

EXPLANATORY MEMORANDUM

Explanatory Memorandum to the Council Tax and Non-Domestic Rating (Electronic Communications) (Wales) Order 2009

This Explanatory Memorandum has been prepared by the Local Government Finance Division and is laid before the National Assembly for Wales in accordance with Standing Order 24.1.

(i) **Description**

This Order amends the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989, the Non-Domestic Rating (Collection and Enforcement) (Central Lists) Regulations 1989 and the Council Tax (Administration and Enforcement) Regulations 1992 in relation to Wales. It will allow the Welsh Ministers to issue non-domestic rates bills and other documents in respect of hereditaments listed on the central rating list electronically, where the ratepayer consents to this method of service. It will also allow billing authorities to bills to issue non-domestic rates and council tax bills and other documents electronically where the ratepayer consents to this method of service

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

Section 10(5) of the Electronic Communications Act 2000 provides that the Welsh Ministers cannot make an order under section 8 of the Act except with the consent of the Secretary of State. This consent was obtained from the Secretary of State for Communities and Local Government on 1 September 2009.

(iii) **Legislative Background**

Part 3 of the Local Government Finance Act 1988 ("the 1988 Act") contains the legislative framework for the levy and collection by local authorities (billing authorities) of non-domestic rates in respect of hereditaments listed on the local list and the Welsh Ministers in respect of hereditaments listed on the central list.

Separately, Part 1 of the Local Government Finance Act 1992 ("the 1992 Act") contains the legislative framework for the levy and collection by billing authorities of council tax.

Regulations made under the 1988 Act are in force in England and in Wales which provide for the collection of non-domestic rates by billing authorities by way of demand notices and for the enforcement of sums due (the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 and the Non-Domestic Rating (Collection and Enforcement) (Central Lists) Regulations 1989). Equally, regulations made under the 1992 Act are in force in England and in Wales which provide for the administration, collection and enforcement by billing authorities of council tax (the Council Tax (Administration and Enforcement) Regulations 1992).

The Welsh Ministers have the power to make an order under section 8 (in conjunction with section 10) of the Electronic Communications Act 2000 so as to modify, in relation to Wales, provisions of secondary legislation so as to authorise the use of electronic communications where the provisions of the above regulations require matters to be evidenced in writing or by way of document or notice (provided that the Welsh Ministers are content that the availability of records will not be less satisfactory than in cases where electronic communication is not used).

This Order will be made using the negative resolution procedure.

(iv) **Purpose and intended effect of the legislation**

This Order is being made to allow the Welsh Ministers to issue non-domestic rates bills and other documents in respect of hereditaments listed on the central rating list electronically, where the ratepayer consents to this method of service. It will also allow billing authorities to issue non-domestic rates and council tax bills and other documents electronically where the ratepayer consents to this method of service.

This brings the position in Wales into line with the position in England, the only difference being that the Wales Order will allow final notices/demands to be issued electronically, but legislation in England does not make provision for this. Summonses in respect of non payment of non domestic rates or council tax will continue to be required to be delivered in hard copy.

This will provide greater choice for council tax and non domestic rates payers as they may consent to receive notices electronically from local authorities and the Welsh Ministers, and it should result in administrative and postage savings for local authorities by reducing postage and stationary costs.

This will apply from the date on which the regulations come into force.

(v) **Implementation**

If this legislation is not made in Wales, local billing authorities and the Welsh Ministers will not be able to validly serve council tax and non domestic demand notices and other connected communications electronically to a person who has agreed to accept electronic

service, and the potential flexibility and savings identified in paragraph (iv) above will not be achieved.

(vi) **Consultation**

There has not been a formal consultation on these Regulations which increase the flexibility for council tax and non domestic rates payers to receive certain notices electronically, but only with their individual agreement. Members of the Local Taxation Working Group, which consists of local authority revenue managers suggested that this legislation be made, and the Welsh Ministers agreed that it would be beneficial. A copy of the draft Order was sent to local authorities, the Valuation Office Agency, the Valuation Tribunal Service in Wales and the Ministry of Justice and the court service for comment. Two responses were received from local authorities confirming that they had no comments to make.

Regulatory Impact Assessment –

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

i) To maintain the status quo in which case there would be no provision for electronic communication, in which case the benefits at paragraph (b) below would not be realised.

ii) Not to extend the provision of electronic communication to include the final notice issued by local authorities before court summonses are issued to taxpayers in default of payments, as applies in England. However, as tax payers will have agreed with billing authorities or the Welsh Ministers to receive communications electronically there appeared to be no reason to do this, - billing authorities are not precluded from also issuing paper copies of final notices. Paper copies of summonses for non payment will continue to be required.

iii) Make the Order as drafted in order to realise the benefits in paragraph (b) below

(b) Benefits

Making the Order will provide greater choice for local tax payers as it will allow them to agree to receive notices from local authorities and the Welsh Ministers, and will result in administrative and postage savings for local authorities as it will reduce postage and stationary costs. There would be no benefit from maintaining the status quo, and there is no apparent reason to exclude final notices from these regulations, as local authorities may still opt to issue a paper copy as well as the electronic version where they believe it would be appropriate.

(c) Costs

There are no costs to the Assembly Government, local authorities or local tax payers.

(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

See paragraph vi of the explanatory memorandum.

(f) Post implementation review

This will be periodically reviewed by the Local Taxation Working Group.