

Explanatory Memorandum to the Non-Domestic Rating (Unoccupied Property) (Wales) (Amendment) Regulations 2021

This Explanatory Memorandum has been prepared by the Local Government Strategic Finance Division of the Welsh Government and is laid before Senedd Cymru in conjunction with the above subordinate legislation and 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 (Unoccupied Property) (Wales) (Amendment) Regulations 2021. I am satisfied that the benefits justify the likely costs.

Rebecca Evans MS
Minister for Finance and Trefnydd
4 February 2021

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PART 1: EXPLANATORY MEMORANDUM

1. Description

The Regulations, from 1 April 2022, extend the period of occupancy required between claiming periods of Empty Property Rates Relief from six weeks to 26 weeks. A suite of policy measures intended at addressing the known methods of fraud and avoidance within the non-domestic rates system was announced on 16 October 2018. These Regulations enact one such measure and the intent to introduce this Statutory Instrument was announced on 14 January 2021.

The Statutory Instrument amends the Non-Domestic Rating (Unoccupied Property) (Wales) Regulations 2008. Regulation 5 is amended to state:

*“A hereditament which has been unoccupied and becomes occupied on any day is to be treated as having been continuously unoccupied for the purposes of regulation 4(a) and (b) if it becomes unoccupied again on the expiration of a period of less than **26 weeks** beginning with that day.”*

Regulation 5 previously stated:

*“A hereditament which has been unoccupied and becomes occupied on any day is to be treated as having been continuously unoccupied for the purposes of regulation 4(a) and (b) if it becomes unoccupied again on the expiration of a period of less than **six weeks** beginning with that day.”*

These Regulations will have the effect of increasing the period of occupation required between periods of Empty Property Rates Relief from six weeks to 26 weeks.

2. Matters of Special Interest to the Legislation, Justice and Constitution Committee

The Regulations have a commencement date of 1 April 2022 to allow time for ratepayers, local authorities and other stakeholders to prepare for changes.

3. Legislative background

Section 45 of the Local Government Finance Act 1988 provides that owners of unoccupied non-domestic hereditaments are liable to pay non-domestic rates (up to 100% of the normal charge for occupied hereditaments) if certain conditions apply. One condition is that the hereditament falls into a class prescribed by the Welsh Ministers (section 45(1)(d)).

The Non-Domestic Rating (Unoccupied Property) (Wales) Regulations 2008 Regulations set out when a ratepayer is liable to pay non-domestic rates in accordance with section 45.

Regulation 4 provides a list of hereditaments that do not fall within the scope of section 45(1)(d) and as such would not pay non-domestic rates in respect of those hereditaments. The list includes (but is not limited to):

- hereditaments which, subject to Regulation 5, have been empty for up to three months (Regulation 4(a)); and
- “qualifying industrial hereditaments” which, subject to Regulation 5, have been empty for up to six months (Regulation 4(b)).

A ‘qualifying industrial hereditament’ is defined in Regulation 2 as a hereditament, other than a retail hereditament, where all the buildings which comprise the hereditament are:

- constructed or adapted for use in the course of a trade or business; and
- constructed or adapted for use for one or more of the following purposes, or one or more such purposes and one or more purposes ancillary thereto:
 - the manufacture, repair or adaptation of goods or materials, or the subjection of goods or materials to any process;
 - storage (including the storage or handling of goods in the course of their distribution); the working or processing of minerals;
 - and the generation of electricity.

Regulation 5 currently provides that if at any time a hereditament which is caught by Regulation 4(a) or (b) is subsequently occupied for a temporary period of at least six weeks where full rates are paid by the occupier, the relief period is reset and the owner is then eligible for another cycle of three or six months relief. These Regulations amend Regulation 5 such that the temporary occupation period is now a longer period of 26 weeks.

4. Purpose and Intended Effect of the Legislation

The Regulations amend Regulation 5 of the Non-Domestic Rating (Unoccupied Property) (Wales) Regulations 2008 such that the temporary period of occupancy required before receiving a subsequent period of Empty Property Rates Relief is extended. The period is extended from six weeks to 26 weeks.

The policy intent is to reduce a widely known method of abuse of the six-week period by disingenuous persons in order to claim repeated cycles of rates relief, which is against the policy intention of the relief scheme.

The aim of the six-week period was to ensure there is no disadvantage for owners who regularly let to genuine short-term occupants. However, there is extensive evidence that the six-week period is being exploited to claim continuous cycles of Empty Property Rates Relief. The temporary period of occupancy is often artificial and contrived, with examples of cardboard boxes, pallets, posters or a Bluetooth transmitter being stored in an otherwise empty property. The Welsh Government and local authorities believe that by requiring a 26-week period of occupancy, where full rates are paid, these artificial arrangements would be discouraged.

The Regulations will have the effect of increasing the temporary period of occupancy, ensuring ratepayers are required to occupy a premises for a substantial period of time before receiving subsequent relief.

5. Consultation

A 12-week consultation took place in the summer of 2018 on the policy behind the Regulations, alongside other non-domestic rates fraud and avoidance proposals, with policy intentions announced in October 2018. A subsequent six-week technical consultation took place between 1 October 2020 and 12 November 2020 on draft regulations for this specific policy change.

The consultation on the suite of policy measures can be found at:
<https://gov.wales/tackling-avoidance-non-domestic-rates-wales>

The technical consultation on draft regulations for this specific measure can be found at: <https://gov.wales/empty-property-rates-relief>

PART 2: REGULATORY IMPACT ASSESSMENT

Options

Option 1 – Do Nothing

This option would result in no legislation being brought forward and no changes to Empty Property Rates Relief. Instances of a widely known method of rates avoidance would not be reduced.

Option 2 – Increase the six-week period to 26 weeks from 1 April 2022

This option would increase the temporary occupancy period from six weeks to 26 weeks and would take effect from 1 April 2022.

Costs and benefits

Option 1 – Do Nothing

The identified method of avoidance would continue to be prevalent in Wales, representing a loss in non-domestic rates revenue which is a vital source of funding for local government services. It is not possible to quantify accurately the extent of this financial loss from this method alone. Data extraction from local authority systems in 2017 estimated the total loss of rates from a number of different methods was up to £20 million a year. However, based on practitioner expertise, this method of avoidance is estimated to account for the largest portion of the total loss to the non-domestic rates pool.

Option 2 – Increase the six-week period to 26 weeks from 1 April 2022

This option would result in the implementation of planned changes being implemented from 1 April 2022. This option would be expected to result in an increase in local government funding. Implementation in 2022 serves to factor in economic impacts of coronavirus and enable those impacted by changes time to prepare prior to commencement.

Option selection

The Welsh Government has committed to tackling non-domestic rates fraud and avoidance and has a long-term programme in place, comprising a range of policy and legislative changes. Abuse of Empty Property Rates Relief through artificial arrangements is a widely known method, often applied through commission-based rates mitigation schemes. There have been a number of challenges against these arrangements in the courts but it is the legal view that the artificial arrangements constitute occupation of an otherwise empty property.

Governments of other nations of the UK have considered how to reduce rates avoidance for a number of years. It is considered that by requiring a longer than six-week period of temporary occupation for future relief cycles, the financial

incentives to avoid rates are altered enough to ensure avoidance is no longer financially viable.

Option 2 is the Welsh Government's preferred option.

Analysis of other effects and impacts

Promoting Economic Opportunity for All (Tackling Poverty)

Increasing the temporary occupancy period discourages disingenuous behaviour and aims to ensure vital funding for local government services is protected. The long lead time before commencement enables ratepayers, local authorities and other stakeholders with more than twelve months in which to plan for the changes ahead, due to the difficult circumstances experienced by many as a result of the coronavirus pandemic.

UNCRC

No particular impact on the rights of children has been identified.

Welsh language

No effect on the opportunities to use the Welsh language or the equal treatment of the language has been identified.

Equalities

No specific impacts, positive or negative, on persons who share a protected characteristic (as determined by the Equality Act 2010) have been identified.

Well-being of Future Generations (Wales) Act 2015

Increasing the temporary occupancy period is intended to result in a reduction in the amount of local government funding lost to non-domestic rates avoidance. Protecting local government funding enables local authorities to better provide local services to their communities.

Impact on the voluntary sector

There are marginal risks that short-term lets in the charity sector may be negatively impacted by these Regulations, though the number of lets for a genuine charitable purpose for only a six-week period is few. These impacts will be monitored.

Competition assessment

A competition filter test has been applied to the Regulations. Ratepayers in Wales may be negatively impacted in comparison to those in England as a result of the change. A similar policy is already in effect in Scotland.

Post implementation review

The Welsh Government will monitor the impact of the change on the non-domestic rates pool as well as specific impacts on ratepayers, sectors, local authorities and other stakeholders. The Welsh Government will carry out this work through its regular representative fora and working groups.