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## Deferring increases in business rates: regulations made

- 1 On 31 March 2009, the Government announced that it would introduce regulations allowing businesses in England to defer payment of 60% of the increase in their 2009-10 business rates bills.
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The reason for the proposed change was to smooth the effects of the spike in inflation in September 2008. The Non-Domestic Rating (Deferred Payments) (England) Regulations 2009 (2009 Regulations) were made on 30 June 2009 and come into force on 31 July 2009. The 2009 Regulations amend: The Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 (Local Lists Regulations).

The Non-Domestic Rating (Collection and Enforcement) (Central List) Regulations 1989 (Central Lists Regulations).

Regulation 7 of the Local Lists Regulations and regulation 7 of the Central Lists Regulations provide for annual rates liability to be discharged in instalments. Currently, however, the instalments are payable in the financial year to which the demand for payment relates.

The 2009 Regulations insert a new Schedule 1B into the Local Lists Regulations and a new Schedule 1A into the Central Lists Regulations to provide that where a ratepayer who is subject to non-domestic rates in respect of the financial year 2009-10 satisfies certain conditions, they can defer payment of a specified proportion of that liability to

the financial years beginning on 1 April 2010 and 1 April 2011.

The ability to defer payments is not automatic. According to the Business Rates Deferral Scheme 2009-10: Fact Sheet, issued in March 2009, ratepayers will need to apply to their billing authority indicating that they would like to defer (but only after the authority has written to them offering them the option). Under the amendments made by the 2009 Regulations, where non-domestic rates are collected under the Local Lists Regulations, the application to defer payment must be made in the form set out in the new Schedule 1C (or in a similar form).

## The introduction of workplace parking levy schemes

The Workplace Parking Levy (England) Regulations 2009 will come into force on 1 October 2009.

Local authorities in England (excluding those in Greater London) will decide whether to introduce a workplace parking levy (WPL) scheme and details of how it will operate will be their responsibility.

By imposing a levy on the amount of workplace car parking provided by employers and educational establishments, it is hoped that car commuting will reduce in favour of alternative means of transport (including car-sharing).

The Regulations, made under the



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Transport Act 2000, do not specify charging levels, exemptions and discounts which it is considered are best left to the local authority to decide in the light of local circumstances. The Department for Transport will be preparing guidance on the issues to be taken into consideration by authorities when developing a WPL scheme.

No WPL scheme is expected to come into operation until 2011 and no levy is expected to be collected before April 2012. The impacts will be reviewed two years thereafter.

## High Court rules on Corby birth defects contaminated land case

In the 1980s, Corby Borough Council (CBC) acquired 680 acres of heavily contaminated land from British Steel for redevelopment.

A number of children in the area were born between 1986 and 1999 with limb defects (the claimants). The claimants alleged that their mothers, who lived close to the sites whilst pregnant, were exposed to toxic materials during CBC's reclamation and decontamination programme.

On 29 July 2009, CBC was held to be liable for: Negligence and public nuisance in causing, allowing or permitting the dispersal of dangerous and noxious contaminants, in particular cadmium, chromium, nickel, PAHs and dioxins.

Breach of its statutory duty under section 34 of the Environmental Protection Act 1990 (which relates to waste) from 1 April 1992 (when the provision came into force).

Individual claimants will have to establish in further proceedings that their particular conditions were actually caused by the defaults identified in this judgment and any damages will be assessed then.

## Defra consults on the possible release of an insect to control Japanese knotweed

Japanese knotweed threatens economic development and biodiversity in the UK.

The cost of eradication, were it to be attempted nationwide, was estimated at more than £1.5 billion in 2003. This plant can damage drainage, concrete and foundations.

On 23 July 2009, the Department for Environment, Food and Rural Affairs (Defra) issued a consultation on its proposal to release an insect (a psyllid called *Aphalara itadori* that weakens the plant by sucking its sap) as a biological control agent against Japanese knotweed (see Defra press release).

Whilst the technique is commonplace in countries such as Australia, New Zealand, USA and Canada, classical biological control of weeds using a non-native insect has never been used officially in any EU country. The release is prohibited under the Wildlife and Countryside Act 1981, which implements the European Habitats Directive (92/43/EEC), unless licensed.

This consultation will be of interest to landowners and managers, developers, contractors, gardeners, nature conservation organisations and environmental organisations. Comments must be submitted by 19 October 2009.

The Corporation Tax (Land Remediation Relief) Order 2009 (SI 2009/2037), which came into force on 21 July 2009, extends tax relief to cover the costs of remediating land contaminated by Japanese knotweed (see Legal update, Changes to land-fill tax and land remediation relief).



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## Green leases: a global perspective

Green leases are a relatively novel concept in the UK. Despite a recent spate of publicity, they are not yet widespread in either the public or private sector.

The first major piece of work undertaken in the UK on green leases and the types of obligation they might include is the Cardiff Good Practice Guide - Incorporating Environmental Best Practice into Commercial Tenant Lease Agreements, published in January 2007 by the Centre for Research in the Built Environment (CRiBE).

More recently, in April 2009, the Better Building Partnership (BBP), an initiative of the London Climate Change Agency consisting of commercial and public property owners, published its Green Lease Toolkit: Working Together to Improve Sustainability (Toolkit).

"Green leases" are leases of real estate containing provisions requiring, or encouraging, the landlord and tenant of a commercial or public sector building to reduce the environmental impact of the let premises.

They are still in their infancy in most jurisdictions, including the UK, and are potentially contentious, particularly in relation to the allocation of costs involved in implementing improvements to existing buildings.

There are a number of ways in which landlords and

tenants can agree to meet environmental and wider sustainability standards. This may take the form of mandatory or discretionary provisions incorporated into the main body of the lease or contained in a schedule. Equally, it may take the form of aspirational objectives, set out in the lease or in a separate Memorandum of Understanding (MoU).

As with any other contractual arrangements, the extent to which any such provisions can be enforced will depend on wording and the nature of the document containing the provisions.

Green leases are commonly referred to as being of various shades of green: "light", "medium" and "dark". The more mandatory and legally binding the requirements are, the "darker green" the lease is said to be. For the purposes of this article, references to "green leases" covers all types of clauses both in a lease or in a document that sits alongside the lease.

Provisions included in a green lease will vary depending on a number of factors, including the age and existing green credentials of the building, and the sustainability goals of the parties, as well as the level of time commitment and financial investment the parties are willing to make. Typical provisions may deal with:

- Energy efficient use of the building.
- Separate metering.
- Reductions in waste and water usage.
- Use of sustainable building materials.
- Recycling.
- Restrictions on alterations and fit-out, to preserve the building's green credentials.
- Creation of joint tenant/landlord building management committees to discuss (and potentially agree on) sustainability issues.

### Contacts

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