THE NON-DOMESTIC RATING BILL

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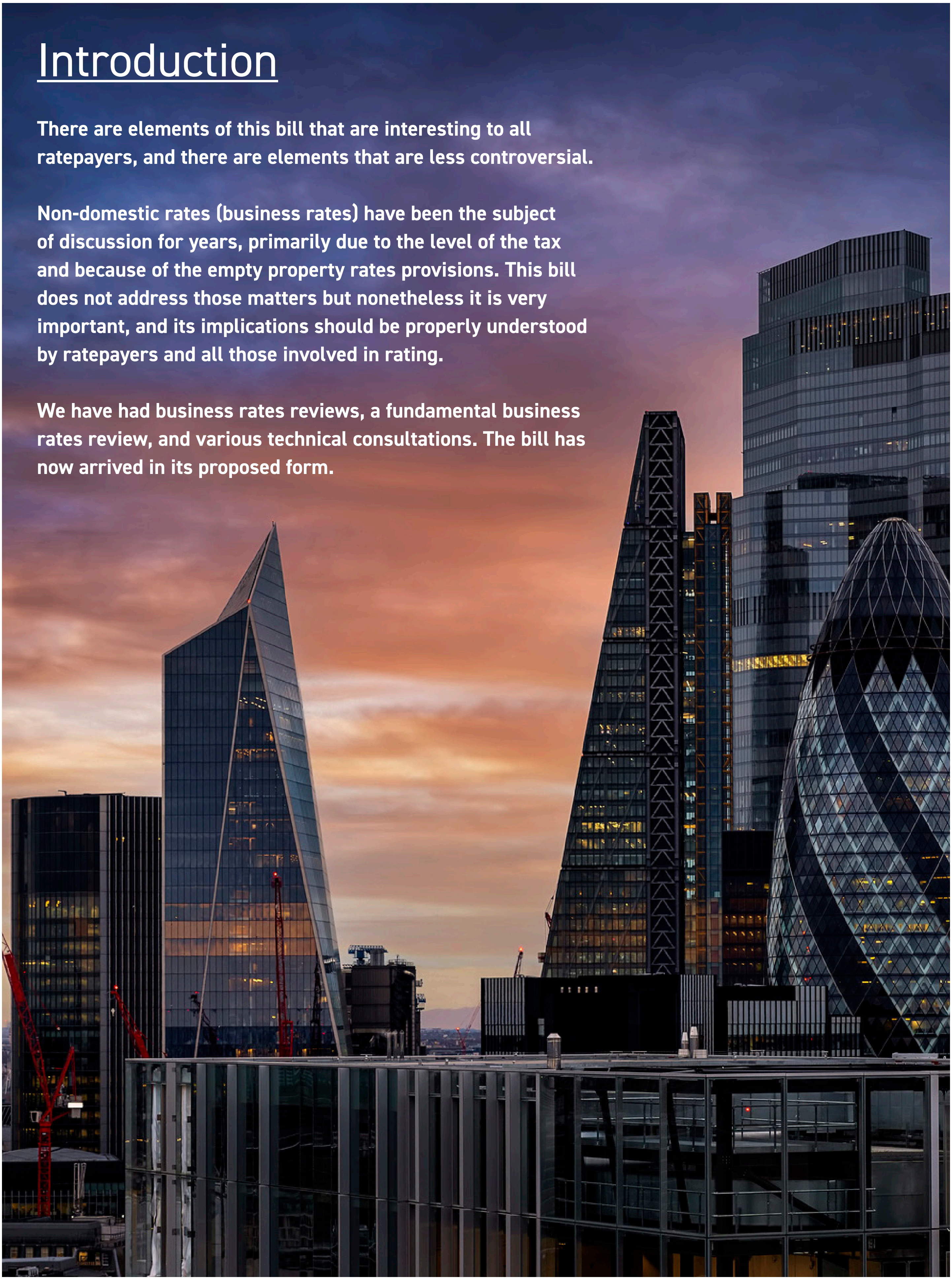
Introduction

There are elements of this bill that are interesting to all ratepayers, and there are elements that are less controversial.

Non-domestic rates (business rates) have been the subject of discussion for years, primarily due to the level of the tax and because of the empty property rates provisions. This bill does not address those matters but nonetheless it is very important, and its implications should be properly understood by ratepayers and all those involved in rating.

We have had business rates reviews, a fundamental business rates review, and various technical consultations. The bill has now arrived in its proposed form.



THE BILL

There has been a lot of discussion across the UK about whether three-year revaluations are a good idea with many suggesting, as applies in Hong Kong, a one-year cycle or whether the five-year revaluations should be maintained. Others have discussed the need for accuracy in assessment and liability through the provision of information by ratepayers. Both of those elements have made their way into the bill along with much more controversial changes.

The most controversial is the change to the potential for appeals consequent on a material change of circumstances (MCC). The Covid-19 pandemic threw up many challenges not least for rating.

The government reacted to the pandemic with all sorts of legislation and regulations that affected everyone including business. That resulted in ratepayers making thousands of Checks and Challenges to rateable values. Had they progressed government receipts from non-domestic rates would have been severely affected.

The Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Act 2021 operated retrospectively and did what it was intended to do. It made appeals that relied on the effects of the Covid-19 pandemic incompetent. Some of the language adopted in that Act has made its way to the Non-Domestic Rating Bill, and as set out below, that is very controversial in my view and substantially disadvantages ratepayers.

KEY ELEMENTS OF THE BILL

I've identified various key elements of the bill which are discussed below. I start with the most onerous obligation on ratepayers, the provision of information.

Provision of Information by Ratepayers (Clauses 10-13)

This area of reform imposes very onerous obligations on ratepayers that are subject to penalty. This is in respect of new provisions about information and there is a lot to digest here.

Clause 10 is about the ratepayer's right to access Valuation Office Agency (VOA) information. The VOA is subject to the Commissioners of Revenue and Customs Act of 2005 and that means that there are statutory restrictions on when the VOA can disclose information. The bill gives the VOA a discretion to disclose information where a ratepayer requests it, when the information is relevant to the valuation of a property and where the person is the ratepayer. It does not allow a breach of data protection law but if the request is reasonable and the data is not subject to that protection, the Valuation Officer (VO) can (but is not required) to provide the information requested.

Clause 11 is about England and Northern Ireland. This is facilitating data exchange across the Irish sea. Clause 12 is all about enabling councils and HMRC to exchange information.

Now we get to the part that ratepayers are going be most interested in, Clause 13. There are new ratepayer duties of disclosure to HMRC and to the VOA. Beginning with HMRC, the duty is a minor one, as a ratepayer, you must provide HMRC through an online gateway with one or more of your tax reference numbers. Information must be provided within 60 days of becoming the for the ratepayer for the property. And there is a penalty regime attached to this.

If you fail to give HMRC that information, you must pay a £100 fine. If you give HMRC, knowingly or recklessly false information, you will be subject to a £3,000 fine that is to be paid within 30 days. And there is a provision covering late provision of notifiable information. If you are late providing the information the penalty increases by £60 a day, subject to a cap of £1,800.

Now the information that you must give to the VOA. Ratepayers must provide what is called 'notifiable information' and it must be provided within 60 days of the change. If you are the ratepayer of a property, you are subject to the regulations. But 'ratepayer' includes a person who 'would be' a ratepayer in respect of a property if the property was in the list. Whilst this is poorly drafted the intention is clear, information is required to be provided irrespective of whether the property is entered on the rating list or not.

So, what is notifiable information? It is information about the ratepayer or the property itself. It covers anything that might affect the existence, extent or the rateable value of the property. It covers just about anything that might justify a change to the rating list. It is difficult to identify anything that is not captured by that form of words.

In essence if there is any change, or if there is a material change of circumstances (that might have a positive effect on value as well as negative effect), if the change might result an inaccuracy, you must tell the VOA.

You only need disclose the information, if you knew or reasonably ought to have known that it would help the VOA, that might help the smaller ratepayer avoid getting into trouble, but it imposes a significant obligation on larger ratepayers and those who engage rating advisors.

So, if you become the ratepayer of a property, you must tell the VOA that you have become the ratepayer. If you extend your property or set a new rent, you have 60 days to tell the VOA. The causes of notifiable information are myriad, so the obligation is a big one.

Ratepayers will also have to do an annual return where they confirm to the VOA of no changes or confirm that they have notified the VOA of all notifiable information.

The VOA also has power under the bill to serve information notices, which require a ratepayer to give it particular information within a specified time. This is in addition to Form of Return regime and presumably is to force disclosure of information that the VOA might find useful.

The more concerning aspect of all of this is that there are no reciprocal requirements. Currently, under the 'Check, Challenge, Appeal' process, when you put in a Check the VOA must deal with it within a certain period. But if CCA changes, or is replaced by the disclosure obligations, the requirement for VOA action disappears. At the moment the VO has 12 months after a rating list has closed where he can make retrospective changes to that rating list. Such changes can cause substantial hardship for ratepayers where significant historic rates liabilities arise. In that sense, that lack of reciprocal time limits seems to be unfair from the ratepayer's perspective. In Scotland changes are limited to the rate year in which the change is made. But that limitation will not apply in England as the bill is drafted.

We have a penalty regime here as well. If you don't disclose the notifiable information, you must pay the higher of 2% of your rateable value or £900. If you give a false statement, it is a crime. If the VOA is satisfied beyond reasonable doubt that you've committed a crime, the VOA can choose instead to serve the penalty notices and you must pay the higher of 3% of the rateable value or £500. And you end up having committed a criminal offense and all the implications of that.

Next the area of real interest to ratepayers and their rating advisors; what constitutes a material change of circumstance for rating appeals.

Material Changes of Circumstances (MCCs) (Clause 14)

The changes all follow what the government did in preventing rating appeals related to the effects of the Covid-19 pandemic. The Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Act 2021 said that the effect of all the regulations or guidance arising from the government's reaction to the pandemic that affected the use of the property or that caused changes in the locality could not amount to MCCs. What the bill does is carry forward that principle so that it applies to all legislation or guidance, which directly or indirectly causes a change to physical enjoyment of the property itself or that causes a change in the locality. Such legislative change will no longer be capable of being an MCC and will only affect rateable value if the effects are present at the valuation date for the relevant rating list.

The legislation, guidance or advice that affects you whether issued by this country or a public authority, or any other country or its public authorities will now not be a competent ground for appeal. And anything done by the ratepayers with a view to securing compliance with any of the above will similarly not count. So, general closure orders or limitations on trading will no longer be an MCC, even though it is an MCC now. That means that legislative changes (an example being the smoking ban) that would count as an MCC resulting in reduced rateable values, will now no longer count.

Now, I see what government is trying to achieve but there appear to be some real unintended consequences. The explanatory notes to the bill say this is about restoring the originally intended scope of the reality principle as set out in the Local Government Finance Act 1988 Act. And we know what that originally intended purpose is.

Addis Ltd v Clement (VO) [1987] RA 1 concerned the effects of an enterprise zone that caused a purely economic effect on value. The Court of Appeal said because there was no physical manifestation, the enterprise zone could not be an MCC, the House of Lords overturned that saying that a change in the law could be an MCC. The government then used the Local Government Finance Bill (now LGFA 1988) to undo the House of Lord's decision and to put things back to as they were in the Court of Appeal.

The Non-Domestic Rating bill as drafted, goes very much further than the principle in Addis. In that case Lord Wolf made the point explicitly that if the enterprise zone gave rise to physically manifest changes in the locality, then they would be MCCs. But under the bill if the changes cited are indirectly attributable to a provision made under a statute they will no longer qualify as MCCs. That limitation potentially extends to all sorts of law. So, it seems that as currently drafted the bill by adopting the language of the Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Act 2021 is going much further than the cause of the appeal in Addis. It will have quite serious unintended consequences for the rating system.

The Revaluation Cycle & the Valuation Date (Clause 5)

The bill gives effect to a major change in rating and that is the move to a 3-year revaluation cycle. There will be 3-year rating lists from the 2026 revaluation. The Local Government Finance Act 1988 already, contains a regulatory power to fix the antecedent valuation date (AVD). Since 1990, in England and Wales, the AVD has been set two years prior to the rating lists coming into force. There is no reason why that could not change to a one-year period, as is the case in Scotland, so that the rating lists reflect more closely what is happening in the market.

Rates Relief from Rates & Local Authority Discretion (Clause 4)

The next area is much more interesting and is to do with discretionary relief. The main change is in respect of time limits. Currently local authorities cannot grant a discretionary discount at all once you are six-months beyond the financial year to which it relates. So, there is nothing you can do about a retrospective period.

Many ratepayers found all the reliefs and grants that they were entitled to, and the application process, difficult to navigate during the Covid-19 pandemic. Local authorities found it difficult to process all that additional work and that led to delays. There were also difficult cases were the VOA retrospectively entered a property in the rating list but several years later meaning that the ratepayer could not apply for the reliefs they were entitled to had the entry existed on the rating list at that time. The bill removes that problem because from the 1st April 2022, the retrospective cut-off period is removed. So, in theory a ratepayer can apply for discretionary relief going back several years. But local authorities have discretion so, perhaps, expect some resistance if applications affect already constrained local authority budgets.

Transitional Rates Relief (Clause 6)

What is of interest in the transitional rates relief (TRR) part of the bill is the change to the requirement for revenue neutrality. This has historically resulted in bills being phased in a downward direction where rateable values fall at revaluation allowing total rates revenues to be less than the sum prior to revaluation. But the current removal of downward phasing may not be permanent.

Completion Notices
(Clause 7)

The bill changes the definition of a new building for completion notice purposes. The bill introduces a new definition allowing property subject to redevelopment that could become capable of beneficial occupation within the period envisaged by the completion notice period, can now be considered a 'new building' and be subject to a completion notice for the first time. This is, perhaps, a way round ratepayers avoiding empty property rates through what has historically been referred to as 'constructive vandalism'.

Improvement Relief
(Schedule 4ZA)

Improvement rate relief applies for one year after the qualifying improvements are made. Simply, the value added to your property as a result of the improvements is discounted from the rateable value. This applies for one year and the provision expires on the 1st of April 2029. But there is a power to potentially extend the scheme.

District Heating Systems
(Schedule 4ZA)

The district heating systems relief provides a 100% discount if you are a heat network. The relief runs all the way until 2035. Again, there is a power for extension.

Rural Rate Relief
Schedule 4ZA

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Rural rate relief now is now to be operated like the Covid retail relief was, by local authorities which is then refunded by government. That works if the local authority does what it should, but that is not always the case. But now the relief is going to be mandatory, like charitable relief in that there is no discretion. So that seems to be a positive change.

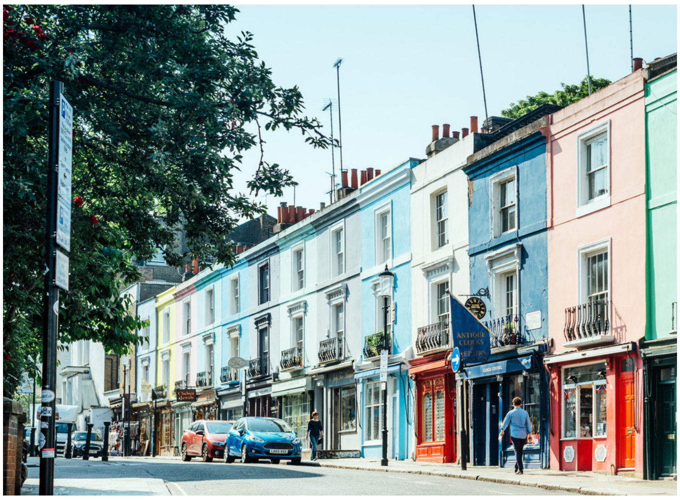
The Central Rating List
(Schedule 5A & Clause 8)

Improvement relief is being applied to central list properties and for the first time, charitable rate relief is going to be available to ratepayers' occupying property that appears on the central list. So positive news here.

The bill also gives the Secretary of State the power to direct the central valuation officer to change the descriptions that apply to the central list without legislation. That should facilitate easier management of the central list.

The Multiplier
(Clause 15)

This clause is about the multipliers that apply. In essence, all that the bill does is change the indexation of multipliers from the RPI to CPI and creating a regulatory power for the index to be lower than CPI.



Conclusion

The new information regime is onerous and there is a lot of duplication to catch you out. The MCC changes result in the potential for very great restrictions on the potential for rating appeals. That will undoubtably result in unfairness and very difficult litigation.