

Empty Properties

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The empty property rate

- Principle of liability
- Exempted buildings
- The chargeable amount
- Zero-rating
- New buildings and completion notices

Legislative basis

- Sections 45-46A Local Government Finance Act 1988
- Non-Domestic Rating (Unoccupied Property) (England) Regulations 2008/386

Principle of liability

- Section 45(1) LGFA 1988
 - (a) on the day none of the hereditament is occupied,
 - (b) on the day the ratepayer is the owner of the whole of the hereditament,
 - (c) the hereditament is shown for the day in a local non-domestic rating list in force for the year, and
 - (d) on the day the hereditament falls within a class prescribed by the Secretary of State by regulations.

“None of the hereditament is occupied”

- Occupation of part is occupation of the whole
- See e.g. *Sunderland City Council v Stirling Investment Properties LLP* [2013] R.A. 411

“Owner”



- The person entitled to possession (see s 65(1) LGFA)
- Where lease forfeited, the landlord: Kingston v Marlow [1995] RA 87
- Disclaimer of a lease under s 178 Insolvency Act 1986 determines the lease for these purposes and means that the landlord is entitled to possession and therefore the owner within the meaning of ss 45 and 65 LGFA 1988: Schroder Exempt Property Unit Trust v Birmingham City Council [2014] EWHC 2207 (Admin)

Class prescribed: regulation 3, 2008 Regs

- “all relevant non-domestic hereditaments other than those described in regulation 4” (reg. 3)
- “relevant non-domestic hereditament” means any non-domestic hereditament consisting of, or of part of, any building, together with any land ordinarily used or intended for use for the purposes of the building or part (reg. 2)
 - Must be a “building”: *Enfield LBC v Hutchinson 3G UK Ltd* [2013] R.A. 429

Regulation 4: exemptions (1)

(a) which, subject to regulation 5, has been unoccupied for a continuous period not exceeding three months;

(b) which is a qualifying industrial hereditament that, subject to regulation 5, has been unoccupied for a continuous period not exceeding six months;

- See definition in reg. 2 of “qualifying industrial hereditament”
- *Southwark v Bellway* [2000] RA 437

(c) whose owner is prohibited by law from occupying it or allowing it to be occupied;

- Not sufficient that property could not be occupied for certain purposes because of disrepair meaning there may be an offence under health and safety legislation:
Pall Mall Investments (London) Ltd v Gloucester City Council [2014] P.T.S.R. 1184 cf
Regent Lion v Westminster [1989] RA 190

Regulation 4: exemptions (2)

(d) which is kept vacant by reason of action taken by or on behalf of the Crown or any local or public authority with a view to prohibiting the occupation of the hereditament or to acquiring it;

- A planning condition is not sufficient: *Hailbury v Westminster* [1986] RA 187

(e) which is the subject of a building preservation notice within the meaning of the Planning (Listed Buildings and Conservation Areas) Act 1990 1 or is included in a list compiled under section 1 of that Act;

- *Richardson Development Ltd v Birmingham City Council* [1999] R.V.R. 44

(f) which is included in the Schedule of monuments compiled under section 1 of the Ancient Monuments and Archaeological Areas Act 1979

Regulation 4: exemptions (3)

- (g) whose rateable value is less than £2,600;
- (h) whose owner is entitled to possession only in his capacity as the personal representative of a deceased person;
- (i) where, in respect of the owner's estate, there subsists a bankruptcy order within the meaning of section 381(2) of the Insolvency Act 1986;
- (k) whose owner is a company which is subject to a winding-up order made under the Insolvency Act 1986 or which is being wound up voluntarily under that Act;
- (l) whose owner is a company in administration within the meaning of paragraph 1 of Schedule B1 to the Insolvency Act 1986 or is subject to an administration order made under the former administration provisions within the meaning of article 3 of the Enterprise Act 2002 (Commencement No. 4 and Transitional Provisions and Savings) Order 2003;
- (m) whose owner is entitled to possession of the hereditament in his capacity as liquidator by virtue of an order made under section 112 or section 145 of the Insolvency Act 1986.

Chargeable amount

- See formula in s 45(4) and 46:

$$\frac{A \times B}{C}$$

- A = the rateable value shown for the day under section 42(4) above as regards the hereditament
- B = the non-domestic rating multiplier for the financial year less the small hereditament factor
- C is the number of days in the financial year
- See also s 45(4A) and 46(4)

Zero-rating



- Section 45A: charities and registered clubs
 - *South Kesteven DC v Digital Pipeline Ltd* [2016] EWHC 101 (Admin)
 - *Preston City Council v Oyston Angel Charity* [2012] R.A. 357
 - *Public Safety Charitable Trust v Milton Keynes Council* [2013] R.A. 275

New buildings and completion notices

- Section 46A & Schedule 4A
- Advantages for the billing authority: see *Aviva Investors Property Developments Ltd v Whitby (Valuation Officer)* [2014] R.A. 61, at [89]
- Formalities and service: *UKI (Kingsway) Ltd v Westminster City Council* [2015] R.A. 433



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