

SL(6)729 – The Non-Domestic Rating (Artificial Avoidance Arrangements) (Local Lists) (Wales) Regulations 2026

Background and Purpose

Sections 63F to 63M of the Local Government Finance Act 1988 (“the Act”), which were inserted by section 13 of the Local Government Finance (Wales) Act 2024, make provision about counteracting advantages arising from artificial arrangements for the avoidance of non-domestic rates liability in relation to hereditaments in Wales.

These Regulations describe the types of avoidance arrangements, in relation to hereditaments on the local non-domestic rating lists, which are artificial for the purposes of sections 63F to 63I and 63K to 63M of the Act (unless a billing authority determines otherwise). They also make provision in relation to penalties and consequential amendments to secondary legislation.

The types of arrangements which are artificial are described in regulation 3 of, and the Schedule to, these Regulations. These are: arrangements where a hereditament is not occupied on a commercial basis, where the ratepayer has been wound up voluntarily, where the owner or occupier exhibits particular characteristics and behaviours, or where the occupation of the hereditament has certain characteristics. However, regulation 3(2) enables a billing authority to determine that an arrangement of a type specified in the Schedule is not artificial after having regard to all the circumstances. Such circumstances may include (but are not limited to) those listed in regulation 3(3).

Regulation 4 makes provision in relation to the penalty imposed where a person has failed to pay an amount due to a billing authority in consequence of having made an artificial arrangement and the information which must be contained in notices imposing such penalties (“penalty notices”).

Regulation 5 makes provision as to how a billing authority may effect service of notices given under section 63K(1) of the Act and penalty notices.

Regulation 6 amends the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 (“the 1989 Regulations”).

Regulation 7 amends the Non-Domestic Rating (Alteration of Lists and Appeals) (Wales) Regulations 2023 (“the 2023 Regulations”).

Procedure

Senedd approval procedure.



The Welsh Ministers have laid a draft of the Regulations before the Senedd. The Welsh Ministers cannot make the Regulations unless the Senedd approves the draft Regulations.

Technical Scrutiny

The following 6 points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2 (v) – that for any particular reason its form or meaning needs further explanation.

One of the enabling powers, section 63M(1) states that:

(1) The Welsh Ministers may by regulations make provision for the imposition of a financial penalty where—

(a) a person has been given a notice under section 63K(1) or (2) and it has not been withdrawn,

(b) the time limit for requesting a review under section 63K(4) has expired and, if a review has been requested, the time limit for appealing under section 63L has expired, and

(c) the person has failed to pay an amount due to a billing authority or the Welsh Ministers in consequence of having made an artificial non-domestic rating avoidance arrangement.

Regulation 4(2) sets out conditions that must be met, where relevant, before imposing a penalty. In addition to the condition listed in section 63M(1)(b) of the Act, regulation 4(2) also includes the following conditions:

(b) if the section 63K notice is subject to an appeal under section 63L(2) of the Act, it has been confirmed by a valuation tribunal established under paragraph 1 of Schedule 11 to the Act and the time limit for appealing the notice to the Upper Tribunal has expired;

(c) if the section 63K notice is subject to an appeal under regulation 56(1)(aa) of the Non-Domestic Rating (Alteration of Lists and Appeals) (Wales) Regulations 2023, it has been confirmed by the Upper Tribunal.

We ask the Welsh Government to set out the reasons for including these conditions which are not specified in section 63M(1) of the Act.

2. Standing Order 21.2 (v) – that for any particular reason its form or meaning needs further explanation.

Regulation 6(3) inserts the following sub-paragraph into regulation 5 of the 1989 Regulations, setting out when a demand notice shall be served:

“(c) if a billing authority in Wales has given notice under section 63K(1) of the Act to a person who is to be treated as liable as regards the hereditament concerned under section 43 or 45 of the Act, the first day after—



- (i) *the time limit for requesting a review under section 63K(4) has expired, or*
- (ii) *if a notice under section 63K(1) of the Act has been confirmed following a review, the time limit for appealing the notice under section 63L has expired."*

Regulation 56(1)(aa) of the 2023 Regulations (which is inserted by regulation 7(5) of these Regulations) permits an appeal to the Upper Tribunal in respect of a decision of a tribunal on an appeal under section 63L of the Act.

It is unclear when a demand notice must be served if such an appeal is made. Could a demand notice be served before the expiry of the time limit to appeal to the Upper Tribunal, or before the outcome of that appeal is known?

3. Standing Order 21.2 (v) – that for any particular reason its form or meaning needs further explanation.

Regulation 7(3) amends regulation 32 of the 2023 Regulations. Regulation 32 of the 2023 Regulations is also amended by regulation 11(4) of the Non-Domestic Rating (Provision of Information About Changes of Circumstances) (Wales) Regulations 2026. The textual amendments made by regulation 7(3) of these Regulations are to regulation 32 of the 2023 Regulations as amended by regulation 11(4) of the Non-Domestic Rating (Provision of Information About Changes of Circumstances) (Wales) Regulations 2026.

Regulation 11 of the Non-Domestic Rating (Provision of Information About Changes of Circumstances) (Wales) Regulations 2026 comes into force on 1 April 2026, the same day as these Regulations.

For the amendments made by regulation 7(3) to correctly amend regulation 32 of the 2023 Regulations, regulation 11 of the Non-Domestic Rating (Provision of Information About Changes of Circumstances) (Wales) Regulations 2026 will need to come into force before these Regulations.

We ask the Welsh Government to explain how regulation 11 of the Non-Domestic Rating (Provision of Information About Changes of Circumstances) (Wales) Regulations 2026, despite coming into force on the same day as these Regulations, takes effect before these Regulations, to allow regulation 7(3) of these Regulations to amend regulation 32 of the 2023 Regulations as drafted.

4. Standing Order 21.2 (v) – that for any particular reason its form or meaning needs further explanation.

Paragraph 1 of the Schedule to the Regulations reads:

*An arrangement is an artificial arrangement for the purposes of section 63H(1)(a) of the Act where it makes a person ("P") the occupier of **a** hereditament and **the** hereditament is not occupied on a commercial basis because one or more of the following applies—*
(emphasis added)



Can the Welsh Government confirm if “a hereditament” and “the hereditament” are referring to the same hereditament in this paragraph?

Further, paragraph 2(2) reads “...ratepayer of **a** hereditament (either the hereditament referred to in sub-paragraph (1) or another hereditament)” making it clear that “a hereditament” could be another hereditament. However, paragraph 2(3)(a) reads “...ratepayer of **the** hereditament (either the hereditament referred to in sub-paragraph (1) or another hereditament), should this also refer to “**a** hereditament”?

5. Standing Order 21.2 (v) – that for any particular reason its form or meaning needs further explanation.

Paragraph 1 of the Schedule to the Regulations reads:

*An arrangement is an artificial arrangement for the purposes of section 63H(1)(a) of the Act **where it makes a person (“P”) the occupier of a hereditament** and the hereditament is not occupied on a commercial basis because one or more of the following applies— (emphasis added)*

The corresponding Welsh text of the words in bold above reads: “pan fo’n gwneud person (“P”) y meddiannydd ar hereditament”. It is queried if the Welsh text is grammatically correct. The same is queried in relation to “y talwr ardrethi” in paragraph 3(1)(b), (c) and (d) of the Schedule.

Further, paragraph 2(1) of the Schedule includes the words: “where it makes P the ratepayer of the hereditament”, the Welsh text reads “pan fo’n gwneud P **yn dalwr ardrethi** yr hereditament”. We ask the Welsh Government to confirm if the differing approach in the Schedule in relation to the use of “y talwr ardrethi” and “yn dalwr ardrethi” is intentional, and if so, explain the reasons for the different wording.

6. Standing Order 21.2 (vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts.

In the Schedule to the Regulations, paragraph 2(3)(b) reads:

*within 3 years of the day the arrangement was entered into between L and P, P was, **or is in the process of being**, wound up voluntarily under Chapters 2 to 5 of Part 4 of the Insolvency Act 1986. (emphasis added)*

The words in bold above, in the Welsh text, reads “neu yr oedd P wrthi’n cael ei ddirwyn i ben yn wirfoddol”, meaning “or **was** in the process of being, wound up voluntarily”. We ask the Welsh Government to confirm which language version of the Regulations is correct.



Merits Scrutiny

The following 3 points are identified for reporting under Standing Order 21.3 in respect of this instrument.

7. Standing Order 21.3 (ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

Whilst a notice given under section 63K of the Act may be reviewed and subsequently appealed, the Regulations do not provide a review or appeal procedure in relation to a penalty imposed under regulation 4, the Welsh Government is asked to explain why it considers such a procedure is not necessary.

8. Standing Order 21.3 (ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

We note the following at section 2 of the Explanatory Memorandum:

The footnote referred to in regulation 4(2)(c) of the Regulations contains a reference to an amending instrument (namely, the Non-Domestic Rating (Provision of Information about Change of Circumstances) (Wales) Regulations 2026). As at the date of laying the Regulations, that amending instrument has not been approved, made and registered, therefore it has not been possible to insert its S.I. number in the footnote. This will be inserted into the footnote prior to the making of the Regulations.

9. Standing Order 21.3 (i) – that it imposes a charge on the Welsh Consolidated Fund or contains provisions requiring payments to be made to that Fund or any part of the government or to any local or public authority in consideration of any licence or consent or of any services to be rendered, or prescribes the amount of any such charge or payment.

Whilst the Regulations themselves do not contain provisions requiring payments to be made to the Welsh Consolidated Fund, section 63M(4) of the Act states that “any sum received by way of penalty under this section is to be paid into the Welsh Consolidated Fund”. These Regulations make provision for the imposition of that financial penalty.

Welsh Government response

A Welsh Government response is required in relation to reporting points 1 to 7.

Legal Advisers

Legislation, Justice and Constitution Committee

28 January 2026



Senedd Cymru
Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad
—
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