EXPLANATORY MEMORANDUM TO

THE NON-DOMESTIC RATING (COLLECTION AND ENFORCEMENT) (LOCAL LISTS) (ENGLAND) (AMENDMENT) REGULATIONS 2011

2011 No.113

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 These Regulations amend Schedule 1A to the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 (SI 1989/1058) ("the 1989 Regulations") as amended by the Non-Domestic Rating (Collection and Enforcement) (Local Lists) (Amendment) (England) Regulations 2010 (SI 2010/1507) ("the 2010 Regulations"). Schedule 1A was inserted by the Non-Domestic Rating (Collection and Enforcement) (Local Lists) (Amendment) (England) Regulations 2009 (SI 2009/204) ("the 2009 Regulations").

2.2. The 1989 Regulations provide for annual non-domestic rates liability to be discharged in instalments in many cases. However, where a rating list is altered with retrospective effect by a valuation officer this can lead to backdated liability which, rather than being payable in instalments, is payable straightaway. The purpose of Schedule 1A of the 1989 Regulations is to allow, in certain cases, backdated liabilities that would otherwise be payable straight away, to be discharged in instalments over a period of up to eight years.

2.3. Schedule 1A was amended by the 2010 Regulations in order to provide a temporary moratorium on the payment and collection of rates under the eight year instalment scheme, ending on 31 March 2011. The purpose of these Regulations is to extend this moratorium to 31 March 2012. However, as with the initial moratorium, the total period of the agreement, including the moratorium on payments till 31 March 2012, may not extend longer than eight years in total from the date of the original agreement.

2.4. If ratepayers and billing authorities have already entered into an agreement, these Regulations enable them to enter into a further agreement to take advantage of the extended moratorium.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 Under section 41 of the Local Government Finance Act 1988 (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 to pay non-domestic rates for each financial year (which, for the purposes of local government finance, runs from 1st April to 31st 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 Secretary of State. However, these Regulations are not relevant to centrally listed properties.

4.2. The 1989 Regulations govern the practicalities of billing for rates in respect of locally listed properties. They require the billing authority (the district or unitary authority for the area the property is situated in) to issue to the ratepayer for each financial year a demand notice, setting out their liability to rates (the contents of demand notices is governed by the Council Tax and Non-Domestic Rating (Demand Notices) (England) Regulations 2003 (S.I. 2003/2613)). Broadly speaking, demand notices are served on or around 1st April in each year in respect of those ratepayers and properties which the authority considers meet the conditions set out in sections 43 or 45 of the 1988 Act. Where those conditions are subsequently met, the demand notice must be served as soon possible after the day on which the authority is first satisfied.

4.3. Where a demand notice is issued, regulation 7 of the 1989 Regulations provides for liability under the notice to be discharged either in instalments calculated in accordance with Part 1 of Schedule 1 or in accordance with an agreement reached between the billing authority and the ratepayer. Where Schedule 1 applies, the number of instalments is ten or, if less, the number of whole months remaining in the year, less one. Where the demand notice is issued after 31st December, liability for the year is payable in a single instalment,

4.4. Where the demand notice is issued after the end of the financial year, Schedule 1 does not apply and instead regulation 7(5) provides that the notice shall require payment of the amount payable for the year in a single instalment, unless, that liability is in respect of the 2005 Ratings list and meets the criteria under Schedule 1A (in which case the backdated liability can be discharged under the eight year instalment scheme).

4.5. One of the circumstances in which a demand notice can be issued after the end of a financial year is where, pursuant to his or her duty to maintain an accurate list, the valuation officer for the billing authority area enters a non-domestic property on the rating list for the first time after the end of the year but with an earlier effective date. The effective date of an alteration to a rating list – including by way of adding properties to it – is governed by the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (S.I. 2009/2268) (“the ALA Regulations”). Until a property is shown in a list, the conditions in sections 43 and 45 of the 1988 Act are not met and so no

demand notice can be issued. Once those conditions are met, a demand notice will be issued in respect of liability from the effective date of the list entry.

4.6. In some cases where there is a difference between the day a rating list is altered and the effective date of the alteration, significant backdated liability can accrue. The 2009 Regulations inserted a new Schedule 1A into the 1989 Regulations (and made associated amendments) which allows – in certain circumstances – billing authorities to agree with the ratepayer that the liability which accrued between the effective date of the list alteration and the date it was actually made, can be discharged in instalments over eight years. This power is time limited and only relates to backdated list alterations made on or before 31st March 2010.

4.7. In addition to this, Schedule 1A of the 1989 Regulations was further amended by 2010 Regulations which allowed agreements under the Schedule to include a moratorium on payments of instalments, until 31 March 2011.

4.8. These Regulations make further amendments to Schedule 1A of the 1989 regulations to extend the moratorium to 31 March 2012. Ratepayers who have already entered into an agreement with authorities may also enter into a new agreement to take advantage of the extended moratorium.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- What is being done and why

7.1 Non-domestic properties are all valued in a consistent way to ensure that the burden of contributions to funding local government is shared fairly amongst businesses around the country. Non-domestic rating lists are maintained in order that the local authority can issue demands for payment of business rates liability. The money collected is pooled into a central pot which is then reallocated to authorities under the formula grant system.

7.2. Regulation 14(2) of the ALA Regulations provides that “where an alteration is made to correct any inaccuracy in the list or on after the day it is compiled, the alteration shall have effect from the day on which the circumstances giving rise to the alteration first occurred”.

7.3. The issue of the impact of backdated liability was highlighted by the review of the rating in ports completed by the Valuation Office Agency in 2008 (but not confined to those properties). The review concluded that certain

properties within ports that were not at that time separately assessed for rates should, in fact have been separately assessed since 1 April 2005.

7.4. In such circumstances, regulation 7(5) of the 1989 Regulations provides that the relevant demand notice shall require payment of the amount payable on the expiry of such period (being not less than 14 days) after the day of issue of the notice as is specified in it. In principle, this does give local authorities some discretion as to when backdated liability is to be collected, but the discretion is limited and the entire amount due must be collected together.

7.5. The previous administration therefore, amended the 1989 Regulations so that, in certain circumstances, businesses facing a significant and unexpected backdated liability of more than 33 months, would be able to discharge that liability in equal interest-free instalments over 8 years.

7.6. Whilst this provided a measure of assistance to businesses, it did not reduce their liability for backdated rates. Such liabilities needed to be reflected, in full, on company balance sheets and could therefore affect a company's solvency. The Government is concerned that businesses are at risk of insolvency as a result of backdated rates liabilities. As a temporary measure, therefore, whilst it explored more permanent solutions, the Government introduced a moratorium on the payment of certain backdated bills (see paragraph 4.7). The moratorium runs until 31 March 2011. The Localism Bill, introduced on 13 December 2010, provides for a more permanent solution, namely, that in certain specified circumstances (to be set out in secondary legislation), backdated rates liabilities can be cancelled in their entirety.

7.7. Pending the passage of this legislation though Parliament, the Government, through these regulations is extending the moratorium for a further year to 31 March 2012. This will ensure that rates liabilities that, subject to the enactment of the Localism Bill, will fall to be cancelled, do not have to be collected following the end of the current moratorium on 31 March 2011.

7.8. Ratepayers who meet the criteria enabling them to benefit from the existing moratorium, regardless of whether they have already entered into an agreement, can enter into a new agreement for an extended moratorium. Any monies paid by a ratepayer in respect of a backdated liability cannot be deferred, so only remaining backdated liabilities can be subject to a new agreement.

- Consolidation

7.9. As all the substantive provisions being added to the 1989 Regulations by these Regulations are included in amendments to a single Schedule (Schedule 1A), the Government does not consider that consolidating the 1989 Regulations is necessary for this amendment.

8. Consultation outcome

8.1 No formal consultation has taken place in relation to these Regulations. There was also no formal consultation on the earlier amendments to the 1989 Regulations, which were announced as part of the Pre Budget Report 2008. The Government became aware of the policy issue now being addressed as a result of the review of the rating of ports and the subsequent separate entry of a number of new properties within ports on ratings lists. The Government has received numerous representations on the issue from businesses that have been affected.

9. Guidance

9.1 The Government has already issued a Business Rates Information Letter in relation to the current moratorium (ending on 31 March 2011) (a copy of which is available at http://www.local.communities.gov.uk/finance/busrats/bus2009.htm) setting out the criteria which will have to be met before a ratepayer and their local authority can agree to reschedule backdated rates liability and this will act as guidance for billing authorities and ratepayers. A further Business Rates Information Letter available at the same website address has been issued to local authorities to provide guidance for this extended moratorium.

10. Impact

10.1 The impact of these amendments to the 1989 Regulations on businesses will be that, where the criteria are satisfied, backdated liabilities may be deferred until 31 March 2012. Notwithstanding the fact that if primary legislation to cancel certain backdated liabilities is obtained, then only a subsection of those eligible to benefit from the moratorium will have the backdated liability cancelled, the ability to defer payments of backdated liability for a period of time has clear beneficial effects for the finances of a business in the short term; particularly for those that will not benefit from the cancellation but are eligible for the moratorium, as some of the affected businesses may not have the financial reserves to pay these unexpected backdated liabilities up front.

10.2. For those ratepayers who are eligible for cancellation of the backdated liability, this will ensure that local authorities are not forced to take enforcement action during the deferred period for the backdated liability, whilst the Government seeks primary legislation for a cancellation.

10.3. We do not envisage the changes will impact significantly on local authorities who will have to collect the backdated rates payments on top of ongoing rates liability using existing collection and enforcement mechanisms.

10.4. The Impact Assessment completed for the Localism Bill takes into account the impact of extending the moratorium until 31 March 2012. This can be found at http://www.communities.gov.uk/corporate/publications/impact-assessments/.

Therefore no separate Impact Assessment has been completed for these regulations.

11. Regulating small business

11.1. The changes to the 1989 Regulations are applicable to all businesses, irrespective of their size, and will benefit small businesses where the criteria are met.

11.2. Accordingly, it would not be appropriate to minimise the impact of these Regulations on firms employing up to 20 people.

11.3. The basis for the final decision was to assist all eligible businesses.

12. Monitoring & review

12.1. There have been a number of changes affecting the Business Rates System, including amendments to empty property rates, small business rate relief, two deferral schemes for payment of rates as well as the introduction of the Business Rates Supplement. To look at these incremental changes individually would not assess the impacts cumulatively of the policies on ratepayers and the property market. The Department is therefore considering the possibility and feasibility of a proposed review which would cover the changes to business rates policy as a whole, using evidence from as wide a range of individual policy interventions as is practical.

13. Contact

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