EXPLANATORY MEMORANDUM TO

THE NON-DOMESTIC RATING (UNOCCUPIED PROPERTY) (ENGLAND) (AMENDMENT) REGULATIONS 2024

2024 No. 323

1. Introduction

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

2. Declaration

2.1 Simon Hoare, Minister for Local Government at the Department for Levelling Up, Housing and Communities confirms that this Explanatory Memorandum meets the required standard.

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

3. Contact

3.1 Finn Dean at the Department for Levelling Up, Housing and Communities. Email: finn.dean@levellingup.gov.uk, or ndr@levellingup.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 Business rates are a tax charged on non-domestic property, normally paid by the occupier. The tax liability falls to the owner when a property is vacant. The Non-Domestic Rating (Unoccupied Property) (England) Regulations 2008 (2008 Regulations) excludes from business rates liability certain properties under specific conditions.

4.2 The 2008 Regulations exclude from rating newly vacated properties for a period of 3 months, or 6 months if the property is industrial. This exclusion from business rates liability is known as Empty Property Relief (EPR). Once the period of exclusion (generally referred to as "relief") has ended, the relief cannot be claimed again until the property has been occupied for a period of 6 weeks or more. This 6-week period is known as the "reset period". The purpose of this instrument is to extend the reset period from 6 weeks to 13 weeks from 1 April 2024.

4.3 Following consultation, the government is extending the reset period in response to a form of business rates avoidance involving property owners minimally occupying an otherwise vacant property (for example, by storing a single box of files) for the 6-week reset period in order to access repeated periods of relief.

4.4 The extension of the reset period will reduce the number of times a property is able to receive the relief in a given period, thereby reducing the incentive to engage in, and

financial impact on local authorities and the Exchequer of, this type of business rates avoidance.

Where does the legislation extend to, and apply?

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

4.6 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 These regulations will amend the 2008 Regulations to increase the duration of the reset period (the length of time a property must be occupied before it can benefit from EPR) from 6 weeks to 13 weeks from the 1 April 2024. This change is intended to reduce the incentive to engage in, and mitigate the effects of, tax avoidance through the EPR scheme.

5.2 The regulations also contain transitional provisions to ensure that those who made arrangements before this change has come into effect are not unfairly disadvantaged. The 6-week reset period requirement will still apply where that period commenced before 1 April 2024 and ends on or after that date. If a property is empty on or after 1 April 2024, it must be occupied continuously for 13 weeks before it can benefit from a period of EPR.

What was the previous policy, how is this different?

5.3 The 2008 Regulations provide for a business rates exemption known as empty property relief. EPR supports property owners upon the vacation of their premises by providing 3 months of 100% relief for non-industrial properties and 6 months for industrial properties. If the property remains unoccupied at the end of the 3 or 6-month relief period, the property owner must pay the full business rates liability.

5.4 Before a property can be eligible for EPR again, the property in question must have been continuously occupied for a period of no less than 6 weeks. This period is known as the 'reset period'.

5.5 EPR is intended to support property owners while they find new use for their property. The relief is time limited to incentivise prompt action to bring non-domestic property back into beneficial use.

5.6 Through the *Business Rates Avoidance and Evasion Consultation*[1] which ran from 6 July to 28 September 2023, the government received evidence of frequent abuse of EPR. Property owners are able to meet the 6-week reset period occupation test by minimally occupying their premises. Examples of minimal occupation have included occupation with a single box of files or Bluetooth transmitters. By minimally occupying otherwise unoccupied properties for the 6-week reset period, property owners are able to access additional periods of EPR, significantly increasing the amount of relief they receive in a given period without the property being beneficially used.

[1] The Business Rates Avoidance and Evasion Consultation can be found here: https://www.gov.uk/government/consultations/business-rates-avoidance-and-evasion-consultation

6. Legislative and Legal Context

How has the law changed?

6.1 Certain unoccupied properties are liable for full business rates, as set out in section 45 of the Local Government Finance Act 1988 (the 1988 Act). The 1988 Act also enables the government to specify through regulations, conditions which provide a rate-free period for unoccupied properties.

6.2 The 2008 Regulations provide for EPR. Regulation 4 sets out a number of specifying conditions on the application of this relief, including Regulation 4 (a), which provides for a 3-month rate free period, and Regulation 4 (b) which provides a 6-month rate free period for industrial properties.

6.3 Regulation 5 of the 2008 Regulations specifies that a property must be, for the purposes of Regulation 4, treated as continuously unoccupied if it is occupied for a period of less than 6 weeks, known as the "reset period". The regulations being put in place by this instrument will amend regulation 5 of the 2008 Regulations by amending the reset period from 6 weeks to 13 weeks.

6.4 These regulations also contain transitional provisions which ensure that the 6-week reset period requirement will still apply where that period commenced before 1 April 2024 and ends on or after that date.

Why was this approach taken to change the law?

6.5 These regulations make only minor changes, and the Department therefore considered it reasonable to make amendments to the existing regulations.

7. Consultation

Summary of consultation outcome and methodology

7.1 The *Business Rates Avoidance and Evasion Consultation*[2] received 192 responses from local authorities, businesses, rating agents and business representative organisations and a small number of others, including individuals. The full government response and summary of responses[3] document has been published on the government website.

7.2 Chapter two of the consultation sought views and evidence regarding EPR, including views on specific measures to reduce the vulnerability of the scheme to avoidance. The options tested were an extension of the reset period, limiting the number of times the relief could be claimed in a given period, reforming the definition of occupation and devolving the scheme to local authorities.

7.3 Local authorities highlighted the widespread scale of business rates avoidance, with many suggesting that avoidance through EPR was the most common and impactful. Of the solutions tested, the most widely supported was to extend the reset period to 6-months. All local authorities that responded supported an extension to the reset period of some kind. The other options tested also received high levels of support from local authorities, but they acknowledged that these solutions may have detrimental knock-on effects. For instance, changing the definition of occupation was considered to carry a risk of disrupting long-established rating principles, while devolving EPR to local

[2] The Business Rates Avoidance and Evasion Consultation can be found here: https://www.gov.uk/government/consultations/business-rates-avoidance-and-evasion-consultation

[3] The Business Rates Avoidance and Evasion Consultation Summary of Responses document can be found here: https://assets.publishing.service.gov.uk/media/65e1ffeb2f2b3b001c7cd881/SoR_A_E_V8_.pdf

authorities could lead to significant variation and complexity for businesses where billing authorities operated their reliefs differently. These options were also thought to be more difficult to implement and administer as they would require changes to the operation of the relief as well as additional data collection and monitoring, such as tracking the number of times a property has received EPR, or site inspections to determine if property occupiers meet new occupation conditions.

7.4 Businesses, business representative organisations and rating agents were mostly against making changes to EPR to reduce avoidance. They stated that EPR does not provide enough support over a long enough timeframe for landlords to find new tenants or new use for their properties. In their view, the most effective way to reduce avoidance through EPR is to increase its generosity, giving property owners relief over a longer time span. This would have the effect of reducing the financial incentive to engage in avoidance activity but at greater expense to government.

7.5 The Government has decided to increase the EPR reset period to 3-months and to keep the effectiveness of the measure under review. This approach will balance the need to reduce the financial incentive to engage in rates avoidance while still supporting property owners whose tenants have recently vacated.

8. Applicable Guidance

8.1 Guidance is not required for this instrument. Business rates are administered by local authorities including billing and the application of relief. The government will notify local authorities of this change through a business rates information letter.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument as it amends a local tax regime which is excluded from the definition of a regulatory provision[4].

Impact on businesses, charities and voluntary bodies

9.2 Those liable for the business rates applicable on unoccupied properties and who engage in the avoidance method described in this document are likely to pay more tax. Small businesses are less likely to be impacted as they may be in receipt of reliefs which remove or reduce their rates liability.

9.3 Alongside EPR, unoccupied properties which are intended to be used for charitable purposes are exempt from rating due to the 'next in use' exemption. Charities are therefore unlikely to be impacted by this instrument.

9.4 There is no, or no significant, impact on the public sector unless organisations have been engaging in the form of avoidance described above.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The government has committed to reviewing the impact of this measure to assess its effectiveness at combating the impacts of business rates avoidance through the EPR.

[4] The instrument, which is in connection with a local taxation regime, is not subject to the duty to review regulatory provisions in secondary legislation in section 28 of the Small Business, Enterprise, and Employment Act 2015.

10.2 Information collected by government from local authorities through National Non-Domestic Rates (NNDR) returns will be used in conjunction with local government engagement to monitor the impact of these regulations.

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

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.