



Llywodraeth Cymru
Welsh Government

OPEN CONSULTATION

Consultation on the draft Non-Domestic Rating (Property in Common Occupation) (Wales) Regulations 2022

We are seeking views on draft regulations. They set out when we will treat two or more units of property as one for valuation purposes.

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Introduction

For over 50 years, a Court of Appeal judgement (Gilbert (VO) v S Hickinbottom and Sons Ltd [1956] 2 Q.B. 40) was regarded as the leading case on the identification of the unit of assessment (hereditament) for NDR. Ratepayers who occupied more than one unit of property in a building shared with other organisations were assessed based on the premise that:

- where their units of property were contiguous (touching), they received one rates bill
- where their units of property were separated by another business or an area in shared use, they received a separate rates bill for each unit of property

It was the practice of the Valuation Office Agency (VOA) to treat contiguous units of property as a single hereditament, when occupied by the same person. The VOA approach to the meaning of contiguous was to treat two units of property as such, where they were separated only by a wall or floor/ceiling. For example, a wall or floor/ceiling between two otherwise contiguous offices may contain services in a void, used by the landlord, but such spaces were not considered to prevent the units of property being contiguous.

In 2015, the Supreme Court ruled, in the case of Woolway (VO) v Mazars [2015] UKSC 53 ('the Mazars decision'), that the test should concern the geographical nature of the property and, as a result, the VOA changed its practice. The general rule now being operated in Wales is that two contiguous properties in the same occupation are only assessed as one if they can be considered a self-contained unit of property. Typically, this will apply if both parts are physically accessible from each other without having to go onto other property or through commons parts (such as a common corridor or stairwell).

Between 9 March and 1 June 2022, the Welsh Government **consulted** on a proposal to make secondary legislation which would reinstate the practice of the

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VOA, prior to the Mazars decision, to coincide with the start of the 2023 rating list and which would continue to apply going forward. On 24 June 2022, the Welsh Government published a summary of responses and **announced** that regulations would be prepared to implement the proposal as consulted upon.

This consultation seeks views on the draft Non-Domestic Rating (Property in Common Occupation) (Wales) Regulations 2022, referred to in this consultation as ‘the draft Regulations’. The draft Regulations set out the circumstances in which two or more hereditaments should be treated as one for valuation purposes in the determination of an owner or occupier’s NDR liability. The consultation is technical in nature and seeks views on the clarity of the legislation in achieving that objective.

This consultation applies to Wales only.

Valuing properties in common occupation

The Welsh Government’s intention is that, where two or more occupied hereditaments meet the following conditions, they are to be treated as one hereditament for valuation purposes:

- they are occupied by the same person
- they meet the ‘contiguity condition’
- none of them is used for a purpose which is wholly different from the purpose for which any of the others is used

In the case of two or more unoccupied hereditaments, they are to be treated as one hereditament for valuation purposes if:

- they are owned by the same person
- they meet the ‘contiguity condition’

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- they ceased to be occupied on the same day and have remained unoccupied since that day
- immediately before that day, they formed part of a single hereditament in accordance with the conditions set out above in relation to occupied hereditaments

The contiguity condition

Two or more hereditaments are intended to meet the ‘contiguity condition’ if at least two of them are contiguous and, where they are not all contiguous with each other, each hereditament is contiguous with at least one of the others.

Two or more hereditaments are intended to be considered contiguous if:

- some or all of a wall, fence, or other means of enclosure of one hereditament forms all or part of a wall, fence, or other means of enclosure of the other hereditament
- the hereditaments are on consecutive storeys of a building and some or all of the floor of one hereditament lies directly above all or part of the ceiling of the other hereditament

Hereditaments occupied or owned by the same person are not prevented from being contiguous under these conditions merely because there is a space between them that is not occupied or owned by that person. This allows for the situation where a sufficiently strong functional connection could be shown to exist between the two parts. For example, two parts of a leisure park separated by a road.

Structure of the legislation

The draft regulations, set out in annex a, specify the circumstances in which two or more hereditaments, whether occupied or unoccupied, must be treated as one hereditament for the purposes of determining an owner's or occupier's NDR liability. The draft regulations also set out the circumstances in which two or more hereditaments are to be considered as contiguous with each other.

The draft regulations are structured such that regulation 1 details the title and the commencement date of the draft regulations as well as the definition of a hereditament.

Regulation 2 prescribes the circumstances in which two or more occupied hereditaments must be treated as one hereditament, with reference to the contiguity condition defined in regulation 4.

Regulation 3 prescribes the circumstances in which two or more unoccupied hereditaments must be treated as one hereditament, with reference to the contiguity condition defined in regulation 4.

Regulations 4 and 5, respectively, prescribe the contiguity condition and, in that regard, the circumstances in which two hereditaments are contiguous. These constitute the circumstances in which two or more hereditaments are contiguous with each other.

Next steps

This technical consultation on the draft regulations will be open for a 6-week period. Following the end of the consultation, all responses will be considered and any amendments which may be considered necessary will be drafted.

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Subject to the views submitted during this consultation exercise, it is intended that the draft regulations will be laid in the Senedd in time for their commencement on 1 April 2023, concurrent with the commencement of the next rating list, following the upcoming NDR revaluation.

Consultation questions

Question 1

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

Question 2

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

Question 3

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

Question 4

Do you have any other comments about the draft Regulations?

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Question 5

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

- opportunities for people to use Welsh
- on treating the Welsh language no less favourably than English

What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Question 6

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

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

Question 7

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

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How to respond

Submit your comments by **15 September 2022**, in any of the following ways.

- complete our [online form](#)
- download, complete our [response form](#) and email: LGFR.Consultations@gov.wales
- download, complete our [response form](#) and post to:

Non-Domestic Rates Policy Branch
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

Your rights

Under the data protection legislation, you have the right:

- to be informed of the personal data held about you and to access it
- to require us to rectify inaccuracies in that data
- to (in certain circumstances) object to or restrict processing
- for (in certain circumstances) your data to be 'erased'
- to (in certain circumstances) data portability
- to lodge a complaint with the Information Commissioner's Office (ICO) who is our independent regulator for data protection.

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please [tell us](#).

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Data Protection Officer
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

E-mail: data.protectionofficer@gov.wales

Information Commissioner's Office

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Telephone: 01625 545 745 or 0303 123 1113

Website: ico.org.uk

UK General Data Protection Regulation (UK GDPR)

The Welsh Government will be data controller for any personal data you provide

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as part of your response to the consultation. Welsh Ministers have statutory powers they will rely on to process this personal data which will enable them to make informed decisions about how they exercise their public functions. Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about or planning future consultations. Where the Welsh Government undertakes further analysis of consultation responses then this work may be commissioned to be carried out by an accredited third party (e.g. a research organisation or a consultancy company). Any such work will only be undertaken under contract. Welsh Government's standard terms and conditions for such contracts set out strict requirements for the processing and safekeeping of personal data. In order to show that the consultation was carried out properly, the Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. If you do not want your name or address published, please tell us this in writing when you send your response. We will then redact them before publishing.

You should also be aware of our responsibilities under Freedom of Information legislation. If your details are published as part of the consultation response then these published reports will be retained indefinitely. Any of your data held otherwise by Welsh Government will be kept for no more than three years.

Further information and related documents

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