

Explanatory Memorandum to the Non-Domestic Rating (Small Business Relief) (Wales) (Amendment) Order 2019

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

Minister'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 2019. I am satisfied the benefits outweigh any costs.

Rebecca Evans
Minister for Finance and Trefnydd
20 December 2019

PART 1 – EXPLANATORY MEMORANDUM

Description

1. Non-domestic rates (NDR) are a local tax which raise revenue on properties used for non-domestic purposes. These properties include uses such as parking, advertising rights, telecommunications masts and automatic teller machines (ATMs). It is estimated that non-domestic rates in Wales will generate over £1 billion (net) in 2019-20. All the revenue is distributed to local government to help fund local services in Wales.
2. The Small Business Rates Relief (SBRR) scheme was introduced to provide support to small businesses. It excludes certain types of property from eligibility on the grounds that they do not, in themselves, constitute 'small businesses'. The exclusions include car parks, advertising rights (eg billboards) and electronic communications apparatus (ECA).
3. The exclusion of ECA covers a wide range of equipment, including ATMs. The exclusions to the scheme were considered as part of the consultation on the permanent SBRR scheme introduced on 1 April 2018. Such equipment was also excluded from the previous temporary schemes which the permanent scheme replaced. The exclusion applies to ATMs which are identified and valued separately from other property for rating purposes. Many ATMs are not valued separately but are included within the valuation of the building of which they are part (eg banks and shops). The exclusion does not affect the eligibility of such host properties for rates relief.
4. In January 2018, a rating agent acting on behalf of an ATM ratepayer, Cardtronics UK Ltd, brought a legal challenge against a local authority for the non-award of SBRR in relation to its ATM sites in the county. Cardtronics UK Ltd is part of a multi-national company which operates ATMs at sites across the UK.
5. The High Court concluded that ATMs were not ECA and were not excepted hereditaments for the purposes of SBRR. This has created confusion as to whether ATMs, and potentially other ECA, are eligible for SBRR. It also conflicts with the policy intention behind the scheme which was developed for the purpose of supporting small businesses.
6. This statutory instrument, the Non-Domestic Rating (Small Business Relief) (Wales) (Amendment) Order 2019 (the 2019 Order), clarifies the treatment of ATMs in respect of SBRR. It amends the Non-Domestic Rating (Small Business Relief) (Wales) Order 2017 (the 2017 Order), to clarify that ATMs are not eligible for SBRR, in line with the purpose of the scheme.

Matters of special interest to the Constitutional and Legislative Affairs Committee

7. No matters of special interest to the Constitutional and Legislative Affairs Committee have been identified.

Legislative background

8. The powers of Welsh Ministers to make an order providing relief for certain ratepayers are contained in section 43(4B)(b) of the Local Government Finance Act 1988. One such Order is the 2017 Order.
9. Article 2 of the 2017 Order clarifies the meaning of an excepted hereditament for the purposes SBRR. Amending article 2, through the 2019 Order, provides clarity on the treatment of ATMs in respect of SBRR.
10. The powers of the Secretary of State in paragraph 2(8) of Schedule 6 to the 1988 Act were transferred, in relation to Wales, to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999. The Local Government Finance Act 1988 is an enactment referred to in Schedule 1 and transferred by Article 2 of that Order. The functions of the National Assembly for Wales were subsequently transferred to the Welsh Ministers under section 162 and paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

Purpose and intended effect of the legislation

Primary purpose of the legislation

11. A form of SBRR has been in place in Wales since 2008. Since its inception, it has been designed to provide support for occupied small business premises. It is established Welsh Government policy to exclude separately valued ATMs from eligibility for SBRR.
12. The primary purpose of this statutory instrument is to revise the criteria for eligibility for SBRR, to clarify that separately valued ATMs are not eligible for SBRR, in line with the long-standing policy position. The instrument would not affect the eligibility of small businesses which meet the criteria for SBRR.
13. This would have the effect of amending the 2017 Order and make it clear that such ATMs are not eligible for SBRR from 1 April 2020, regardless of whether they are considered to be electronic communications apparatus.

The Impact on ATMs and SBRR

14. Following the court ruling, certain ATMs may be eligible for SBRR. This has resulted in increased costs for the scheme and reduced the contribution these properties make to the non-domestic rates pool. Importantly, it means resources intended to support small businesses are diverted elsewhere.
15. As a result of the ruling, it is estimated that around 350 separately valued ATMs could be eligible for SBRR, increasing the cost of the Small Business Rates Relief by almost £700,000. The instrument would exclude these ATMs in Wales from relief. Separately valued ATMs were not previously eligible for relief and may have seen a reduction in their NDR bill as a result of the court ruling. The effect of the legislation is to confirm the intended treatment of such property.

16. The 2019 Order would not preclude ATMs from benefitting from other forms of rates relief if this is considered appropriate or necessary. For example, where an individual ATM is considered to be of particular community value, a local authority may make use of its share of the £2.4m additional funding provided by Welsh Government in 2019-20 for discretionary relief. Targeted relief for ATMs would represent more effective use of the available resources.

Consultation

17. A public consultation sought views on draft legislation. The technical consultation was launched on 18 September 2019 and closed on 30 October.
18. It asked stakeholders for views on the proposed order with respect to how the provisions could be administered and enforced.
19. The consultation was published on the Welsh Government website and was issued to the following organisations:
 - Members of the Welsh Ratepayers Forum
 - Welsh Retail Consortium
 - Federation of Small Businesses
 - Confederation of British Industry Wales
 - All local authorities
 - Welsh Local Government Association
 - Valuation Tribunal for Wales
 - Valuation Office Agency
 - Institute of Revenues, Rating and Valuation
20. Nine consultation responses were received. The breakdown of responses is as follows.
 - Five local authorities
 - Welsh Local Government Association
 - Two professional bodies
 - One individual
21. Respondents generally expressed appreciation for the clarity provided by the draft 2019 Order. Local authority responses raised the need for changes to be made by January 2020 at the latest to allow for processed to be adapted in time for 1 April 2020.
22. Around half of respondents commented on the impact on rural communities, with one respondent suggesting extended use should be made of discretionary relief for ATMs.
23. The purpose of the consultation was to gather views on the technical aspects of the draft 2019 Order. The policy position has been long-standing since a form of SBRR was introduced in 2008. The 2017 Order provides the basis for the permanent SBRR scheme introduced on 1 April 2018.

24. The consultation prior to the introduction of the permanent scheme referred to the exclusion of ATMs from eligibility for the relief. Following the consultation, ATMs were not considered small businesses and as such should not be eligible for SBRR.
25. The consultation on the 2019 Order and the summary of responses can be found at:
<https://gov.wales/non-domestic-rating-small-business-relief-wales-amendment-order-2019>

Regulatory Impact Assessment

26. The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these amendments.
27. A Regulatory Impact Assessment has been conducted and is given in Part 2 of this document.

PART 2 – REGULATORY IMPACT ASSESSMENT

OPTIONS

Option 1 – Do nothing: accept the changes resulting from the High Court ruling and allow SBRR to be awarded for separately valued ATMs

No changes would be made to legislation and the effect of the court ruling would remain, allowing certain separately valued ATMs to be eligible for SBRR.

Option 2 – Legislative amendments to make it explicit that separately valued ATMs are not eligible for SBRR relief

The effect of amendments would be to confirm the long-standing policy position and separately valued ATMs would not be eligible for SBRR.

COSTS AND BENEFITS

The options have been costed using the latest available information.

Option 1 – Do nothing: accept the changes resulting from the High Court ruling and allow SBRR to be awarded for separately valued ATMs

Costs

The effect of making no change would be to increase the cost of the SBRR scheme on a permanent basis. For 2019-20, the cost of providing SBRR to separately valued ATMs is estimated to be almost £700,000. This would be a direct and recurring cost to the Welsh Government Budget.

Benefits

If eligible for SBRR, the operational costs for separately valued ATMs would be reduced.

Option 2 – Make legislative amendments to make it explicit that separately valued ATMs are not eligible for SBRR relief

Costs

This could result in increased rates bills for 350 separately assessed ATMs. There is a risk that excluding ATMs from eligibility for the relief might impact on the number and location of ATMs in Wales. This risk was considered and accepted prior to the introduction of the permanent scheme.

Benefits

Removing separately assessed ATMs from the SBRR scheme would ensure the relief supports small businesses as intended. It would reduce the overall cost of the scheme and increase the contribution to the NDR pool made by ratepayers.

This would result in additional revenue for local services and ensure rates relief for businesses is targeted more effectively.

The Order would also provide clarity for ratepayers and local authorities regarding eligibility for SBRR.

Competition Assessment

The Order has been scored against the competition filter test which indicated that there will be no detrimental effect on competition.

Post implementation review

The Welsh Government reviewed the Small Business Rates Relief Scheme before introducing the permanent scheme on 1 April 2018. We are continuing to develop the scheme and to monitor its impact.