

*These notes refer to the Rating (Valuation) Act 1999
(c.6) which received Royal Assent on 26 May 1999*

RATING (VALUATION) ACT 1999

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Rating (Valuation) Act 1999 which received Royal Assent on 26 May 1999. They have been prepared by the Department of the Environment, Transport and the Regions in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

SUMMARY

3. The Act amends the Local Government Finance Act 1988 to require that property in England or Wales which is subject to non-domestic rating is to be valued for that purpose on the assumption that it is in a state of reasonable repair. This assumption will apply whatever the actual condition of the property. There is an exception for repairs which would be uneconomic: in such cases the valuation is to be made on the basis that such repairs will not be made.
4. The Act is designed to put on a statutory footing the law as it was widely believed to apply before the decision of the Lands Tribunal on 11th March 1998 in the case of *Benjamin (VO) v Anston Properties Limited* [1998] R.A. 53, [1998] 19 E.G. 163. A similar provision already exists in relation to the valuation of domestic property for council tax (see regulation 6 of the [Council Tax \(Situation and Valuation of Dwellings\) Regulations 1992, S.I. 1992/550](#)).

BACKGROUND

Valuation for non domestic rating

5. The legislative framework for non-domestic rating is set out in Part III of the [Local Government Finance Act 1988 \(c.41\)](#). Property which is subject to non-domestic rating is valued every five years. A valuation is carried out by a valuation officer. He is appointed by the Commissioners of Inland Revenue, and he has a duty to compile and maintain an accurate list of property subject to non-domestic rating (a 'rating list'). There is a local rating list for the area of each local authority to which non-domestic rates are payable. Certain special classes of property are entered on the central rating list for England or the central rating list for Wales, as appropriate. These classes of property consist for the most part of property of the former nationalised industries which extends beyond the boundaries of a single local authority. New rating lists come into force at five year intervals.
6. A rateable value, entered in the appropriate rating list in respect of each property, when multiplied by the national non-domestic rating multiplier specified annually by the Secretary of State, determines the amount of rates payable in respect of that property for each of the five years during which each rating list is in force.

7. The way in which the rateable value is determined is for present purposes virtually the same as that applicable under the previous legislation, the [General Rate Act 1967 \(c. 9\)](#). That Act consolidated legislation dating from 1925 and earlier. Methods and principles established in a considerable body of case law decided in relation to pre-1988 legislation are still considered to be relevant to the estimation of the rateable value for the purposes of the present system of non-domestic rating, though domestic property is no longer taxed in the same way.

The hypothetical tenancy

8. The rateable value is a notional annual rental value attributed to a property on the basis of certain assumptions. The valuer is required to determine the annual amount of rent which, if the property were vacant and available for letting on the open market, it would attract for a tenancy from year to year. The tenancy is a notional, or hypothetical one, not based on the actual characteristics of the landlord or the tenant (if there are a landlord and a tenant) or the terms of any tenancy to which the property may be subject.
9. The physical characteristics of the property, and its surroundings, which are taken into account in the valuation are, for the most part, those which are assumed to be attributable to the property on the day on which the list comes into force or, if there is a subsequent change of circumstances, on a day determined in accordance with regulations made by the Secretary of State.
10. The rental levels to be considered for the purposes of estimating rateable values, whether on the list first coming into force or in relation to its subsequent alteration, are however those applicable by reference to a day falling two years before the day on which the lists in question come into force (the 'antecedent valuation date'). Thus unless there is a subsequent change of circumstances, the value attributed to a property on the day on which a list comes into force will apply for the calculation of each year's rates bill for that property until the next list comes into force five years later.

Responsibility for repair under the hypothetical tenancy

11. Under the legislation in force until 1990, there was a distinction drawn between industrial and other property for the purposes of valuation. For non-industrial property, valuation was on the assumption that the hypothetical landlord rather than the tenant was responsible for keeping rateable property in repair.
12. Under the pre-1990 case law, there was an established exception to the assumption that the physical characteristics of a property were to be taken as at the time applicable to the valuation. This exception was that, whatever the actual state of repair of the property, the landlord under the hypothetical tenancy was to be deemed to have put the property in a state of reasonable repair. Thus general disrepair actually in evidence on the property was disregarded. However, although the exception was widely believed to be equally applicable whether the landlord or the tenant was assumed to be responsible for repair under the hypothetical tenancy, the cases which established this were, like the leading case of *Wexler v Playle (VO)*, [1960] 1 Q.B. 217, decided in relation to non-industrial property.
13. Under the present legislation, which came into force on 1st April 1990, it is assumed for the purposes of estimating the rent that the hypothetical tenant under the assumed tenancy would be responsible for meeting the cost of repairs, and of any other outgoings required to maintain the property (paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988). It is normal practice for leases of non-domestic property to impose responsibility for repairs on the tenant. Such leases provide the evidence of market rentals which are used for estimating rateable values. When the present legislation was enacted, it was widely assumed that the previous case law in relation to the assumed state of the property would continue to be applicable. The valuation provisions of the Local Government Finance Act 1988 were constructed on this assumption.

14. In the case of *Benjamin v Anston Properties Ltd.* mentioned in paragraph 4 above, it was however held by the Lands Tribunal that because the exception mentioned in paragraph 12 above depended on an assumption that it was the hypothetical landlord who had put the property into repair, it was only applicable in cases where the hypothetical landlord was deemed to be responsible for such repair. Thus though the exception had been understood to apply in relation to non-industrial property under the legislation applicable before 1990, it can on the basis of the decision have no application under the present legislation as all rateable property falls to be valued on the basis that the tenant is responsible for repair.
15. The rating lists compiled in 1990 and 1995 have, however, as under the system that applied before 1990, been compiled on the assumption that the exception applied.

THE ACT

16. The Act secures that the assumptions on which the 1990 and 1995 rating lists were compiled will continue to apply; and provides for subsequent rating lists to be compiled on the same basis.

Assumptions as to the hypothetical tenancy

17. The legislation amended is in paragraph 2 of Schedule 6 to the Local Government Finance Act 1988 ('the 1988 Act'). As amended by [section 1\(2\)](#), sub-paragraph (1) of paragraph 2 of Schedule 6 reads -

“The rateable value of a non-domestic hereditament none of which consists of domestic property and none of which is exempt from local non-domestic rating shall be taken to be an amount equal to the rent at which it is estimated the hereditament might reasonably be expected to let from year to year on these three assumptions -

- (a) **the first assumption is that the tenancy begins on the day by reference to which the determination is to be made;**
 - (b) **the second assumption is that immediately before the tenancy begins the hereditament is in a state of reasonable repair, but excluding from this assumption any repairs which a reasonable landlord would consider uneconomic;**
 - (c) **the third assumption is that the tenant undertakes to pay all usual tenant's rates and taxes and to bear the cost of the repairs and insurance and the other expenses (if any) necessary to maintain the hereditament in a state to command the rent mentioned above.**
18. The following concepts used in the provision are defined elsewhere:
 - *A hereditament* is defined by section 64(1) of the Local Government Finance Act 1988 by reference to the definition which applied for the purposes of rating under the General Rate Act 1967. Section 115(1) of that Act defined 'hereditament' as 'property which is or may become liable to a rate, being a unit of such property which is, or would fall to be, shown as a separate item in a valuation list'.
 - The *day by reference to which the determination is to be made* is in effect a day specified by the Secretary of State by order under paragraph 2(3)(b) of Schedule 6 to the 1988 Act. In each case the Secretary of State has specified a day two years before the day on which a list comes into force. This enables the substantial work involved in preparing new rating lists to be undertaken on the basis of known, rather than anticipated, market values. (For example, in relation to the list which is to come into force on 1st April 2000, rateable values will be determined by reference to market rents at 1st April 1998.)
 19. The significant change made to the provision is the introduction of the assumptions (a) and (b).

20. The first assumption, as to the day on which the hypothetical tenancy begins, makes explicit the present practice, which is to treat it as beginning on the day by reference to which the valuation is to be made. This follows from the notion of the hypothetical tenancy itself, and the assumption that the property is to be valued as if vacant and to let.
21. The first assumption paves the way for the second assumption, that immediately before the tenancy begins (subject to one exception) the hereditament is assumed to be in a state of reasonable repair. This assumption will in practice be applied in the particular context of the property being valued. What is reasonable repair may vary according to the age and type of the property, the locality in which it is situated, and all the surrounding circumstances.
22. This provision as to the assumed state of reasonable repair makes an exception in a case where a reasonable landlord would consider repair to be uneconomic. This gives statutory expression to the existing case law. In the case of *Saunders v. Maltby (VO)* [1976] R.A. 109 it was established by the Court of Appeal that whether or not the state of disrepair of premises was to be taken into account in estimating rateable value depended on whether on economic grounds a reasonable landlord under the hypothetical tenancy could be expected to remedy any existing disrepair. If the expenditure required to remedy disrepair was so great that it did not make economic sense to do so, the rateable value would be estimated on the basis that the landlord would instead accept a lower rent for the premises.
23. The third assumption, as to the tenant being responsible for repairs, and the costs and expenses of maintenance, reproduces with necessary re-wording the existing provision of the 1988 Act as to the assumption that the tenant under the hypothetical tenancy is responsible, during the currency of the tenancy, for any rates and taxes applicable to a tenant, for repairs and insurance, and for any other expenses necessary to maintain the hereditament in a state to command the estimated rent.
24. [Section 1\(3\)](#) ensures that the assumption as to repair at the outset of the hypothetical tenancy applies throughout the life of the list. Although market rentals for the purpose of estimating rateable value are taken as at the antecedent valuation date, two years before the date at which the list comes into force, and remain applicable as at that date if the list is subsequently altered, certain other matters are taken as at other times. Matters affecting the physical state of the property or its locality, for example, are taken (under paragraph 2(7) of Schedule 6 to the 1988 Act) as they are assumed to be at the date on which the list comes into force, where the value is being determined in compiling a new list. Where the value is being determined in order to alter a list because circumstances have changed (for example, because the property has been extended, or sub-divided) the physical characteristics of the property and its surroundings are taken as they are assumed to be at an appropriate date, ascertained by reference to the circumstances in question, according to rules set out in regulations made by the Secretary of State. (The currently applicable regulations are the [Non-Domestic Rating \(Material Day for List Alterations\) Regulations 1992 \(S.I. 1992/556\)](#).)
25. The state of repair of property being a matter relating to its physical condition, the amendment in section 1(3) ensures that notwithstanding the reference to a later date in relation to other physical circumstances, the assumption in section 1(2)(b) will apply when the property is valued for the list as it comes into force and also whenever it is re-valued for the purpose of altering the list at a later date.

Prospective and retrospective effect

26. [Section 2\(1\)](#) secures the application of the assumptions contained in section 1(2) in relation to the rating lists which will come into force on 1st April 2000, and subsequent lists.
27. [Section 2\(2\)](#) applies the amended provision retrospectively in relation to the rating lists which came into force on 1st April 1990 and 1st April 1995. Therefore alteration of

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those lists will be made in the light of the amendments effected by section 1(2). Both lists were compiled on the basis that the assumption that premises were in reasonable repair was the applicable law, subject to the exception for uneconomic repairs.

Savings from retrospective effect

28. [Section 2\(3\)](#) creates an exception to the retrospective effect of section 2(2) in respect of cases where proposals by ratepayers and others to alter existing rating lists were made to the valuation officer before 12th March 1998, the day after that on which the Lands Tribunal decision in *Benjamin (VO) v. Anston Properties Ltd.* was published. The ratepayers protected by this saving include the ratepayer in that case.
29. In such a case, unless the proposal had been withdrawn or finally disposed of (whether by alteration of the list, or decision on appeal) before 11th March 1998, the proposal is to be dealt with on the basis that the rateable value of the hereditament in question may be estimated on the basis of the actual state of repair of the hereditament. Proposals made on or after 12th March are (unless they relate to a hereditament which is the subject of an earlier proposal which is still unsettled at that date) to be dealt with according to the assumption that the hereditament is in a state of reasonable repair. The current rules about the circumstances in which proposals for alterations may be made are contained in the [Non-Domestic Rating \(Alteration of Lists and Appeals\) Regulations 1993, S.I. 1993/291](#), as amended. The 1993 Regulations came into force on 1st April 1993, and superseded, with savings, the [Non-Domestic Rating \(Alteration of Lists and Appeals\) Regulations 1990, S.I. 1990/582](#), as amended.

COMMENCEMENT

30. The Act came into force on 26 May 1999, the date of Royal Assent, and has retrospective effect as indicated above.

ANNEX: EXTRACT FROM PARAGRAPH 2 OF SCHEDULE 6 TO THE LOCAL GOVERNMENT FINANCE ACT 1988 SHOWING THE AMENDMENTS EFFECTED BY THE ACT (PRINTED IN BOLD)

- “2(1) The rateable value of a non-domestic hereditament none of which consists of domestic property and none of which is exempt from local non-domestic rating shall be taken to be an amount equal to the rent at which it is estimated the hereditament might reasonably be expected to let from year to year on these three assumptions -
- (a) **the first assumption is that the tenancy begins on the day by reference to which the determination is to be made;**
 - (b) **the second assumption is that immediately before the tenancy begins the hereditament is in a state of reasonable repair, but excluding from this assumption any repairs which a reasonable landlord would consider uneconomic;**
 - (c) **the third assumption is that the tenant undertakes to pay all usual tenant’s rates and taxes and to bear the cost of the repairs and insurance and the other expenses (if any) necessary to maintain the hereditament in a state to command the rent mentioned above.**
- (1A)
- (1B)
- (2)
- (3) Where the rateable value is determined for the purposes of compiling a list the day by reference to which the determination is to be made is—
- (a) the day on which the list must be compiled, or
 - (b) such day preceding that day as may be specified by the Secretary of State by order in relation to the list.
- (4) Where the rateable value is determined with a view to making an alteration to a list which has been compiled (whether or not it is still in force) the day by reference to which the determination is to be made is—
- (a) the day on which the list came into force, or
 - (b) if a day was specified under sub-paragraph (3)(b) above in relation to the list, the day so specified.
- (5) Where the rateable value is determined for the purposes of compiling a list by reference to a day specified under sub-paragraph (3)(b) above, the matters mentioned in sub-paragraph (7) below shall be taken to be as they are assumed to be on the day on which the list must be compiled.
- (6) Where the rateable value is determined with a view to making an alteration to a list which has been compiled (whether or not it is still in force) the matters mentioned in sub-paragraph (7) below shall be taken to be as they are assumed to be on the material day.
- (6A) For the purposes of sub-paragraph (6) above the material day shall be such day as is determined in accordance with rules prescribed by regulations made by the Secretary of State.
- (7) The matters are—
- (a) matters affecting the physical state or physical enjoyment of the hereditament,
 - (b) the mode or category of occupation of the hereditament,
 - (c) the quantity of minerals or other substances in or extracted from the hereditament,
 - (cc) the quantity of refuse or waste material which is brought onto and per -manently deposited on the hereditament,

- (d) matters affecting the physical state of the locality in which the hereditament is situated or which, though not affecting the physical state of the locality, are nonetheless physically manifest there, and
 - (e) the use or occupation of other premises situated in the locality of the hereditament.
- (8) The Secretary of State may make regulations providing that, in applying the preceding provisions of this paragraph in relation to a hereditament of a prescribed class, prescribed assumptions (as to the hereditament or other -wise) are to be made.
- (8A) For the purposes of this paragraph the state of repair of a hereditament at any time relevant for the purposes of a list shall be assumed to be the state of repair in which, under sub-paragraph (1) above, it is assumed to be immediately before the assumed tenancy begins.**
- (9)
- (10) If a day is specified under sub-paragraph (3)(b) above the same specification must be made in relation to all lists to be compiled on the same day.
- (11) For the purposes of sub-paragraph (8) above a class may be prescribed by reference to such factors as the Secretary of State sees fit.
- (12)
- (13)

HANSARD REFERENCES

The following table sets out the dates and Hansard references for each stage of this Act's passage through Parliament.

<i>Stage</i>	<i>Date</i>	<i>Hansard reference</i>
House of Commons		
Introduction	26 November 1998	Vol 321 Col 321
Second Reading	11 January 1999	Vol 323 Cols 58-75
Committee	19 January 1999	Hansard Standing Committee A
Report and Third Reading	24 February 1999	Vol 326 Cols 497-511
House of Lords		
Introduction	25 February 1999	Vol 597 Col 1293
Second Readings	11 March 1999	Vol 598 Cols 444-455
Committee	5 May 1999	Vol 600 Col CWH1
Report	20 May 1999	Vol 601 Col 408-415
Third reading	24 May 1999	Vol 601 Col 639
Royal assent - 26 May 1999		House of Lords Hansard Vol 601 Col 915
		House of Commons Hansard Vol 332 Col 354