EXPLANATORY MEMORANDUM TO

THE NON-DOMESTIC RATING (DEFINITION OF DOMESTIC PROPERTY) (ENGLAND) ORDER 2022

2022 No. 217

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Levelling Up, Housing and Communities and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument ensures that property will only be assessed as commercial short-stay self-catering accommodation (such as short-stay holiday accommodation) for business rates purposes where it has a history of marketing and letting activity. It does this through introducing two additional conditions a property must meet to be treated in this way.

2.2 The conditions are that the building (or relevant part of the building) must have been advertised commercially as self-catering accommodation for short periods totalling at least 140 days in the previous year; and let for at least 70 days during that year.

2.3 The new conditions will come into force on 1 April 2023 and will take into account marketing and letting activity from 1 April 2022 onwards.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England only.

5. European Convention on Human Rights

5.1 The Minister for Regional Growth and Local Government has made the following statement regarding Human Rights:

"In my view the provisions of the Non-Domestic Rating (Definition of Domestic Property) (England) Order 2022 are compatible with the Convention rights."

6. Legislative Context

6.1 Section 66 of the Local Government Finance Act 1988 ("the 1988 Act") defines domestic property for the purposes of non-domestic rates ("business rates"). Section 42 of the 1988 Act requires a local non-domestic rating list ("business rates list") for the area of each billing authority[1] in England to show non-domestic properties situated

[1] "Billing authority" is defined in section 144(2) of the 1988 Act.

in the billing authority's area. Where property is considered entirely domestic, it cannot be shown on a business rates list, but may instead be considered a "dwelling" under section 3 of the Local Government Finance Act 1992 and assessed for council tax (if the property fulfils the conditions set out in section 3(2) of that Act).

6.2 Section 66(1) of the 1988 Act specifies when property is to be considered domestic, including when it is used wholly for the purposes of living accommodation. However, article 3 of the Standard Community Charge and Non-Domestic Rating (Definition of Domestic Property) Order 1990 (S.I. 1990/162) amended Section 66 of the 1988 Act to insert a new subsection (2B), to which Section 66(1) is subject. This provides that living accommodation is not domestic (and therefore can be shown in a business rates list) if the owner intends to make it available to let commercially, as self-catering accommodation, for short periods totalling 140 days or more in the year following the day on which the property is being assessed for inclusion in a business rates list.

6.3 This instrument amends subsection (2B) to add two additional conditions to the criteria which property made available as short-stay self-catering accommodation must meet in order to be considered non-domestic and subject to business rates.

7. Policy background

What is being done and why?

7.1 The Valuation Office Agency is responsible for determining whether a property should be assessed for council tax purposes or business rates purposes, in accordance with relevant legislation. Generally, property is assessed for council tax purposes where its primary use is domestic, and for business rates purposes where its primary use is not domestic. Most property that is not someone's main residence but is otherwise used as living accommodation (often referred to as a "second home") is assessed for council tax.

7.2 Under existing legislation, such property is treated as commercial short-stay self-catering accommodation for holiday or other short-term purposes (a "holiday let"[2]), if the owner intends to make it available to let commercially for short periods totalling 140 days or more in the coming year. In these circumstances, the property is assessed for business rates instead. which may result in a lower or zero tax liability, due to small business rate relief ("SBRR").

7.3 From 1 April 2017 the Government made a permanent change to the level and the thresholds for SBRR, so that it provides a 100% reduction in a business rates bill – meaning no tax is due – to property with a rateable value of £12,000 or less. Relief is generally only available if a business uses a single property. 97% of the 65,000 holiday lets on the rating list as at September 2021 had a rateable value below the threshold for full relief. However, the Government does not collect data on how many holiday lets are actually in receipt of SBRR. Local authorities are paid a grant under section 31 of the Local Government Act 2003 to compensate them for this change, in relation to the value of SBRR granted to eligible businesses in each financial year.

7.4 Concerns have been raised that owners of second homes may seek to reduce their tax liability by claiming that they intend to let their second home out commercially for short periods, but making little or no realistic effort to do so. It is difficult for listing

[2] A "holiday let" can include property let out commercially in the short term for non-holiday purposes, for example work trips.

officers of the Valuation Office Agency to verify whether an owner has a real 'intention' to make their property available as a holiday let.

7.5 In light of those concerns, the Government consulted between November 2018 and January 2019 on strengthening the business rates eligibility criteria for holiday lets (see 10.1). The consultation proposed the addition of two criteria which broadly mirror those introduced in Wales in 2010[3], and was supported by a vast majority of the 106 responses received.

7.6 To ensure that all second homes are subject to the appropriate tax, this instrument adds two conditions to the business rates eligibility criteria for holiday lets. It means that holiday lets will only be assessed for business rates if:

(a) The owner intends to make the property available for letting commercially as self-catering accommodation for short periods totalling 140 days or more in the coming year;

(b) The property was made available (i.e. advertised) for letting commercially as self-catering accommodation for short periods totalling at least 140 days in the year ending with the day on which the property is being assessed for inclusion on a business rates list; and

(c) The property was actually let for at least 70 days during that year.

7.7 This instrument will come into force from 1 April 2023, taking account of marketing and letting activity from 1 April 2022 onwards. It ensures that property will only be assessed for business rates as a holiday let, and able to access SBRR, where listing officers of the Valuation Office Agency are satisfied that it has a history of marketing and letting activity.

7.8 This instrument protects genuine small businesses by setting a letting threshold which allows for fluctuations in letting activity and provides for accommodation operating in more restricted letting seasons (that may otherwise find it challenging to meet a higher threshold.) It also protects the Exchequer, through ensuring that grant compensation provided for changes to SBRR is only paid in relation to genuine small businesses.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 These regulations do not amend existing regulations.

10. Consultation outcome

10.1 The Government ran a full public consultation on the business rates criteria for holiday lets between 7 November 2018 and 15 January 2019. [4] The consultation proposed strengthening the criteria by adding the two new conditions implemented by this instrument and received 106 responses. The vast majority of responses were broadly in support of the conditions, and many felt that the criteria should be even

[3] See the Non-Domestic Rating (Definition of Domestic Property) (Wales) Order 2010 (S.I. 2010/682): https://www.legislation.gov.uk/wsi/2010/682/contents/made. Further amendments were made to section 66 in respect of Wales by S.I. 2016/31 – those changes are not replicated in this instrument.

[4] The full consultation response was published on 14 January 2022 and is available at the following address: https://www.gov.uk/government/consultations/business-rates-treatment-of-self-catering-accommodation.

more stringent. A few respondents considered the existing criteria to be sufficient, and therefore argued that the proposed additions were harsh or unnecessary.

10.2 The Government considers that the thresholds implemented by this instrument strike a balance between strengthening the eligibility criteria in order to require evidence of actual commercial activity and providing flexibility for genuine holiday lets operating across varied building types and market conditions across England.

10.3 This instrument will broadly bring the holiday let criteria in England into line with those introduced in Wales in 2010 and the Scottish Government is introducing a 70 day letting condition which will apply from 1 April 2022. [5] In developing these changes, the Department has engaged with officials in the Welsh and Scottish Governments.

11. Guidance

11.1 The Valuation Office Agency will be responsible for assessing compliance with the new criteria, consistent with its existing responsibility to maintain accurate rating lists. The Government will set out more detail in guidance on the method for collecting evidence before the new rules come into effect on 1 April 2023.

12. Impact

12.1 A full Impact Assessment has not been prepared for this instrument because it amends a local taxation regime and amendments to any tax are excluded from the definition of a regulatory provision for these purposes.[6]

12.2 Business, charities or voluntary bodies, where they operate self-catering holiday accommodation, will need to be able to provide evidence if requested by the Valuation Office Agency of marketing and letting activity in the previous year that meets the new thresholds, in order to be (or continue to be) assessed for business rates. This may include providing evidence of the website or brochure used to advertise, letting details and accounts. Any property that fails to meet the strengthened criteria is likely to be assessed instead for council tax.

12.3 There is no, or no significant, impact on the public sector.

13. Regulating small business

13.1 The legislation applies to small businesses. The Department will set out more detail in guidance to help small businesses (and other ratepayers) understand the practical requirements before the new rules come into effect on 1 April 2023.

14. Monitoring & review

14.1 The Government keeps the operation of the council tax and business rates system and the underpinning legislation under regular review.

[5] See the Council Tax (Dwellings and Part Residential Subjects) (Scotland) Amendment Regulations 2021 (S.I. 2021/489): https://www.legislation.gov.uk/ssi/2021/489/contents/made.
[6] Section 22(4)(a) of the Small Business, Enterprise, and Employment Act 2015.

15. Contact

15.1 Rosie Pearce at the Department for Levelling Up, Housing and Communities. Telephone: 0303 44 44912 or email: rosie.pearce@levellingup.gov.uk can be contacted with any queries regarding the instrument.

15.2 Chris Megainey, Deputy Director for Local Taxation, at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.

15.3 Kemi Badenoch MP at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.