



Modernising Empty Property Relief

A Consultation Paper



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1 Introduction

1.1 Introduction to this consultation

- 1.1.1 The Government is committed to promoting the efficient use of land and property. It is therefore taking action to modernise empty property relief from non-domestic rates to provide a positive incentive to bring vacant shops, offices, factories and warehouse back into use, and to remove distortions in the efficient operation of commercial property markets.
- 1.1.2 Owners of empty non-domestic property have been liable for non-domestic rates since 1966. They currently qualify for significant relief from rates, receiving at minimum a 50% relief from the occupied business rate. Owners of empty industrial premises enjoy a complete exemption from rates. This regime was introduced in the 1980s during periods of economic recession and low demand for property and land. In 2007-08 this tax relief was worth a total of £1.38 billion in England alone.
- 1.1.3 The UK economy has enjoyed ten consecutive years of growth, with significant rises in land and property values. UK office rents are currently amongst the highest in the world and there is significant pressure on land for new housing and commercial developments. In these circumstances it does not make sense for other taxpayers to subsidise owners to keep properties empty.
- 1.1.4 That is why the Government announced reforms to empty property relief in the 2007 Budget, in response to recommendations made by Kate Barker in her independent Review of Land Use Planning and by Sir Michael Lyons in his independent Inquiry into Local Government.
- 1.1.5 Key aspects of the reforms announced in the Budget are being taken forward through primary legislation. A summary of the provisions in the Rating (Empty Properties) Bill is provided at section 1.2 below.
- 1.1.6 This consultation paper seeks views on proposals for detailed reforms to be achieved through secondary legislation, in particular:
- changes to exemptions from empty property rates
 - new measures to tackle avoidance of empty property rates
- 1.1.7 The consultation proposals are summarised at section 1.3 below.

1.2 The Rating (Empty Properties) Bill

1.2.1 The Rating (Empty Properties) Bill was introduced into the House of Commons on 10 May 2007. Its key provisions, which relate to England and Wales:

- amend Part 3 of the Local Government Finance Act 1988 so as to increase the empty property rate from 50% to 100% of the basic occupied business rate. This will provide a strong incentive for owners to re-let, re-develop or sell empty non-domestic buildings, reducing the need for new development on greenfield sites and increasing access to existing premises for businesses, so helping to reduce rents and increase the competitiveness of the UK.
- provide a zero rate for empty properties owned by charities, as announced by the Chancellor, and also for empty properties owned by community amateur sports clubs. This represents a significant boost to the support given by the Government to the voluntary and community sector.
- provide a new power to reduce the empty property rate from the new level of 100% of the basic occupied rate back to a minimum of 50% of the occupied rate. This will ensure that, in future, the Government has flexibility to respond to prevailing conditions in the property market.
- provide a new power to make regulations to tackle rate avoidance tactics by disregarding changes to the state of property in circumstances to be defined by regulations.
- provide for a number of minor consequential and technical amendments to existing primary and secondary legislation.

1.2.2 The reformed empty property rate will have a consequential impact on the rating of partially occupied property, described at annex C.

1.2.3 Further details, including a copy of the Bill and accompanying explanatory notes, are available on the Parliament website.¹

¹ http://www.publications.parliament.uk/pa/pabills/200607/rating_empty_properties.htm

1.3 Summary of consultation proposals

1.3.1 This consultation paper sets out Communities and Local Government's proposals regarding detailed aspects of the reforms to empty property rates in England, which would be achieved through secondary legislation.

1.3.2 It invites views from consultees on:

- **Potential reforms to a small number of the current exemptions from empty property rates.** The Department proposes to retain the current exemptions from empty property rates, which are set out in regulation 2 of the Non-Domestic Rating (Unoccupied Property) Regulations 1989², largely unchanged. However, we want to review whether empty listed and other protected buildings should continue to be exempt from rates; and whether the current insolvency exemptions should be extended to apply to companies in administration as well as companies in liquidation. We would welcome views from consultees on the options set out in section 3.
- **Detailed proposals for new anti-avoidance regulations**, which the Department intends to bring in under the new power provided by the Rating (Empty Properties) Bill³. The power was introduced in response to concerns from stakeholders about the potential for owners to avoid rates by rendering empty property incapable of economic repair – for instance, by removing roofs. It enables empty property that has been damaged to be valued as if the damage had not occurred, in circumstances to be defined in the regulations. Detailed proposals are set out in section 4.2.
- **Other types of rate avoidance.** The Department intends to work with the Local Government Association, the Institute of Revenues, Rating and Valuation and other interested stakeholders to identify the most prevalent forms of rate avoidance, and to establish how they might best be addressed within the existing legislative framework. To inform this work, we would welcome views on the issues discussed at section 4.3 of this document.

1.4 How to respond to this consultation

1.4.1 This consultation is being carried out under the code of practice on consultations adopted by the Government, details of which are provided at annex A. It has been published on the Department's website, and the organisations listed at annex B have been invited to respond.⁴ A partial regulatory impact assessment of the proposals in this paper has been undertaken and can be found at annex E.

² SI 1989/2261.

³ See paragraph 4 of Schedule 1 to the Bill, which inserts a new section 66A into the Local Government Finance Act 1988.

⁴ This consultation is available on the Department's website at: <http://www.local.communities.gov.uk/finance/busrats1.htm>.

- 1.4.2 Comments on the proposals in this consultation paper should be sent, preferably by e-mail, to:

emptyproperty@communities.gov.uk

Department for Communities and Local Government
Zone 5/C1
Eland House
Bressenden Place
London SW1E 5DU

- 1.4.3 The deadline for responses is **1 October 2007**.

- 1.4.4 In accordance with the requirements of the Freedom of Information Act 2000, all information contained in responses, including personal information, may be subject to publication or disclosure. Where respondents request that information given in response to the consultation be kept confidential, this will only be possible if it is consistent with Freedom of Information obligations.

- 1.4.5 Any automatic confidentiality disclaimer generated by your organisation's IT system will not be respected unless you specifically include a request to the contrary in the main text of your response.

2 Objectives

2.1 The overarching rationale for the Government's reforms to empty property relief, as set out in the regulatory impact assessment accompanying the Rating (Empty Properties) Bill,⁵ is to increase:

Competitiveness. Strengthening the incentive for owners to re-let or re-develop property that is empty will help to improve access to premises and so reduce UK business rents – which are currently amongst the highest in the world. This will help to improve the competitiveness of the UK.

Efficiency. Strengthening the incentive for owners to re-let or re-develop property that is empty will also encourage the efficient use of land and property. This will help to reduce the need for new development on greenfield sites, and to bring forward opportunities to re-develop brownfield land for housing and business property.

Fairness. Reforms to empty property relief are intended to improve fairness in the tax treatment of owners of different classes of empty property by applying the same strong incentive to re-let or re-develop property to all owners, except in exceptional circumstances where more favourable tax treatment can be justified.

2.2 Communities and Local Government intends that the reforms proposed by this consultation paper should support the achievement of these objectives, whilst being simple and practical to implement, with as little alteration to current practice as possible. To that end, it is consulting on proposals which seek to ensure that:

- exemptions from empty property rates make appropriate provision for exceptional circumstances where more favourable treatment can be justified, whilst ensuring that in all other circumstances owners are subject to the same strong incentive to bring empty property back into use.
- potential rate avoidance by owners of empty property is prevented, to ensure that all owners meet their rates liability and are subject to the incentive to re-let or re-develop empty property provided by the reformed empty property rate.

⁵ The regulatory impact assessment accompanying the Rating (Empty Properties) Bill is available at: <http://www.communities.gov.uk/index.asp?id=1510357>

3 Exemptions from the reformed empty property rate

3.1 Introduction

- 3.1.1 Communities and Local Government believes that in most circumstances the current system of exemptions from empty property rates, described at section 3.2 below, provides support for owners of appropriate classes of empty property and proposes to leave it largely unchanged. However, in a small number of cases, we propose to review the existing exemptions.
- 3.1.2 The Chancellor has already made clear in the 2007 Budget that the Government will retain the existing exemption from rates for any property that has been empty for less than three months. He also announced in the Budget that the current permanent exemption from rates for empty industrial properties will be replaced with an exemption for industrial property that has been empty for less than six months.⁶
- 3.1.3 This consultation document seeks views on proposals relating to the other current exemptions from empty property rates.

3.2 Existing exemptions

- 3.2.1 Certain classes of property are completely exempt from rates, regardless of whether they are occupied or empty, including all agricultural buildings.⁷
- 3.2.2 There are also a limited number of permanent exemptions from rates for additional specific classes of property when they are empty. These exemptions cover circumstances where:
- *occupation of the property is prohibited or prevented*, either by the operation of the law or because of action taken by a public authority;
 - *the property is recognised to be of architectural or historic interest*, by virtue of being either subject to a building preservation notice, listed, or included in the Schedule of ancient monuments;
 - *the property has a very low market rental value*, evidenced by it having a rateable value of less than £2,200;⁸

6 Whilst Kate Barker's analysis shows that the risks of owning commercial and industrial property appear to be equivalent, suggesting that more favourable tax treatment cannot be justified on economic grounds, the Government recognises that bringing the treatment of industrial property completely into line with that of other property would be a major reform to tax relief for the sector. That is why owners of empty industrial property will benefit from an additional three months rate free compared with other owners. The Barker Review of Land-Use Planning: Final Report is available at: <http://www.communities.gov.uk/index.asp?id=1504875>

7 The classes of property that are exempt from both occupied business rates and empty property rates are set out in Schedule 5 to the Local Government Finance Act 1988.

8 This exemption originally applied to properties with a rateable value of less than £1,000 when it was introduced in 1990 and the threshold has since more than doubled to £2,200. Owners of property located in areas with relatively weak market demand, which is reflected in the rateable value of the property, are more likely to benefit from this exemption. We estimate that 3.5% of all properties in the Assisted Areas are empty with a rateable value of less than £2,200 and benefit from this exemption, compared with 2.6% of empty properties in England as a whole. The Government will continue to keep the threshold under review.

- *the owner is insolvent* and is either bankrupt or subject to a winding-up order;
- *the owner is entitled to possession of the property for particular purposes only*, as a liquidator, a trustee under a deed of arrangement, or as the personal representative of a deceased person.

3.2.3 The Department proposes to retain the majority of the current exemptions from empty property rates. However, we want to review whether the current more favourable tax treatment of listed buildings should be retained, in light of the overall objective to provide strong incentives for owners to bring empty property back into use. We also want to review whether the existing exemptions from empty property rates for owners who are insolvent should be extended to apply equally to companies that enter into administration rather than liquidation.

3.3 Protected buildings

3.3.1 The Government is committed to protecting buildings of architectural or historic interest, and does this through the planning system.

3.3.2 Owners of buildings that are included on a list compiled by the Secretary of State for Culture, Media and Sport under the Planning (Listed Buildings and Conservation Areas) Act 1990, on advice from English Heritage, are required to obtain listed building consent before undertaking any work to the property which affects its special interest. The 1990 Act also provides a power for local planning authorities to temporarily extend listed building control, pending a decision by the Secretary of State as to whether to include the building in the statutory list, to unlisted buildings that appear to them to be of special architectural or historic interest and in danger of demolition or alteration, by serving a building preservation notice.

3.3.3 Any protected buildings which have non-domestic uses – for instance, listed buildings used as shops, offices or visitor attractions – are included in a rating list maintained by the VOA. When protected property that is on a rating list is in active use, the occupier is liable to pay occupied business rates in the usual way. However, when it is empty, the owner enjoys a permanent exemption from rates – significantly more advantageous than the three month exemption from rates generally offered to owners of empty property.

3.3.4 The overarching aim of the reforms to empty property relief is to provide a strong incentive for owners to bring empty property back into use, and to remove distortions in the tax treatment of different forms of property. It is arguable, therefore, that protected buildings should be subject to business rates when they are empty, like any other buildings. On the other hand, there may be good grounds for continuing to treat owners of empty protected property more favourably than others – for instance, if such buildings are demonstrably harder to let, and the risks to their owners are significantly greater than average.

- 3.3.5 Evidence of the risks associated with owning and developing protected buildings is mixed. English Heritage advises that “work to listed buildings is more painstaking and piecemeal than constructing a new building and so the right kinds of consultants and contractors should be employed. Costs and time taken are likely to be greater than for corresponding elements of new build.”⁹ However, market analysis carried out in 2006 by Investment Property Databank, which looked at a sample of listed offices across the country, found that “over the long term, owners of listed offices have incurred lower refurbishment costs than investors in more modern, unlisted offices. This suggests that it has not been necessary to spend more on refurbishments to attract and retain tenants of listed offices”. It also showed that “the long-term investment performance of listed and unlisted offices appears to have been identical at national level...indicating similar levels of risk”, and that “whilst the void rate in London was significantly higher for listed offices compared with unlisted offices, outside London the void rate for listed offices was significantly lower than for unlisted offices.”¹⁰ This finding is supported by research commissioned by the RICS Education Trust, which looked at listed buildings in Cornwall and concluded that “the occupancy level of commercial buildings was found not to be effected [sic] by listing.”¹¹
- 3.3.6 If protected buildings are more likely to be maintained in good condition when they are occupied, incentives to bring them back into use could help to conserve our national heritage. The research cited above found that “occupancy was confirmed to have a strong relationship with building condition. The effects of this relationship are heightened in the case of listed buildings. Part occupied or unoccupied listed buildings were found to be at significantly more risk than part occupied or unoccupied non-listed buildings.”¹²
- 3.3.7 The Department would therefore welcome views from consultees on the following options for the future treatment of protected non-domestic buildings that are empty.

Option one: continue to provide protected buildings with a permanent exemption from rates when they are empty.

This option would provide owners of empty non-domestic premises that are protected with a significant subsidy – continuing to place an equivalent burden on other tax payers – and would not increase the incentive for owners to bring empty non-domestic buildings that are protected back into use.

However, there may be a case for preserving the tax advantage enjoyed by owners of empty protected buildings if, for example, it can be demonstrated that there are greater risks associated with holding non-domestic property that is protected than with holding unprotected property (for instance, if it is demonstrably more difficult to let or sell).

9 *Heritage Works: the use of historic buildings in regeneration*, prepared by Drivers Jonas working with English Heritage, RICS and the British Property Federation, is available at: http://www.english-heritage.org.uk/upload/pdf/Heritage_Works.pdf

10 *The Investment Performance of Listed Offices*, Findings in Built and Rural Environments, October 2006. This research is based on a sample of 221 offices, 83% by value of which are located in London, and is available online at: <http://www.helm.org.uk/upload/pdf/Investment-Performance.pdf>.

11 *Listing traditional vernacular buildings has been detrimental to their condition*, Steve Goodhew, Brian Pilkington and Dennis Wilkinson, University of Plymouth, November 2002. Available online at: http://www.rics.org/NR/rdonlyres/C395B952-6E8E-4B8A-84DE-EDE86E400BD2/0/listing_vernacular.pdf

12 As above.

Option two: provide protected buildings with an initial exemption from rates for the first six months they are empty.

If there is a broad equivalence of risk in owning protected and non-protected commercial premises, treating owners of empty protected buildings more favourably than other owners distorts the incentives to bring empty property back into use. However, the Department recognises that applying the standard three month exemption from empty property rates to owners of listed non-domestic buildings would represent a major reform to the tax relief for the sector. This option would cushion the impact on owners of empty protected property by offering them an exemption from rates for an additional three months (bringing the total period of the exemption to six months). This is comparable with the future rates liability of owners of industrial property, who also currently enjoy a permanent exemption from empty property rates.

Option three: provide owners of protected buildings with the same initial exemption from rates as other owners.

Assuming there is a broad equivalence of risk in owning protected and non-protected commercial premises, this option would completely remove distortions in the incentives for property to be put to efficient use, by offering the same rate free period to owners of protected non-domestic buildings as is offered to owners of other non-domestic buildings (i.e. six months for industrial property and three months for other property). This option would provide a strong incentive to bring buildings that are of special architectural or historic interest back into use.

Questions for consultees

- 1. What, if any, evidence do you have regarding the risks of owning protected non-domestic buildings compared with the risks of owning other non-domestic buildings?*
- 2. Which of the three alternative periods of exemption from rates described at paragraph 3.3.7 do you think should apply to owners of empty protected buildings and why?*
- 3. Do you agree that all protected buildings included on the non-domestic rating list should be treated in the same way for rating purposes, or do you believe that some types of protected buildings should be treated more favourably than others? If so, which types of protected buildings do you think should be treated more favourably, on what grounds, and how might these categories be defined?*

3.4 Insolvency

- 3.4.1 The current exemptions from empty property rates apply to insolvent companies that are in liquidation, and to individuals subject to bankruptcy proceedings. They were introduced at a time when the vast majority of insolvent companies went into liquidation, either voluntarily or by order of the courts, and very few insolvent companies went into administration. The current exemptions do not apply to insolvent companies that are in administration.

- 3.4.2 The Government has since taken action to promote a rescue culture, which provides opportunities for insolvent companies that have viable underlying businesses to be rescued wherever possible, and which minimises the loss in the value of their assets in order to get a better result for their creditors where a rescue is not possible. The Enterprise Act 2002 streamlined the process for entering into administration and 3,560 companies entered into administration in 2006, compared with just 643 in 2002.
- 3.4.3 The modernisation of empty property relief is intended to strengthen the incentive for owners to make efficient use of empty property, and to ensure that the incentive applies equally to owners of all classes of empty property wherever that makes good sense. However, Communities and Local Government recognises that owners of empty property who are insolvent will face particular hardship in meeting their rates liability, and that their creditors could be disadvantaged if they were required to do so. We therefore have no plans to change the existing exemptions from empty property rates for individuals who are bankrupt or companies in liquidation, while we intend to consider whether a similar exemption should be offered to companies in administration.
- 3.4.4 The Department would welcome views from consultees on the following options:

Option one: companies in administration continue to pay empty property rates.

Under this option, the current disparity in the tax treatment of insolvent companies that are in liquidation and those that are in administration would continue. On the one hand, this could lead to insolvent companies entering liquidation with the resultant loss of jobs, loss of business for their suppliers and reduced returns to their creditors – when they might otherwise have been in a position to enter administration and continue operating – at a time when the Government is seeking to promote a rescue culture in cases of insolvency. On the other hand, the disparity could be justified on the grounds that, although a company in administration is insolvent, it may nevertheless still be operating and should therefore be treated in the same way as other companies despite its financial position.

Option two: companies in administration are exempt from empty property rates for twelve months.

Under this option, companies in administration would be exempt from empty property rates during the initial period of the administration (which is fixed at twelve months) but would be liable to pay rates during any extensions to that period. This would remove the potential for unequal tax treatment to distort initial decisions about whether to enter administration or to go into liquidation. It would also recognise that companies in administration, unlike companies in liquidation, may still be operating, by limiting the financial support provided by the exemption from empty property rates to a maximum of twelve months.

However, limiting the exemption from empty property rates to the initial period of the administration in this way could potentially distort decisions taken at a later stage about whether to continue efforts to rescue viable business by extending the period of the administration, or whether to enter liquidation.

Option three: companies in administration are permanently exempt from empty property rates.

This option would treat insolvent companies that are in administration in exactly the same way as those in liquidation. Although it could be held to conflict with the Government's general position that the reformed empty property rate should apply to owners of all classes of empty property, unless there is a strong case for different treatment, this option would remove any potential for decisions about whether to enter administration or to wind-up the company to be distorted by differences in rates liability.

Questions for consultees

4. *Which of the three options for the future rates liability of companies that are in administration set out at paragraph 3.4.4 do you think the Department should adopt, and why?*

3.5 Relief from empty property rates

- 3.5.1 A billing authority has the discretion to grant relief from rates where the ratepayer is suffering financial hardship, where it is reasonable to do so having regard to the interests of council taxpayers. Hardship relief may be granted regardless of whether the property is occupied or empty.
- 3.5.2 Empty property is not eligible for mandatory occupied business rate reliefs that support particular types of active businesses, including small businesses and those providing key services in small rural settlements (such as rural post offices, shops and pubs). This is because there is no active business to support when the property is empty.
- 3.5.3 The Department does not intend to extend the existing system of reliefs from occupied business rates to empty properties.

4 Tackling rates avoidance

4.1 Introduction

- 4.1.1 Communities and Local Government wants to tackle rates avoidance tactics that could potentially be employed by owners of empty property, whilst continuing to provide exemptions from empty property rates to those who genuinely qualify for them.
- 4.1.2 When an owner avoids paying empty property rates, it is unfair on other taxpayers who meet their rates liabilities, and it also reduces the financial incentive for the owner to bring the empty property back into use. Whilst the majority of owners meet their liability for rates, stakeholders have highlighted a variety of rate avoidance tactics which might be employed by a small number of owners.
- 4.1.3 Section 4.2 below seeks views on proposals for new regulations to prevent the potential avoidance of rates through making changes to the state of property which reduce its rateable value. Section 4.3 sets out the Department's intention to ensure that owners have a right to appeal against the application of new anti-avoidance regulations.
- 4.1.4 Section 4.4 seeks views on how prevalent other potential rate avoidance tactics are, and how they might best be tackled under existing legislation.

4.2 Changes to the state of property

- 4.2.1 In extreme cases, the owner of an empty property may seek to avoid liability for rates by allowing or causing its physical condition to deteriorate to the point where it is judged incapable of economic repair and is removed from the rating list.
- 4.2.2 This is not something an owner would undertake lightly, as it would reduce the market value of the asset. However, a number of stakeholders have expressed concern that the reform of empty property relief will cause more owners to act in this way.
- 4.2.3 The Government has therefore made provision to tackle this form of rate avoidance in the Rating (Empty Properties) Bill. Subject to Parliamentary approval, the Bill introduces a new section 66A to the Local Government Finance Act 1988, which provides a power for the Secretary of State and the Welsh Ministers to make regulations setting out circumstances in which the state of property included in an unoccupied hereditament shall be deemed not to have changed. So, for example, if the owner removed the roof from the property, for rating purposes it could continue to be shown on the list and be valued as if the roof had not been removed.
- 4.2.4 The Department proposes to bring in anti-avoidance regulations under this new power, to come into force no later than 1 April 2008 (and potentially earlier).

- 4.2.5 Our intention is that the anti-avoidance regulations should not apply if the property is damaged as a result of circumstances beyond the owner's control, or in the course of permitted development work. At the same time, the Department believes that anti-avoidance provisions should be as simple as possible to operate in practical terms, and should be based on existing valuation practice wherever practicable.
- 4.2.6 To achieve these objectives, it will be important to be able to define precisely and concisely the circumstances in which changes to the state of property should be treated as avoidance activity, and those in which it should be treated as normal business activity.
- 4.2.7 We would welcome views from consultees on the detailed proposals set out below.

Current practice

- 4.2.8 All non-domestic hereditaments that are liable for rates are entered in rating lists maintained by valuation officers and are re-valued at least every five years. Hereditaments are revalued more often if there are changes to them which affect their rateable value.
- 4.2.9 In valuing hereditaments, the valuation officer takes account of the state of the property, alongside other factors such as market demand and the local environment. If the property is in poor condition, the valuation officer has to judge whether it would be economically reasonable for the landlord to repair it, in light of the rental income it would generate if it was in reasonable repair. If it would be economically reasonable to repair it, the valuation is based on the assumption that the property is in reasonable repair, even if it is not.¹³ If it would not be economically reasonable to repair the property, it may be removed from the rating list.
- 4.2.10 The most recent revaluation was carried out in 2005. Under the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2005 (as amended)¹⁴, occupiers and owners have a right to appeal once against the rating list entry for their hereditament after each five yearly revaluation, if they disagree with the valuation which appears in the rating list. They also have a right of appeal against the rating list entry for the hereditament if there are material changes in circumstance, such as changes in the physical state of the property.
- 4.2.11 This system of regular revaluation, and of appeals, means that the state of any property comprising or included in a hereditament should be reflected in its current rateable value.

Proposed application of new section 66A

- 4.2.12 Subject to Parliamentary approval of the Rating (Empty Properties) Bill, the Department proposes to bring in anti-avoidance regulations, to be made under new section 66A of the Local Government Finance Act 1988 which will be inserted by paragraph 4 of Schedule 1 to the Bill. New section 66A enables changes in the state of property to be disregarded in specified circumstances. This would extend the existing legislative requirement that valuation officers disregard the condition of property in circumstances when it would be economically reasonable to repair the property.

¹³ See Schedule 6 to the Local Government Finance Act 1988

¹⁴ SI 2005/659.

- 4.2.13 The practical effect of the anti-avoidance regulations would be that in future, if the valuation officer judged that it would not be economic for the landlord to repair the property, he or she would then need to establish whether the anti-avoidance provisions should apply. This consultation seeks views on the circumstances in which the anti-avoidance provisions should apply.
- 4.2.14 If the anti-avoidance provisions did not apply, the valuation officer would value the property in the usual way and may remove it from the rating list. If the anti-avoidance provisions did apply, the valuation officer would value the property as if it were in the same state as on a defined date.¹⁵ This consultation seeks views on what that date should be.
- 4.2.15 The anti-avoidance provisions would apply for a defined period, after which the rating list entry would need to be updated to reflect the actual state of the property. This consultation seeks views on what that time period should be, and how best to ensure that the rating list entry is promptly updated when the period expires.
- 4.2.16 The Department's proposals are set out below, by reference to the subsections of new section 66A to which they relate.

New section 66A(1)(a) and (b)

- 4.2.17 New section 66A(1) enables anti-avoidance regulations to provide that the state of any property comprising or included in an unoccupied hereditament shall be deemed not to have changed since before any event of a prescribed description, or by reason of any act done by or on behalf of a prescribed person. Put simply, the valuation officer could be required to value the property, or any part of it:
- as if it were in the same state as it was at an earlier date; or
 - as if an act done by a prescribed person, or someone acting on his behalf, that causes change to its physical state, had not been done.
- 4.2.18 We would welcome views from consultees on which of the following options would be the best basis for anti-avoidance regulations that are simple and practicable, and that do not apply in circumstances where damage to property is caused by normal business activity rather than rate avoidance activity.

Option one: value the property as if it were in the same state as it was before a defined event, and define the event as the date it was last occupied

Under this option, in valuing any empty property that is not capable of economic repair, the valuation officer would assume that each part of it was in the same state as it was on the date of last occupation – unless the owner could demonstrate that it had been damaged as a result of:

- natural disasters, such as flooding, erosion of land, subsidence, gales or hurricanes;

¹⁵ In respect of factors other than the state of the property, the valuation would be carried out in the usual way. For example, any subsequent changes to the physical state of the wider area in which the property is located would be taken into account.

- accidental damage, such as burst water pipes, gas explosions or fire, that the owner had taken appropriate action to prevent;
- criminal damage, such as graffiti, vandalism or theft, that the owner had taken appropriate action to prevent;
- work undertaken to re-develop the property for which planning permission has been obtained;
- demolitions which are permitted under part 31 of Schedule 2 to the General Permitted Development Order 1995¹⁶.

In the circumstances listed above, the anti-avoidance regulations would not apply and the empty property would be valued in the usual way (meaning that it could be removed from the rating list, or its rating list entry could be altered to reflect its state). In all other circumstances, empty property would be valued as if each part of it were in the same state as it was on the day it was last occupied. So if it was considered economic to repair the property on the day of last occupation, the property would be valued as if it were still capable of economic repair, regardless of any damage that had since occurred.

This option has the advantage of being closely based on current valuation practice, and therefore being relatively simple to operate, whilst protecting owners who did not cause or allow their property to be damaged in order to avoid rates. However, it could leave a loophole for owners to avoid rates by causing or allowing damage to the property before the day of last occupation. It would also require the valuation officer to establish when and how the damage had occurred, which in some cases could be difficult to prove and so lead to additional appeals.

Option two: value the property as if it were in the same state as it was before a defined event, and define the event as the most recent day in respect of which it was last valued¹⁷

Under this option, in valuing any empty property that is not capable of economic repair, the valuation officer would assume that each part of it was in the same state as it was on the most recent day in respect of which it was last valued, unless the owner could demonstrate that it had been damaged as a result of:

- natural disasters, such as flooding, erosion of land, subsidence, gales or hurricanes;
- accidental damage, such as burst water pipes, gas explosions or fire, that the owner had taken appropriate action to prevent;

16 See the Town and Country Planning (General Permitted Development) Order 1995 (SI 1995/418).

17 In this context, the phrase “the most recent day in respect of which it was last valued” refers to either:

- (a) the day that the rating list showing the property came into force (or, if the property was added to the list after that day – other than as a result of a split or merger of previously listed property – the day on which it was added); or, where that list entry has subsequently been altered,
- (b) the most recent *material day* for which the rating list entry for the property was altered by the valuation officer. When a valuation officer values a property for the purposes of considering whether to alter an entry, he considers various factors in relation to it (set out in paragraph 2(6) of Schedule 6 to the Local Government Finance Act 1988) as they existed on the material day, so that a value shown in a list for a property for a day reflects matters as they stood on that day. The material day is established in accordance with the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992/556).

- criminal damage, such as graffiti, vandalism or theft, that the owner had taken appropriate action to prevent;
- work undertaken to re-develop the property for which planning permission has been obtained; or
- demolitions permitted under part 31 of Schedule 2 to the General Permitted Development Order 1995.

Referring to the condition it was in on the most recent day in respect of which it was last valued – rather than the day it was last occupied – would ensure that owners could not avoid rates through causing or allowing damage to the property before the day of last occupation. It would also mean that the valuation officer would not be required to establish when the damage had occurred, making this option the simplest to operate and the one most closely based on existing valuation practice.

Option three: value the property as if it were in the same state as it was before an act or omission that causes its state to change, done by or on behalf of a prescribed person, and specify who the person is and who is to be treated as connected with them

If this option were adopted, the Department intends that the prescribed person should be the owner of the property.

The practical effect would be that the valuation officer would have to establish: what act or omission had caused the change in the condition of the property; who was responsible for it; and whether the person responsible was the owner, or was operating on behalf of the owner. If the valuation officer established (assuming it was possible to do so) that the damage to the property had been caused by an act or omission of the owner or someone acting on the owner's behalf, the property would be valued as if it was in the same state as it was before the act or omission. If the valuation officer could not satisfy himself that the damage had been so caused, the property would be valued in the usual way and could be removed from the rating list.

Acts causing changes in the property's condition could include:

- damaging or destroying elements of the interior or exterior structure of the building, such as the walls, roof, ceilings, floors, windows or means of access;
- removing or damaging fixtures and fittings, including the means of connection to key services, such as lighting, water, heat and power;
- damaging or destroying other property included in the hereditament, such as drives, parking areas, landscaped areas or lighting;
- any other act which damages the physical condition of any property included in the hereditament.

Omissions causing changes in the property's condition are discussed at paragraph 4.2.40 below. Persons who the valuation officer would treat as connected with the owner for these purposes are discussed at paragraph 4.2.38 below.

This option represents a significant move away from existing valuation practice, as it requires valuation officers to establish how the change in the condition of a property occurs. Whilst it would link anti-avoidance measures directly to acts done by the owner for the purpose of avoiding rates, which makes good sense in logical terms, it would be very complex to administer. It would make the process of valuing empty properties significantly harder and – in cases where the valuation officer cannot find clear-cut evidence as to how the damage was caused and by whom – it is likely that the volume of appeals would increase.

4.2.19 The Department intends to ensure that owners have a right to appeal if they believe that the valuation officer has applied the anti-avoidance regulations to their property in circumstances when the regulations should not have been applied. Our proposals in relation to appeals are set out at section 4.3 below.

Questions for consultees

5. *With regard to the three options described at paragraph 4.2.18, do you think that the valuation officer should be required to value empty property as if it were in the same state as it was:*

i) before the date it was last occupied (and only if it has been damaged in specific circumstances, on which questions 6 and 7 seek views);

ii) before the date it was last valued (and only if it has been damaged in specific circumstances, on which questions 6 and 7 seek views); or

iii) before an act or omission that caused its state to change and which was done by or on behalf of the owner (and only if the valuation officer can establish that this is the case, on which questions 8 and 9 seek views)?

Why?

6. *If option one or option two were adopted, do you agree that anti-avoidance regulations should not apply to the classes of property described at paragraph 4.2.18 (i.e. property that is damaged as a result of natural disasters; accidental or criminal damage that the owner has taken appropriate action to prevent; permitted development work; or permitted demolitions)? If not, why not?*

7. *If option one or option two were adopted, are there other classes of property that you think anti-avoidance regulations should not apply to, in addition to those listed at paragraph 4.2.18? If so, what additional classes of property should be exempt, on what grounds, and how could they be clearly defined in legislation?*

8. *If option three were adopted, do you agree that anti-avoidance regulations should only apply if the valuation officer is able to prove that damage to the property had been caused or allowed by an act or omission done by the owner, or a person acting on his behalf, as described at paragraph 4.2.18? If not, why not?*

9. *If option three were adopted, are there additional classes of property to which you think the anti-avoidance regulations should apply? If so, what are they, on what grounds should anti-avoidance regulations apply to them, and how could they be clearly defined in legislation?*

10. For each of the three options set out at paragraph 4.2.18, are there practical issues which the Department should consider in implementing them?

New section 66A(2)

4.2.20 New section 66A(2) enables anti-avoidance regulations to specify the circumstances in which, and the period for which, changes to the state of the property would be disregarded by the valuation officer.

Circumstances in which anti-avoidance provisions should apply

4.2.21 As set out above, anti-avoidance regulations are not intended to apply in circumstances where the property is damaged as a result of circumstances beyond the owner's control, or in the course of permitted development work.

4.2.22 Options one and two at paragraph 4.2.18 above would achieve this by providing that the anti-avoidance regulations do not apply where the owner can demonstrate that the damage to property was caused by:

- natural disasters, such as flooding, erosion of land, subsidence, gales or hurricanes;
- accidental damage, such as burst water pipes, gas explosions or fire, that the owner had taken appropriate action to prevent;
- criminal damage, such as graffiti, vandalism or theft, that the owner had taken appropriate action to prevent;
- work undertaken to re-develop the property for which planning permission has been obtained; or
- demolitions permitted under part 31 of schedule 2 to the General Permitted Development Order 1995.

4.2.23 Option three at paragraph 4.2.18 above would achieve this by providing that the anti-avoidance regulations do not apply if the valuation officer is unable to satisfy himself that the damage to property was caused or allowed by an act or omission by the owner, or a person acting on his behalf, other than permitted development or demolition.

4.2.24 The Department intends that the anti-avoidance provisions should apply in the specified circumstances, regardless of whether the identity of the hereditament in which the property that has been damaged changes. That is why section 66A refers to "the state of any property comprising or included in the hereditament".

4.2.25 So, for instance, if a commercial property is divided into three new business units, and one of the new units includes property that was damaged as result of an act by the owner prior to the sub-division, the anti-avoidance regulations would apply and the property included in the new unit would be valued as if it was in its earlier state of repair.

Period for which anti-avoidance provisions should apply

4.2.26 The Department believes that the period of time for which the valuation officer should ignore the change in the state of the property, in circumstances where the anti-avoidance provisions apply, needs to be long enough to act as a genuine deterrent to rate avoidance.

4.2.27 Whilst it would be logical for the time period to start on the day that the property was damaged, this is not considered to be a workable option, as in many cases it would be impossible to establish the precise date on which the damage occurred. The Department therefore proposes that the time period should start on the day that the rating list entry would otherwise have been altered or removed.¹⁸

4.2.28 We would welcome views on when the period of time for which the change in the state of property should be disregarded under the anti-avoidance regulations should come to an end:

- i) One year from the day that the rating list entry would otherwise have been altered or removed;
- ii) Two years from the day that the rating list entry would otherwise have been altered or removed;
- iii) Three years from the day that the rating list entry would otherwise have been altered or removed; or
- iv) Indefinitely.

4.2.29 During the period of time for which the anti-avoidance regulations apply, the owner's rates liability would not be reduced as a result of the damage to property.

4.2.30 The Department wants to ensure that owners are treated fairly and that their rates liability ceases to be affected by the anti-avoidance regulations when that time period expires. Valuation officers will be responsible for achieving this objective, under their statutory duty to maintain accurate rating lists.

4.2.31 We would welcome views on the following options for practical arrangements to ensure that no owner's rates liability is affected by the application of the anti-avoidance regulations for any longer than the period of time defined in the regulations:

- i) On the day that the time period for which the change in the state of property can be disregarded expires, the property is automatically removed from the rating list until the valuation officer next values the property, when he will value it in the usual way. This option provides the maximum protection for owners affected by the application of the anti-avoidance regulations, as it assumes that

¹⁸ Regulation 14 of the Non-Domestic Rating (Alteration of Lists and Appeals) Regulations 2005 (SI 2005/659) (as amended) governs the date from which an alteration to a list should take effect. The general position, under paragraph (2), is that alterations take effect from the day on which the circumstances giving rise to the alteration occurred, for example the day on which a material change of circumstances occurred. However, in certain cases, an alteration will take effect on a different day, for example where a completion notice has been served or where the date the event giving rise to the alteration cannot be ascertained.

the property is not capable of economic repair and is not liable for rates until it is next valued by the valuation officer under his duty to maintain an up to date rating list. However, in some cases this may mean that owners benefit from the removal of their property from the rating list when it does in fact have a rateable value (until such time as the valuation officer carries out a new valuation under his duty to maintain an up to date rating list). For instance, in some circumstances the original damage to the property may have led to a reduction in its rateable value rather than its removal from the rating list; or the property may since have been repaired.

- ii) On the day that the time period for which the change in the state of property can be disregarded expires, the rating list entry for the property is altered or removed to reflect its actual condition on the day it was last valued. Under this option, the property is assumed to be in the same state as it was when the anti-avoidance regulations were applied. If the state of the property had further deteriorated since then, the owner could appeal by making a proposal to the valuation officer in the usual way. However, if the owner had repaired the property since then, its increased value would not be reflected in his rates liability until the valuation officer next valued the property under his duty to maintain an accurate rating list.
- iii) From the day that the time period for which the change in the state of property can be disregarded expires, if the valuation officer has not altered the rating list entry for the hereditament to reflect its changed state under his existing duty to maintain an up-to-date rating list, the owner may appeal against the continued application of the anti-avoidance provisions. Whilst this option is based most closely on existing valuation practice, it could be seen as providing less protection for the owner, or as placing unfairly on him the onus of ensuring that the anti-avoidance regulations are not applied for longer than they should. The owner's rates liability could continue to be affected by the anti-avoidance provisions for longer than the period specified in regulations if neither he nor the valuation officer took action to alter the rating list entry promptly, or if the owner's appeal was not promptly resolved.

4.2.32 If property is re-developed during the time period for which the anti-avoidance provisions apply, we intend that the owner should be able to make a proposal to the valuation officer that the regulations should cease to apply, and the rating list entry should be altered or removed, from the point when permitted re-development work begins.

4.2.33 If property is re-occupied during the time period for which the anti-avoidance provisions apply, the new occupier would be liable for the occupied business rates in the usual way. To prevent owners from avoiding empty property rates by re-letting the property for a very short period of time, we are consulting on how long a property should be re-occupied before the owner benefits from the initial three or (in future) six month exemption from empty property rates when it next becomes empty (see paragraphs 4.4.4 – 4.4.5 below). We intend that the same minimum period of re-occupation should be required before the owner of the property ceases to be affected by the application of the anti-avoidance regulations when the property next becomes empty.

- 4.2.34 The Department would welcome views on whether and for how long the anti-avoidance regulations should continue to apply if the property is sold, and remains unoccupied. It could be seen as unfair to require a new owner to pay rates on a property that would otherwise have been removed from the rating list, because of avoidance tactics employed by the previous owner. On the other hand, if a new owner would not inherit the rates liability of the previous owner, he or she could seek to avoid rates by asking the vendor to damage the property before it is sold. There is also a risk that the sale of a property could be engineered – for example, to a sister company – solely as a means of avoiding the rates liability.
- 4.2.35 Consultees are invited to consider which of the following options would strike the best balance between the need to treat new owners fairly and the need to prevent rates avoidance:

- i) Anti-avoidance provisions cease to apply if the hereditament is sold, and the rating list entry can immediately be altered or removed in the usual way.
- ii) Anti-avoidance provisions apply for a reduced period of time if the hereditament is sold, and the rating list entry can be altered or removed three months after the sale.
- iii) The period of time for which anti-avoidance provisions apply does not change if the hereditament is sold.

Questions for consultees

10. *Having regard to the issues considered at paragraph 4.2.26 – 4.2.28, which of the following options for the period of time that the anti-avoidance regulations could apply do you prefer, and why?:*

- i) One year;*
- ii) Two years;*
- iii) Three years;*
- iv) Indefinitely.*

11. *Having regard to the issues considered at paragraph 4.2.31, which of the following options do you think would best ensure that the owner's rates liability is not affected by the anti-avoidance provisions for any longer than the specified time period, and why? What practical issues should the Department consider in implementing those options?*

- i) On the day that the time period for which the change in the state of property can be disregarded expires, the property is automatically removed from the rating list until the valuation officer next values the property, when he will value it in its actual condition.*
- ii) On the day that the time period for which the change in the state of property can be disregarded expires, the rating list entry for the property is altered or removed to reflect its actual condition on the day it was last valued.*

iii) From the day that the time period for which the change in the state of property can be disregarded expires, the owner may appeal against the continued application of the anti-avoidance provisions by making a proposal to the valuation officer.

12. Do you agree that anti-avoidance provisions should cease to apply if the property is re-developed or re-occupied during the period of time for which the anti-avoidance regulations apply? If not, why not?

13. Which of the following options do you think would strike the best balance between the need to treat new owners fairly and the need to prevent rates avoidance?

i) Anti-avoidance provisions cease to apply if the hereditament is sold, and the rating list entry can immediately be altered or removed in the usual way.

ii) Anti-avoidance provisions apply for a reduced period of time if the hereditament is sold, and the rating list entry can be altered or removed three months after the sale.

iii) The period of time for which anti-avoidance provisions apply does not change if the hereditament is sold.

New section 66A(4)(a) and (b)

4.2.36 New section 66A(4)(a) and (b) enable anti-avoidance regulations to provide that an act is to be treated as done on behalf of a prescribed person if it is done by any person connected with that person, and to define in what circumstances persons are to be treated as connected. It is likely that it would only be necessary to define connected persons under option three at paragraph 4.2.18.

4.2.37 Communities and Local Government proposes that, if option three above is adopted, acts or omissions shall be treated as having been done on behalf of the owner if they are done by any person connected with the owner.

4.2.38 The Department would welcome views on who should be treated as connected with the owner for these purposes, and proposes the following:

- the previous occupier of the property;
- persons directly employed by the owner on either a permanent or casual basis;
- suppliers of goods or services to the owner;
- persons related to the owner; and
- any person commissioned by the owner to carry out an act or omission resulting in damage to the state of property.

Questions for consultees

14. Do you agree that, if option three at paragraph 4.2.18 is adopted, acts or omissions shall be treated as having been done on behalf of the owner if they are done by any person connected with the owner? If not, why not?

15. Do you agree that, if option three at paragraph 4.2.18 is adopted, some or all of the persons listed at paragraph 4.2.38 should be treated as connected with the owner? If not, why not? What alternative means of determining whether damage is caused by a person acting on behalf of the owner would be preferable, if option three is adopted?

New section 66A(5)

4.2.39 New section 66A(5) enables anti-avoidance regulations to provide that they have effect in relation to omissions as well as acts.

4.2.40 The Department proposes that, if option three above is adopted, anti-avoidance measures should apply when the change in the state of property results from any omission by the owner of the hereditament, or by a person connected with them. Omissions may include:

- failing to take appropriate action to secure the property against theft, vandalism, illegal occupation or accidental damage;
- failing to take appropriate action to ensure that the property is weather-tight.

Questions for consultees

16. Do you agree that, if option three at paragraph 4.2.18 is adopted, the change in the state of property should be disregarded where property is damaged as a result of omissions as well as acts done by or on behalf of the owner?

4.3 Appeals

4.3.1 Under the existing system, ratepayers who disagree with the rateable value of their property may challenge it by making what is known as a “proposal” to the valuation officer. The arrangements for making proposals against the 2005 list entries are set out in the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2005 (SI 2005/659), as amended.

4.3.2 The right to make proposals applies equally in respect of empty and occupied properties. Proposals are not limited to challenges against compiled rating list entries. Ratepayers may also make proposals against alterations to rateable values made by valuation officers as part of their statutory duty to maintain non-domestic rating lists, and also on the grounds of a material change of circumstances. In the vast majority of cases, proposals are resolved through discussion between the ratepayer and the valuation officer. Those that cannot be decided in this way are resolved at valuation tribunals.

- 4.3.3 The Department proposes to ensure that owners have a right to appeal against the application of the anti-avoidance regulations. We intend that owners should be able to make a proposal on the grounds that the rating list entry is inaccurate because of the incorrect application of the anti-avoidance regulations. Proposals on these grounds would be made to the valuation officer in the same way as any other proposals, and if successful, could result in the removal of the property from the rating list.

Questions for consultees

17. *Do you agree that owners should have a right to make a proposal on the grounds that the valuation officer has applied the anti-avoidance regulations, and disregarded changes to the state of property, in circumstances when they should not have done so? If not, why not?*
18. *Do you foresee any difficulties in ensuring owners have a right to make proposals on these grounds? If so, what are they and how might they best be avoided or overcome?*

4.4 Other rate avoidance tactics

- 4.4.1 Local government and rating practitioners tell us that they encounter other rate avoidance tactics employed by owners of empty properties, including:

- Failing to carry out the final works to complete a development, and so avoid having it entered onto the rating list. The empty property is marketable, but the owner avoids liability for empty property rates.
- Intermittent occupation. The owner claims the initial three or (in future, for industrial property) six month exemption from empty property rates; then lets the property for six weeks before claiming another three- or six-month exemption from rates; then lets the property for six weeks before claiming another exemption etc.
- Bogus tenancies. The owner lets the empty property to an organisation that does not in fact operate from the premises, but which is exempt from rates, such as a charity; or to a fictitious tenant. The property remains empty, but the owner avoids paying empty property rates.

- 4.4.2 Communities and Local Government intends to work with the Local Government Association, the Institute of Revenues, Rating and Valuation and other interested stakeholders to identify the most prevalent forms of rate avoidance and to establish how best they might be addressed. At this stage, we would welcome views from consultees on the issues identified below.

Failing to complete a development

4.4.3 Billing authorities already have powers to prevent owners from avoiding rates by failing to complete a development by serving them with a completion notice specifying a completion day, after which the initial three or (in future) six month exemption period automatically starts to run:

- where a building is considered to have been completed; or
- where the work remaining to be done on a building is such that it can reasonably be expected to be completed within three months.

Questions for consultees

19. *How widespread do you believe the practice of failing to complete a development in order to avoid rates is, based on your experience? Please provide any evidence, or describe any cases, of this happening that you have.*

20. *How might billing authorities best be encouraged to make full use of their existing powers to serve completion notices and so prevent owners from avoiding empty property rates by failing to complete developments?*

Intermittent occupation

4.4.4 The Department wants to ensure that an empty property must be re-occupied for a reasonable period of time before the owner can qualify for the initial three or (in future for empty industrial property) six month exemption when it next becomes empty. We believe that the period of time should be sufficiently long to prevent avoidance of empty property rates through intermittent occupation, but not so long as to unduly restrict the ability of owners to bring premises back into use through flexible, short-term lets.

4.4.5 We would welcome views from stakeholders on which of the following options strikes the best balance between those two aims:

- six weeks
- three months
- six months

Questions

21. *How widespread do you believe the practice of intermittent occupation in order to avoid rates is, based on your experience? Please provide any evidence, or describe any cases, of this happening that you are aware of.*

22. *With regard to the time period for which a property should have to be re-occupied before it re-qualifies for the initial three or (in future) six month exemption when it next becomes empty, which of the options at paragraph 4.4.5 do you think would strike the best balance between preventing rate avoidance whilst preserving the ability to let premises on a flexible, short-term basis, and why?*

Bogus tenancies

- 4.4.6 Stakeholders have raised concerns about the practice of letting empty property to an organisation that does not in fact operate from the premises but which is exempt from rates, such as a charity; or to a fictitious tenant. The property remains empty, but the owner avoids paying rates.
- 4.4.7 The Department intends to explore further with the Local Government Association, the Institute of Revenues, Rating and Valuation and other interested stakeholders how widespread this practice is, and what action might be taken to tackle it under existing legislation.

Questions for consultees

22. *Are you aware of instances where an owner has let a property to a company that does not in fact operate from the premises, for the purpose of avoiding empty property rates?*
23. *How widespread do you believe this practice is, based on your experience, and how do you think it might best be prevented?*
24. *Are you aware of other forms of rate avoidance employed by owners of empty properties that you think the Department should address with the LGA and IRRV? If so, what are they and how do you think they might best be addressed?*

Identifying owners

- 4.4.8 Finally, it is the Department's intention that owners of non-domestic property and their representatives should be responsible for keeping their local billing authority updated about the empty property that they own. We will work with the Local Government Association and other interested stakeholders to consider how this might be encouraged.

5 Next steps

- 5.1 The Department intends to announce its decisions on the future exemptions from reformed empty property rates and on the proposed new anti-avoidance regulations in the autumn, after considering responses to this consultation.
- 5.2 We intend to bring new anti-avoidance regulations, and any reforms to the exemptions from empty property rates, into effect from 1 April 2008. A full regulatory impact assessment will be published alongside the secondary regulations that give effect to its decisions.

Questions for consultees

25. Are there any further comments that you would like to make on the issues considered in this consultation, or any other issues relating to the reformed empty property rate that you think the Department should have regard to?

Annex A: Consultation Criteria

The Government has adopted a code of practice on consultations. The criteria below apply to all UK national public consultations on the basis of a document in electronic or printed form. They will often be relevant to other sorts of consultation. Though they have no legal force, and cannot prevail over statutory or other mandatory external requirements (e.g. under European Community Law), they should otherwise generally be regarded as binding on UK departments and their agencies, unless Ministers conclude that exceptional circumstances require a departure.

- 1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.**
- 2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.**
- 3. Ensure that your consultation is clear, concise and widely accessible.**
- 4. Give feedback regarding the responses received and how the consultation process influenced the policy.**
- 5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.**
- 6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.**

The full consultation code may be viewed at

www.cabinet-office.gov.uk/regulation/Consultation/Introduction.htm

Are you satisfied that this consultation has followed these criteria? If not, or you have any other observations about ways of improving the consultation process please contact:

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Bressenden Place
LONDON SW1E 5DU
david.plant@communities.gsi.gov.uk

Annex B: Consultees

Academy for Sustainable Communities	Cyril Leonard
Allsop Chartered Surveyors	Department for Transport
Ancient Monuments Society	Drivers Jonas
Architectural Heritage Fund	Eastynet
Architecture Foundation	Edwin Hill
Argent Group plc	English Heritage
Association of Preservation Trusts	English Historic Towns Forum
Association of Town Centre Management	EP2
Business In Sport and Leisure	Erdman Lewis Rating
Baker Davidson Thomas	Evans & Payne
Bayram Vickery Meech	Federation of Small Business
BBG Commercial	Federation of Small Businesses
Berkley Homes Group	Forum of Private Business (FPB)
BH&HPA	Georgian Group
BOC Ltd.	GL Hearn
Brady & Mallalieu Architects	Grosvenor Group
Bridgestone Surveyors	GVA Grimley Hair & Son
British Beer & Pub Association	Heritage Link
British Chamber of Commerce	Historic Environment Conservation
British Council for Offices	Historic Houses Association
British Holiday & Homes Park Association	IBSOpensystems
British Property Federation	Insolvency Service
British Retail Consortium	Institute of Revenues, Rating and Valuation
Chartered Institute of Building	Inter Bank Rating Forum
Chartered Institute of Housing	J D Consultancy Ltd.
Chartered Institute of Public Finance and Accountancy	Joint Committee of National Amenity Societies
Civic Trust	Jones Lang LaSalle
Cluttons LLP	King Sturge LLP
Commission for Architecture and the Built Environment	Rating Surveyors' Association
Confederation of British Industry	Lambert Smith Hampton
Conservation Studio	Land Registry
Country Landowners Association	Landmark Trust

Leeds City Council
Liberata
Local Authorities (England)
Local Government Association
Local Government Ombudsman
London Councils
London Forum of Amenity Societies
LSM Partners
MUA Property Services Ltd.
NAI Fuller Peiser
National Caravan Council
National Grid Plc
National Trust
New Local Government Network
Nial Phillips Architects Ltd
Paul Drury Partnership
Planning Officers Society
PriceWaterhouseCoopers
Princes Regeneration Trust,
Rapleys LLP
Rating Solutions South West
Rating Surveyors Association
Regional Development Agencies (England)
Robert Clarke Chartered Surveyors
Royal Institute of British Architects
Royal Institution of Chartered Surveyors
Royal Town Planning Institute
Sanderson Weatherall
SAVE Britain's Heritage
Society for the Protection of Ancient Buildings
Society of Local Authority Chief Executives
Stimpsons Chartered Surveyors
Theatres Trust
Twentieth Century Society
UK PIA
Urban Design Group 7
Urban Splash
Valuation Office Agency
Valuation Tribunal Service
Victorian Society
VisitBritain
Wilkinson Hardware Stores

Annex C: Partially occupied property

This annex summarises the impact of reforms to empty property relief on owners of partially occupied property.

At present, if a non-domestic property is only partially occupied, the billing authority has discretion to request that the valuation officer apportions the property's rateable value between its occupied and unoccupied parts, after which, broadly speaking, the empty property rate applies to the unoccupied part of the building and the occupied business rate applies to the occupied part.

As a consequence of the change to the empty property rate, the Rating (Empty Properties) Bill adjusts the provisions in the Local Government Finance Act 1988 to provide that, where the empty property rate is 100% of the occupied business rate, an apportionment will have no effect and the occupied business rate – including any occupied business rate reliefs such as small business rate relief – will apply to the whole of the property. This will ensure that occupiers can benefit from occupied business rate reliefs on the whole of the property – not just the occupied part.

The Bill also provides that, if in future the Government uses its new power to reduce the empty property rate, the reduced rate will apply to the empty part of an apportioned property. Finally, it provides that if an apportioned property is owned by a charity or community amateur sports club, or is covered by the other exemptions from empty property rates set out in regulations, the empty part of the property will benefit from an exemption from rates for the entire time it is empty.

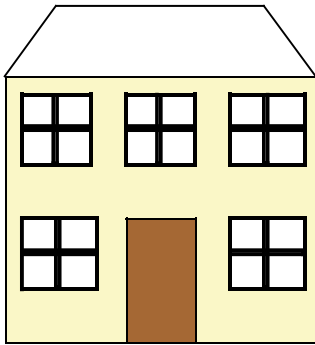
The Department intends that the unoccupied part of an apportioned property should benefit from the initial three month exemption from rates, or six months in the case of industrial properties. This will ensure that, in cases where new businesses are only partly occupied when they initially start up, authorities have discretion to provide short term support by applying the initial exemptions from the unoccupied rate to the unoccupied part.

The Department proposes to ensure that regulations make clear that billing authorities should apply the initial three and (in future) six month exemptions from empty property rates to the unoccupied parts of apportioned buildings.

The diagrams below illustrate how partially occupied property that the billing authority chooses to apportion will be treated in future.¹⁹

Diagram 1: Property occupied by a business in receipt of small business rate relief

The business is operating at full capacity and the property is fully occupied.

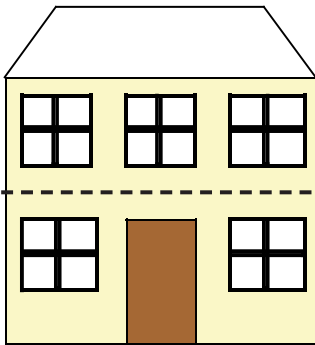


Rateable value of whole property: £5,000

The rates payable on the property would normally be £183.75. However, the occupier is eligible for small business rate relief and claims a reduction of £91.88.

Rates payable for each month: £91.88

The occupier becomes unable to operate at full capacity and occupies only part of the property. The billing authority decides to request that the valuation officer apportions the property’s rateable value between its occupied and unoccupied parts. The empty part is exempt from rates for three months.



Rateable value of occupied part: £2,500

The occupier continues to be eligible for small business rate relief on the occupied part and claims a reduction of £45.94.

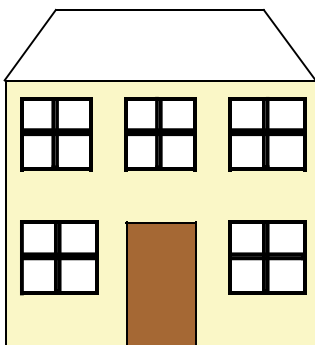
Rates payable on unoccupied part: £45.94

Rateable value of unoccupied part: £2,500

Rates payable on unoccupied part: £0

Total rates payable for each month: £45.94

The apportionment ceases once the initial exemption from empty property rates has expired and the occupied business rate applies to the whole property.



Rateable value of whole property: £5,000

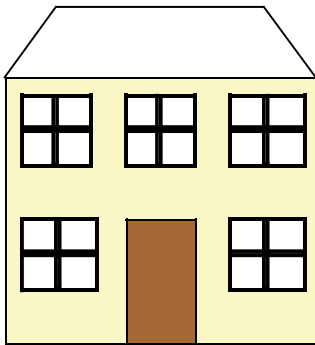
The occupier is eligible for small business rate relief and claims a reduction of £91.88.

Rates payable for each month: £91.88

¹⁹ The rates payable for each month in the examples are based on the 2007-08 multiplier.

Diagram 2: Property occupied by a business that does not qualify for any relief

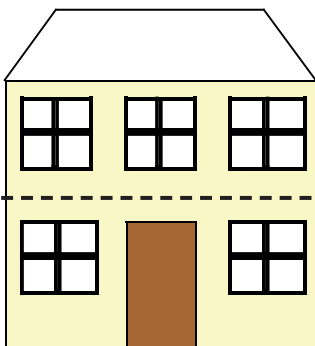
The business is operating at full capacity and the property is fully occupied.



Rateable value of whole property: £20,000

Rates payable for each month: £740

The occupier becomes unable to operate at full capacity and occupies only part of the property. The billing authority decides to request that the valuation officer apportions the property's rateable value between its occupied and unoccupied parts. The empty part is exempt from rates for three months.



Rateable value of occupied part: £10,000

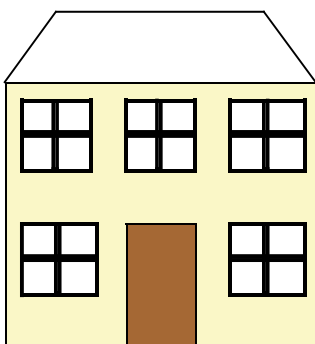
Rates payable on unoccupied part: £370

Rateable value of unoccupied part: £10,000

Rates payable on unoccupied part: £0

Total rates payable for each month: £370

The apportionment ceases once the initial exemption from empty property rates has expired and the occupied business rate applies to the whole property.



Rateable value of whole property: £20,000

Rates payable for each month: £740

Annex D: Glossary

Appeal	See proposal .
Apportionment	Where a property is only partly occupied, the local authority has the discretion to request that the valuation officer divides the property's total rateable value between its occupied and unoccupied portions so that liability can be calculated separately for the two parts. See section 44A of the Local Government Finance Act 1988.
Basic occupied rate	This is the rate payable by occupiers of non-domestic properties, calculated under section 43(4) of the Local Government Finance Act 1988, where no reliefs are available and no adjustments required as a result of transitional arrangements following revaluation.
Billing authority	<p>Local authorities are responsible for sending rates bills in respect of the non-domestic property in their area. In England, the following local authorities are billing authorities:</p> <ul style="list-style-type: none">● district councils;● London borough councils;● the Common Council of the City of London; and● the Council of the Isles of Scilly. <p>See section 144(2) of the Local Government Finance Act 1988 and section 1(2) of the Local Government Finance Act 1992.</p>
Community Amateur Sports Club	A club that is registered and which is required by its constitution to be a club that: is open to the whole community; is organised on an amateur basis; and has as its main purpose the provision of facilities for, and promotion of participation in, one or more sports recognised by the National Sports Councils. See paragraph 1 of Schedule 18 to the Finance Act 2002.
Empty property rate	The rate payable by the owner of unoccupied non-domestic property. See section 45 of the Local Government Finance Act and the amendments proposed in the Rating (Empty Properties) Bill.
Hereditament	The unit of property for which rates are payable.
Material day	The day in respect of which various factors, such as matters affecting the physical state of a property, are considered when a valuation officer is valuing it with a view to altering its entry in the rating list. See paragraph 2(6) of Schedule 6 to the Local Government Finance Act and the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992/556).

Owner	The owner of a hereditament or land is the person entitled to possession of it, as set out in section 65(1) of the Local Government Finance Act 1988
Proposal	Where an occupier or owner is unhappy with the rating list entry for their property, in various circumstances they have the power to ask the valuation officer to consider changing it. This is known as making a proposal. See the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2005 (SI 2005/659).
Rateable value	The rateable value of a property is the value by which rates liability is calculated. It represents the annual rental value of the property, which the valuation officer estimates the property would achieve if it was in a reasonable state of repair. See Schedule 6 to the Local Government Finance Act 1988.
Rating list	All non-domestic properties in respect of which rates are payable are shown on a rating list. The majority of properties are shown on the local rating list for the area covered by the billing authority they are situated in (some large networks which cross billing authority boundaries are shown on a central list). Local valuation officers are under a duty to ensure their rating list is accurately maintained. See sections 41 and 42 of the Local Government Finance Act 1988.
Rating list entry	The details shown for an individual property on a rating list, which must include its rateable value. See section 42 of the Local Government Finance Act 1988.
Valuation	The process by which a valuation officer arrives at a rateable value for a property. See Schedule 6 to the Local Government Finance Act 1988.
Valuation Office Agency	The Valuation Office Agency is an executive agency of Her Majesty's Revenue and Customs (HMRC) and its valuation officers are responsible for the valuation of non-domestic property in England.
Valuation officer	Statutory officers for each billing authority area, appointed by the Commissioners of HMRC, are responsible for valuing non-domestic property and for preparing and maintaining the local rating list for the area.
Valuation Tribunal	Where an owner or occupier and a valuation officer cannot agree on a proposal to alter a rating list entry, the matter is passed, as an appeal, to a valuation tribunal.

Annex E: Partial Regulatory Impact Assessment

1. Introduction

- 1.1 This is a partial regulatory impact assessment of proposals for detailed aspects of reforms to empty property relief, to be achieved through secondary legislation following the enactment of the Rating (Empty Properties) Bill.
- 1.2 As announced in the 2007 Budget, the Government intends to raise the empty property rate from 50% to 100% of the basic occupied rate, to provide a strong incentive for the efficient use of commercial land and property. It also intends to reduce the rate for empty property owned by charities and community amateur sports clubs from 10% of the occupied business rate to zero, to provide a significant boost to Government support for the third sector and community clubs. The Rating (Empty Properties) Bill will make these reforms to the empty property rate from 1 April 2008, subject to Parliamentary consent.
- 1.3 The Government also announced in the 2007 Budget Report that it will retain the existing exemption from rates for property that has been empty for less than three months, whilst replacing the current permanent exemption from rates for empty industrial property with an exemption for the first six months that it is empty only. The exemption from rates for empty industrial property will be reformed by amending the secondary legislation, and will have effect from 1 April 2008.
- 1.4 Communities and Local Government has now published for consultation a number of proposals for additional reforms to detailed aspects of the system of rates for empty property. These proposals are set out in the main body of the consultation document above, and relate to:
 - exemptions from the reformed empty property rate, for classes of property other than industrial property; and
 - new regulations to prevent avoidance of the reformed empty property rate.
- 1.5 This partial regulatory impact assessment considers the costs and benefits of each of the options on which the Department is consulting.

2. Objectives

- 2.1 The overarching rationale for reforms to empty property relief is to increase competitiveness, efficiency and fairness.
- 2.2 As set out in section 2 of the main body of the consultation document above, the Department wants to ensure that detailed aspects of the system for rating empty property help to achieve these objectives, whilst being simple and practical to implement, with as little alteration to current valuation practice as possible.

2.3 To that end, it is consulting on proposals which seek to ensure that:

- exemptions from empty property rates²⁰ make appropriate provision for exceptional circumstances where more favourable tax treatment can be justified, whilst ensuring that in all other circumstances owners are subject to the same strong incentive to bring empty property back into use.
- potential rate avoidance by owners of empty property is prevented, to ensure that all owners meet their rates liability and are subject to the incentive to re-let or re-develop empty property provided by the reformed empty property rate.

3. Options

Exemptions: protected buildings

3.1 The consultation seeks views on the following options for the future treatment of empty listed and other buildings which are protected through the planning system, which are described in detail at section 3.2 of the main body of the consultation document above:

Option one: continue to provide protected buildings with a permanent exemption from rates when they are empty.

Option two: provide protected buildings with an initial exemption from rates for the first six months they are empty.

Option three: provide owners of protected buildings with the same initial exemption from rates as other owners.

Exemptions: companies in administration

3.2 The consultation also seeks views on the following options for the future treatment of companies in administration, which are described in detail at section 3.3 of the main body of the consultation document above:

Option one: companies in administration continue to pay empty property rates.

Option two: companies in administration are exempt from empty property rates for twelve months.

Option three: companies in administration are permanently exempt from empty property rates.

²⁰ The existing exemptions from empty property rates are set out in the Non-Domestic Rating (Unoccupied Property) Regulations 1989.

Tackling rates avoidance

3.3 Finally, the consultation seeks views on the following options for preventing owners from potentially avoiding rates by rendering empty property incapable of economic repair, as set out in detail in section 4.2 of the main body of the consultation document above:

Option one: value the property as if it were in the same state as it was before the date it was last occupied. Under this option, in valuing any empty property, the valuation officer would assume that each part of it was in the same state as it was on the date of last occupation – unless the owner could demonstrate that it had been damaged as a result of:

- natural disasters, such as flooding, erosion of land, subsidence, gales or hurricanes;
- accidental damage, such as burst water pipes, gas explosions or fire, that the owner had taken appropriate action to prevent;
- criminal damage, such as graffiti, vandalism or theft, that the owner had taken appropriate action to prevent;
- work undertaken to re-develop the property for which planning permission has been obtained; or
- demolitions which are permitted under part 31 of schedule 2 to the General Permitted Development Order 1995.

Option two: value the property as if it were in the same state as it was before the most recent day in respect of which it was last valued. Under this option, in valuing any empty property that is not capable of economic repair, the valuation officer would assume that each part of it was in the same state as it was on the most recent day in respect of which it was last valued, unless the owner could demonstrate that it had been damaged as a result of:

- natural disasters, such as flooding, erosion of land, subsidence, gales or hurricanes;
- accidental damage, such as burst water pipes, gas explosions or fire, that the owner had taken appropriate action to prevent;
- criminal damage, such as graffiti, vandalism or theft, that the owner had taken appropriate action to prevent;
- work undertaken to re-develop the property for which planning permission has been obtained; or
- demolitions permitted under part 31 of Schedule 2 to the General Permitted Development Order 1995.

Option three: value the property as if it were in the same state as it was before an act or omission that causes its state to change, and that is done by or on behalf of a prescribed person (defined as the owner of the property). The practical effect would be that the valuation officer would have to establish: what act or omission had caused the change in the condition of the property; who was responsible for it; and whether he/she was the owner, or was operating on behalf of the owner. If the valuation officer established (assuming it was possible to do so) that property had been damaged as a result of an act or omission of the owner or someone acting on the owner's behalf, the property would be valued as if it was in the same state as it was before the act or omission. If the valuation officer could not establish whether the damage had been so caused, the property would be valued in the usual way.

- 3.4 The Government intends to ensure that, whichever option is adopted, owners have a right to appeal if they believe that the valuation officer has applied the anti-avoidance regulations to their property in circumstances when the regulations should not have been applied.

4. Costs and benefits of reform

Exemptions: protected buildings

- 4.1 The overarching aim of the Government's reforms is to provide strong incentives for all owners to bring empty property back into use, and to remove distortions in the tax treatment of different forms of property. Nevertheless, we recognise that there may be good grounds for continuing to treat owners of empty protected property more favourably than other owners – for instance, if such buildings are demonstrably harder to let, and the risks to their owners are significantly greater than average.
- 4.2 The Department is therefore seeking views from consultees on the relative merits of the three options for the future tax treatment of owners of empty protected buildings summarised above. An initial assessment of the likely costs of these options is provided below.
- 4.3 The options for reforming the exemption from rates for owners of empty protected buildings would only affect owners of protected non-domestic property included on the rating list – for instance, listed buildings used as shops, offices or visitor attractions. It would not affect owners of protected residential property. For the purposes of modelling the likely costs of reforming the current exemption, we have assumed that around 30,000 protected buildings are on the rating list.²¹

²¹ There are currently around 372,000 buildings in England that are protected by virtue of being listed. Whilst no data are held on how many listed buildings are residential and how many are non-domestic, we estimate that around 28,000 listed buildings – about 7% of the total – are liable for non-domestic rates. This estimate is made on the basis that about 7% of the 23.1 million properties in England that are liable for either council tax or non-domestic rates are on the rating list. No central data are held on the number of additional properties that are protected by virtue of a six-month building preservation notice. For modelling purposes we have assumed that up to 2,000 such notices may be valid at any one time. This gives a total of 30,000 protected buildings.

- 4.4 The average vacancy rate for all non-domestic buildings was 9 per cent in 2004-05.²² If we assume that the risks of owning protected non-domestic buildings are the same as for other non-domestic buildings, this would suggest that around 2,700 protected non-domestic buildings are likely to be empty. However, as set out in the consultation document, evidence of the risks associated with owning and developing protected buildings is mixed. We have therefore assumed that between 2,700 and 5,400 protected buildings on the rating list may be empty.
- 4.5 The average rateable value of non-domestic property in England is £28,000. If we assume that the average rateable value of protected non-domestic property is also £28,000, this suggests that reforming the permanent exemption from empty property rates for owners of protected buildings (options two and three) could reduce the cost of relief by £35 million to £70 million. Retaining the permanent exemption from rates for owners of empty protected buildings (option one) would place an equivalent burden on other taxpayers.

Exemptions: companies in administration

- 4.6 The modernisation of empty property relief is intended to strengthen the incentive for owners to make efficient use of empty property, and to ensure that the incentive applies equally to owners of all classes of empty property wherever that makes good sense. However, the Department recognises that owners of empty property who are insolvent will face particular hardship in meeting their rates liability, and that their creditors could be disadvantaged if they were required to do so.
- 4.7 We therefore have no plans to change the existing exemptions from empty property rates for individuals who are bankrupt or companies in liquidation, while we have invited views on the merits of extending a similar exemption to companies in administration.
- 4.8 Option one would have no impact on tax revenue, as companies in administration would continue to pay empty property rates. However, it could lead to insolvent companies entering liquidation, with the resultant loss of jobs, loss of business for their suppliers and reduced returns to their creditors, when they might otherwise have been in a position to enter administration and continue operating.
- 4.9 Options two and three would exempt companies in administration from empty property rates for up to twelve months or for the duration of the administration respectively. 3,560 companies entered administration in 2005-06, and the average duration of an administration is 363 days. Whilst no data are held centrally on the number or rateable value of empty properties held by the average company in administration, a sample collected by the Insolvency Service of 465 companies in administration provides an estimate that the average company in administration holds empty property with a rateable value of £195,000.
- 4.10 This suggests that exempting companies in administration from empty property rates could reduce tax revenue by up to £160 million, placing an equivalent burden on other tax payers. However, it could also lead to more insolvent companies entering administration and continuing to operate, rather than entering liquidation with the associated impacts for their staff, suppliers and creditors.

²² Commercial and Industrial Property Estimated Vacancy Statistics: England, 2004/05, Department for Communities and Local Government.

Tackling rates avoidance

- 4.11 The Department anticipates that introducing new anti-avoidance regulations will provide benefits in terms of competitiveness, efficiency and fairness, by preventing owners from avoiding incentives to bring empty property back into efficient use at the expense of other taxpayers.
- 4.12 As each of the options for tackling rates avoidance on which the Department is consulting would simply ensure that owners could not avoid their existing liabilities for empty property rates, they would not give rise to any new financial or other impacts on owners of empty property; on central tax revenues; or on local authorities, as the billing and collection agents.
- 4.13 There could, however, be a small administrative cost to the Valuation Office Agency, depending on which option for tackling rates avoidance is ultimately adopted. Whilst empty properties are already included on the rating list maintained by the VOA, and as a result no increase in the number of properties requiring valuation is expected, option three represents a significant alteration to existing valuation practice. If adopted, option three could make the process of valuing an empty property administratively more complex and time consuming and the Department is considering the likely associated costs with the VOA.

5. Specific impact tests

Competition

- 5.1 The Government's general presumption is that all owners of empty property should be liable for the reformed empty property rate, and that exemptions should only be provided in exceptional circumstances. This supports the overarching objectives for reform, which seek to improve competitiveness by reducing differences in the tax treatment of different types of property, and to improve efficiency by providing strong incentives to bring property back into use.
- 5.2 The consultation seeks views on whether the current exemption from empty property rates for owners of protected buildings can be justified. The options for reform would, if adopted, reduce differences in the tax treatment of owners of different classes of property.
- 5.3 The consultation also seeks views on whether the current exemption from empty property rates for companies in liquidation should be extended to companies in administration. In considering whether to extend more generous tax treatment to companies in administration, the Department will have regard to whether the costs to other taxpayers are outweighed by the benefits to businesses, employees, suppliers and creditors of supporting more insolvent companies to enter administration and continue operating.

Small Firms

- 5.4 When assessing the impact of reform upon small firms, the most important factor is the tendency of small firms to be tenants rather than owners of business property. The impact of reforms to empty property relief – including the options in this consultation paper regarding new anti-avoidance regulations and reforms to the exemptions from empty property rates – is expected to fall primarily on property owners rather than tenants. That is why organisations such as the Federation of Small Businesses have generally welcomed reforms to empty property relief.

Legal Aid

- 5.5 No impact on legal aid has been identified as arising from the options for exemptions from the reformed empty property rates and for tackling rates avoidance that have been published for consultation.

Sustainable Development, Carbon Assessment, Other Environment

- 5.6 Reform of empty property relief will help to encourage owners to make efficient use of land and property, and so reduce the need for new development on greenfield land. The proposals in this consultation seek to ensure that all owners are subject to the same strong incentive to bring empty property back into use, apart from in exceptional circumstances where exemptions from the reformed empty property rate can be justified.

Health

- 5.7 No impact on health has been identified as arising from the options for exemptions from the reformed empty property rates and for tackling rates avoidance that have been published for consultation.

Race, Disability, Gender and Other Equality

- 5.8 No equality impacts have been identified as arising from the options for exemptions from the reformed empty property rates and for tackling rates avoidance that have been published for consultation.

Human Rights

- 5.9 There are two provisions of the European Convention which could be relevant to the options set out in the consultation document – Article 1 of the First Protocol and Article 14.
- 5.10 Article 1 of the First Protocol provides that everyone is entitled to the peaceful enjoyment of his possessions, and may not be deprived of them except in the public interest and subject to the conditions provided for by law and by the general principles of international law. There is an exception for the right of the State to secure the payment of taxes and discretion for the State to impose taxes in the public interest. The Department is confident that the options published for consultation are justified as in the public interest and proportionate to the policy aims.

- 5.11 The second provision is Article 14 of the Convention which provides that the enjoyment of the rights and freedoms set out in the Convention shall be secured without any discrimination. This means that any differential treatment in terms of the right to peaceful enjoyment of property, protected by Article 1 of the First Protocol, including differential treatment for tax purposes, is in principle unlawful. The European Court has, however, consistently said that differential treatment is not unlawful provided that it is objectively and reasonably justified. The Department will have regard to consultation responses in considering whether the options for reforming exemptions from empty property rates, and the ensuing differences in the rates liabilities of owners, can be justified as being in the general public interest.

Rural

- 5.12 The options for exemptions from the reformed empty property rates and for tackling rates avoidance that have been published for consultation are expected to have broadly equivalent impacts in rural and urban areas.

6. Next steps

- 6.1 The Department has published this partial regulatory impact assessment alongside its consultation proposals. The deadline for consultation responses is 1 October 2007.
- 6.2 The Department will announce its decisions in the light of responses to consultation in the autumn. A full regulatory impact assessment will be published alongside the secondary regulations that give effect to those decisions.

7. Contact Point

- 7.1 For further information, please contact:

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