

Explanatory Memorandum to the Non-Domestic Rating (Small Business Relief) (Wales) Order 2017

This Explanatory Memorandum has been prepared by Local Government Strategic Finance Division and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Cabinet Secretary's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Non-Domestic Rating (Small Business Relief) (Wales) Order 2017.

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Cabinet Secretary for Finance
13 December 2017

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PART 1: EXPLANATORY MEMORANDUM

1. Description

- 1.1. The Non-Domestic Rating (Small Business Relief) (Wales) Order 2015 (the 2015 Order) provided for a rates relief scheme for small businesses in Wales. The 2015 Order replaced the previous small business rates relief scheme in Wales (which had been in operation since 2008), and provided for an enhanced temporary element to the scheme. There has been an enhanced temporary element of the small business rates relief schemes since 2010. This has been extended on an annual basis.
- 1.2. The 2015 Order did not change the previously existing levels of relief available but restructured and simplified the provisions to make them clearer to understand and apply. The scheme was further extended by the Non-Domestic Rating (Small Business Relief) (Wales) (Amendment) Order 2016 (the 2016 Order) to continue the arrangements for enhanced Small Business Rates Relief (SBRR) by extending the temporary element of the scheme in Wales for 2016-17.
- 1.3. The Non-Domestic Rating (Small Business Relief) (Wales) (Amendment) Order 2017 further amended the 2015 Order to extend the application of the temporary element of the scheme to 31 March 2018. The Non-Domestic Rating (Small Business Relief) (Wales) Order 2017 (the 2017 Order) will introduce a new permanent rates relief scheme which will commence on 1 April 2018.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

- 2.1. None.

3. Legislative background

- 3.1. The powers enabling the Welsh Ministers to make a Small Business Rates Relief Scheme are contained in sections 43(4B)(b), 44(9)(b), 143(1) and 146(6) of the Local Government Finance Act 1988.
- 3.2. The functions of the Secretary of State, so far as they are exercisable in relation to Wales, transferred to the National Assembly for Wales by virtue of the National Assembly for Wales (Transfer of Functions) Order 1999 (SI 1996/672, article 2, Schedule 1). These functions were subsequently vested in the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006.
- 3.3. A small business rates relief scheme was first introduced in Wales via the Non-Domestic Rating (Small Business Relief) (Wales) Order 2008 (SI 2008/2770 (W. 246)) (the 2008 Order). This made provision for the levels of relief available to small businesses in Wales. The scheme was amended by the Non-Domestic Rating (Small Business Relief) (Wales) (Amendment) (No 2) Order 2010 (SI 2010/2223 (W. 195)) to make provision for an increase

in the level of relief available to businesses with premises with a rateable value (RV) of up to £12,000 on a temporary basis. This temporary element of the scheme allowed for full rates relief in respect of business premises with a RV of up to £6,000, and for tapered relief in respect of business premises with a RV between £6,001 and £12,000. Whilst this increase in the provision of relief was temporary, and initially applied from 1 October 2010 to 30 September 2011, its application was extended annually.

- 3.4. The 2015 Order restructured and simplified the small business rates relief scheme provisions, and applied temporary relief provisions for a further year.
- 3.5. The temporary relief provisions in the 2015 Order were extended into 2016-17 and 2017-18, but they come to an end on 31 March 2018.
- 3.6. The 2017 Order will introduce the Welsh Government's new permanent small business rates relief scheme from 1 April 2018.

4. **Purpose and intended effect of the legislation**

- 4.1. The non-domestic rating system in Wales applies to all forms of non-domestic property including property owned or occupied by public sector organisations, not-for profit organisations and charities. However, the current Small Business Rates Relief Scheme, including the temporary element of the scheme, applies only to particular categories of rateable property which are occupied for business purposes.
- 4.2. The provision of a rates relief scheme for small businesses in Wales is part of the Welsh Government's policy approach to supporting smaller businesses and to provide assistance to certain businesses that are important for local communities.
- 4.3. The 2015 Order revoked and re-enacted, with amendments, the 2008 Order, to provide for the continuation of a small business rates relief scheme and included an enhanced temporary element of relief to the scheme. The enhanced temporary element of relief will come to an end on 31 March 2018.
- 4.4. The 2017 Order has effect from 1 April 2018. This Order includes the following provisions.
 - **Part A** of the Order contains general provisions including the definition of hereditaments which are excepted from receiving relief under the scheme. Article 3 makes provision about the application of the Order. It provides that where a hereditament qualifies for relief because it meets the conditions in more than one of articles 7, 8 or 9, then the article which will provide the greatest amount of relief is to be applied to it.

Under the scheme, in accordance with article 12, where a ratepayer is liable for more than two hereditaments on a single local non-domestic rating list ("local list"), and those hereditaments meet only the rateable value conditions, the ratepayer will only receive relief for a maximum of two such hereditaments. In order to assist billing authorities in administering this

restriction, article 4 requires relevant ratepayers to provide notice of such hereditaments to the appropriate billing authority.

Article 5 prescribes a maximum rateable value of £20,500 for hereditaments which are eligible for relief under the scheme.

- **Part B** of the Order makes provision about the relief scheme, with articles 7 to 9 prescribing the conditions of eligibility.

Articles 10 to 12 prescribe the amount of E for the purposes of the formula within section 43(4A)(b) of the 1988 Act. That formula provides the mechanism for calculating the amount of non-domestic rates payable in respect of hereditaments qualifying for relief under the scheme.

In accordance with article 11, the rate of relief that hereditaments will receive is as set out in the illustrative table below.

Type of condition	Rateable value (£)	Relief (%)
Rateable Value	0 to 6,000	100
Rateable Value	6,001 to 12,000	Tapered from 100 to 0
Childcare	0 to 6,000	100
Childcare	6,001 to 20,500	Tapered from 100 to 0
Post Office	0 to 9,000	100
Post Office	9,001 to 12,000	50

In accordance with article 12 however, a ratepayer will only be able to receive relief for up to two hereditaments which meet only the rateable value conditions, and which appear on any single local list (referred to in the article as qualifying hereditaments). In accordance with article 12(1)(b), no account is taken of any hereditaments a ratepayer is liable for, which satisfy the childcare conditions or post office conditions.

In order to ensure that a ratepayer continues to receive the maximum relief possible under the scheme, even where the provisions of article 12 apply, article 12(2) provides that relief will be applied to the two relevant hereditaments with the highest “notional values”. The notional value of a hereditament is calculated in accordance with article 12(4) to (6). Article 12(3) prescribes that the amount of E for any further qualifying hereditaments will be 1 (which is equivalent to 0% relief).

- **Part C** of the Order provides for the information that must be included in the notices to be given to billing authorities, the time within which such notices are to be served and the method of service.

4.5. In order to qualify for relief under Part B of the 2017 Order, business premises must:

- (a) be fully occupied;

- (b) not be an excepted premises as defined by the 2017 Order (ie. those occupied by a council, a police and crime commissioner, or the Crown; those occupied by charities, registered clubs, or not-for-profit bodies whose main objectives are philanthropic, religious, concerned with education, social welfare, science, literature or the fine arts; beach huts; properties which are used exclusively for the display of advertisements, parking of motor vehicles, sewage works or electronic communications apparatus); and
- (c) have a rateable value of £12,000 or less, or £20,500 or less if they are registered childcare premises.

4.6. The means by which the reduction in rates is achieved is by altering the value of E in the legislative formula which applies to the calculation of the daily rate payable. In general, E (a denominator) is 1. Thus, for example, changing E to 2 would result in the daily rate being halved; and changing E to 5,000,000 would result, in effect, in nothing being payable.

4.7. Relief will be awarded subject to hereditaments meeting the rateable value conditions; childcare conditions or post office conditions.

5. Consultation

5.1. I made a commitment to introduce a permanent small business rates relief scheme for Wales from 1 April 2018. The intention is to provide certainty and security for small businesses and deliver a tax cut to help them drive long-term economic growth for Wales.

5.2. Views were invited on proposals to introduce a new small business rates relief scheme as part of a 12-week consultation period which began on 21 July 2017 and ended on 13 October 2017. The consultation sought views on redirecting relief from certain businesses, such as national chains, which occupy multiple small premises across Wales, to support businesses which would benefit more. This would release funding to be reinvested in making the relief more generous for small businesses including local shops, cafes and restaurants which might only operate from one or two premises.

5.3. The consultation also considered how a new permanent scheme could be used to support wider Welsh Government objectives, with the option of providing additional relief to certain industries or sectors, such as childcare. The consultation also set out a series of longer term possibilities for further alignment between the considerable investment in small business rates relief and wider Welsh Government objectives.

5.4. Respondents were not asked for views on whether SBRR should be continued or discontinued, or whether some other form of support should be provided for small businesses in Wales.

5.5. The summary of consultation responses can be found at:
<https://consultations.gov.wales/consultations/delivering-tax-cut-small-businesses-new-small-business-rates-relief-scheme-wales>

Further engagement

- 5.6. During the consultation period, further stakeholder engagement was undertaken including meetings with representatives from local authorities and stakeholders. This engagement explored the practical implications of the proposals and specifically the financial, software, administrative and legislative considerations. Feedback from the engagement has been included as part of the consultation responses.

Summary of responses

- 5.7. In total, the consultation received 85 substantive responses from a range of stakeholders. Of the responses, 14 came from county councils and town and community councils and 22 were from business or professional representative bodies. There were multiple responses from particular sectors – energy, tourism, hospitality and childcare (23 in total). The remaining responses were from individual ratepayers and other organisations.
- 5.8. A significant majority of respondents welcomed the support SBRR provides. Key themes included the following.
- Supportive arguments for a pan-Wales or local authority based restriction based on the number of properties occupied or on an aggregate rateable value basis. Overall, more respondents were in favour of a local authority based approach.
 - A clear rationale before any additional exceptions were made was requested by respondents.
 - Respondents acknowledged that increasing thresholds would be significantly more expensive and might not be achievable within the current funding envelope.
 - Broad support for the removal of enhanced relief for retail properties, given that it would simplify the relief structure and remove a layer of administration that was unnecessary within a new ‘permanent’ scheme.
 - Support for the introduction of time-limited assistance for start-ups but respondents requested a separate consultation at the appropriate time setting out the reasons why the relief should be introduced and its financial structure.
- 5.9. Other points raised by respondents will be considered as part of the Welsh Government’s process of making non-domestic rates policy.
- 5.10. A published summary report of the consultation responses received can be found on the consultation page of the Welsh Government website at:

<https://consultations.gov.wales/consultations/delivering-tax-cut-small-businesses-new-small-business-rates-relief-scheme-wales>

6. Regulatory Impact Assessment

- 6.1. A Regulatory Impact Assessment has been conducted and is included in Part 2 of this document.

PART 2: REGULATORY IMPACT ASSESSMENT

This Regulatory Impact Assessment presents three options in relation to the design of a new permanent SBRR scheme. All costs and benefits quantified within this draft Regulatory Impact Assessment are based on information and data available to the Welsh Government leading up to publication.

Three options have been considered in the development of a new permanent SBRR scheme. The options considered were as follows.

- | | |
|----------|---|
| Option 1 | Do nothing – continue with the permanent aspects of the current scheme |
| Option 2 | Continue with the current scheme and make the 2017-18 temporary enhanced scheme permanent from 1 April 2018 |
| Option 3 | Implement a new permanent scheme – introduce new regulations |

Option 1: Do nothing

This option would involve no changes to the legislation and would result in the SBRR scheme reverting back to its original eligibility criteria. If no changes are made to the legislation, the Non-Domestic Rating (Small Business Relief) (Wales) Order 2015 (“the 2015 Order”) introduced in April 2015 will continue to apply but the Non-Domestic Rating (Small Business Relief) (Wales) (Amendment) Order 2017, which extended the application of the temporary enhanced element of the scheme, will cease to have effect from 31 March 2018.

As a consequence, the enhanced temporary element of the relief provided in previous years would be withdrawn and eligibility for the permanent relief would apply as follows.

Standard Relief	Rateable Values up to £2,400 – 50% relief Rateable Values up to £2,401 to £7,800 – 25% relief
Post Offices	Rateable Values up to £9,000 – 100% relief Rateable Values £9,001 to £12,000 – 50% relief
Childcare	Rateable Values £2,000 to £12,000 – 50% relief
Retail	Rateable Values £7,801 to £11,000 – 25% relief

Doing nothing would result in a number of small businesses which were previously eligible for relief becoming ineligible. As a consequence, many small businesses would face increases in their non-domestic rates bills. These are often small businesses which play a role in delivering economic growth and sustaining local communities.

Costs

Costs to Welsh Government

Reverting to the permanent element of the 2015 Order would reduce the costs of the scheme from £110m to £27m, resulting in a **reduction in relief provided by £83m**.

Table 1 illustrates the levels of relief set out in the April 2015 Order and the number of ratepayers who would benefit from the scheme, alongside the estimated cost of providing relief.

Table 1: The effect of reverting to the permanent element of relief only*

Eligibility for relief	Permanent element of relief – introduced from April 2015	Ratepayers eligible for relief	Relief provided (£m)
Standard relief	RV up to £2,400 – 50% relief	13,672	5.2
	RV £2,401 to £7,800 – 25% relief	36,420	21.2
Post Offices	RV up to £9,000 – 100% relief	228	0.5
	RV £9,001 to £12,000 – 50% relief	31	0.1
Childcare	RV £2,000 to £12,000 – 50% relief	171	0.3
Retail**	RV £7,801 to £11,000 – 25% relief	107	0.1

* Properties with a 2017 Rateable Value of zero have been excluded from the table.

** It is not possible to identify all retail premises with Rateable Values between £7,801 and £11,000 in the available data.

Costs to local authorities

There should be no additional costs to local authorities as a result of this option (any administrative changes should form part of the normal costs of maintaining the non-domestic rates system).

Costs to businesses

Doing nothing would result in a considerable drop in the level of support provided to small businesses in Wales. The reduction in relief available would result in increased bills for thousands of businesses in Wales. Small businesses would be required pay **£83m in additional non-domestic rates** as a result of this option.

Benefits

Reverting to the current permanent scheme would result in a substantial increase in the total amount of rates collected. This could be used to support Welsh Government policy objectives.

Disadvantages

By reverting to the permanent element of the scheme, the number of ratepayers entitled to relief would fall by approximately 20,000.

Option 1 Summary

Doing nothing would lead to a reduction in the support for small businesses and is not the preferred option.

Option 2: Continue with the current scheme, making the temporary enhanced element of the scheme permanent from 1 April 2018 by way of amending regulations

Costs

Costs to Welsh Government

Option 2 would result in a continuation of the current scheme and therefore there would be no additional costs to the Welsh Government associated with this option other than those due to normal inflationary patterns.

Costs to local authorities

There would be no additional costs to local authorities.

Costs to businesses

Option 2 would not alter the eligibility criteria for the Small Business Rates Relief scheme. There would be no associated additional costs to businesses.

Benefits

The scheme has been enhanced for several years, meaning that all the necessary functionality is in place. The current scheme is reasonably simple to understand by ratepayers and maintains the current levels of support for businesses.

Option 2 would not make changes to the current arrangements. Therefore, there are no additional financial benefits associated with Option 2.

Disadvantages

Option 2 would not result in the available resources being better targeted towards businesses which might benefit more from the support.

Option 2 Summary

Option 2 would maintain the current levels of support. However, it would not enable the scheme to be targeted to meet the needs of Wales and is not the preferred option.

Option 3: Implement a new permanent scheme, making new regulations

Option 3 introduces a new permanent scheme for Wales. The new scheme broadly maintains current levels of relief and makes a number of specific alterations. The new aspects of the scheme include the following:

- Providing enhanced relief for childcare providers

- Introducing a limit on the number of properties owned by a single business which are eligible for relief so that it is targeted at genuinely small businesses.
- Removing the marginal enhancement of relief for retail properties.

Costs

The changes are designed to target the available funding more effectively towards businesses which would benefit more and are to be delivered within the same overall funding provision.

Costs to Welsh Government

Option 3 does not result in additional costs to the Welsh Government.

Costs to local authorities

There are potentially minor administrative costs associated with identifying and maintaining records of businesses which occupy more than two properties in any one local authority. Local authorities will need to update their billing systems to reflect the criteria of the scheme. Authorities receive annual funding for the administration of the rates system.

Costs to businesses

The changes limit relief to a maximum of two properties per ratepayer in any single local authority area. As a result, some ratepayers will see a reduction in the overall level of relief they receive. The limit reduces the overall level of support for these businesses by an estimated £7m.

Removing the additional relief for retail properties will reduce the relief available for retail properties with rateable values between £10,500 and £11,000. This is estimated to affect approximately 100 ratepayers.

Benefits

The £7m released through placing a limit on the number of properties for which a business may receive relief will be recycled to support other businesses.

Childcare providers will benefit from enhanced support, receiving an estimated £0.4m of additional relief.

For 2018-19, the remaining funding will be used to extend the temporary relief available for businesses on the high street, for certain renewable energy schemes, and to enable local authorities to provide additional discretionary relief. The scheme will continue to be developed during 2018-19 with further changes being incorporated into the permanent scheme.

Option 3 Summary

Option 3 makes small business rates relief a permanent scheme which maintains support for most businesses which currently receive relief and targets enhanced support towards businesses which contribute to the delivery of wider policy objectives.

Option 3 is the preferred option.

Analysis of other effects and impacts

Promoting Economic Opportunity for All (Tackling Poverty)

Introducing a new permanent scheme will provide certainty and financial assistance for eligible small businesses in meeting their rates liability and will target particular businesses, eg. post offices and registered day nurseries, which could help to prevent hardship.

UNCRC

No particular impact on the rights of children of the provision of the proposed relief has been identified in the development of the new scheme. The scheme will not result in any reduction in funds available for local authorities as the relief will continue to be fully funded by the Welsh Government. Therefore, there should not be any impact on the provision of children's services by a local authority. Additional relief for the childcare sector could lead to improved provision.

Welsh language

No effect on the opportunities to use the Welsh language or the equal treatment of the language has been identified in preparing the new SBRR scheme. Views on this were sought in the consultation document.

Equalities

Section 149(1) of the Equality Act 2010 requires the Welsh Ministers to have regard, in the exercise of their functions, the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the 2010 Act; advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; foster good relations between people who share a relevant protected characteristic and people who do not share it.

For the purposes of section 149, the protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. No specific impacts, positive or negative, on persons who share a protected characteristic have been identified in the development of the new scheme. This will be kept under review as the scheme is implemented.

Well-being of Future Generations (Wales) Act 2015

Consideration has also been given to the wellbeing duty contained in section 3 of the Well-being of Future Generations (Wales) Act 2015. This includes consideration of how the policy could contribute to supporting the wellbeing goals under section 4 of that Act, and the wellbeing objectives set by the Welsh Ministers, whilst acting in accordance with the sustainable development principle. Providing a small business rates relief scheme will assist ratepayers and, as such, will help to contribute to the achievement of the wellbeing goals of a prosperous Wales and a more equal Wales.

Impact on voluntary sector

We do not expect voluntary sector organisations to be affected by the new scheme. Charities and not-for-profit organisations will continue to be supported through the mandatory relief that is available under the Local Government Finance Act 1988, and local authorities will continue to be able to provide discretionary relief to charities, community amateur sports clubs and not-for profit organisations under the Act.

Competition Assessment

A competition filter test has been applied to the Regulations. The result of the test suggests there is unlikely to be any detrimental or beneficial effects on competition. There is no obligation on any party, business or organisation to respond to the consultation.

Post implementation review

The Welsh Government will monitor the impact of the new scheme through feedback from local authorities, small businesses and other stakeholders and will continue to develop the permanent scheme to ensure that it is targeted to best meet the needs of Wales.