

## **Non-Domestic Rating (Nursery Grounds) Bill HL Bill 124 of 2017–19**

### **Summary**

The Non-Domestic Rating (Nursery Grounds) Bill is a two-clause government bill which provides an exemption from non-domestic rates for agricultural premises which are nursery grounds and which operate under covered premises (such as polytunnels or glasshouses). Its effect would be to restore the position which was generally considered to exist prior to a Court of Appeal ruling in 2015.

The Bill was introduced into the House of Commons on 23 May 2018, had its second reading on 5 June 2018 and completed its stages in the House of Commons on 10 July 2018. During its passage it received support from the Opposition and no amendments were tabled at any of its House of Commons stages. The Bill was introduced into the House of Lords on 11 July 2018 and is scheduled to receive its second reading on 24 July 2018.

### **Background**

Since at least 1928, agricultural premises have benefitted from a general exemption from non-domestic rates.<sup>1</sup> This exemption was written into the Local Government Finance Act 1988.<sup>2</sup>

Prior to a Court of Appeal ruling in 2015, agricultural premises for this purpose were considered to include ‘nursery grounds’. Neither the Non-Domestic Rating (Nursery Grounds) Bill nor the Local Government Finance Act 1988 defines a ‘nursery ground’.<sup>3</sup> However, the explanatory notes to the Bill describe the meaning as:

A property where small plants or trees are propagated or sown in their initial stages of growth with a view to selling them to someone else for progression onto their mature state. This is in contrast to garden centres, where plants are displayed and sold to the public, which are and will continue to be rateable (including garden centres sometimes called “nurseries”).<sup>4</sup>

In 2015, the Court of Appeal found that treating nursery grounds as exempt from business rates was an incorrect application of the law, if the nursery grounds wholly comprised buildings (for example, polytunnels and glasshouses), as opposed to agricultural land.<sup>5</sup> As a result, non-domestic rates became payable by nursery grounds operating wholly under cover. The Government has stated that only a “handful” of businesses have in fact been charged rates since the ruling.<sup>6</sup>

In March 2017, the Government announced that it would legislate to ensure that such nurseries would be exempt, effectively restoring the position generally understood to exist before the Court of Appeal

judgment. Marcus Jones, then Minister for Local Government, stated:

The exemption for agricultural properties is an important part of the rating system. It ensures that large areas of agricultural land and buildings are not liable to a property tax which could have a significant impact on the cost of farming.<sup>7</sup>

Subsequently, the Government stated that the exemption would be backdated to 1 April 2015, so that any affected property which had paid rates since the Court of Appeal ruling would be reimbursed.<sup>8</sup>

The explanatory notes to the Bill explained that reinstating the exemption for nurseries operating wholly under cover would also remove an inconsistency with the treatment of ‘market gardens’ operating under cover, which have a similar function but remained exempt following the ruling.<sup>9</sup> A ‘market garden’ was defined by the Court of Appeal as having the “essential element of [...] the production of an article—fruit, vegetables or, indeed, mushrooms or other fungi—that will be sold directly or indirectly to a member of the public for consumption”.<sup>10</sup>

## **The Bill**

Clause 1 of the Non-Domestic Rating (Nursery Grounds) Bill would ensure a building which is, or forms part of, a nursery ground, is an “agricultural building” for the purposes of schedule 5 of the Local Government Finance Act 1988. This would have the effect that “such buildings are exempt from non-domestic rating under section 51 of the Act”.<sup>11</sup> Clause 1 also sets out the retrospective element of the Bill, such that its provisions have effect from 1 April 2015 in England and 1 April 2017 in Wales. The later date has been set for Wales because, thus far, no plant nurseries in Wales have been assessed as liable for rates, and therefore the need is only to ensure that “no plant nursery grounds are assessed and included on the current non-domestic rating list (compiled on 1 April 2017)”.<sup>12</sup>

Clause 2 states that the Bill extends to England and Wales, which are the jurisdictions affected by the Court of Appeal’s decision in 2015.<sup>13</sup>

## **House of Commons Stages**

### ***Second Reading***

The Bill received its second reading in the House of Commons on 5 June 2018. Only Conservative and Labour MPs spoke during the debate, with the Opposition indicating its support for the Bill.<sup>14</sup> Moving the Bill, the Parliamentary Under Secretary of State for Housing, Communities and Local Government, Rishi Sunak, explained why he believed the issue was significant:

We firmly believe that the business rates system plays an important role in supporting agricultural productivity. The agricultural exemption from business rates is a key part of this support. It is a broad-ranging and generous tax measure that ensures that no business rates are paid on agricultural land and properties.<sup>15</sup>

Mr Sunak said that the Bill would “restore fairness for hard-working businesses hit by an unexpected tax burden”.<sup>16</sup> He also confirmed that any affected business which had paid business rates since 1 April 2015

(in England) or 1 April 2017 (in Wales) would be able to claim these payments back. He stated his understanding that “only a handful of businesses had been caught”.<sup>17</sup> He added that no costs would be reclaimable, but neither would any costs be involved in filing a claim for a refund.

Responding on behalf of the Opposition, Jim McMahon, Shadow Minister for Housing, Communities and Local Government, supported the Bill. He bracketed it with other legislation which, he said, was intended to “iron out anomalies” in the rates and tax systems, and stated:

These bills are genuinely not controversial or divisive. They will not be divided on in committee, provided that they are about dealing with the impact of court decisions that were never Parliament’s original intention.<sup>18</sup>

Mr McMahon raised the question of whether local authorities who had received payments, and would now have to repay them, would themselves be reimbursed by central government.<sup>19</sup> This point was also picked up by Yvonne Fovargue (Labour MP for Makerfield), who argued that the policy should be costed, particularly because of its possible implications for local authority financing.<sup>20</sup>

Summing up, the Parliamentary Under Secretary of State for Housing, Communities and Local Government, Nigel Adams, stated that no interest would be payable on reclaimable sums, and that only “a very small number of organisations and businesses” had been affected. Although he did not directly address the question of whether local authorities should be reimbursed, he described the sums of money involved as being “relatively small”.<sup>21</sup>

### ***Committee Stage, Report Stage and Third Reading***

A committee of the whole House considered the Bill during a single sitting, on 10 July 2018, followed immediately by report stage and third reading on the same day.<sup>22</sup> No amendments were tabled during committee; speaking for the Opposition, Jim McMahon described the Bill as “non-contentious”.<sup>23</sup> The Bill was therefore reported without amendment, and was approved by a legislative grand committee representing England and Wales.

At third reading, MPs reiterated their support for the Bill. Rishi Sunak spoke on behalf of the Government, acknowledging the support of the National Farmers’ Union in the preparation of the Bill.<sup>24</sup>

### **Further Information**

- House of Commons Library, [Non-Domestic Ratings \(Nursery Grounds\) Bill 2017–19](#), 6 July 2018
- National Farmers’ Union, [Parliamentary Success for Nursery Growers after Years of NFU Work](#), 23 May 2018

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<sup>1</sup> [Explanatory Notes](#), p 3.

<sup>2</sup> [Local Government Finance Act 1988](#), s 51, schedule 5.

<sup>3</sup> At second reading in the House of Commons, Rishi Sunak, Parliamentary Under Secretary of State for Housing, Communities and Local Government, noted that the definition was contained in “case law” ([HC Hansard, 5 June 2018, col 261](#)).

<sup>4</sup> [Explanatory Notes](#), p 3.

<sup>5</sup> [Tunnel Tech Ltd v Reeves \(VO\) \[2015\] EWCA Civ 718](#).

<sup>6</sup> [HC Hansard, 5 June 2018, col 263](#).

<sup>7</sup> House of Commons, [‘Written Statement: Business Rates: Plant Nurseries’](#), 30 March 2017, HCWS585.

<sup>8</sup> House of Commons, [‘Written Statement: Business Rates’](#), 28 March 2018, HCWS606.

<sup>9</sup> [Explanatory Notes](#), p 3.

<sup>10</sup> [Tunnel Tech Ltd v Reeves \(VO\) \[2015\] EWCA Civ 718](#), para 25.

<sup>11</sup> [Explanatory Notes](#), p 4.

<sup>12</sup> *ibid*, p 3.

<sup>13</sup> House of Commons Library, [Non-Domestic Ratings \(Nursery Grounds\) Bill 2017–19](#), 6 July 2018, p 4.

<sup>14</sup> [HC Hansard, 5 June 2018, cols 258–77](#).

<sup>15</sup> *ibid*, col 259.

<sup>16</sup> *ibid*, col 260.

<sup>17</sup> *ibid*, col 263.

<sup>18</sup> *ibid*, col 264.

<sup>19</sup> *ibid*, col 265.

<sup>20</sup> *ibid*, col 274.

<sup>21</sup> *ibid*, cols 275 and 277.

<sup>22</sup> [HC Hansard, 10 July 2018, cols 863–79](#).

<sup>23</sup> *ibid*, col 864.

<sup>24</sup> *ibid*, col 879.

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