITORIAL EXTENT

9. The Bill extends to England and Wales only.

TERRITORIAL APPLICATION: WALES

10. The provisions of the Bill apply equally to England and Wales.

COMMENTARY ON CLAUSES

Clause 1: Unoccupied hereditaments: chargeable amount

11. Clause 1(1) increases the unoccupied rate. The unoccupied rate is currently 50% of the basic occupied business rate (as provided for under section 43(4) of the 1988 Act). Clause 1(1) replaces the formula in respect of unoccupied properties in section 45(4) of that Act so that the rates payable on unoccupied properties are the same as those payable on occupied properties.

12. *Subsection (1)* also inserts into section 45 of the 1988 Act new subsection (4A), which provides a power to reduce liability for unoccupied rates from 100% of the basic liability for occupiers by any amount down to 50% of that basic liability. The power to make such an order in relation to England is exercisable by the Secretary of State and in relation to Wales by the Welsh Ministers (see new subsection (4B)).

13. *Subsection (2)* inserts new section 45A into the 1988 Act, which sets out classes of properties for which the unoccupied rate will be zero pounds. New section 45A(2) and (3) specifies that the classes of property which will be liable at the zero rate are unoccupied property owned by charities or trustees for charities that appears likely next to be used wholly or mainly

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for charitable purposes and unoccupied property owned by registered CASCs that appears likely next to be used wholly or mainly for the purposes of the club.

14. *Subsection (3)* amends section 143 of the 1988 Act to provide that orders under new section 45(4A) changing the unoccupied property rate are subject to the affirmative resolution procedure.

Clause 2 and Schedules 1 and 2: Consequential provisions

15. Clause 2 introduces Schedules 1 and 2 to the Bill which contain consequential provisions and repeals respectively.

16. Paragraph 1 of Schedule 1 updates the provisions in the 1988 Act dealing with rate liability for partially occupied property. A reduction in the occupier's rates bill where part of their property is unoccupied will now be available firstly, if the property is one which, if it were completely empty, the owner would not be liable to the unoccupied rate or would be liable at zero pounds; or secondly, if the Secretary of State has exercised her new power in section 45(4A) to make an order reducing the unoccupied property rate below 100% of the basic rate for occupiers. In other cases, occupiers whose property is partially unoccupied will be liable to the occupied rate in the usual way; so, for example, an occupier who benefited from small business rate relief would continue to benefit from it.

17. Paragraph 2 of Schedule 1 makes amendments consequential on the new zero unoccupied rate for charities and CASCs to the existing provisions of the 1988 Act which provide for discretionary rate relief; since unoccupied properties owned by charities and CASCs are to be zero rated, new subsection (10) provides that discretionary rate relief is not applicable to such properties.

18. Paragraph 3 of Schedule 1 makes consequential changes to the provisions of the 1988 Act for transitional relief in England and Wales.

19. Paragraph 4(1) of Schedule 1 inserts new section 66A into the 1988 Act. This new section empowers the Secretary of State and the Welsh Ministers to make regulations to deal with steps that owners might take (or omit to take) in an attempt to avoid unoccupied rates through causing or allowing the state of their property to change. Such regulations may provide that the state of any property forming part of an unoccupied hereditament shall be deemed not to have changed since before any prescribed event or as the result of an act or omission by or on behalf of a prescribed person.

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20. *Subsection (2)* of new section 66A specifies that these regulations may make provision for the circumstances in which and length of time for which the change of the state of property may be disregarded.
21. *Subsections (3) to (5)* of the new section set out additional matters which may be included in regulations. These are provisions prescribing assumptions in relation to changes in the state of property in comparison with an earlier time; provisions relating to the person by whom acts may be treated as done; and provisions that the regulations apply to omissions as well as acts.
22. *Subsection (6)* of the new section provides for the regulations to be made by the Secretary of State in relation to England and by the Welsh Ministers in relation to Wales.
23. Paragraph 4(2) provides, by amending section 143 of the 1988 Act, for regulations under new section 66A to be subject to the affirmative resolution procedure.
24. Paragraph 5 of Schedule 1 makes consequential changes to the interpretation provisions in section 67 of the 1988 Act.
25. Paragraph 6 of Schedule 1 removes the deadline of 31st December 2007 by which regulations under paragraph 4(6) of Schedule 8 to the 1988 Act for the financial year 2008/09 must come into force. These regulations specify the annual value of various financial and economic factors in the formula used by local authorities to calculate the amount of business rates they will pay into the national non-domestic rating pool in the next financial year.
26. Paragraph 7 of Schedule 1 makes a consequential amendment to the National Heritage Act 1980 so that the provisions of new section 45A of the 1988 Act apply to the Trustees of the National Heritage Memorial Fund.
27. Paragraph 8 of Schedule 1 confers a power to make amendments to legislation as a consequence of the Bill. Paragraph 8(2) specifies that the power covers legislation which predates the Bill and legislation which is passed in the same session as it. Paragraph 8(4) specifies that this power to make an order is exercisable by the Secretary of State in relation to England and by the Welsh Ministers in relation to Wales. Paragraph 8(5) provides that orders amending primary legislation are to be subject to the affirmative resolution procedure; all other orders made under the paragraph are to be subject to the negative resolution procedure (paragraph 8(6)).
28. Schedule 2 repeals the existing provisions of the 1988 Act which provide for unoccupied rates for charities and CASCs and those which extend the power of billing authorities to give discretionary relief from unoccupied rates to charities and CASCs.

FINANCIAL IMPLICATIONS OF THE BILL

29. It is estimated that the reform of relief from business rates in respect of empty property will increase net tax yields by £950m in 2008/09 and by £900m in 2009/10. This estimate reflects the increase in yield from rates, offset against reduced corporation tax yield (because rates are a legitimate deduction from corporation tax) and changes in other tax yields resulting from increased transactions and associated behaviour. Any spending decisions related to this yield will be considered as part of the Comprehensive Spending Review 2007.

EUROPEAN CONVENTION ON HUMAN RIGHTS

30. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement about the compatibility of the provisions of the Bill with the Convention rights (as defined in section 1 of that Act). The statement has to be made before second reading. Lord Davies of Oldham has made the following statement:

“In my view, the provisions of the Rating (Empty Properties) Bill are compatible with the Convention rights”.

31. An increase in liability for some classes of ratepayer might be said to raise issues under Article 1 of the First Protocol because the peaceful enjoyment of the ratepayer’s possessions is being interfered with. However, Article 1 of Protocol 1 is without prejudice to the right of the State to enforce such laws as it deems necessary to secure the payment of taxes and the discretion of the State to impose taxes in the public interest. These measures are considered to be in the public interest and proportionate and therefore compatible with Article 1 of the First Protocol.

32. The reduction in liability for charities and CASCs might be said to raise issues under Article 14 read with Article 1 of the First Protocol because of the different treatment of different classes of ratepayer. However, the difference in treatment in this case is considered to be proportionate to the aim of supporting the work of charities and CASCs and in the public interest and so compatible with Article 14.

COMMENCEMENT DATE

33. Clause 3 makes provision for commencement. It specifies that the provisions of the Bill come into force the day it is passed and provides that the new liability and zero rate apply from the financial year beginning 1st April 2008 and for all subsequent years. However, the power to make regulations under new section 66A of the 1988 Act may be exercised so that the regulations apply in the financial year beginning 1st April 2007.

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