



## BRIEFING PAPER

Number 08967, 7 September 2020

# Non-Domestic Rating (Public Lavatories) Bill 2019-21

By Mark Sandford

**Contents:**

1. Business rates and public toilets
2. The Bill



# Contents

<b>Summary</b>	<b>3</b>
<b>1. Business rates and public toilets</b>	<b>4</b>
1.1 Background	4
1.2 Public toilets: liability	4
1.3 Rates on public toilets: concerns	5
1.4 Introduction of rate relief for public toilets	6
1.5 Developments in Wales	8
<b>2. The Bill</b>	<b>9</b>

## Summary

The [\*Non-Domestic Rating \(Public Lavatories\) Bill 2019-21\*](#) was introduced into the House of Commons on 18 March 2020. Its Second Reading was originally scheduled for Monday 30 March 2020, but this was postponed due to the coronavirus pandemic. Second Reading took place on [16 July 2020](#). The Bill was committed to a Committee of the Whole House. Committee Stage and Third Reading [took place on 3 September 2020](#): no amendments were made at Committee Stage.

This Bill is almost identical to the [\*Non-Domestic Rating \(Public Lavatories\) Bill \[HL\] 2017-19\*](#), which was introduced into the House of Lords and [had its Second Reading there](#) on 10 July 2019. That Bill fell at the prorogation of Parliament in September 2019. Similar provisions were found in the *Local Government Finance Bill 2016-17*, which fell due to the snap general election of June 2017.

The Bill and its Explanatory Notes can be found [on the Parliamentary website](#).

The Bill provides for public toilets to be exempt from business rates in England and Wales. The Government has committed separately to reimbursing billing authorities (district and unitary councils), which collect business rates, for any revenue foregone as a result of this measure. As a result, the Bill required a Money Resolution in the House of Commons, to permit the Government to compensate billing authorities for the revenue foregone as a result of the mandatory relief. This was passed on 3 September 2020.

Business rates are devolved to Scotland, Wales and Northern Ireland. This Bill extends to England and Wales, and has effect in both England and Wales. The Welsh Government has laid a Legislative Consent Motion for the Bill before the Senedd.

# 1. Business rates and public toilets

## 1.1 Background

Non-domestic rates, or 'business rates', are a tax on non-domestic property. Rates have been in existence in some form since the Poor Law of 1601, though a standardised system of non-domestic rating dates to the *Rating and Valuation Act 1925*. The current system in England, Wales and Scotland dates from the [Local Government Finance Act 1988](#). In Northern Ireland the [Rates \(Northern Ireland\) Order 1977](#), as amended, governs non-domestic rating.

In order to operate the non-domestic rating system, every non-domestic property in the UK is assigned a 'rateable value'. In England and Wales, the responsibility to do this falls to the Valuation Office Agency (VOA). The rateable value is based on the annual sum for which the property would let on the open market, on the 'antecedent valuation date' (AVD).

The property's annual rate bill is then multiplied by a 'multiplier', set by the UK Government for England and by the devolved administrations in Scotland, Wales and Northern Ireland. The standard multiplier in England in 2020-21 is 51.2p in the pound, and in Wales it is 53.5p in the pound. Thus a property with a rateable value of £100,000 would be liable for £51,200 per annum in England. Further details of the operation of the business rates system can be found in the Commons Library briefing paper [Business rates](#).

In England, business rate billing, collection and reliefs are operated by district and unitary authorities (i.e. the lower tier of local government). In Wales the county and county borough councils are responsible for billing, collection and reliefs. As of 1 April 2020, there are 314 billing authorities in England and 22 in Wales.

## 1.2 Public toilets: liability

Liability for business rates arises for all non-domestic properties except for those that are explicitly exempted in legislation. As public toilets are not currently an exempt category, they attract a rateable value and thus a business rate bill.

Liability for business rates falls to the occupant of the property. As public toilets do not have an 'occupant' as such, the rate bill will fall to the owners of the toilets. This can be a substantial liability, in relative terms, for the toilet owners and/or can provide an incentive for public authorities owning toilets to close them down.

As the law stands, billing authorities cannot give discretionary relief to properties that they own; nor can they give relief to those that are owned by parish councils. Such properties are described as 'excepted hereditaments' in the relevant legislation.<sup>1</sup> This means that, where a

---

<sup>1</sup> *Local Government Finance Act 1988*, section 47 (9)

local authority or a parish council owns public toilets, it cannot be granted discretionary relief from business rates if they are due.

The VOA's Rating Manual suggests that disabled toilets should, for the time being, be regarded by valuation officers as exempt from business rates:

At present, there is some uncertainty regarding the issue of exemption for disabled persons' public conveniences. The matter is currently under consideration. However, until those considerations have been completed, conveniences which are provided for disabled persons should be regarded as exempt under para 16(1)(b) Sch 5 LGFA 1988, on the basis that their provision may be regarded as a welfare service. Occasional use by non-disabled persons should not be regarded as preventing exemption. But exemption should not be allowed for Conveniences which have been provided for undifferentiated use by both the disabled and the non-disabled, e.g. a room which doubles as a disabled Convenience and "a mother and baby room" will not be exempt.<sup>2</sup>

### 1.3 Rates on public toilets: concerns

This issue attracted considerable local media attention through 2014 and 2015. The National Association of Local Councils submitted a proposal to abolish business rates on public toilets under the *Sustainable Communities Act 2007*.<sup>3</sup> The Explanatory Notes to the previous (2017-19) Bill say:

There has been concern from local authorities, Members of Parliament, local organisations and members of the public about the rate at which public lavatories have been closing. The Bill will reduce the cost of running public lavatories, and therefore help support their continued operation, by providing 100% relief from business rates.<sup>4</sup>

The Royal Society for Public Health published a report in May 2019, [\*Taking the p\\*\\*\\*\*](#), which noted that:

In more recent decades the increasing pressure on LA budgets has led to the privatisation or closure of many public toilets. Sub-contracted or privately operated toilets make a charge, usually 50p or more. They tend to be located in highly frequented areas such as tourist spots and in general they have restricted opening hours. .... Where public toilets cannot be privatised, many have been sold off for other purposes or simply closed. Introduction of legislation to improve disabled access has had the unfortunate consequence in some cases of several public conveniences being replaced by just one disabled access toilet.<sup>5</sup>

An investigation by the BBC in 2018 found that:

Data supplied by 376 of the 430 councils contacted by the BBC showed that:

- UK councils stopped maintaining around 13% of public toilets between 2010 and 2018

---

<sup>2</sup> VOA, [\*Rating Manual\*](#), section 6 part 3, section 625

<sup>3</sup> See NALC, ["Don't let parishes get 'caught short' over public toilets"](#), 22 June 2015

<sup>4</sup> *Non-Domestic Rating (Public Lavatories) Bill 2017-19*, [Explanatory Notes](#), p2

<sup>5</sup> Royal Society for Public Health, [\*Taking the p\\*\\*\\*\*](#), May 2019, p5

## 6 Non-Domestic Rating (Public Lavatories) Bill 2019-21

- In 2018 there were 4,486 toilets run by major councils in the UK, down from 5,159 in 2010
- In 37 areas, major councils no longer run any public conveniences.<sup>6</sup>

There were considerable regional variations in the quantity of public toilets maintained. In a number of areas, principal local authorities managed far fewer public toilets but had transferred many of them to parish and town councils. Cornwall Council, for instance, managed 14 toilets in 2018 compared to 253 in 2010, but over 200 of these had been transferred to parish and town councils: only 16 had closed entirely.<sup>7</sup>

Parish and town councils would be faced with a business rate bill if they agreed to take on public toilets, and the district or unitary authority would have no power to offer them relief. This would be in addition to the running costs of the toilet itself: “The running costs of public toilets, according to local authority and other reports, vary between around £15,000 and £60,000 a year, depending on factors such as size and staffing by attendants”.<sup>8</sup>

At Second Reading of the 2017-19 Bill in the House of Lords, Lord Bourne said:

...the substance of the Bill has been called for by councils, health and disability charities and many members of the public. It is on a subject of wide and important public interest. The Government have also engaged with the British Toilet Association and the National Association of Local Councils on the rollout of this relief. This important, if unglamorous, measure will make a real difference to the lives of people up and down the country. The savings will be of vital assistance to councils where removing the additional costs of business rates could help to keep these facilities open.<sup>9</sup>

### 1.4 Introduction of rate relief for public toilets

The 2016 Budget stated:

The government will allow local authorities in England to use their discretionary relief powers to support publicly owned public lavatories from 1 April 2018.<sup>10</sup>

Clause 9 of the [Local Government Finance Bill 2016-17](#) would have permitted local authorities to give discretionary discounts to public toilets. However, this Bill fell due to the snap general election in June 2017.

The 2018 Budget then stated:

---

<sup>6</sup> Lora Jones and Rachael Schraer, [“Reality check: public toilets mapped”](#), BBC Online, 15 Aug 2018

<sup>7</sup> Ibid.

<sup>8</sup> Royal Society for Public Health, [Taking the p\\*\\*\\*](#), May 2019, p12

<sup>9</sup> [HL Deb 10 Jul 2019](#) c1812

<sup>10</sup> HM Treasury, [Budget 2016](#), 2016, p108

The government will introduce 100% business rates relief for all public lavatories to help keep these important local amenities open.<sup>11</sup>

This is a broader relief than the relief that would have been introduced by the 2016-17 Bill, as it covers all public toilets, not just those owned by local authorities. It is also a mandatory relief, whereas the 2016-17 Bill would have introduced a power to give discretionary relief. Billing authorities already have the power to give discretionary relief to public toilets that are not owned by local authorities.

The policy costings section of the 2018 Budget indicated that this would be introduced from the 2020-21 financial year.<sup>12</sup> The decision was welcomed by the [British Toilets Association](#) and by the [National Association of Local Councils](#) (representing parish and town councils).

After the fall of the 2017-19 Bill, several Parliamentary Questions followed up the issue, and it was most recently raised at Business Questions on 25 June 2020:

**Steve Double:** Public toilets are essential facilities, particularly in rural and coastal tourist areas, but many in Cornwall are now operated by small parish councils that are struggling to fund their running, particularly in a covid-safe manner. In 2018, the former Chancellor announced that public toilets would be exempt from business rates, but the Government did not manage to find time to bring forward the legislation in the previous Parliament. Can the Leader of the House confirm that this legislation will be brought forward and give an idea of when it will be, because that would bring great relief to many?

**Jacob Rees-Mogg:** My hon. Friend knows how to play the cistern—he is doing it extremely well—and he will soon, I hope, be flushed with success, because I can assure him that this does remain Government policy. Although business has been under considerable pressure, using up a lot of parliamentary time, and legislation has been prioritised accordingly, I hope that we will find time for a Bill in due course.<sup>13</sup>

The Government then committed again to the measure in the 2020 Budget:

The government will bring forward legislation as soon as possible in this session to provide mandatory 100% business rates relief for standalone public lavatories in England from April 2020.<sup>14</sup>

The Explanatory Notes to the Bill state that the costs of the exemption will be met by the Government for local authorities in England. It is expected that business rate revenue will be reduced by £6 million per year in England, and £450,000 in Wales.<sup>15</sup> In England, the costs will be paid to the relevant billing authorities via a Section 31 grant.<sup>16</sup> It is not clear for how long this grant will remain in place.

---

<sup>11</sup> HM Treasury, [Budget 2018](#), 2018, p46

<sup>12</sup> *Ibid.*, p37

<sup>13</sup> [HCDeb 25 Jun 2020](#) c1481-2. See also [PO 18506 2019-21](#), 2 Mar 2020; [HCDeb 24 Feb 2020](#) c147; [PO 14756 2019-21](#), 10 Feb 2020; [PO 12834 2019-21](#), 5 Feb 2020,

<sup>14</sup> HM Treasury, [Budget 2020](#), p. 90

<sup>15</sup> *Non-Domestic Rating (Public Lavatories) Bill 2019-21*, [Explanatory Notes](#), p5

<sup>16</sup> *Non-Domestic Rating (Public Lavatories) Bill 2019-21*, [Explanatory Notes](#), p4

## 1.5 Developments in Wales

Section 113 of the [Public Health \(Wales\) Act 2017](#) provided that:

- (1) A local authority must prepare and publish a local toilets strategy before the end of the period of one year beginning with the date on which this section comes into force.
- (2) A local toilets strategy must include—
  - (a) an assessment of the need for toilets in the local authority's area to be available for use by the public,
  - (b) a statement setting out the steps which the local authority proposes to take to meet that need, and
  - (c) any other information which the local authority considers appropriate.

This Act also requires the Welsh Ministers to issue guidance covering:

- (a) the assessment of the need—
  - (i) for toilets to be available for use by users of highways and active travel routes;
  - (ii) for toilets to be available for use by users of other sites and facilities that, having regard to criteria set out in the guidance, are facilities of particular significance for transport;
  - (iii) for toilets to be available for use in the vicinity of sites and in connection with events that, having regard to criteria set out in the guidance, are of particular significance or of cultural, sporting, historic, popular or national interest;
  - (iv) for toilets located in premises that are publicly funded (whether wholly or in part) to be available for use by the public,
- (b) promoting public awareness of toilets available for use by the public, and
- (c) collaboration between local authorities.<sup>17</sup>

The statutory guidance was published in June 2018. It encourages local authorities in Wales to identify any need for public toilets and to ensure that it is met – which may or may not mean additional provision by local authorities. The guidance also encourages authorities to “talk to the public and representative groups about the challenges they face in accessing local toilet facilities, listening to their concerns and seeking their views and involvement in identifying, and delivering potential solutions”.<sup>18</sup>

---

<sup>17</sup> *Public Health (Wales) Act 2017*, section 113 (8)

<sup>18</sup> Welsh Government, [The Provision of Toilets in Wales: Local Toilets Strategies Statutory Guidance](#), 2018, p13

## 2. The Bill

The Bill and its Explanatory Notes can be found [on the Parliamentary website](#).

This Bill is almost identical in text, and equivalent in effect, to the [Non-Domestic Rating \(Public Lavatories\) Bill \[HL\] 2017-19](#).<sup>19</sup> That Bill was introduced into the House of Lords and [had its Second Reading there](#) on 10 July 2019. It fell at the prorogation of Parliament in October 2019. Similar provisions were found in the *Local Government Finance Bill 2016-17*, which fell due to the snap general election of June 2017.

The Opposition tabled three amendments and one new clause at Committee Stage in the House of Commons, but withdrew them all. No amendments were made to the Bill at Committee Stage.

**Clause 1 (3)** amends section 43 of the [Local Government Finance Act 1988](#) to provide a mandatory exemption for public toilets from business rates. This was a change from the provision in the 2016-17 Bill, which only provided powers for local authorities to give discretionary relief.<sup>20</sup>

The mandatory exemption will not apply where a public toilet forms part of a larger property. The condition that must be met, for the mandatory exemption to apply, is that “the hereditament [i.e. the unit of property] consists wholly or mainly of public lavatories”.<sup>21</sup>

Kate Hollern MP, for the Opposition, introduced an amendment at Committee stage to extend the exemption to toilets within properties that are “a publicly-owned library or community centre or a local authority property that is free of charge to enter and contains a public lavatory that is free of charge for anyone to use”.<sup>22</sup> This suggestion also arose at the Lords Second Reading of the 2017-19 Bill.

This would be complex, as the VOA would have entered the larger property on the rating list as a single unit with its own rateable value. To implement this measure, it would be necessary to identify all properties with toilets and revalue them, which could be a costly undertaking. The Minister, Simon Clarke, said:

...lavatories inside other buildings are not typically given a rateable value in their own right within the wider valuation. Instead, the overall value adopted for the shop or library, for example, merely reflects the presence of a toilet. To meet the aim of the amendment, it would therefore be necessary for the Valuation Office Agency to revalue every eligible building, to reassess its overall value and the value of the lavatory specifically as part of that. That would not only be an artificial and notional exercise for the VOA, but many thousands of properties would potentially need to be reassessed, which would divert resources

---

<sup>19</sup> For the 2017-19 Bill, in addition to the documentation at the link in the text, see MHCLG, [Factsheet: Non-Domestic Rating \(Public Lavatories\) Bill 2017-19](#), June 2019

<sup>20</sup> This was noted at Lords Second Reading of the 2017-19 Bill: see [HL Deb 10 Jul 2019 c1812](#)

<sup>21</sup> It will be up to billing authorities, in the first instance, to interpret the exact meaning of ‘wholly or mainly’ where it is in dispute: see the discussion at [HL Deb 10 Jul 2019 c1810](#)

<sup>22</sup> [HC Deb 3 Sep 2020 c329](#)

## 10 Non-Domestic Rating (Public Lavatories) Bill 2019-21

away from other VOA priorities, such as the operation of the business rates appeals system and the 2023 revaluation.<sup>23</sup>

Lord Bourne claimed, at the Lords Second Reading of the 2017-19 Bill, that there were 3,500 public toilets on the English rating list and 500 on the Welsh rating list.

A further Opposition amendment at Committee Stage would have required a separate calculation of rateable value where a public toilet formed part of a larger property that was liable for business rates. Kate Hollern MP explained the rationale as follows:

...in return for providing a free-to-use public convenience, each library, community centre and town hall should be eligible for relief equivalent to the rateable value of their public toilets. That would ease the crippling burden on councils, and that money could be better spent on services our communities desperately need. The money saved could pay towards an additional refuse collector or social worker; it could support a food bank or a family fleeing domestic violence.<sup>24</sup>

The Minister, Simon Clarke, opposed the amendment, stating that “unlike stand-alone toilets, we have not seen evidence to suggest that those toilet facilities are specifically at risk of closure due to the business rates bill”.<sup>25</sup>

Kate Hollern also tabled a new Clause 1 that would have required the Government to publish a review of the impact of the Bill one year after Royal Assent. The Government resisted this on the grounds that the impact of the Bill would not be felt within that timescale. Ms Hollern withdrew the amendment.

**Clause 2** would make a number of technical consequential amendments to ensure that the new mandatory relief for public toilets applies throughout business rate legislation.

Clause 2 (1) includes mandatory relief for public toilets in a general provision in the [Local Government Finance Act 1988](#), which provides that the relief applies on a particular day only if it applies immediately before the day ends.

Clause 2 (2) applies the mandatory relief provisions to the [Business Rate Supplements Act 2009](#). It would provide that any business rate supplement scheme must provide mandatory relief to public toilets.<sup>26</sup>

Clause 2 (3-6) would make consequential amendments to the transitional relief scheme that applies in England for the 2017 rating list (i.e. the rating list introduced by the 2017 revaluation of business rates). This scheme is set out in the [Non-Domestic Rating \(Chargeable Amounts\) \(England\) Regulations 2016](#) (referenced in clause 2 (3)).

**Clause 3** permits additional funding to be made available in accordance with the provisions in the Bill, once it has become an Act. This permits

---

<sup>23</sup> [HCDeb 3 Sep 2020](#) c335

<sup>24</sup> [HCDeb 3 Sep 2020](#) c331

<sup>25</sup> [HCDeb 3 Sep 2020](#) c336

<sup>26</sup> The 2009 Act is not currently in force in Wales, so this subsection would have no effect in Wales unless and until the 2009 Act comes into force there.

the Government to compensate billing authorities (district and unitary councils) for any revenue foregone as a result of the provisions in the Bill. This will be done via a grant under section 31 of the *Local Government Act 2003*.

As business rates are a devolved matter, any such compensation will attract 'Barnett consequentials', providing proportionate additional funding for the devolved administrations.

**Clause 4 (1)** provides that the Bill extends to England and Wales. As the Bill concerns a devolved matter, it will require the Welsh Parliament to pass a Legislative Consent Motion (LCM). The Welsh Government [laid an LCM for the Bill before the Senedd](#) on 7 May 2020.

Clause 4 (2) provides that, if the Bill becomes an Act, it will have application from the beginning of the 2020-21 financial year. This clause would implement the Government's commitment in that regard (see section 1.4 above). Clause 4 (4) provides the citation for the Act.

This provides that if the Bill becomes an Act it will come into force as of 1 April 2020, and it will thus have retrospective effect.

This provision is different from the equivalent provisions in the Bill that was introduced in the 2017-19 Parliamentary session. That Bill gave the Secretary of State and the Welsh Ministers power to commence the provisions of the Bill by statutory instrument – in England and Wales respectively.

### About the Library

The House of Commons Library research service provides MPs and their staff with the impartial briefing and evidence base they need to do their work in scrutinising Government, proposing legislation, and supporting constituents.

As well as providing MPs with a confidential service we publish open briefing papers, which are available on the Parliament website.

Every effort is made to ensure that the information contained in these publicly available research briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

If you have any comments on our briefings please email [papers@parliament.uk](mailto:papers@parliament.uk). Authors are available to discuss the content of this briefing only with Members and their staff.

If you have any general questions about the work of the House of Commons you can email [hcenquiries@parliament.uk](mailto:hcenquiries@parliament.uk).

### Disclaimer

This information is provided to Members of Parliament in support of their parliamentary duties. It is a general briefing only and should not be relied on as a substitute for specific advice. The House of Commons or the author(s) shall not be liable for any errors or omissions, or for any loss or damage of any kind arising from its use, and may remove, vary or amend any information at any time without prior notice.

The House of Commons accepts no responsibility for any references or links to, or the content of, information maintained by third parties. This information is provided subject to the [conditions of the Open Parliament Licence](#).