EXPLANATORY MEMORANDUM TO

THE NON-DOMESTIC RATING (DISCRETIONARY RELIEF) (AMENDMENT) (ENGLAND) REGULATIONS 2021

2021 No. 1276

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.

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

2. Purpose of the instrument

2.1 This instrument is being made to ensure that local authorities can award discretionary business rates relief and then, if necessary, amend the relief in order to comply with any international agreement to the extent it is given effect in the law of England and Wales.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The regulations will come into force the day after the day on which it is made so as to ensure as quickly as possible that local authorities responsible for billing business rates ("Billing Authorities") can comply with any international agreement to the extent it is given effect in the law of England and Wales ("international agreements"). Therefore, the instrument will break the convention that negative statutory instruments should not come into effect until a minimum of 21 calendar days after they are laid.

3.2 Whilst regrettable, it has in this exceptional case proved necessary to break the 21 day convention. This is because until these regulations have come into force, Billing Authorities are unable to award discretionary relief and then amend that award to ensure compliance with international agreements without giving notice of at least one year and ensuring the change takes effect at the expiry of a financial year. Billing Authorities in Freeports[1], the first of which are to be designated on 19 November 2021, will be introducing rate relief schemes. This change will therefore allow those Billing Authorities to quickly proceed with their Freeport rate relief schemes from 19 November 2021. As such, breaking the 21 day rule is necessary to support the smooth operation of the discretionary relief schemes in Freeports, although the change will have the benefit of providing greater flexibility for all future discretionary relief schemes.

[1] Freeports are special areas within the UK's borders where different economic regulations apply. Within Freeports businesses may benefit from tax reliefs including business rate relief. https://www.gov.uk/guidance/freeports

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.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 Section 47 of the Local Government Finance Act 1988 ("the 1988 Act") allows Billing Authorities to set aside the normal rules for determining chargeable amounts and instead determine lower chargeable amounts by their own rules. These powers are used by Billing Authorities to establish discretionary relief schemes.

6.2 Section 47(8) provides the power for the Secretary of State to make regulations concerning a Billing Authority's ability to revoke or vary discretionary relief schemes and the notice period for such changes. Under that power the Secretary of State has made the Non-Domestic Rating (Discretionary Relief) Regulations 1989 ("the 1989 Regulations"). Regulation 2(3) of the 1989 Regulations currently provides that a revocation or variation to a discretionary relief scheme that would result in an increase to business rates may only be made if it takes effect at the expiry of a financial year and so that at least one year's notice is given.

6.3 This instrument will remove the limitation in regulation 2(3) where a Billing Authority needs to revoke or vary a discretionary relief scheme in order to achieve or maintain compatibility with international agreements.

7. Policy background

What is being done and why?

7.1 When awarding discretionary relief Billing Authorities must ensure that they comply with international agreements. For example, business rate relief in Freeports is subject to the UK's domestic and international subsidy control obligations. Therefore, Billing Authorities need to ensure that businesses located in designated tax sites in Freeports fulfil any requirements in place to ensure compliance with those obligations in advance of, during, and after claiming relief[2].

7.2 Billing Authorities who are putting in place discretionary relief schemes and subsequently conclude that those schemes are potentially not compliant with international agreements may, as a result, need to amend their schemes. It is possible that for most or indeed all discretionary relief schemes the Billing Authority will conclude that the relief awarded is not at odds with international agreements. In which case no immediate action will be needed by Billing Authorities.

7.3 Nevertheless, we would like Billing Authorities to be able introduce discretionary relief schemes confident that they will always comply with international agreements.

[2] See paragraph 15 of the guidance provided to Billing Authorities on rate relief in Freeports. https://www.gov.uk/government/publications/freeports-business-rates-relief-local-authority-guidance/freeports-business-rates-relief-local-authority-guidance#subsidy-control

This applies in relation to discretionary relief in Freeports, the first of which are being designated on 19 November 2021. In this situation we want Billing Authorities to be able to procced now with their rate relief schemes knowing that they can comply with international agreements. Therefore, this instrument provides that Billing Authorities can from 19 November 2021 establish a discretionary relief scheme but then revoke or varying that scheme in order to comply with international agreements.

8. European Union Withdrawal and Future Relationship

8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union because it ensures, if necessary, that Billing Authorities can quickly vary their discretionary relief schemes to achieve and maintain compatibility with international agreements.

9. Consolidation

9.1 No consolidation is planned. The regulations are implemented by Billing Authorities and the Department will inform them of the change.

10. Consultation outcome

10.1 No consultation took place because the instrument is made to ensure that local authorities can, if necessary, quickly vary their discretionary relief schemes to achieve and maintain compatibility with international agreements. The Department holds regular discussions with Billing Authorities on the operation of the business rates system including section 47 and the 1989 Regulations.

11. Guidance

11.1 The Department will directly inform Billing Authorities of the change to the 1989 Regulations.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

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

12.3 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[3].

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

13.3 The basis for the final decision on what action to take to assist small businesses is that the legislation is being made as a contingency measure and would only apply where discretionary relief was not compliant with international agreements. The instrument does not apply to the Small Business Rate Relief Scheme, under which over 700,000 small properties pay no business rates at all, because that is a mandatory and not a discretionary relief scheme.

[3] Section 22(4)(a) of the Small Business, Enterprise, and Employment Act 2015

14. Monitoring & review

14.1 The Government continues to keep the administration of the business rates system under review.

15. Contact

15.1 Nick Cooper at the Department for Levelling Up, Housing and Communities Telephone: 07458 090955 or email: nick.cooper@communities.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.