EXPLANATORY MEMORANDUM TO

THE NON-DOMESTIC RATING (DEFINITION OF DOMESTIC PROPERTY) (ENGLAND) ORDER 2026

2026 No. 692

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Ministry of Housing, Communities and Local Government and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Alison McGovern MP, Minister of State (Minister for Local Government and Homelessness) at the Ministry of Housing, Communities and Local Government confirms that this Explanatory Memorandum meets the required standard.

2.2 Michelle Warbis, Deputy Director for Local Tax and Pensions, at the Ministry of Housing, Communities and Local Government confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Nick Cooper at the Ministry of Housing, Communities and Local Government can be contacted by email at the following address with any queries regarding the instrument: ndr@communities.gov.uk. Alternatively, the department can be contacted by telephone: 0303 444 2674.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 Currently, self-contained self-catering accommodation is subject to business rates if it is both available for letting for 140 days in a year and actually let for 70 days. Otherwise the property is subject to council tax. These rules ensure, in part, that owners of 2nd homes cannot avoid council tax by merely claiming their property is available for letting. However, these rules also mean that some uses which are clearly businesses, such as aparthotels, are drawn into council tax when the property is first built and stay in council tax until they have met the test of 70 days of actual letting. This instrument will therefore carve out from the 70 day actual letting test, certain business uses of self-contained accommodation. They are those where the property comprises or includes 5 or more units of self-contained accommodation or where the accommodation is occupied together with land used for another non-domestic purpose.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England.

5. Policy Context

What is being done and why?

5.1 Non-domestic rates (known as business rates) are paid by the occupiers, or if vacant the owners, of non-domestic property. Whereas domestic property is generally subject to council tax. In most cases the boundary between business rates and council tax is obvious. Broadly speaking, living accommodation such as someone's main home, is subject to council tax whereas a non-domestic use, such as an office, is subject to business rates. Some living accommodation is also clearly part of a business, such as a hotel, and is included in business rates.

5.2 In the case of self-contained accommodation which is let commercially (such as holiday lets), a rule divides the occasional commercial use of such property by owners from more dedicated commercial use. The rule is that such accommodation is only subject to business rates if it is intended to be let for 140 days in a year and actually let for 70 days. Otherwise the property falls into council tax.

5.3 This rule ensures, in part, that owners of 2nd homes cannot move their property from council tax to business rates by merely claiming that they are seeking to let out their property. They must also actually let the property for 70 days before they can claim it should be in business rates.

5.4 However, we have found that some properties which are clearly used for business purposes are being pulled into council tax by this rule. For example, we have found that newly built aparthotels (which are offering self-contained accommodation) must first be actually let for 70 days before they can be subject to business rates. Until that point each unit of accommodation in the aparthotel will be liable for council tax.

5.5 Therefore, the instrument amends this rule to ensure that the test of actually letting for 70 days does not apply to self-contained accommodation where:

- it is occupied together with land used for another non-domestic purpose. The test of "occupied together with" is one which is already used in business rates to determine whether agricultural buildings should benefit from the exemption available to agricultural land. In order to be considered as "occupied together with" land used for another non-domestic purpose, the self-contained accommodation must be part of a single operation with the other non-domestic purpose and ancillary or consequential in relation to that purpose. This for example would cover lodges at a fishing lake where the lodges are offered as part of a package with the fishing. It would not, for example, cover a flat above a shop where the letting of the flat was unconnected to the shop (even where they were in the same occupation and hereditament), or
- it is part of a property under the same occupation which comprises or includes 5 or more self-contained units of accommodation. This for example would cover aparthotels.

5.6 Such properties will only have to meet the test of intending to be let out for 140 or more days and therefore, assuming that test was met, fall into business rates from when they are completed.

What was the previous policy, how is this different?

5.7 It has never been government policy for obviously business properties, such as aparthotels, to be subject to council tax. The instrument therefore amends the law to ensure it is aligned with policy.

6. Legislative and Legal Context

How has the law changed?

6.1 Section 66 of the Local Government Finance Act 1988 makes provision to determine whether a property is domestic or non-domestic. Section 66(1)(a) provides that property is domestic if it is used wholly for the purpose of living accommodation. However, section 66(2B) provides that a building or self-contained part of a building is not domestic property if it is intended that it will be available for letting commercially as self-catering accommodation for 140 days or more in the year to come and was actually so available for 140 days in during the past year and actually let for at least 70 days during that year.

6.2 These regulations amend section 66 to provide that in certain cases, only the test of available for 140 days in the following year needs to be met (and not the test of 140 days availability or 70 actual letting days in the past year). Those cases are where the accommodation:

- is occupied together with land which is used for a non-domestic purpose other than the commercial letting of self-catering accommodation, or
- is part of a property under the same occupation which comprises or includes 5 or more self-contained units of accommodation.

Why was this approach taken to change the law?

6.3 This is the only possible approach to make the necessary changes to the law.

7. Consultation

Summary of consultation outcome and methodology

7.1 As this is not a change in policy, no formal consultation was undertaken. The Ministry of Housing, Communities and Local Government has engaged with representatives of the hospitality sector and business rates experts on a draft of the instrument. The proposed change was supported by respondents although some ratepayers wished for the change to be made retrospective (no powers are available to change these rules retrospectively by statutory instrument).

8. Applicable Guidance

8.1 The Valuation Office of HMRC are responsible for implementation of section 66 of the Local Government Finance Act 1988 and the boundary between business rates and council tax. They will update their guidance once the instrument has come into force[1].

[1] The principle source of guidance on business rates published by the Valuation Office of HMRC is the Rating Manual and the relevant section is here. https://www.gov.uk/guidance/rating-manual-section-2-maintaining-the-rating-list/part-5-effective-dates

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 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[2].

Impact on businesses, charities and voluntary bodies

9.2 The impact on business, charities or voluntary bodies is that some properties which may otherwise have been subject to council tax (until 140 days of availability and 70 days of letting in a year had been achieved) will instead for the same period be subject to business rates. Whether this would be to the advantage or disadvantage of the ratepayer will depend on the location and circumstances of each case.

9.3 The legislation would impact small or micro businesses in the same way where they are offering such accommodation. An established small business rate relief scheme already provides up to 100% relief to small or micro-businesses.

9.4 There is no, or no significant, impact on the public sector because established systems will support local authorities with the billing and collection of business rates and council tax.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is to continue to keep the administration of business rates under review as is usual government practice.

[2] Definition of Regulatory Provision, Better Regulation Framework, Guidance, September 2023. See https://www.gov.uk/government/publications/better-regulation-framework

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 The Minister of State (Minister for Local Government and Homelessness) at the Ministry of Housing, Communities 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 2026 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").