

**Explanatory Memorandum to The Non-Domestic Rating (Deferred Payments)
(Wales) Regulations 2012**

2012 No. 466(W.77)

This Explanatory Memorandum has been prepared by Local Government Finance and Public Service Performance Division and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Non-Domestic Rating (Deferred Payments) (Wales) Regulations 2012. I am satisfied that the benefits outweigh any costs.

Carl Sargeant

Minister for Local Government and Communities

20 February 2012

1 Purpose of Instrument

These Regulations amend the Non-Domestic Rating (Collection and Enforcement) (Local Lists)(Wales) Regulations 1989 (SI 1989/1058) (“the Local Lists Regulations”) and the Non-Domestic Rating (Collection and Enforcement) (Central Lists) Regulations 1989 (SI 1989/2260) (“the Central Lists Regulations”) which, amongst other things, provide for annual rates liability to be discharged in instalments. Under the usual instalment scheme, instalments are payable in the financial year to which the demand for payment relates. These Regulations provide that, where a ratepayer is subject to non-domestic rates in respect of the local government financial year 2012-13, they can opt to defer payment of 3.36% of their 2012-13 liability to the financial years beginning on 1 April 2013 and 2014.

2 Matters of special interest to the Constitutional and Legislative Affairs Committee

None.

3 Legislative background

Under section 41 of the Local Government Finance Act 1988 (“the 1988 Act”), most non-domestic properties appear on a rating list compiled for the area in which they are situated. Under section 43, the occupiers of such properties are liable for non-domestic rates for each financial year (which, for the purposes of local government finance, runs from 1 April to 31 March). In certain cases where the property is unoccupied, the owner is liable for rates under section 45. Certain properties, which are not suitable to be shown on a local rating list, are shown on the central rating list and rates are paid directly to the Welsh Ministers. The central rating lists contain the rating assessments of the network property of major transport, utility and telecommunications undertakings and cross-country pipelines. There is a single entry in the rating list for each company named in The Central Rating List (Wales) Regulations 2005 SI 2005/422). There are separate regulations and lists for England and Wales.

The Local Lists Regulations and the Central Lists Regulations govern the practicalities of billing for rates which in the case of the former is undertaken by the billing authority (the county or county borough council for the area the property is situated in) and in the case of the latter, the Welsh Ministers. The Local Lists and Central Lists Regulations require the billing authority or the Welsh Ministers (as the case may be) to issue to the ratepayer for each financial year a demand notice, setting out the ratepayer’s liability for rates. The content of demand notices is governed by the Non-Domestic Rating (Demand Notices) (Wales) Regulations 1993 (SI 1993/252) (“the Demand Notices Regulations).

Where a demand notice is issued, Regulation 7 of the Local Lists Regulations and Regulation 7 of the Central Lists Regulations provide for liability under the notice to be discharged either in instalments (calculated in accordance with the relevant Schedule) or in accordance with an agreement reached between the billing authority or Welsh Ministers and the ratepayer. Where Schedule 1 applies, the instalments are payable in the financial year to which the demand for payment relates, the number of instalments being ten or, if less, the number of whole months remaining in the year (subsequent to the issue of the demand notice), less one.

All ratepayers liable to rates in the financial year 2012-13 are facing increases in their rates bills of 5.6% reflecting the increase in to Retail Prices Index (“RPI”) to September 2011. These amending Regulations insert a new Schedule 1D into the Local Lists Regulations and a new Schedule 1B into the Central Lists Regulations to provide that, where a ratepayer is subject to non-domestic rates in respect of the financial year 2012-13, they can defer payment of a specified proportion of that liability to the financial years beginning on 1 April 2013 and 2014. The detailed operation of the new schedules mirrors as far as possible the operation of the existing instalment schemes under Schedule 1 to the Local Lists Regulations and the Schedule to the Central Lists Regulations.

The Regulations also make consequential modifications and amendments to the Non-Domestic Rating (Demand Notices) (Wales) Regulations 1993 (SI 1993/252) and a modification to the Non-Domestic Rating Contributions (Wales) Regulations 1992 (SI 1992/3238).

The powers to make these Regulations pursuant to sections 143(1) and (2) and 146(6) of, and paragraph 6(5) and (6) of Schedule 8 to, and paragraph 1 to 4 of Schedule 9 to, the Local Government Finance Act 1988 were conferred on the National Assembly for Wales by article 2 of the National Assembly for Wales (Transfer of Functions) Order 1999 (SI 1999/672). These powers are now vested in the Welsh Ministers so far as they are exercisable in relation to Wales by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

The Regulations follow the negative procedure.

These amending Regulations repeat the provision to permit a proportion of the rate increase for 2009-10 to be deferred to the years 2010-11 and 2011-12.

These amending Regulations have been drafted in generic form i.e. not referring to specific financial years. In this way, it will be easier to implement the same provision in future years.

4 Policy background

Non-domestic rates are adjusted each year to take account of inflation as measured by the RPI. This approach has been taken ever since national non-domestic rates were introduced in 1990. The 1988 Act requires that rates are adjusted every April in line with the RPI rate for the previous September.

In recognition of the increases non-domestic ratepayers are facing and the current economic climate generally, the UK Government decided to allow ratepayers to defer a portion of certain increases in their 2012-13 bills, and the Welsh Ministers decided to make similar provision in Wales. Businesses in Wales will be able to defer 3.36% of their 2012-13 rates bills: this equates to 60% of the annual increase of their 2012-13 rates bill. The deferred amount would be repaid equally in 2013-14 and 2014-15 to allow ratepayers to spread the 2012-13 increase across three years.

The deferral scheme will be available for all 2012-13 ratepayers, including any new ratepayers entering rateable properties in-year except for ratepayers that:

- have lost the right to pay their 2012-13 rates bill by instalments by or on the date that the ratepayer notifies the billing authority in writing of their wish to apply for the

- deferral scheme. Where the ratepayer has lost the right, it is for the billing authority to decide whether to process the notification for deferral and grant deferral; or
- have already discharged their 2012-13 rates liability in full or will be due to discharge their 2012-13 liability in full within 21 days of notifying the billing authority of their wish to apply for the deferral scheme.

Local billing authorities manage and enforce the collection of non-domestic rates. The deferral scheme has been built into the existing regulatory framework which sets out the responsibilities of local authorities in carrying out rates collection. In that way, the scheme will not significantly alter enforcement practices.

The Regulations make minor changes in billing practices and payment tracking that have to be made in accordance with the deferral scheme. These include ensuring that the outstanding 2012-13 liability and its associated payment schedule can be shown on future years' bills and paid alongside future years' payments.

The Regulations also set out how payments made in future years are counted against the 2012-13 and liabilities from future years. This is to ensure that billing authorities are able to take recovery action against any outstanding liability in those years as they would otherwise.

Where a ratepayer fails to pay any instalment due in respect of the 2012-13 financial year, the billing authority will serve a notice in accordance with regulation 8(1) of the Non-Domestic Rating (Collection and Enforcement) (Local List) Regulations 1989 and subsequently the ratepayer will lose their right to pay by instalments and the deferral will cease to have effect.

5 Implementation

If this legislation is not made, businesses in Wales will not be able to opt to defer payment of part of the increase in their 2012-2013 non-domestic rates bills over two years. Accordingly, businesses in Wales would not benefit from the same measure to assist with their cash-flows as businesses in England.

6 Consultation

There has not been a formal consultation on the changes made by the Regulations: they were announced as part of the Autumn Budget Statement 2012. In order for the scheme to achieve its purpose of easing cash-flow for businesses in 2012-13, it needs to come into force as quickly as possible so that ratepayers can apply for deferral and have their 2012-13 instalments reduced as a result. However, the Welsh Ministers recognise the importance of the scheme being as simple as possible for billing authorities to administer and for businesses to take up. Officials will write to the CBI, FSB, Chair of Business Wales and the WLGA to inform them of need to make these changes quickly and that no formal consultation would be undertaken.

7 Regulatory Impact Assessment

7.1 Options (for achieving the policy objective – as set out in paragraph 5)

The alternative to the deferral scheme was to allow ratepayers to pay increases in their 2012-13 rates bills as expected. This would have meant that all ratepayers would pay bills based on the 5.6% inflation adjustment.

In deciding to enable businesses to spread payment of this year's inflation-adjustment over three years, the UK Government recognised that some businesses may need help to ease cash flow and the deferral scheme was seen as an effective option to mitigate the rates bill increases. When the UK Government announced that this would be implemented in England, the Welsh Ministers decided that it should also apply to Wales, as failure to do so could place businesses in Wales at a disadvantage.

7.2 Benefits

The ability to discharge increased liability over a period may have beneficial effects for the finances of a business in the short term; some of the affected businesses may not have the financial reserves to discharge these increased liabilities immediately. In the long term, the affected businesses will be able to plan ahead for the impact of their increased liabilities. These Regulations will enable businesses to opt to defer part of the 2012-13 increase in non-domestic rates and may reduce its impact on the cash-flow of businesses.

7.3 Costs

There are no costs to the Welsh Government. There will be some additional administrative costs to local authorities, which may include modifications to billing software but this should be negligible since the same scheme was operated in respect of the financial year 2009-10.

7.4 Competition assessment

This proposal has been scored against the competition filter test which indicated that there should be no detrimental effect on competition.

7.5 Consultation

See paragraph 6.

7.6 Post implementation review

This will be reviewed by the Local Taxation Working Group.

The Regulations have no impact on:

- the statutory duties of the Welsh Ministers concerning equality of opportunity (section 77 of the Government of Wales Act 2006), the Welsh language (section 78) and sustainable development (section 79); and
- the local government, voluntary sector and business schemes made under sections 73, 74 and 75 of the Government of Wales Act 2006 respectively.