

Explanatory Memorandum to the Non-Domestic Rating (Alteration of Lists and Appeals) (Wales) Regulations 2023

This Explanatory Memorandum has been prepared by Local Government Finance Reform Division and is laid before Senedd Cymru 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 (Alteration of Lists and Appeals) (Wales) Regulations 2023. I am satisfied that the benefits justify the likely costs.

Rebecca Evans MS
Minister for Finance and Local Government
7 February 2023

PART 1: EXPLANATORY MEMORANDUM

1 Description

- 1.1 The Non-Domestic Rating (Alteration of Lists and Appeals) (Wales) Regulations 2023 (“the 2023 Regulations”) revoke and replace the Non-Domestic Rating (Alteration of Lists and Appeals) (Wales) Regulations 2005 (“the 2005 Regulations”) and the Non-Domestic Rating (Alteration of Lists and Appeals) (Wales) (Amendment) Regulations 2006. The 2023 Regulations cover the alteration of non-domestic rating (NDR) lists by valuation officers, and the process for proposing any alterations and for appeals, should there be disagreement in relation to a proposal.

2 Matters of special interest to the Legislation, Justice and Constitution Committee

- 2.1 None.

3 Legislative background

- 3.1 The Local Government Finance Act 1988 (“the 1988 Act”) sets out the operation of the NDR system including the responsibilities of local government and the role of the VOA in compiling and maintaining rating lists. Section 55 of the 1988 Act enables the Welsh Ministers to make regulations about the NDR appeals process. The 2023 Regulations are made under relevant powers in sections 42, 53, 55 and 143 and Schedules 6, 7A, 9 and 11 to the 1988 Act.
- 3.2 The 2023 Regulations are subject to the draft affirmative resolution procedure.

4 Purpose and intended effect of the legislation

- 4.1 The 2023 Regulations are intended to reform the NDR appeals system in Wales. The system is administered by two independent organisations, each responsible for different stages of the process. The Valuation Office Agency (VOA) is responsible for the valuation and listing of hereditaments for NDR, including the consideration of proposals from ratepayers who believe their valuation should be changed. The Valuation Tribunal for Wales (VTW) is responsible for appeals, when agreement is not reached between a ratepayer and the VOA in relation to a proposed change to a valuation.
- 4.2 The 2023 Regulations implement a new process for ratepayers to engage with the VOA, underpinned by its digital platform, and a small number of additional changes to the arrangements for appeals to the VTW. The changes aim to improve the efficiency of the system for ratepayers and public bodies by reducing speculative and unsuccessful appeals. They also act as an enabler for the broader policy aim of delivering more frequent NDR revaluations, ensuring ratepayers’ bills more accurately reflect the prevailing

economic conditions and, in turn, reducing the likelihood of an appeal being submitted.

- 4.3 The digital platform will hold NDR valuation data and provide the portal for ratepayers to interrogate and exchange information with the VOA. This will provide the online facility for ratepayers to 'check' and 'challenge' their valuations, in a similar way to the process which was introduced in England in 2017. The 2023 Regulations set out these procedures, replacing the VOA's arrangements for considering NDR list alterations previously provided by the 2005 Regulations. The process for Wales will benefit from the improvements made to the process for England after it was first introduced.
- 4.4 The check stage will require the ratepayer (or other interested person) to request and review the information held by the VOA about the hereditament. The challenge stage will then consider disagreements and allow for an alternative valuation to be proposed, with supporting evidence. The VOA may determine that it is necessary to alter the rating list in accordance with the proposal, in another way, or not at all. The 2023 Regulations provide for closure of a rating list by specifying that a person will not be able to initiate a challenge if they have not commenced the check stage and provided confirmation that the information held by the VOA about their property is accurate before the day on which the next rating list is compiled. There are a small number of specific grounds for which additional time is allowed.
- 4.5 Alongside the introduction of the digital platform, the 2023 Regulations introduce a penalty regime, allowing the VOA to impose a £200 penalty on a person for knowingly, recklessly or carelessly providing information known to be false. The application of penalties will be at the discretion of the VOA and recipients of a penalty will be able to appeal to the VTW.
- 4.6 Following completion of the check and challenge stage, ratepayers will be able to submit an appeal to the VTW within a four-month timeframe following a VOA decision on a challenge. Where a decision is not made within 18 months, the ratepayer may submit an appeal within four months following the 18-month period.
- 4.7 The changes to the VTW appeal stage are more limited than those to the earlier stages of the process. Challenges will no longer automatically transfer to appeals, where the VOA has not reached a decision after three months. The 2023 Regulations, therefore, set out the grounds, process, and time limits for making an appeal. Much of the process for the appeal stage will remain unchanged and relevant provisions from the 2005 Regulations are replicated with amendments. The 2023 Regulations provide the VTW with some broader rule-making powers, which enable them to regulate parts of their procedures which are not prescribed in regulations.
- 4.8 There will also be limitations placed on the provision of new evidence at appeal stage. The 2023 Regulations will ensure that the VTW is presented with all relevant information to enable it to reach a correct and fair decision. New evidence will only be admitted at the appeal stage if it were not known,

or could not reasonably have been acquired, before the challenge was considered by the VOA.

- 4.9 The 2023 Regulations will come into force and take effect from 1 April 2023, in alignment with the coming into effect of the next rating list.

5 Consultation

- 5.1 A policy [consultation](#) took place from 17 October 2017 to 9 January 2018. The consultation sought views on the Welsh Government's proposals to reform the NDR appeals system in Wales, in line with the purpose and intended effect set out above. A summary of responses was published in April 2018.
- 5.2 The consultation received 39 responses. Respondents included property agents, wider representative bodies, sector specific representatives, ratepayers, and citizens.
- 5.3 The consultation views broadly supported changes. One of the key messages was that changes should not be made midway through a rating list (between revaluations) and that the preferred timing for changes would be the beginning of the next new list, then planned for 1 April 2021. As a result of the coronavirus pandemic, the next revaluation has been rescheduled to 1 April 2023. It was also suggested that implementation of the VOA's digital platform in England should be monitored before determining whether to extend it to Wales.
- 5.4 A draft of the 2023 Regulations was the subject of a [technical consultation](#) between 19 July and 11 October 2022. The consultation received 11 responses. Following the consultation, a small number of changes were made to the drafting of the Regulations, to ensure they achieve the policy intention and provide clarity.

PART 2: REGULATORY IMPACT ASSESSMENT

6 Options

6.1 This Regulatory Impact Assessment (RIA) presents two options in relation to the system used to administer NDR appeals. All costs and benefits quantified in this RIA are based on information available to the Welsh Government leading up to publication.

6.2 The options considered are as follows:

Option 1 – Do nothing. Retain the existing appeals system, with no legislative changes.

Option 2 – Make the Regulations. Legislate to implement the modernised appeals system making use of the VOA's digital platform. The system would be in place from the 2023 rating list onwards.

7 Costs and benefits

Option 1 – Do nothing

7.1 Option 1 would not require any legislative change. The existing appeals framework would remain in place. Challenges that are not resolved within three months would also continue to automatically transfer to the VTW as an appeal.

Costs

7.2 Option 1 would require the VOA to operate different systems in Wales and England and maintaining the existing system or developing an alternative system would carry a cost. It is not possible to determine the exact cost of not moving onto the VOA digital platform as set out in the Regulations. The VOA has indicated that costs of maintaining existing procedures would be significantly higher than those associated with adopting the digital platform.

7.3 Ratepayers and public bodies would be faced with an opportunity cost of continuing to use the current system as opposed to adopting the modernised digital platform. The sharing of information would likely be more resource intensive. Welsh ratepayers would also not benefit from future developments to the system, including those which will help to enable more frequent revaluations in the future.

Benefits

7.4 Doing nothing would ensure no legislative changes would be required.

7.5 The existing approach is familiar to ratepayers, with understanding of the processes already in place.

Disadvantages

- 7.6 Doing nothing would not address the Welsh Government's policy aims and the decision announced following consultation. It would also fail to ensure a consistent approach between Wales and England in how appeals are managed. Not adopting the digital platform would limit the potential for improvements to the appeals system as part of plans for longer-term reform.

Option 2 – Make the Regulations

- 7.7 Option 2 would be to make Regulations to amend the appeals system to introduce the VOA's digital platform for ratepayers in Wales. The system is already in place in England and would ensure a consistent approach for ratepayers across Wales and England. The changes would come into force from 1 April 2023, in line with the next rating list, and apply going forward.

Costs

- 7.8 The adoption of the digital platform would carry an upfront implementation cost. The VOA have estimated costs to total approximately £190,000 to extend the service to properties in Wales. Some of this cost has already been incurred, as the VOA prepare for implementation from 1 April 2023. The ongoing costs of maintaining a process underpinned by the digital platform is expected to be significantly lower than the cost of maintaining existing arrangements.
- 7.9 There will be an initial time cost for ratepayers not already familiar with and registered for the digital platform, should they wish to challenge the rateable value of their property.

Benefits

- 7.10 The adoption of the digital platform would ease the information flow between ratepayers and the VOA. This would better enable further improvements to the system going forward, which is an important enabler for wider NDR reforms.
- 7.11 Once implemented, administrative burdens are expected to reduce with the digital platform making the process easier to interact with and less time consuming. For larger ratepayers, operating across Wales and England, there would be a benefit of operating under a consistent approach, as has been the case in the past.
- 7.12 The process will continue to be fair to ratepayers, providing the opportunity to challenge and appeal a valuation, without charging fees, and only imposing penalties in cases where they have provided information known to be false.
- 7.13 As unprocessed challenges would no longer automatically transfer to the VTW, this would likely result in a reduced burden of unnecessary appeals on the tribunals system.

7.14 Making the Regulations would address the Welsh Government's policy aims for an improved non-domestic rating system in Wales. It would also reinstate a consistent approach to managing appeals in Wales and England.

Disadvantages

7.15 There may be initial uncertainty and increased administrative burden for ratepayers when adapting to the new platform. It is, however, designed to be intuitive and straightforward to use.

8 Option summary

8.1 Doing nothing would result in no changes to the existing process for managing appeals, and costs of remaining on the existing system would be more than those for adopting the new system. Ratepayers in Wales would also not benefit from modernisation of processes. Option 1 also presents risks in achieving the broader policy aim of more frequent revaluations. Option 1 is, therefore, not the preferred approach.

8.2 Option 2 would be more cost-effective and ensure ratepayers in Wales benefit from the best system currently available for managing appeals. This option would also support the Welsh Government's wider policy objective for more frequent revaluations, to the benefit of ratepayers and the fairness of the NDR system overall.

8.3 Option 2 is, therefore, the preferred approach.

9 Duties

- 9.1 ***Well-being of Future Generations (Wales) Act 2015***. Ensuring that ratepayers in Wales have access to a modernised appeals platform will make the processing of appeals more efficient. This will support stability and clarity in the NDR tax-base and contribute to the wellbeing objective of a prosperous Wales.
- 9.2 ***UNCRC***. No particular impact on the rights of children has been identified.
- 9.3 ***Welsh language***. No direct effect on the opportunities to use the Welsh language or the equal treatment of the language has been identified in connection with this legislation.
- 9.4 ***Equalities***. No specific impacts, positive or negative, on persons who share a protected characteristic (as determined by the Equality Act 2010) have been identified.
- 9.5 ***Voluntary sector***. No particular impact on the voluntary sector has been identified.

10 Competition assessment

- 10.1 A competition filter test has been applied to the 2023 Regulations and the risk of a significant detrimental impact on competition is considered to be low.

11 Post-implementation review

- 11.1 The Welsh Government will monitor the impact of the change by working closely with the VOA and VTW and engaging with stakeholder groups to assess the effectiveness of new procedures and impacts on overall volumes within the appeals system.