



Llywodraeth Cymru
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Welsh Government
Consultation – Summary of Responses

Non-Domestic Rates

A Technical Consultation on the draft Non-Domestic Rating (Property in Common Occupation) (Wales) Regulations 2022– Summary of Responses

7 October 2022

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

Overview

This document provides a summary of the responses to the technical consultation on the draft Non-Domestic Rating (Property in Common Occupation) (Wales) Regulations 2022.

Action Required

This document is for information only.

Further information and related documents

Large print, Braille and alternative language versions of this document are available on request.

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Additional copies

This summary of response and copies of all the consultation documentation are published in electronic form only and can be accessed on the Welsh Government's website.

Link to the consultation documentation:

<https://gov.wales/draft-non-domestic-rating-property-common-occupation-wales-regulations-2022>

Contents

Introduction	4
Proposals	4
Engagement.....	5
Overview of responses.....	5
Summary of responses	5
Next steps	7
Annex A: List of respondents	8

Introduction

1. For over 50 years, ratepayers who occupied more than one unit of property in a building shared with other organisations were assessed based on the premise that:
 - where their units of property were contiguous (touching), they received one rates bill; and
 - where their units of property were separated by another business or an area in shared use, they received a separate rates bill for each unit of property.
2. It was the practice of the Valuation Office Agency (VOA) to treat contiguous units of property as a single hereditament, when occupied by the same person. In 2015, the Supreme Court ruled that the test should concern the geographical nature of the property and, as a result, the VOA changed its practice. The general rule now being operated in Wales is that two contiguous properties in the same occupation are only assessed as one if they can be considered a self-contained unit of property. Typically, this will apply if both parts are physically accessible from each other without having to go onto other property or through commons parts (such as a common corridor or stairwell).
3. Between 9 March and 1 June 2022, the Welsh Government [consulted](#) on a proposal to make secondary legislation which would reinstate the practice of the VOA, prior to the Supreme Court decision in 2015, to coincide with the start of the 2023 rating list and which would continue to apply going forward. On 24 June 2022, the Welsh Government published a summary of responses and [announced](#) that regulations would be prepared to implement the proposal as consulted upon.
4. This document summarises the views put forward in a recent technical consultation on the draft *Non-Domestic Rating (Property in Common Occupation) (Wales) Regulations 2022*, referred to in the consultation as ‘the draft Regulations’. The draft Regulations set out the circumstances in which two or more hereditaments should be treated as one for valuation purposes in the determination of an owner or occupier’s NDR liability. The consultation sought views on the clarity of the draft legislation in achieving that objective.
5. The consultation applied to Wales only.

Proposals

6. The Welsh Government’s intention is that, where two or more **occupied** hereditaments meet the following conditions, they are to be treated as one hereditament for valuation purposes:
 - i. they are occupied by the same person;
 - ii. they meet the ‘contiguity condition’; and
 - iii. none of them is used for a purpose which is wholly different from the purpose for which any of the others is used.

7. In the case of two or more **unoccupied** hereditaments, they are to be treated as one hereditament for valuation purposes if:
 - i. they are owned by the same person;
 - ii. they meet the ‘contiguity condition’;
 - iii. they ceased to be occupied on the same day and have remained unoccupied since that day; and
 - iv. immediately before that day, they formed part of a single hereditament in accordance with the conditions set out above in relation to occupied hereditaments.
8. The Welsh Government’s intention is that the draft Regulations will be laid in the Senedd in time for their commencement on 1 April 2023, concurrent with the commencement of the next rating list, following the upcoming NDR revaluation.

Engagement

9. Views were invited as part of a six-week consultation period which began on 4 August 2022 and ended on 16 September 2022. The consultation was published on the consultation pages of the Welsh Government’s website. Respondents were able to submit their views and comments on paper, by email or online, and in Welsh or English.

Overview of responses

10. In total, the consultation received six responses, three were from representative bodies and two were from individuals. One respondent wished to remain anonymous.
11. A full list of respondents is given in Annex A.

Summary of responses

12. This document is intended to be a summary of the responses received. It does not aim to capture every point raised by respondents but to highlight the key themes. Where responses agreed that the draft Regulations provide clarity, limited views were provided.

Q1. Does Regulation 2 of the draft Regulations provide clarity on the circumstances in which two or more occupied hereditaments must be treated as one hereditament? If not, how can it be improved?

13. Of the six responses received, five agreed that the draft Regulations provide clarity in this regard. One respondent felt that the term “wholly different” is not sufficiently clear, where the draft Regulations provide that one of the circumstances that must be satisfied for two or more hereditaments to be treated as one is that none of them is used for a purpose which is wholly different from the purpose for which any of the others is used.

Q2. Does Regulation 3 of the draft Regulations provide clarity on the circumstances in which two or more unoccupied hereditaments must be treated as one hereditament? If not, how can it be improved?

14. All respondents agreed that the draft Regulations provide clarity in this regard.

Q3. Do Regulations 4 and 5 of the draft Regulations provide clarity on the circumstances in which two or more hereditaments are to be considered as contiguous with each other? If not, how can they be improved?

15. All respondents agreed that the draft Regulations provide clarity in this regard.

Q4. Do you have any other comments about the draft Regulations?

16. Four respondents answered this question. Three respondents were of the view that retrospective changes should be made, to apply the legislation to previous rating lists.

17. One respondent noted that the draft Regulations largely mirror the equivalent legislation that has been operated successfully in England since November 2018.

Q5. The Welsh Government would like your views on the effects the draft Regulations would have on the Welsh language, specifically on:

- i. opportunities for people to use Welsh; and
- ii. on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

18. Three respondents answered this question. They were of the view that the proposals would not have any effect on the use of the Welsh language.

Q6. Please also explain how you believe the draft Regulations could be formulated or changed so as to have:

- i. positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language; and
- ii. no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

19. Three respondents answered this question. They were of the view that the proposals would not have any effect on the use of the Welsh language.

Q7. We have asked a number of specific questions. If you have any related points which we have not specifically addressed, please use this space to record them.

20. Two respondents answered this question. One reiterated their view that the changes should be backdated to previous rating lists. The other respondent

commented that ratepayers would need to be made aware of the practical implications of the changes, including whether they would need to seek alterations to the rating list through the appeals process, where relevant, or whether the Valuation Office Agency (VOA) will proactively make the required changes.

Next steps

21. The views on backdating the proposed changes are recognised and the Welsh Government has clarified the approach being taken as part of the previous policy consultation.
22. Although the VOA did not submit a formal response to the consultation, the Welsh Government has discussed the draft Regulations with the VOA to ensure they will be operated in line with the policy intention.
23. The Welsh Government will make the Regulations, as drafted and consulted on.

Annex A: List of respondents

One respondent wished to remain anonymous. The other five respondents are as follows.

Two individuals

GL Hearn

Institute of Revenues, Rating and Valuation

Royal Institution of Chartered Surveyors