

Explanatory Memorandum to the Non-Domestic Rating (Small Business Relief) (Wales) (Amendment) Order 2018

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

Cabinet Secretary's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Non-Domestic Rating (Small Business Relief) (Wales) (Amendment) Order 2018.

I am satisfied that the benefits justify the likely costs.

Mark Drakeford AM
Cabinet Secretary for Finance
20 November 2018

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CONTENTS

PART 1: EXPLANATORY MEMORANDUM 3

Description 3

Matters of special interest to the Constitutional and Legislative Affairs Committee 3

Legislative background..... 3

Purpose and intended effect of the legislation 4

Consultation 5

PART 2: REGULATORY IMPACT ASSESSMENT 6

Option 1: Do nothing, continue with the current arrangements for childcare properties 6

Option 2: Amend regulations to increase the lower threshold 7

Option 3: Amend regulations to provide 100% relief to all registered childcare providers
(support to be evaluated after a 3 year period)..... 8

Analysis of other effects and impacts 9

PART 1: EXPLANATORY MEMORANDUM

Description

- 1 The Non-Domestic Rating (Small Business Relief) (Wales) Order 2015 (the 2015 Order) provided for a rates relief scheme for small businesses in Wales. The 2015 Order replaced the previous small business rates relief scheme in Wales (which had been in operation since 2008), and provided for an enhanced temporary element to the scheme. There had been an enhanced temporary element of the small business rates relief schemes since 2010 extended on an annual basis. The 2015 Order did not change the previously existing levels of relief available but restructured and simplified the provisions to make them clearer to understand and apply.
- 2 The scheme was further extended by the Non-Domestic Rating (Small Business Relief) (Wales) (Amendment) Order 2016 (the 2016 Order) to continue the arrangements for enhanced Small Business Rates Relief (SBRR) by extending the temporary element of the scheme in Wales for 2016-17.
- 3 The Non-Domestic Rating (Small Business Relief) (Wales) (Amendment) Order 2017 further amended the 2015 Order to extend the application of the temporary element of the scheme to 31 March 2018.
- 4 The Non-Domestic Rating (Small Business Relief) (Wales) Order 2017 (the 2017 Order) introduced a new permanent rates relief scheme which commenced on 1 April 2018.
- 5 The Non-Domestic Rating (Small Business Relief) (Wales) Amendment Order 2018 (the 2018 Order) will introduce 100% relief for registered childcare premises in Wales to the small business rates relief scheme. The Welsh Government intends to review the operation of the scheme in relation to childcare providers after a 3 year period (1 April 2019 to 31 March 2022).

Matters of special interest to the Constitutional and Legislative Affairs Committee

- 6 None.

Legislative background

- 7 The powers enabling the Welsh Ministers to make a Small Business Rates Relief scheme are contained in sections 43(4B)(b), 44(9)(b), 143(1) and 146(6) of the Local Government Finance Act 1988.
- 8 The functions of the Secretary of State, so far as they are exercisable in relation to Wales, transferred to the National Assembly for Wales by virtue of the National Assembly for Wales (Transfer of Functions) Order 1999 (SI 1996/672, article 2, Schedule 1). These functions were subsequently vested in the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006.

- 9 A small business rates relief scheme was first introduced in Wales via the Non-Domestic Rating (Small Business Relief) (Wales) Order 2008 (SI 2008/2770 (W. 246)) (the 2008 Order). This made provision for the levels of relief available to small businesses in Wales. The scheme was amended by the Non-Domestic Rating (Small Business Relief) (Wales) (Amendment) (No 2) Order 2010 (SI 2010/2223 (W. 195)) to make provision for an increase in the level of relief available to businesses with premises with a rateable value (RV) of up to £12,000 on a temporary basis. This temporary element of the scheme allowed for full rates relief in respect of business premises with a RV of up to £6,000, and for tapered relief in respect of business premises with a RV between £6,001 and £12,000. Whilst this increase in the provision of relief was temporary, and initially applied from 1 October 2010 to 30 September 2011, its application was extended annually.
- 10 The 2015 Order restructured and simplified the small business rates relief scheme provisions, and applied temporary relief provisions for a further year.
- 11 The temporary relief provisions in the 2015 Order were extended into 2016-17 and 2017-18, but came to an end on 31 March 2018.
- 12 The 2017 Order introduced the Welsh Government's permanent small business rates relief scheme from 1 April 2018.

Purpose and intended effect of the legislation

- 13 The non-domestic rating system in Wales applies to all forms of non-domestic property including property owned or occupied by public sector organisations, not-for profit organisations and charities. However, the current Small Business Rates Relief Scheme applies only to particular categories of rateable property which are occupied for business purposes.
- 14 The provision of a rates relief scheme for small businesses in Wales is part of the Welsh Government's policy approach to supporting smaller businesses and to provide assistance to certain businesses that are important for local communities.
- 15 The Order Come into Force on 19 December 2018 and has effect from 1 April 2019. This Order amends the Non-Domestic Rating (Small Business Relief) (Wales) Order 2017 (SI 2017/1229 (W. 293)) (the 2017 Order). The 2017 Order provides for a rate relief scheme which applies to certain categories of hereditament.
- 16 The effect of the amendments made by this Order is to exempt all hereditaments meeting the conditions (the childcare conditions) set out in Article 8 of the 2017 Order from the payment of non-domestic rates.
- 17 Article 5 of the 2017 Order is amended to increase to £100,000 the maximum rateable value of hereditaments meeting the child care conditions. This means that all hereditaments with a rateable value of £100,000 or less, which meet the childcare conditions, are eligible for relief under the scheme. This Order also

preserves the existing maximum rateable value (of £12,000) in relation to hereditaments meeting the rateable value conditions in article 7 and the post office conditions in article 9.

- 18 The Welsh Ministers may prescribe E for the purposes of the Local Government Finance Act 1988 (“the 1988 Act”). This Order amends E to 5,000,000 for all hereditaments which meet the child care conditions. This, when inserted to the formula within section 43(4A)(b) of the 1988 Act, has the effect of exempting all hereditaments meeting the child care conditions from the payment of non-domestic rates. Article 11(4) of the 2017 Order is omitted, which has the effect of removing the previous tapered relief scheme for hereditaments meeting the child care conditions.

Consultation

- 19 In 2017, the consultation Delivering a Tax Cut for Small Businesses: a New Small Business Rates Relief Scheme for Wales asked whether the childcare sector should be provided with greater relief. Responses from the childcare sector supported additional relief for this sector. Other sectors did not support the case for additional relief for the childcare sector, saying that support should be consistent across small businesses. These views were taken into account in determining the policy approach for the permanent SBRR scheme. The conclusion was that the additional requirements on the sector and the importance of its role in supporting Welsh Government policy aims, particularly in relation to employability, did make a case for providing additional relief. A summary of consultation responses is available at <https://beta.gov.wales/delivering-tax-cut-small-businesses-new-small-business-rates-relief-scheme-wales>
- 20 As enhancements for the childcare sector were broadly consulted upon as part of the development of the new permanent scheme, no further consultation will be undertaken. The new proposals will benefit childcare ratepayers in Wales, aligning with the roll-out of the Welsh Government’s Taking Wales Forward commitment of creating “the most generous childcare offer anywhere in the UK: 30 hours free childcare for working parents of three and four year olds, 48 weeks of the year”.

Regulatory Impact Assessment

- 21 The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to this Order.
- 22 A Regulatory Impact Assessment has been conducted and is included in Part 2 of this document.

PART 2: REGULATORY IMPACT ASSESSMENT

23 This Regulatory Impact Assessment presents three options in relation to the design of the Small Business Rates Relief (SBRR) scheme from April 2019. All costs and benefits quantified within this Regulatory Impact Assessment are based on information and data available to the Welsh Government leading up to publication.

24 Three options have been considered in the development of the SBRR scheme. The options considered were:

- Option 1 Do nothing – continue with the current arrangements for childcare properties
- Option 2 Increase the lower threshold
- Option 3 100% relief to all registered childcare providers for a three-year period

Option 1: Do nothing, continue with the current arrangements for childcare properties

25 SBRR currently provides registered childcare premises with relief as follows:

- Eligible registered childcare premises with a RV of up to £6,000 receive 100% relief; and
- Those with a RV between £6,001 and £20,500 receive relief on a tapered basis from 100% to zero. (The upper threshold for other businesses is £12,000.)

26 This option would involve no changes to the regulations and the Non-Domestic Rating (Small Business Relief) (Wales) Order 2017 (the 2017 Order) introduced in April 2018 will continue to apply.

Costs to Welsh Government

27 Option 1 would result in a continuation of the current scheme and therefore there would be no additional costs to the Welsh Government associated with this option.

Costs to local authorities

28 There would be no additional costs to local authorities.

Costs to businesses

29 Option 1 would not alter the eligibility criteria for the Small Business Rates Relief scheme. There would be no associated additional costs to businesses.

Benefits

30 The scheme has been enhanced for several years, meaning that all the necessary functionality is in place. The current scheme is reasonably simple to understand by ratepayers and maintains the current levels of support for businesses.

31 Option 1 would not make changes to the current arrangements. Therefore, there are no additional financial benefits associated with Option 1.

Disadvantages

32 Option 1 would not result in the available resources being better targeted towards businesses such as registered childcare providers who might benefit more from the support.

Option 1 Summary

33 Doing nothing would retain the current thresholds and would not result in any additional costs. The current level of support for registered childcare providers would be maintained under this option. However no additional childcare providers would benefit. This option would not support childcare businesses which occupy the larger than average premises required under the national minimum standards for childcare regulation and would provide limited support for the childcare commitment. This is not the preferred option.

Option 2: Amend regulations to increase the lower threshold

34 The current relief applied to eligible registered childcare premises is set out in paragraph 25. Option 2 proposes to amend the 2017 Order to allow registered childcare premises to receive relief as follows:

- Eligible registered childcare premises with a RV of up to £12,000 receive 100% relief and
- Those with a RV between £12,001 and £20,500 receive relief on a tapered basis from 100% to zero.

Costs to Welsh Government

35 Whilst no new properties would be brought into the scheme this option would increase the number of ratepayers eligible to receive 100% relief. The total estimated cost Option 2 is £320,000: this includes the 100% relief element and the tapered element.

Costs to local authorities

36 There are potentially minor administrative costs associated with identifying registered childcare premises and maintaining records. Local authorities will need to update their billing systems to reflect the changing criteria of the scheme. Authorities receive annual funding for the administration of the rates system.

Costs to businesses

37 Option 2 would change the eligibility criteria for the Small Business Rates Relief scheme and as a result, some ratepayers would receive an increase in the overall level of relief they receive. There are no additional associated costs to businesses.

Benefits

38 The scheme has been enhanced for several years, meaning that all the necessary functionality is in place. The current scheme is reasonably simple to

understand by ratepayers and maintains the current levels of support for other businesses.

- 39 Registered childcare providers would benefit from enhanced support, receiving in total an estimated £320,000 of additional relief a year.

Disadvantages

- 40 Option 2 would not support registered childcare providers with an RV of over £20,500 even though they are subject to the same national minimum standards for childcare regulation.

Option 2 Summary

- 41 Option 2 would provide full relief for smaller childcare premises and would continue to support childcare properties with up to the average rateable value of £20,500. This option would make positive steps towards providing additional support for registered childcare providers and supporting the childcare commitment but would not help to support those providers above the £20,500 RV threshold. This is not the preferred option.

Option 3: Amend regulations to provide 100% relief to all registered childcare providers (support to be evaluated after a 3 year period)

- 42 The current relief applied to eligible registered childcare premises is set out in paragraph 25. Option 3 proposes to amend the 2017 Order to allow all registered childcare premises to receive 100%.
- 43 The Welsh Government intends to evaluate the operation of the scheme after a 3 year period (1 April 2019 to 31 March 2022) to assess the impact on registered childcare providers and Welsh Government policy aims.

Costs to Welsh Government

- 44 It is estimated Option 3 will cost an additional £2.5 million a year. This is based on bringing around a further 80 properties into the scheme. A small number of these properties are owned or run by local authorities and would not be eligible for SBRR. However it is not clear from the information currently available how many properties fall into this category.

Costs to local authorities

- 45 There are potentially minor administrative costs associated with identifying registered childcare premises and maintaining records. Local authorities will need to update their billing systems to reflect the criteria of the scheme. Authorities receive annual funding for the administration of the rates system.

Costs to businesses

- 46 Option 3 would change the eligibility criteria for the Small Business Rates Relief scheme and as a result, some ratepayers would receive an increase in the overall level of relief they receive. There are no additional associated costs to businesses.

Benefits

- 47 The scheme has been enhanced for several years, meaning that all the necessary functionality is in place. The current scheme is reasonably simple to understand by ratepayers and maintains the current levels of support for other businesses.
- 48 Registered childcare providers would benefit from 100% rates relief for the period 1 April 2019 to 31 March 2022 and receive in total an estimated £2.5 million of additional relief a year.

Disadvantages

- 49 Some registered childcare providers could be affected if the support is removed or reduced after three years, as the national minimum standards would still be enforced.

Option 3 Summary

- 50 Option 3 would provide full relief for all registered childcare providers and would support them to become more established and operate on a more viable basis. Allowing the sector to create new and maintain existing childcare places across Wales would support the Welsh Government's delivery of its Childcare Offer commitment and other policy aims. However, the sector could be disadvantaged if the support is removed or reduced after three years.

Analysis of other effects and impacts

Promoting Economic Opportunity for All (Tackling Poverty)

- 51 Enhanced support for registered childcare premises is intended to improve access to childcare, enabling parents to take advantage of employment opportunities.

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- 52 No particular impact on the rights of children of the provision of the proposed relief has been identified in the development of the new scheme. The scheme will not result in any reduction in funds available for local authorities as the relief will continue to be fully funded by the Welsh Government. Therefore, there should not be any impact on the provision of children's services by a local authority. Additional relief for the childcare providers could lead to improved provision.

Welsh language

- 53 No effect on the opportunities to use the Welsh language or the equal treatment of the language has been identified in connection with the introduction of the childcare changes to the scheme. As part of the business investment support being developed for the childcare sector under the 10-Year Childcare, Play and Early Years Workforce Plan, the Welsh Government is seeking to encourage Welsh medium provision either as new business start-ups or expansions. The suggested approach to the childcare changes would therefore have the potential to encourage new or support existing Welsh Medium provision.

- 54 Views on the effect SBRR would have on the Welsh language were sought in the consultation and respondents did not identify means of promoting the Welsh language through the scheme.

Equalities

- 55 Section 149(1) of the Equality Act 2010 requires the Welsh Ministers to have regard, in the exercise of their functions, the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the 2010 Act; advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; foster good relations between persons who share a relevant protected characteristic and person who do not share it.
- 56 For the purposes of section 149, the protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. The availability of affordable childcare is intended to improve employment opportunities for parents. Research indicates that this has a positive impact on certain groups who share a protected characteristic, for example pregnancy and maternity, disability.

Well-being of Future Generations (Wales) Act 2015

- 57 Consideration has also been given to the wellbeing duty contained in section 3 of the Well-being of Future Generations (Wales) Act 2015. This includes consideration of how the policy could contribute to supporting the wellbeing goals under section 4 of that Act, and the wellbeing objectives set by the Welsh Ministers, whilst acting in accordance with the sustainable development principle. Providing a small business rates relief scheme which includes enhanced support of the childcare sector will assist ratepayers and, as such, will help to contribute to the achievement of the wellbeing goals of a prosperous Wales and a more equal Wales.

Impact on voluntary sector

- 58 We do not expect voluntary sector organisations to be affected by the new scheme. Charities and not-for-profit organisations will continue to be supported through the mandatory relief that is available under the Local Government Finance Act 1988, and local authorities will continue to be able to provide discretionary relief to charities, community amateur sports clubs and not-for profit organisations under the Act.

Competition Assessment

- 59 A competition filter test has been applied to the Regulations. The result of the test suggests there is unlikely to be any detrimental or beneficial effects on competition. There was no obligation on any party, business or organisation to respond to the 2017 consultation.

Post implementation review

- 60 The Welsh Government will monitor the impact of the childcare changes to the scheme through feedback from local authorities, small businesses and other stakeholders and will continue to develop the permanent scheme to ensure that it is targeted to best meet the needs of Wales.