

**EXPLANATORY MEMORANDUM TO
THE NON-DOMESTIC RATING (CHARGEABLE AMOUNTS) (AMENDMENT)
(ENGLAND) REGULATIONS 2006**

2006 No. 3394

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

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

2. **Description**

- 2.1 These Regulations amend the Non-Domestic Rating (Chargeable Amounts) (England) Regulations 2004 (S.I. 2004/3387) (“the 2004 Regulations”) to widen the definition of a “defined hereditament”. If a defined hereditament meets the criteria specified in the 2004 Regulations, its rates liability will be calculated in accordance with the arrangements in those Regulations to soften the impact of the 2005 revaluation of non-domestic properties on rates bills. The new amended definition will bring within the category of defined hereditament those hereditaments which were valued at zero on 31st March 2005.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 These Regulations are subject to the affirmative resolution procedure. They are being made in response to the judgment of Mr Justice Collins in the case of R (on the application of the British Waterways Board) v The First Secretary of State¹. In that case, the exclusion from the definition of a defined hereditament at regulation 3 of the 2004 Regulations of hereditaments shown in a ratings list with a rateable value of zero for 31st March 2005 was declared unlawful.

- 3.2 These Regulations address this by amending the provision which excludes hereditaments previously valued at zero from the definition of defined hereditament.

4. **Legislative Background**

- 4.1 The 2004 Regulations were made under section 57A of the Local Government Finance Act 1988 (c.41) (“the 1988 Act”), which requires the Secretary of State to make regulations in relation to England in respect of the five year period commencing on 1st April 2005 when all non-domestic properties were revalued for the purposes of rating. The purpose of such regulations is to make provision for a transitional relief scheme which softens the impact on ratepayers of an increased rates bill as a result of revaluation. This is provided

¹ [2006] EWHC 1019 (Admin)

for in the 2004 Regulations by phasing in increases over a period of up to four financial years.

- 4.2 To qualify for transitional rate relief, a hereditament must be a “defined hereditament” for the purposes of the 2004 Regulations. If it is not, the provisions of the 2004 Regulations will not apply and the new rates liability will be payable immediately in accordance with the 1988 Act. Whether a defined hereditament actually receives transitional rate relief is determined in accordance with the 2004 Regulations.
- 4.3 Regulation 3(2) of the 2004 Regulations provides that a hereditament which had a rateable value of zero on 31st March 2005 (the last day before the 2005 revaluation) is not a defined hereditament. The effect of this is to exclude that category of hereditaments from the 2005 transition scheme altogether.
- 4.5 These amending Regulations will remove the requirement of a rateable value of greater than zero on 31st March 2005.

5. Extent

- 5.1 This instrument applies to England.

6. European Convention on Human Rights

- 6.1 The Minister of State for Local Government and Community Cohesion has made the following statement regarding Human Rights:

In my view the provisions of the Non-Domestic Rating (Chargeable Amounts) (Amendment) (England) Regulations 2006 are compatible with the Convention rights.

7. Policy background

- 7.1 Properties subject to non-domestic rates are revalued every five years. As this can result in large increases in rates bills for some ratepayers, there are transitional arrangements to phase in the change in liability. The transition scheme for the 2005 revaluation was brought into effect by the 2004 Regulations which were made on 21st December 2004 and came into force on 22nd December 2004.
- 7.2 The transition scheme works by limiting the amount by which rate bills can increase or decrease each year compared with liability for 2004/05. The scheme is self-financing which means that the cost of capping increases to those rate bills which, without a transition scheme, would increase significantly is funded by limiting reductions in those rate bills which would decrease significantly. The upward and downward limits on changes in rates bills depend on the size of the business and increase each year so that by 2009/10, all businesses will pay their normal bill.
- 7.3 Hereditaments with a value of zero on 31st March 2005 were excluded from the transition scheme. The scheme, like its predecessors, was designed so that a hereditament’s transitional path would be calculated according to its pre-

reevaluation liability. On that basis, the liability for a hereditament that had previously had a rateable value of zero would be £0 (as liability is the product of the rateable value and the business rates multiplier). This liability would continue for each of the four years of the scheme as any percentage increase applied to £0 would continue to give a liability of £0. Therefore, the ratepayer would start to pay rates for a hereditament previously rated at zero only in 2009/10. Using pre-reevaluation liability as the starting point, the Government did not consider that it would be possible to create within the overall transition scheme an alternative mechanism for determining the transitional path of hereditaments that were previously rated at zero that was clearly fair to all other ratepayers. In this context, the Government took the view that it was reasonable to exclude those hereditaments from the transition scheme, thus treating them in the same way as new hereditaments which also appeared on a ratings list in 2005 with a positive rateable value for the first time.

- 7.4 Previous transitional relief schemes lasted for the full five years of a rating list. Therefore, some ratepayers were still not paying their full liability following the 2000 reevaluation at the time of the 2005 reevaluation. Mr Justice Collins accepted that for hereditaments which had been rated at zero prior to reevaluation and given a positive rateable value at reevaluation, the operation of the previous transitional arrangements resulted in a virtual exemption from rates and that this was unsatisfactory. However, in his judgment, Mr Justice Collins did not accept that hereditaments previously rated at zero were analogous to those appearing on a ratings list for the first time in 2005. He considered that a previous value of zero was as much a rateable value as any other and any increase was a reevaluation which could result in a sudden and dramatic rise in liability for the ratepayer. As such, he did not accept that the solution to the problem of a virtual exemption from rates was to exclude previously zero rated properties from the 2005 transition scheme and so require the ratepayer to immediately meet their new liability in full.
- 7.5 The Government does not believe that it would be appropriate or to the benefit of the majority of ratepayers to revisit the operation of the transitional relief scheme generally mid-way through its four year life. It could not be guaranteed that new arrangements would not result in increased liability for some ratepayers and operate fairly across the board.
- 7.6 Therefore, these amending Regulations will bring hereditaments valued at zero on 31st March 2005 into the transition scheme in line with the Mr Justice Collins' judgment. The scheme will operate in the same way for those hereditaments as for all other defined hereditaments and no other aspect of the transition scheme is affected by these Regulations.

8. Impact

- 8.1 A Regulatory Impact Assessment is attached to this memorandum.
- 8.2 The impact on the public sector is described in the Regulatory impact Assessment.

9. Contact

Gill Rendall at the Department for Communities and Local Government Tel: 020 7944 2524 or e-mail: gill.rendall@communities.gsi.gov.uk can answer any queries regarding the instrument.

19th July 2006