

EXPLANATORY MEMORANDUM & REGULATORY IMPACT ASSESSMENT

Explanatory Memorandum to The Non-Domestic Rating (Unoccupied Property) (Wales) Regulations 2008

This Explanatory Memorandum has been prepared by Local Government Finance Division and is laid before the National Assembly for Wales.

(i) Description

These Regulations re-enact the Non-Domestic Rating (Unoccupied Property) Regulations 1989 (“the 1989 Regulations”) with amendments. In addition to drafting amendments the only change of substance is the inclusion of a new exception for companies in administration from liability for paying non domestic rates in respect of unoccupied property (regulation 4(l)).

(ii) Matters of special interest to the Subordinate Legislation Committee

None

(iii) Legislative Background

These Regulations will be made under sections 45(1)(d), (9), (10), 143(2), 146(6) of the Local Government Finance Act 1988. These powers were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 and are now vested in the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

The Regulations will follow the negative procedure.

(iv) Purpose and intended effect of the legislation

These regulations re-enact the 1989 Regulations but will also exempt properties owned by companies in administration from non domestic rates. This will make the treatment of these companies consistent with the treatment of companies in liquidation and individuals subject to bankruptcy proceedings, and will remove any potential for decisions about whether to enter administration or to wind up the company to be distorted by differences in rates liability.

(v) Implementation

This legislation will have effect from 1st November 2008.

(vi) Consultation

A consultation was undertaken between 2 May and 27 June 2008.

Regulatory Impact Assessment –

(a) Options (for achieving the policy objective – as set out in paragraph (iv) above) –

Other options were to make no change, or to specify a maximum period, for which empty properties owned by companies in administration would be exempted from non domestic rates.

The UK Government has exempted properties owned by companies in administration in England, and if the Assembly Government did not do the same, the benefits outlined in para (b) below would not be realised.

(b) Benefits

This will make the treatment of properties owned by companies in administration consistent with the treatment of companies in liquidation and individuals subject to bankruptcy proceedings, and will remove any potential for decisions about whether to enter administration or to wind up the company to be distorted by differences in rates liability.

The objective of administration is to:

- rescue a company as a going concern;
- achieve a better price for the company's assets or otherwise realise their value more favourably for the creditors as a whole than would be likely if the company were wound up (without first being in administration); or
- in certain circumstances, realise the value of property in order to make a distribution to one or more preferential creditors.

(c) Costs

Because this brings Welsh regulations into line with those in force in England, the Welsh Assembly Government Budget will not be reduced under the terms of the Statement of Funding policy agreed between the Treasury and Devolved Administrations, and the costs will effectively be met by the Treasury.

(d) Competition Assessment

This has been scored against the competition filter test which indicated that there should be no detrimental effect on competition,

(e) Consultation

A consultation on these proposals was undertaken between 2 May and 27 June 2008.

(f) Post implementation review

The Welsh Assembly Government will review this relief if any changes in the funding arrangements or the regulations are proposed by the UK Government.