

EXPLANATORY MEMORANDUM TO
THE NON-DOMESTIC RATING (IMPROVEMENT RELIEF) (ENGLAND)
REGULATIONS 2023

2023 No. 1357

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 His Majesty.

2. Purpose of the instrument

2.1 Business rates are a recurrent tax paid on most non-domestic properties. The Non-Domestic Rating Act 2023 provided for a new mandatory business rate relief of one year for qualifying improvements to properties to take effect from 1 April 2024. This instrument provides, for the purposes of that relief, the meaning of qualifying improvement works, other conditions that must be met for the relief to apply and details about how the relief will operate. It also makes a consequential amendment to ensure that improvement relief is available to ratepayers currently receiving transitional relief from the 2023 revaluation.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

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

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) 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 Sections 1 and 3 of the Non-Domestic Rating Act 2023 inserted new Schedules 4ZA and 5A into the Local Government Finance Act 1988 (“the 1988 Act”) concerning the chargeable amount for non-domestic rates for occupied hereditaments¹ on local and central rating lists respectively². The new Schedules take effect from the financial

¹ A hereditament is the term used for a unit of property capable of being assessed for business rates.

² Local lists are held by local authorities and contain hereditaments in their areas. The central list is held of the Secretary of State and is typically used to hold hereditaments which cross several local authority areas such as utility networks.

year 2024/25 and replace the existing provisions for chargeable amounts in section 43 and 54.

- 6.2 Schedules 4ZA and 5A include a new relief for improvement works not currently in section 43 or 54. Paragraph 10(2)(a) of Schedule 4ZA and paragraph 6(2)(a) of Schedule 5A provides for a discount (G) to be applied to the rateable value of a hereditament where the conditions for improvement relief have been met. Paragraph 10(7) of Schedule 4ZA and paragraph 6(6) of Schedule 5A allow for the value of G to be prescribed or calculated in accordance with provisions prescribed in regulations made by the Secretary of State. Paragraph 10(8) of Schedule 4ZA and paragraph 6(7) of Schedule 5A allow for the provision of certificates from the Valuation Officer for the purposes of determining the value of G.
- 6.3 The conditions to be met for improvement relief to apply are in paragraph 3 of Schedule 4ZA and paragraph 3 of Schedule 5A and are that the improvements were completed within the last year and that the relief must end before 1 April 2029 (unless that date is extended by regulations). Both of those provisions also allow for the meaning of qualifying improvement works to be defined in regulations and for the Secretary of State to prescribe further conditions. This instrument provides for that definition and further conditions.
- 6.4 Section 57A of the 1988 Act requires the Secretary of State to make Regulations to make transitional provision in relation to the period of three years following a business rates revaluation. Through these Regulations the Secretary of State may set aside the normal rules for determining the chargeable amount, such as those in Schedules 4ZA and 5A, and instead prescribe rules for finding a different the chargeable amount. The Non-Domestic Rating (Chargeable Amounts) (England) Regulations 2022, made under the powers in section 57A, introduce a transitional relief scheme for those ratepayers who faced large increases in their bills at the 2023 revaluation. The consequential amendment in regulation 8 will ensure that those ratepayers receiving transitional relief can benefit from improvement relief. The amendment will ensure that the calculations for transitional relief use the value of A (as defined in Schedule 4ZA or 5A) which reflects the improvement relief discount (G) to the rateable value.

7. Policy background

What is being done and why?

- 7.1 In its Final Report of the Business Rates Review published in October 2021³, the government announced a new improvement relief to support investment in property improvements. The Final Report explained that the relief would provide 12 months relief from higher bills for occupiers where eligible improvements to an existing property increase the rateable value.
- 7.2 Further details of improvement relief were provided in November 2021 in a technical consultation⁴. As explained in the technical consultation, the object of the relief is to help occupiers making improvements in support of their existing business premises and is not intended to subsidise general commercial property development such as

³ <https://www.gov.uk/government/consultations/hm-treasury-fundamental-review-of-business-rates-call-for-evidence>.

⁴ <https://www.gov.uk/government/consultations/business-rates-review-technical-consultation>. See Chapter 4 of the consultation document.

new construction or refurbishment. Therefore, the relief is targeted on existing businesses that invest in improvements which result in a positive change in the rateable value and remain in occupation of their property. Accordingly, the instrument provides that the same person must have been the occupier in relation to that hereditament on each day since when the works were commenced (regulation 3(1)(c)).

7.3 The instrument defines qualifying improvement works at regulation 4. Having regard to the objectives for the relief, the technical consultation provided examples of the type of works which may meet the definition of qualifying works (assuming all remain in a rating list and under the same occupation):

- a business adds insulation or new lining to a previously uninsulated old industrial property resulting in an increase in value of the property,
- a business makes a physical extension to their property, like an extension to the rear,
- a shop removes a structural wall within its front part. This could increase the rateable value as the areas previously behind the wall are now able to be used for retail purposes rather than storage, or
- a business adds a structural mezzanine retail area at their retail warehouse.

7.4 As explained in the technical consultation, any improvements which result in no overall change in rateable value or a reduction due to value-suppressing activity will not give rise to any relief. Therefore, regulation 4 defines qualifying works as including associated works which reduce the rateable value of the hereditament. Such associated works could, for example, include:

- the demolition of a building to make way for a new building and/or the demolition of a building which is no longer required as a result of the new building,
- the removal of plant and machinery which has been functionally replaced by new plant and machinery. Such plant and machinery may not necessarily be the in the same physical location provided the function of the old plant and machinery has been replaced by the function of the new plant and machinery, and
- reductions in the value or utility of an area of the hereditament incurred as a result of the improvement works. For example, some of the space under a new mezzanine may as a result of the works have been changed from office or retail space to storage space reducing its value.

7.5 The value of the improvement relief is based upon the change in rateable value attributable to the qualifying improvement works (regulation 5(1)) which includes any value suppressing activity associated with the works. The change in rateable value attributable to the qualifying improvement works may in practice occur over more than one alteration to the rating list. This value is certified by the Valuation Officer and provided to the Billing Authority, or the Secretary of State, to calculate the relief with a copy to the ratepayer.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 No consolidation is planned.

10. Consultation outcome

10.1 The Regulations were published in draft for consultation on 5 June 2023 for 12 weeks and a summary of responses published at the time of the laying of this instrument⁵.

There were 24 responses, half of which were from local government and the remainder from ratepayers, trade and professional bodies.

10.2 13 respondents agreed that the draft Regulations delivered the government's policy objective with the others making suggestions for improvements which were considered by the government prior to making the Regulations. The key points raised were that:

- regulation 4(1) should be amended to make clear that the addition of entire buildings to a large hereditament could be a qualifying improvement. The government agrees and has amended the regulations to accommodate such a situation,
- the Regulations left room for uncertainty over when works are completed (which determines when the relief commences). The government considers the meaning of completed is already defined in rating in caselaw and it would not be desirable to define it separately for the purposes of these Regulations, and
- the issuing of certificates was left to individual Valuation Officers without set timescales. The duty to maintain rating lists sits with individual Valuation Officers and, therefore, is replicated in these regulations for certificates. And the government does not consider a statutory time limit would be appropriate for improvement relief certificates as each case will differ in complexity. However, the Valuation Office Agency (VOA) will issue guidance to its network and Valuation Officers ensuring certificates are issued in a timely and consistent manner.

10.3 A full analysis of the responses is available in the Summary of Responses.

11. Guidance

11.1 The VOA is already working with local government on the systems and processes necessary to deliver improvement relief and will prepare guidance to local authorities and ratepayers on the issuing of certificates. The government will update the business rates pages of gov.uk⁶ ahead of the relief taking effect on 1 April 2024.

12. Impact

12.1 The impact on business, charities or voluntary bodies is to provide rate relief for the eligible ratepayers with qualifying improvements to their property.

12.2 There is no, or no significant, impact on the public sector. The government will compensate local government for the revenue forgone as a result of the improvement relief scheme.

⁵ <https://www.gov.uk/government/consultations/business-rates-improvement-relief-draft-regulations>.

⁶ <https://www.gov.uk/apply-for-business-rate-relief>.

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 provision⁷.

13. Regulating small business

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

13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to provide relief for eligible qualifying improvements. Also, the scheme has been designed to ensure relief is applied automatically and that all businesses, including small businesses, do not have to apply for relief.

14. Monitoring & review

14.1 The government continues to keep the administration of business rates under review⁸.

15. Contact

15.1 Nick Cooper at the Department of Levelling Up, Housing and Communities Telephone: 0303 444 3610 or email: nick.cooper@levellingup.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 Simon Hoare at the Department for Levelling Up Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.

⁷ Section 22(4)(a) of the Small Business, Enterprise, and Employment Act 2015.

⁸ 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.