

## **Explanatory Memorandum to the Non-Domestic Rating (Waterways) (Wales) Regulations 2014**

This Explanatory Memorandum has been prepared by the Local Government Finance and Performance 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.

### **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Non-Domestic Rating (Waterways) (Wales) Regulations 2014. I am satisfied that the benefits outweigh any costs.

**Leighton Andrews**  
Minister for Public Services  
4 March 2015

## **Description**

1. This statutory instrument provides that the waterways network in Wales occupied or owned by the Canal & River Trust (“CRT”) is to be treated as a single hereditament occupied by CRT and situated in the area of Wrexham County Borough Council for the purposes of non-domestic rates.

## **Matters of special interest to the Constitutional and Legislative Affairs Committee**

2. None.

## **Legislative background**

3. The British Waterways Board had responsibility for maintaining certain waterways, docks and harbours in Great Britain. The functions of the British Waterways Board, exercisable in relation to England and Wales, were transferred to the Canal & River Trust (“CRT”) by the British Waterways Board (Transfer of Functions) Order 2012. Its properties, rights and liabilities were transferred to the CRT by the British Waterways Board Transfer Scheme 2012. Both instruments were made by the Secretary of State under the Public Bodies Act 2011. The property transferred to the CRT includes the canal network in Wales.
4. The Local Government Finance Act 1988 sets out the legislative framework for the operation of non-domestic rates. Most properties that are subject to non-domestic rates in Wales appear on the local rating list for the Local Authority area in which they are situated and rates are paid to that Local Authority. The property transferred to CRT lies in several Local Authority areas and, without specific provision, that property will fall to be assessed individually on more than one local ratings list.
5. Under section 64(3) of the Local Government Finance Act 1988 (“the Act”) the Welsh Ministers may make Regulations providing that in prescribed cases anything that would (apart from the Regulations) be more than one hereditament<sup>1</sup> must be treated as a single hereditament. Under section 65(4) such Regulations may include rules for ascertaining who is to be treated as the owner or occupier of the hereditament. Section 143(1) of the Act enables the Welsh Ministers to exercise their powers differently in relation to different areas or different cases and section 143(2) enables the Welsh Ministers to make supplementary, incidental or consequential provision.
6. These powers were originally conferred on the Secretary of State and were transferred, in relation to Wales, to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I.

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<sup>1</sup> A “hereditament” is the unit of assessment for the purpose of non-domestic rates.

1999/672). The functions of the National Assembly for Wales were later transferred to the Welsh Ministers under section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c.32).

7. The Regulations provide that certain waterways hereditaments occupied by CRT, which would otherwise comprise more than one hereditament, are to be treated as one hereditament occupied by CRT and situated in the area of Wrexham County Borough Council.
8. This instrument will follow the negative resolution procedure.

### **Purpose and intended effect of the legislation**

9. The intended effect is that CRT's canal network will appear on Wrexham County Borough Council's local list and be treated for the purpose of non-domestic rating as situated in Wrexham, as opposed to being situated in various Local Authorities across Wales. Wrexham will be responsible for the calculation, collection and enforcement of CRT's non-domestic rates bill.
10. Without these Regulations CRT's hereditaments would fall to be assessed individually on local ratings lists. This would give rise to new hereditaments on different ratings lists. The nature of CRT's assets, which includes the canal network in Wales, makes this undesirable. As a registered charity, CRT will be eligible for charitable rate relief in respect of its non-domestic rates bill.
11. Under section 43(6) of the Local Government Finance Act 1988, where the ratepayer is a charity or trustees for a charity and the hereditament is wholly or mainly used for a charitable purpose, an 80% mandatory relief applies. Under section 47 of the Act, Local Authorities have discretion to grant further relief and may reduce the bill to zero.
12. Previously, the canal network owned by the British Waterways Board ("the Board") was entered on the central ratings list in Wales, and was therefore assessed and treated as a single hereditament for non domestic rates purposes on the central ratings list. Hereditaments on the central list are, however, not eligible for charity relief.
13. After ownership of the waterways was transferred to the CRT, the UK Government made Regulations providing that the waterways in England was to be treated as a single hereditament situated on Birmingham City Council's local list. A similar course of action is now proposed in relation to the CRT's assets in Wales.

### **Consultation**

14. The UK government carried out a consultation on the transfer of the functions and assets of the British Waterways Board to CRT. Details of the consultation

are set out in the Explanatory Memorandum to the British Waterways Board (Transfer of Functions) Order 2012 available at:

[www.legislation.gov.uk/ukxi/2012/1659/memorandum/contents](http://www.legislation.gov.uk/ukxi/2012/1659/memorandum/contents)

15. There was no general consultation on these Regulations as the changes relate only to CRT and Wrexham County Borough Council. The agreement of Wrexham was sought prior to the making of the Regulations and discussions took place with representatives of the CRT and the Valuation Office Agency who support the proposals.

## **Regulatory Impact Assessment (RIA)**

### **Options**

#### Option 1 - Do nothing

16. CRT's assets would be dealt with under the 'ordinary' non-domestic rates rules, meaning each separate hereditament would be placed individually on the relevant local lists.

#### Option 2 – Place on central list

17. Make Regulations to place CRT's assets on the central list in Wales.

#### Option 3 - Single hereditament on a local list

18. Make Regulations to deem CRT's assets in Wales as one hereditament situated in one area (in this case Wrexham County Borough Council) for the purpose of non-domestic rates.

### **Costs and benefits**

#### Option 1 – Do nothing

19. CRT's assets would be separately assessed and each hereditament would be placed on the relevant local list. There are four main canals in Wales covering eight Local Authorities. Accordingly, there would be several entries on local lists.
20. The Valuation Office Agency (VOA), which is responsible for assessing hereditaments to determine their rateable value, has explained that there would be difficulties with option 1. This is due to the difficulties in separately valuing each part of the canal network which falls in a different Local Authority

area. It is also administratively preferable for there to be a single assessment in respect of CRT's assets.

#### Option 2 – Place on central list

21. Placing CRT's assets on the central list would mean that the charitable trust would not be eligible for charitable relief. As mandatory charitable relief provides an 80% reduction in non-domestic rates liability, this would represent a considerable cost for CRT and as such it has been discounted.

#### Option 3 - Single hereditament on a local list (in this case, Wrexham)

22. Regulations would be made providing that CRT's assets in Wales are to be treated as a single hereditament situated in the area of Wrexham County Borough Council (Wrexham) for the purpose of non-domestic rates.
23. The advantage of this approach is that CRT's assets would be assessed and administered as a single hereditament but, by virtue of appearing on a local list, would also be eligible for charitable relief.
24. As a result, the VOA will not be faced with the difficulty of having to separately value the hereditaments, and CRT will not have the administrative complexity of dealing with eight separate non-domestic rates bills.
25. Wrexham has been identified, because the section of the canal network in Wrexham's area (the Llangollen Canal) has the highest rateable value and attracts a high level of usage by both pedestrians and boats, which is likely to bring benefits to the local area.
26. The mandatory 80% charitable relief will reduce CRT's bill. It is also possible Wrexham could grant discretionary relief which will reduce CRT's liability to zero, however there is no obligation on Wrexham to do this. If Wrexham did grant CRT discretionary charitable relief then it would pay for 75% of the cost of this relief, and the remaining 25% would be funded via the non-domestic rates pool. As such, any cost to Wrexham of making such Regulations is not considered to be significant.

#### **Sectors**

27. This legislation will not affect the Business Sector.

#### **Duties**

28. In drafting these Regulations consideration has been given to Welsh Minister's duty to promote equality and eliminate discrimination.

29. Local Authorities are under general duties to comply with Welsh Language and Sustainable Development duties.

### **Competition Assessment**

30. This has been scored against the competition filter test which indicated that there will be no detrimental effect on competition.

### **Post implementation review**

31. The Regulations will be reviewed if there is a significant change in CRT's assets in Wales.