

Non-Domestic Rating Bill

AMENDMENTS
TO BE MOVED
ON REPORT

Clause 4

LORD SHIPLEY

Clause 4, page 15, line 36, at end insert –

“(4) Omit subsections (8A) and (9).”

Member's explanatory statement

The intention of this amendment is to remove the prohibition on a billing authority giving relief on a hereditament occupied by a billing authority, a precepting authority or a GLA functional body.

Clause 5

LORD SHIPLEY

Clause 5, page 16, line 4, leave out “third” and insert “second”

Member's explanatory statement

This amendment would require central non-domestic rating lists to be compiled every two years.

LORD SHIPLEY

Clause 5, page 16, line 6, leave out “third” and insert “second”

Member's explanatory statement

This amendment would require central non-domestic rating lists to be compiled every two years.

LORD SHIPLEY

Clause 5, page 16, line 12, leave out “three” and insert “two”

Member's explanatory statement

This amendment would make every second year from now on a relevant period for transitional provision under the 1988 Act.

After Clause 15

LORD SHIPLEY

After Clause 15, insert the following new Clause—

“Non-domestic rating: accreditation of non-domestic rating advisors

- (1) Within 90 days of the day on which this Act is passed the Secretary of State must commence a consultation on the merits and practicability of a system of accreditation and the introduction of professional standards for non-domestic rating advisors.
- (2) The consultation must consider the benefits of introducing a criminal or financial penalty for failing to comply with accreditation and adhering to professional standards.
- (3) For the purposes of this section, a “non-domestic rating advisor” is defined as any person providing or attempting to provide rating advice on a commercial basis to the occupier of a non-domestic premises.
- (4) In carrying out the consultation under subsection (1) the Secretary of State must consult with the following non-exhaustive list of stakeholders—
 - (a) professional surveying bodies;
 - (b) small and medium-sized business representatives;
 - (c) local authorities.
- (5) The Secretary of State must lay the findings of this consultation before both Houses of Parliament within one year of the commencement of the consultation.”

Member's explanatory statement

This amendment would require the Secretary of State to consult on the benefits and practicability of a system of accreditation for rating advisors. This amendment is seeking to explore an avenue to combating the rogue and unprofessional practices of some rating advisors.

LORD SHIPLEY

After Clause 15, insert the following new Clause—

“Exemptions

- (1) Schedule 5 to the Act (non-domestic rating: exemption) is amended as follows.
- (2) Before paragraph 20 (power to confer exemption) insert—

“Advertising rights in respect of social infrastructure sites

 - 19B(1) A hereditament is exempt to the extent that it consists of any advertising rights in respect of social infrastructure site.
 - (2) An advertising right in respect of a social infrastructure site is—
 - (a) any advertising right granted to an economic operator by a contracting authority pursuant to a public contract procured

- under the Public Contract Regulations 2015 or the Concession Contract Regulations 2015;
- (b) any other advertising right granted to an economic operator by a contracting authority pursuant to a public contract or otherwise; and
 - (c) any advertising right in respect of a public telephone box or kiosk.
- (3) In this paragraph –
- “contracting authority” means the State, regional or local authorities, bodies governed by public law or associations formed by one or more such authorities or one or more such bodies governed by public law, and includes central government authorities, but does not include His Majesty in his private capacity.
- “economic operator” means any person or public entity or group of such persons and entities, including any temporary association of undertakings, which offers the execution of works or a work, the supply of products or the provision of services on the market.”

Member's explanatory statement

This amendment provides that advertising rights in respect of social infrastructure sites including, bus shelters, other advertising rights granted by contracting authorities and public telephone kiosks shall be exempt from local non-domestic rating.

LORD SHIPLEY

After Clause 15, insert the following new Clause –

“Anti-avoidance regulations

After section 67 of the Act insert –

“67A Anti-avoidance regulations

- (1) The Secretary of State may by regulations (“anti-avoidance regulations”) make such provision as he considers appropriate with a view to preventing or minimising advantages (see section 67B) arising from non-domestic rates avoidance arrangements that are artificial (see sections 67C and 67D).
- (2) The Secretary of State may not make anti-avoidance regulations unless he considers that it is appropriate to do so.
- (3) Anti-avoidance regulations –
 - (a) may modify any enactment (but not this Part),
 - (b) may make different provision for different purposes,
 - (c) may make incidental, supplementary, consequential, transitional, transitory or saving provision.

67B Meaning of “advantage”

- (1) An “advantage”, in relation to non-domestic rates, includes in particular —
 - (a) avoidance of a possible valuation,
 - (b) remission,
 - (c) relief (or increased relief),
 - (d) repayment (or increased repayment),
 - (e) deferral of a payment or advancement of a repayment.
- (2) In determining whether a non-domestic rates avoidance arrangement has resulted in an advantage, regard may be had to the amount of non-domestic rates that would have been payable in the absence of the arrangement.

67C Non-domestic rates avoidance arrangements

- (1) An arrangement (or series of arrangements) is a non-domestic rates avoidance arrangement if, having regard to all the circumstances, it would be reasonable to conclude that obtaining an advantage is the main purpose, or one of the main purposes, of the arrangement.
- (2) An “arrangement” includes any agreement, transaction, undertaking, action or event (whether legally enforceable or not).

67D Meaning of “artificial”

- (1) A non-domestic rates avoidance arrangement is artificial if Condition A or B is met.
- (2) Condition A is met if the entering into or carrying out of the arrangement is not a reasonable course of action in relation to the non-domestic rates provisions in question having regard to all the circumstances, including —
 - (a) whether the substantive results of the arrangement are consistent with—
 - (i) any principles on which those provisions are based (whether express or implied), and
 - (ii) the policy objectives of those provisions,
 - (b) whether the arrangement is intended to exploit any shortcomings in those provisions.
- (3) Condition B is met if the arrangement lacks economic or commercial substance.
- (4) Each of the following is an example of something which might indicate that a non-domestic rates avoidance arrangement lacks economic or commercial substance—
 - (a) the arrangement is carried out in a manner which would not normally be employed in reasonable business conduct,
 - (b) the legal characterisation of the steps in the arrangement is inconsistent with the legal substance of the arrangements as a whole,

- (c) the arrangement includes elements which have the effect of offsetting or cancelling each other,
 - (d) transactions are circular in nature,
 - (e) the arrangement results in an advantage that is not reflected in the business risks undertaken.
- (5) The examples given in subsection (4) are not exhaustive.
- (6) Where a non-domestic rates avoidance arrangement forms part of any other arrangements, regard must also be had to those other arrangements.

67E Procedure for anti-avoidance regulations

- (1) Anti-avoidance regulations are subject to the affirmative procedure.
- (2) Before laying a draft of a statutory instrument containing anti-avoidance regulations before Parliament, the Secretary of State –
- (a) must consult such person or persons as appear to the Secretary of State to represent the interests of –
 - (i) local authorities, or
 - (ii) the Commissioners for His Majesty's Revenues and Customs as the Secretary of State consider appropriate, and
 - (b) may consult –
 - (i) such ratepayers or potential ratepayers, and
 - (ii) such other persons, as the Secretary of State considers appropriate.
- (3) Consultation under subsection (2) must include a copy of the proposed anti-avoidance regulations.
- (4) The Secretary of State must, as soon as reasonably practicable after consultation under subsection (2) begins, notify Parliament about the consultation.
- (5) The Secretary of State must have regard to any representations about the draft anti-avoidance regulations received as a result of the consultation.
- (6) When laying a draft of a statutory instrument containing anti-avoidance regulations, the Secretary of State must also lay before Parliament a document which –
- (a) explains why the Secretary of State considers that it is appropriate to make the anti-avoidance regulations, and
 - (b) gives details of –
 - (i) the consultation,
 - (ii) any representations received as a result of the consultation, and
 - (iii) the changes (if any) made to the draft anti-avoidance regulations as a result of those representations.”

Member's explanatory statement

The intention of this amendment is to introduce into law the power to make anti-avoidance regulations, as provided for in Part 4 of the Non-Domestic Rates (Scotland) Act 2020. The amendment mirrors Part 4, with such changes as to make it applicable to UK law.

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