

LEGISLATIVE CONSENT MEMORANDUM

NON-DOMESTIC RATING (NURSERY GROUNDS) BILL

1. This Legislative Consent Memorandum is laid under Standing Order (SO) 29.2. SO29 prescribes that a Legislative Consent Memorandum must be laid, and a Legislative Consent Motion may be tabled, before the National Assembly for Wales if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the National Assembly.
2. The Non-Domestic Rating (Nursery Grounds) Bill (the Bill) was introduced in the House of Commons on 23 May 2018. The Bill can be found at: <https://services.parliament.uk/Bills/2017-19/nondomesticratingnurserygrounds.html>

Policy Objective(s)

3. The UK Government's stated policy objective is to ensure that land and buildings at plant nursery grounds should benefit from the agricultural exemption for business rates.
4. Since at least 1928 there has been a general exemption for agricultural premises in relation to liability to pay non-domestic rates. The Valuation Office Agency (VOA) is responsible for applying exemptions to hereditaments that qualify for them by not including them in the non-domestic rating list. It has long been the practice of the VOA to treat buildings that are (or form part of) market gardens and buildings which are (or form part of) plant nursery grounds as exempt.
5. The Court of Appeal in *Tunnel Tech Ltd v Reeves (VO)* [2015] EWCA Civ 718 found that treating buildings which are plant nursery grounds (which are not occupied with and used solely in connection with agricultural operations on agricultural land) as exempt was an incorrect application of the law and that buildings at plant nurseries (including poly-tunnels) which are not used in connection with agricultural land are rateable. This reverses the VOA's previous approach to assessments for these types of properties.
6. Amending Schedule 5 to the Local Government Finance Act 1988 will be amended to enable the VOA to continue to treat land and buildings at plant nurseries as exempt from non-domestic rates and return the law to align with previous practice.

Summary of the Bill

7. The Bill is sponsored by the Ministry of Housing, Communities & Local Government (MHCLG).
8. The Bill amends Schedule 5 to the Local Government Finance Act 1988 to provide for an exemption for buildings which are, or form part of, plant nursery grounds if they are used solely in connection with agricultural

operations at the nursery ground. This ensures that the ratepayers for such hereditaments will continue to not pay non-domestic rates and aligns the law with the previous long-standing practice of the VOA and government policy.

Provisions in the Bill for which consent is required

9. MHCLG introduced a Bill (the Non-Domestic Rating (Nursery Grounds) Bill 2017-19) on 23 May which makes the provision for buildings which are used as, or form part of nursery grounds to be exempt from non-domestic rates in England and Wales.
10. The Bill amends the Local Government Finance Act 1988 and restores the VOA's treatment of plant nurseries prior to the decision of the Court of Appeal. Such properties were intended to be covered by the agricultural exemption and it is considered unfair that plant nurseries and market gardens are treated differently and in a way which could result in a competitive disadvantage. The Bill consists of two clauses. Consent is sought in relation to the Bill as a whole as it relates to Wales.

Reasons for making these provisions for Wales in the Non-Domestic Rating (Nursery Grounds) Bill

11. The possibility of making this change through a future Welsh Government Bill has been discounted because there is not currently a firm legislative opportunity within the timescale required. Also, using a Welsh Government Bill would result in different valuation approaches operating in Wales and England for a period, ie. until such time as a Welsh Government Bill became law. This would not be desirable or justifiable.
12. The UK Government's Bill provides an opportunity for the Welsh Government to align the NDR valuation methodology in Wales with that in England in a timely manner.

Financial implications

13. The Bill contains provisions which will ensure that plant nurseries in Wales continue to be exempt from non-domestic rates. As these properties have not previously been rated, no associated revenue has ever been collected and as such HM Treasury has agreed that such a provision is revenue neutral.
14. Under the legislation, any plant nursery owners who have been assessed for inclusion in the list as a result of the Court's judgment will be removed from the list and any that have been paying rates as a result of their inclusion will be able to apply for a backdated refund. In Wales, this will be limited to financial years beginning on or after 1 April 2017 being the date of the last revaluation and closure of the relevant list. The VOA has advised that, at present, no such properties in Wales have been assessed as needing to be included in the relevant list.

Conclusion

15. It is the view of the Welsh Government that it is appropriate to deal with these provisions in this UK Bill for reasons of timing and coherence. The interconnected nature of the relevant Welsh and English systems for administering valuation for rating purposes also supports provision being taken forward at the same time and in the same legislative instrument.

Mark Drakeford AM
Cabinet Secretary for Finance
June 2018