Localism Bill: cancellation of certain backdated non-domestic rates liabilities

Impact assessment

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Impact assessment

January 2011
Department for Communities and Local Government

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January 2011

ISBN: 978-1-4098- 2737-5

Title: Localism Bill: cancellation of certain backdated non-domestic rates liabilities	Impact Assessment (IA)
Lead department or agency: The Department for Communities and Local Government	**IA No:** DCLG 0053
Other departments or agencies:	**Date: January 2011**
	Stage: Final
	Source of intervention: Domestic
	Type of measure: Primary legislation
	Contact for enquiries: Nageen Haroon, 0303 444 41758

Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

This matter was originally highlighted by the ports review, conducted by the Valuation Office Agency between 2006 and 2008, when a number of properties that were previously assessed for non domestic rates as part of a single hereditament (i.e. a rateable property), were split from that assessment, and hence became liable for rates in their own right. In addition to becoming liable for rates for the first time, the occupiers of such properties also saw their rates bills backdated, in many cases, by [1]33 months or more. This situation (with such significant and unexpected backdated liabilities, in some cases amounting to millions of pounds) was further exacerbated by ratepayers becoming liable for these backdated bills at a time when the economy was in recession.

The Government believes that there was an inherent unfairness in the situation in which such ratepayers (not just those based in ports) were caught as the imposition of rates, backdated for many years, would have been both unexpected and unwelcome for two main reasons. Firstly, many of these ratepayers would, until they were landed with the backdated bill, have believed that they were paying rates through other means (such as rent) because another party, such as the landlord, was understood to be liable for rates and secondly, because they incurred these bills during the recession, when businesses were already struggling.

What are the policy objectives and the intended effects?

The first coalition agreement (published on 12 May 2010 – see reference 9 below) contained commitments to tackle the unfairness caused by the imposition of certain backdated rates in circumstances outlined above. Removing the backdated liability for certain backdated rates has financial benefits for eligible ratepayers.

[1] 33 continuous months is the minimum period for which a property must owe backdated liability before it can qualify for the eight-year instalment scheme to assist ratepayers with significant backdated non-domestic rates liabilities, and represents a period of more than 50 per cent of the life of the ratings list.

What policy options have been considered? Please justify preferred option (further details in Evidence Base)
Three options were considered: 1. Do nothing – ratepayers continue to be liable for the backdated rates and make the payments either in full or through the eight year instalment scheme (see paragraph 4 on page 7 and Reference 2 for more information on this scheme) 2. Waive the backdated liability for all ratepayers that meet the current eight year instalment scheme. 3. Waive the backdated element of certain backdated business rates liabilities for those properties that meet the eight year instalment scheme and also incurred the bill as a result of being split from another hereditament. The preferred option is 3 as it meets the Government's commitment to address the unfairness that occurred in circumstances where certain significant and unexpected liabilities were incurred during the economic downturn.

When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?	It is intended to be reviewed as part of a research project – see Post Implementation Review at Annex 1.
Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?	Yes

Ministerial Sign-off For final proposal stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible Minister: Bob Neill .... Date: January 2011 ....

Summary: Analysis and Evidence

Policy Option 2

Description:

Price Base Year 2010-11	PV Base Year 2010-11	Time Period Years 7	Net Benefit (Present Value (PV)) (£m)		
			Low: 0	**High:** 0	**Best Estimate: 0**

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	66	1	21	**188**
High	107		34	**282**
Best Estimate	86		28	**241**

Description and scale of key monetised costs by 'main affected groups'

The exchequer will forgo all unexpected and significant backdated liability, of an estimated nominal value of £298m.

The only net benefit to the exchequer is the value of holding those payments already made before they are returned to business once the policy is enacted.

Other key non-monetised costs by 'main affected groups'

There will be minimal administrative costs involved with introducing the waiver.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	66	1	21	**188**
High	107		34	**282**
Best Estimate	86		28	**241**

Description and scale of key monetised benefits by 'main affected groups'

The costs to government above represent benefits to businesses, see policy option 3, below.

Other key non-monetised benefits by 'main affected groups'

See policy option 3, below.

Key assumptions/sensitivities/risks — **Discount rate (%)** 3.5

See policy option 3, below.

Impact on admin burden (AB) (£m): 0			**Impact on policy cost savings (£m):**	**In scope**
New AB: 0	**AB savings:** 0	**Net:** 0	**Policy cost savings:**	Yes/No

Policy Option 3 (preferred)

Description:

Price Base Year 2010-11	PV Base Year 2010-11	Time Period Years 7	Net Benefit (Present Value (PV)) (£m)		
			Low: 0	**High:** 0	**Best Estimate: 0**

COSTS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Cost** (Present Value)
Low	31		10	**90**
High	72	1	23	**193**
Best Estimate	51		17	**146**

Description and scale of key monetised costs by 'main affected groups'

The exchequer will forgo certain unexpected and significant backdated liability, of an estimated nominal value of £177m.

Other key non-monetised costs by 'main affected groups'

There will be minimal administrative costs involved with introducing the waiver.

BENEFITS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Benefit** (Present Value)
Low	31		10	**90**
High	72	1	23	**193**
Best Estimate	51		17	**146**

Description and scale of key monetised benefits by 'main affected groups'

Eligible ratepayers will benefit from this scheme by having their certain backdated liabilities waived, by an estimated nominal value of £177m.

Other key non-monetised benefits by 'main affected groups'

The unfair burden placed on those ratepayers that genuinely may have found the backdated bills unexpected (due to properties being split from larger rateable hereditaments and added to the 2005 ratings list for the first time between 1 January 2008 and 31 March 2010 (during the economic downturn)), will have the qualifying backdated element removed from their bills. The policy will have retrospective effect so that any rates that may already have been discharged in respect of the cancelled liability will be refunded either by means of refunds or will be used to offset ongoing/future rating liabilities.

An incidental benefit of this measure may be to help businesses grow – a number of businesses hit by backdated rates have claimed that the liability would necessitate laying off staff or would adversely affect the business by for example, making the company technically insolvent.

Key assumptions/sensitivities/risks	**Discount rate (%)**	3.5

1. All properties that meet the criteria will benefit from the measure.
2. The high/low range of costs given above are calculated on the basis of both worst-case or both best-case scenarios, as described in the sensitivity analysis for both the proportion of splits and the rate of bad debts below, occurring simultaneously.
3. The calculations contained within this IA represent our best estimate of the likely costs of the policy options outlined. The estimates are based on data from the Valuation Office Agency collected for their own operational purposes. The data are now being used for a different purpose. As a consequence, there are some data issues that mean that the following estimates are subject to a margin of error. It is likely that the costs of the policy have been over-estimated.
4. Further assumptions are set out in the evidence base below.

Impact on admin burden (AB) (£m): 0			**Impact on policy cost savings (£m):**	**In scope**
New AB: 0	**AB savings:** 0	**Net:** 0	**Policy cost savings:**	Yes/No

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	England				
From what date will the policy be implemented?	2011				
Which organisation(s) will enforce the policy?	Local authorities				
What is the annual change in enforcement cost (£m)?	De Minimis				
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	No				
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)	**Traded:** N/A		**Non-traded:** N/A		
Does the proposal have an impact on competition?	No				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	**Costs:** 100%		**Benefits:** 100%		

Annual cost (£m) per organisation (excl. Transition) (Constant Price)	**Micro**	**< 20**	**Small**	**Medium**	**Large**
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on…?	**Impact**	**Page ref within IA**
Statutory equality duties[2] Statutory Equality Duties Impact Test guidance	No	16
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	16
Small firms Small Firms Impact Test guidance	No	16
Environmental impacts		
Greenhouse gas assessment	No	16
Wider environmental issues	No	16
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	17
Human rights Human Rights Impact Test guidance	No	17
Justice system Justice Impact Test guidance	No	17
Rural proofing Rural Proofing Impact Test guidance	No	18
Sustainable development Sustainable Development Impact Test guidance	No	18

[2] Public bodies including Whitehall departments are required to consider the impact of their policies and measures on race, disability and gender. It is intended to extend this consideration requirement under the Equality Act 2010 to cover age, sexual orientation, religion or belief and gender reassignment from April 2011 (to Great Britain only). The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No	Legislation or publication
1	Impact Assessment attached to Explanatory Memorandum To The Non-Domestic Rating (Collection And Enforcement) (Local Lists) (England) (Amendment) Regulations 2009 (which introduced the eight year instalment scheme)– SI 204 –available at http://www.opsi.gov.uk/si/si2009/uksi_20092268_en_2)
2	Business Rates Information Letter – Number 2 (which provided information for local authorities on the eight year instalment scheme)– 2009 available at the Department for Communities and Local Government website http://www.communities.gov.uk/localgovernment/localgovernmentfinance/businessrates/busratesinformationletters
3	Business Rates Information Letter – Number 7 (which provided guidance and information to local authorities on the moratorium on the collection of certain backdated rates liabilities)– 2010 available at the Department for Communities and Local Government website http://www.communities.gov.uk/documents/localgovernment/pdf/1601622.pdf
4	Impact Assessment attached to Explanatory Memorandum To The Non-Domestic Rating (Collection And Enforcement) (Local Lists) (England) (Amendment) Regulations 2010 (which introduced the moratorium)– SI 1507 –available at http://www.legislation.gov.uk/uksi/2010/1507/pdfs/uksiem_20101507_en.pdf?type=em
5	Business Rates Information Letter – Number 8 (which provided information to local authorities about the Budget announcement which included the policy decision to cancel certain backdated rates liabilities)– 2010 available at the Department for Communities and Local Government website http://www.communities.gov.uk/documents/localgovernment/pdf/1627919.pdf
6	Coalition Document – Page 16 http://media.conservatives.s3.amazonaws.com/manifesto/cpmanifesto2010_lowres.pdf
7	Initial Coalition Document (11 May 2010)– Page 1 http://www.conservatives.com/~/media/Files/Downloadable%20Files/agreement.ashx?dl=true
8	HM Treasury Gross Domestic Product (GDP) deflator estimates http://www.hm-treasury.gov.uk/data_gdp_fig.htm
9	Letter from the Insolvency Service to John Healey, MP - www.parliament.uk/deposits/depositedpapers/2009/DEP2009-0404.zip
10	House of Commons - Treasury Committee. Administration and expenditure of the Chancellor's departments, 2007–08 First Report of Session 2008–09 www.publications.parliament.uk/pa/cm200809/cmselect/cmtreasy/35/3510.htm#a30

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (to nearest £m) constant prices (Year 0 = earliest possible date of policy implementation – 2011/12)

	Y_0	Y_1	Y_2	Y_3	Y_4	Y_5	Y_6	Y_7	Y_8	Y_9
Transition costs	51									
Annual recurring	33	17	16	16	15	15	4			
Total annual costs	84	17	16	16	15	15	4			
Transition benefits	51									
Annual recurring	33	17	16	16	15	15	4			
Total annual benefits	84	17	16	16	15	15	4			

*Difference in constant prices between Option 1 (do-nothing) and preferred option, Option 3. For non-monetised benefits please see summary pages and main evidence base section

Explanations

Transition Costs are costs to government of returning received payments of backdated liability that will now be cancelled.

Annual recurring costs are cost to government of forgoing payments on all scheduled payments in Y_0, and of forgoing payments due for splits post-Y_0. As these are given in constant prices they decline over time, and in addition Y_6 does not see payments from all hereditaments on the scheme for the whole year, and so is further reduced.

Total annual costs are the above two added together

Transition benefits are benefits to business of being refunded payments of backdated liability that will now be cancelled

Annual recurring benefits are benefits to business of forgoing payments on all scheduled payments in Y_0, and of forgoing payments due for splits post-Y_0. As these are given in constant prices they decline over time, and in addition Y_6 does not see forgone payments from all hereditaments on the scheme for the whole year, so it is further reduced

Total Annual recurring benefits are benefits to business of forgoing payments. They are the exact opposite of costs to government.

Problem

1. Following the review of ports, undertaken by the Valuation Office Agency between 2006 and 2008, a number of properties that existed, but were not previously assessed separately, were entered onto the 2005 ratings list. Many of these properties had until then, been assessed for business rates as part of a larger hereditament (in this example under the port authorities' assessment and rates bill). However this was not in line with rating case law and once the Valuation office Agency became aware of this, it was under a duty to correct the ratings list and separately assess properties as appropriate.

2. As a consequence, a number of these newly added properties incurred, through no fault of their own, a significant amount of unexpected backdated liability, in some cases going back to the start of the 2005 ratings list (1 April 2005), during the economic downturn. In the case of ports, the majority of these bills were issued after the review, in 2008, at which point the UK entered the economic downturn and therefore these ratepayers were not only dealing with the burden of unexpected and significant backdated rates bills, but they were also being affected by the downturn.

3. The impact of such a significant backdate liability was compounded for affected ratepayers due to the liability being unexpected. The Valuation Office Agency recognised that, in the exercise of re-assessing rateable values within ports, it should have done more to inform businesses of developments. Indeed, the then Chief Executive. Mr Hudson, in evidence to the Treasury Select Committee accepted that "*in practice some of the people who have written in were not aware that this work was going on"* and concluded that*, "With the benefit of hindsight we have learned a lesson and please God this does not come up again: if it were to, we would seek to improve our communications with the occupiers as well as the operators. That is certainly a lesson*"[3].

4. Under the ratings legislation, backdated liabilities must be paid in full within a period of fourteen days from receipt of the bill. Given the magnitude of some of these liabilities and the economic period in which these were incurred, the previous administration also accepted the principle of an unfairness for affected ratepayers and introduced a payment scheme, through legislation, to allow ratepayers, that met certain critieria, to spread the payment of the backdated element of these bills through instalments over a maximum period of eight years (referred to in this document as the eight year instalment scheme, also known as the 'schedule of payments scheme'.)

5. The eight year instalment scheme allows ratepayers that meet certain criteria to discharge the backdated liability incurred over a maximum period of eight years, in interest free instalments[4]. However, the current Government does not believe that this solution goes far enough to address the inherent unfair burden that has been placed on some ratepayers. This is in part because, advice from the Insolvency Service[5], to the previous administration stated "*that the backdated liability had to be booked onto their accounts immediately and if these companies were unable to pay their debts (i.e. their other trading debts together with the part of the backdated tax debt now payable) as they fell due, the company would be "commercially" or "liquidity insolvent*".

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[3] House of Commons - Treasury Committee. Administration and expenditure of the Chancellor's departments, 2007–08 First Report of Session 2008–09 – Page 35.

[4] Business Rates Information Letter – Number 2 (which provided information for local authorities on the eight year instalment scheme)– 2009 available at the Department for Communities and Local Government website http://www.communities.gov.uk/localgovernment/localgovernmentfinance/businessrates/busratesinformationletters

[5] Letter from Insolvency Service to John Healey – 9 February 2009.

6. Indeed the Treasury Select Committee also concluded that eight year schedule of payment scheme did not go far enough to assist affected ratepayers and due to the impact it could have on businesses that more should be done. **"***The Government's proposal to extend payment terms for port businesses comes too late for those firms which have already ceased to operate in the face of the huge rates bills presented. It is probable that, even with an eight year period to pay, the backdated and prospectively increased rates bills may make many firms technically insolvent. We recommend that, in recognition of the fact that the Valuation Office Agency is to blame for the situation faced by the port firms, the Government takes steps to mitigate further the difficult position faced by port businesses. Consideration should be given to the proposal to maintain the rateable values of premises in statutory docks and harbours at the levels published in the April 2005 rating lists until the new ratings list is published in April 2010".*[6]

7. Therefore not withstanding the fact that affected ratepayers were being required to make payments towards the backdated liability, companies are required to show the liability on their accounts, with the attendant risk to their viability. The Government therefore wishes to remove the backdated rates liability altogether for those ratepayers that incurred the backdated liability under certain circumstances.

8. The ratepayers at whom this policy is specifically targeted are those occupying properties that were rated as part of a wider property, with another party, the landlord, being liable for the rates. Therefore those ratepayers may have reasonably believed they were making a contribution to their landlord's rates liability through other means, such as rent. In these circumstances the Government accepts that ratepayers may have genuinely found the backdated rates bill unexpected and no criticism could be attached to ratepayers for not knowing that they should have been separately liable for rates.

9. Moreover, the imposition of significant backdated liabilities was imposed at the height of the recession and there is some anecdotal evidence that shows that imposition of such significant and unexpected backdated rates was adversely impacting affected businesses. For example International companies such as France's Gefco were threatening to scale back its activities at the Port of Sheerness, putting more than 100 jobs at risk[7], whilst companies such as Scotline Terminal in Goole went into liquidation.[8] The Government also considered that the imposition of such significant and unexpected backdated rates bills could cause damage to potential further international investment in UK port operations.

10. The limited help provided by the previous administration; the incidental benefits to individual businesses and the need for improved international confidence in investment in the UK, are material considerations that added further weight to the central policy rationale which is about correcting an unfairness that occurred under a specific set of circumstances. Therefore the Government announced, on 22 May 2010, its intention to explore the possibility of further action to assist affected ratepayers and on 22 June, at the 22 June 2010 Budget, Ministers announced the Government's intention to seek primary legislation to waive certain backdated business rates liabilities for those that meet specific criteria[9].

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[6] House of Commons - Treasury Committee. Administration and expenditure of the Chancellor's departments, 2007–08 First Report of Session 2008–09 – Page 37

[7] www.telegraph.co.uk/finance/newsbysector/transport/5615244/Port-jobs-at-risk-as-rates-row-escalates.html

[8] www.telegraph.co.uk/finance/newsbysector/supportservices/7721095/Coalition-ditches-backdated-rates-bills-for-British-ports.html

[9] During the 22 June 2010 Budget announcement, the Government announced its intention to seek primary legislation, at the earliest opportunity, to cancel certain backdated rates liabilities where the schedule of payments criteria is met and the backdated bill was incurred as a result of the property being split from the assessment of another rateable property. The detailed criteria along with any further necessary amendments will be published in draft secondary legislation alongside the Localism Bill in due course.

11. Although this issue came to light following the ports review, the Government is aware that there are other ratepayers that also encountered similar issues and have received backdated rates bills following a decision to split properties from the assessment of other rateable hereditaments. Therefore this policy applies to all ratepayers that meet the criteria and is not specific to port based ones.

Rationale and policy objective

12. The Government believes that due to the unfair burden placed on ratepayers at a time of economic recession, it is right to provide assistance to those businesses/ratepayers. The policy objective of this regulation is to ensure that any ratepayers facing outstanding backdated liabilities, that meet the criteria, would have the backdated element of such bills waived. Although there may be incidental benefits, to this policy, such as providing support to businesses that will allow jobs to be retained, these are not central to the policy rationale which is about addressing an unfairness that has occurred under a specific set of circumstances.

13. To qualify for the cancellation, the criteria that the Government is likely to adopt, will be that the backdated liability must have been accrued due to a property being entered onto the 2005 ratings list for the first time, after being split from a larger rateable hereditament, between 1 January 2008 and 31 March 2010 and that the newly split property has a backdated assessment of more than 33 months.

14. The rationale for this criteria is that it targets those ratepayers that are disproportionately affected as 1) the backdated bill would be for a significant period (more than 33 months) from a property that has a backdated assessment of more than 33 months, 2) the liability would have been accrued during the recession (hence the cut off date of 31 March 2010 for qualifying alterations) and 3) the bill was unexpected as before being split from another property, as explained in paragraph 8 above, ratepayers may have incorrectly believed that another party was liable for rates on their property and they were providing a contribution to the landlord's rates through other means, such as rent. Therefore the Government believes that it is right that the backdated element of such rates should be cancelled for ratepayers in these circumstances.

Background

15. All non domestic properties are liable to pay business rates unless they are exempt. Under section 41 of the Local Government Finance Act 1988 (1988 Act), the valuation officer[10] must accurately compile, and then maintain, lists of hereditaments[11] in an area for the relevant billing authority, known as the local non-domestic rating lists. The list must be compiled every five years, commencing on 1st April 1990 (the current list came into force on 1st April 2010) and is in force for the five year period until the next list. The list must show for each day for which it is in force each hereditament which fulfils the conditions set out in section 42 of the 1988 Act. The list must be maintained for so long as necessary for the purposes of Part 3 of the 1988 Act (section 41(7)). The lists are therefore subject to alteration during their lifetime, under section 55 of the 1988 Act.

16. Alterations may be made to the Non-Domestic Rating list by the Valuation Office Agency

[10] A valuation officer is appointed for each billing authority by the Commissioners of the Inland Revenue (section 61 of the 1988 Act). In practice, valuation officers are appointed to a number of billing authorities. They are grouped together under the Valuation Office Agency, which is an executive agency of HMRC.

[11] A hereditament is defined in section 64 of the 1988 Act. For the purposes of these instructions, it is used to refer to a unit of rateable property.

(www.voa.gov.uk) which may reflect changes which take place on that day or prior to it. Those alterations may take effect from different points in time and can be backdated to the date of the compilation of the rating lists, in this case 1 April 2005, which can lead to a [12] backdated rates liability for ratepayers.

17. The collection of these liabilities is through the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 (SI 1989/1058) ("the C & E Regulations") made under paragraphs 1-4 of Schedule 9 to the Local Government Finance Act 1988. Although this provides for the payment of rates by instalments, this does not apply where the demand notice for a financial year is issued after the year has ended. In these circumstances, regulation 7(5) provides that the relevant demand notice shall require payment of the amount payable on the expiry of such period (being not less than 14 days) after the day of issue of the notice as is specified in it. In principle, this does give local authorities some discretion as to when backdated liability is to be collected, but the discretion is limited as local authorities must act diligently to collect the backdated liability within the financial year the demand is issued and the amount due must be collected in a lump sum.

18. Although a review of ports and the subsequent separate assessment of a number of new properties within ports highlighted the issue of the impact of backdated liability, the policy proposed would apply to all ratepayers occupying properties that meet the criteria to benefit from the waiver of the backdated element of certain backdated business rates bills.

Options

19. The following options were considered:

    a. Do nothing - Under this option the Government would not take any further steps and eligible ratepayers affected by backdating would be required to repay the backdated liability either in full or through instalments under the eight year instalment scheme.

        - This option was rejected as it does not address the unfairness that the Government believes was encountered by certain ratepayers.

    b. Cancel the backdated liability for all ratepayers that meet the eight year instalment scheme. Under this option the Government would be offering permanent relief from the backdated element of certain liabilities to all ratepayers that meet the current instalment scheme (which in itself specifically targets those with significant backdated rates liabilities – see Reference 1 and 2 for more details).

        - Under this option the Government would be offering permanent relief from the backdated element of certain backdated liabilities to all ratepayers that meet the current instalment scheme (which in itself specifically targets those with significant backdated rates liabilities); however, a fundamental principle/component of rating policy is that all non-domestic properties are liable for non domestic rates and should all be assessed consistently to ensure that the burden of contributions to funding local government is shared fairly amongst businesses. The anomaly in this situation is that of an unfairness (due to a combination of circumstances under which certain

[12] Regulation 14(2) of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (http://www.opsi.gov.uk/si/si2009/uksi_20092268_en_2) states that "where an alteration is made to correct any inaccuracy in the list, on or after the day it is compiled, the alteration shall have effect from the day on which the circumstances giving rise to the alteration first occurred" (i.e. backdating).

backdated rates bills were incurred) and on reviewing the issue, Ministers found that only those ratepayers with significant backdated bills, incurred during the economic downturn, resulting from the property they occupy being split from a larger rateable hereditament could genuinely and justifiably have found the backdated bills to be unexpected. This is because where properties were rated as part of larger hereditaments the occupiers may have been under the misconception that another party, the landlord, was liable for the rates and they were making a contribution to their landlord's rates through other means, such as rent. The same cannot be said for those that were not being rated (as for example, those that have been newly listed and incurred backdated bills because the property was newly built would have no reason not to expect to pay rates)

c. Cancel the backdated business rates liabilities for those properties/ratepayers that meet the eight year instalment scheme and additionally incurred the backdated bill as a result of being split from a larger rateable property.

- This would have the effect of meeting the Government's commitment to provide more help to affected ratepayers in order to address what they consider to be an unfairness (due to the significant and unexpected nature of the backdated rates bills incurred during the economic downturn). Therefore this is the preferred option.

Costs and benefits

20. We have used aggregated data from the Valuation Office Agency to cost this policy. When properties are assessed by the Valuation Office Agency they receive a classification as to how they are entered on the ratings list;
    a. 'New build' – this is when a property has been newly built, i.e. it did not exist before.
    b. 'Split' – this is where a property was created from one or more existing properties, for example one office is split into two new offices which need to be distinct entities on the ratings list.
    c. 'Merger' – this is where a property is created from two or more existing properties joining together, i.e. three small offices are reformed to make one larger office.
    d. 'New (other)' – this is where a property which was previously on the ratings list, but removed for some reason and then subsequently re-added to the list. For example, if a building is made exempt because it is classed as being used for agricultural purposes, and then the use changes so that it is no longer exempt (eg it is converted into an office unit), it should be added to the ratings list again.

21. The estimated backdated liabilities can be seen in Table 1 below. Paragraphs 21 a – 21 c list the assumptions we used in the analysis:
    a. We have used the actual number of new assessments that have a backdated liability identified by the Valuation Office Agency that could meet the criteria for an eight year instalment scheme.
    b. The proposal is to assist those ratepayers that are facing certain, significant and unexpected liabilities, resulting from their property being split from a larger rateable property (through unilateral action by the Valuation Office Agency), by cancelling the backdated element of those rates bills. As such one criterion is that an occupier who was not previously liable for rates on a property ,"preceding" the new property assessment, (at the ratings list alteration date) (i.e. not occupying previous property that forms a part of a new merged property – or not occupying a part of a property that has been split into two or more properties). As such we have estimated that:

i. Merged properties would not benefit from the waiver; indeed they are unlikely to even meet the current schedule of payments criteria. This is because it cannot be said to be an unexpected backdated bill where 2 or more properties liable for rates (i.e. two properties, both occupied by the same ratepayer, that were separately liable for rates in their own right) form a new merged property and so have not been included in estimates of eligible properties; and
ii. Rateable value of splits is reduced by 50 per cent (the maximum) as one new property from a split property would have been the previous ratepayer and would not therefore have found the rates bill unexpected (and therefore cannot benefit from the cancellation)

c. We have reduced backdated liabilities by the proportion by which national non-domestic rates are reduced due to reliefs (apart from transitional relief as this is designed to be revenue neutral and would therefore not impact on aggregate percentages and it would not be possible to work out the impact for each year), such as empty property relief and small business rate relief to represent properties that qualify for other reliefs.

22. Table 1 below sets out the estimated extent of the backdated liability that could be subject to a schedule of payments between 1 January 2008 and 31 March 2010 (the qualifying period under which the property must have been added to the 2005 ratings list).

Table 1: Showing the extent of the backdated liabilities we estimate were identified between 1 January 2008 and 31 March 2010

	Estimated liabilities (to nearest £m)	Estimated No of Hereditaments eligible for schedule of payments & Options 1 & 2 (to nearest hundred)	Estimated liabilities of splits (to nearest £m)	Estimated No of Hereditaments eligible for cancellation under option 3 (to nearest hundred)
Jan 08 to March 08	29	1,300	19	400
April 08 to March 09	125	3,900	73	1,300
April 09 to March 10	144	5,200	84	1,500
Total	***298***	***10,300***	***177***	***3,200***

Impact on Government Revenue

23. Table 2 below shows the costs to Government (and the equal benefit to ratepayers) from the original eight year instalment scheme; the current payment freeze (Option 1); waiving all backdated liability that meets the criteria for the schedule of payments (Option 2); and waiving the backdated liability of only split properties (Option 3).

Table 2: Costs to Government of Policy Options on Backdated Liability (All figures rounded to nearest £m)

	2007-08	**2008-09**	**2009-10**	**2010-11**	**2011-12[4] [5]**	**2012-13**	**2013-14**	**2014-15**	**2015-16**	**2016-17**	**2017-18**	**Total**
ORIGINAL SCHEME												
a) Payments received (current prices)	6	25	51	30	30	30	30	30	30	30	7	**298**
b) Payments received (constant prices)[1]	6	25	51	30	29	29	28	27	27	26	6	**283**
c) Payments received (net present value)[2 3]	6	25	51	30	28	25	23	21	20	18	4	**251**
OPTION 1: DO NOTHING, CURRENT SCHEME												
d) Payments received (current prices)	6	25	51	6	34	34	34	34	34	34	8	**298**
e) Payments received (constant prices)[1]	6	25	51	6	33	32	31	31	30	29	7	**282**
f) Payments received (net present value)[2 3]	6	25	51	6	31	29	26	24	22	20	5	**245**
OPTION 2: ALL LIABILITY WAIVED												
g) Payments received (current prices)	6	25	51	6	-88	0	0	0	0	0	0	**0**
h) Payments received (constant prices)[1]	6	25	51	6	-86	0	0	0	0	0	0	**2**
i) Payments received (net present value)[2 3]	6	25	51	6	-84	0	0	0	0	0	0	**5**
j) Increase in Net Present Value cost from Option 1 (j = f - i)	0	0	0	0	115	29	26	24	22	20	5	**241**
OPTION 3: ONLY SPLITS LIABILITY WAIVED												
k) Payments received (current prices)	6	25	51	6	-52	16	16	16	16	16	4	**121**
l) Payments received (constant prices)[1]	6	25	51	6	-51	16	15	15	15	14	3	**115**
m) Payments received (net present value)[2 3]	6	25	51	6	-50	14	13	12	11	10	2	**100**
n) Increase in Net Present Value cost from Option 1 (n = f - m)	0	0	0	0	81	15	14	12	11	11	2	**146**

All figures rounded to nearest £m

[1] *Constant prices use HM Treasury inflation estimates beginning in 2011-12, then 2.5 per cent per annum after 2013-14.*
[2] *Beginning in 2011-12, a discount rate of 3.5 per cent used in calculation of Net Present Value.*
[3] *Annual bad debts and insolvency rate of 2.5 per cent used in calculation of Net Present Value. Not applied to repayments by government in 2011-12 under options 2 and 3.*
[4] *Payment freeze extended to end of 2011-12 for options 2 and 3.*
[5] *The negative payment figures in year 2011-12 for options 2 and 3 represent the repayment by government to businesses of backdated liability that has already been paid, but has now been waived.*

24. Table 3 below summarises the costs relative to the do-nothing scenario

Option	Option 1 (do nothing)	Option 2	Option 2 relative to do nothing	Option 3	Option 3 relative to do nothing
Net Present Value Cost (£m)	53	293	241	198	146
Net Present Value Benefit (£m)	53	293	241	198	146

Explanation

Net Present Value costs of each option are the Net Present Value of receiving all the backdated liability owed immediately (which is equal the total backdated liability), less the Net Present Value received from taking that option (see table 2).

For example, the value of backdated liability is £298m, while the Net Present Value of total payments received in Option 1 is £245m. Thus the Net Present Value cost of Option 1 equals: £298m - £245m = £53m. This cost to government is the benefit to business.

Risks and assumptions

25. The transition cost represents the repayment of already-paid waived liabilities to eligible ratepayers.

26. The annual costs represent the variation from the current situation in the value of annual payments. A freeze of all eligible ratepayers' payments in 2011-12 sees the greatest annual cost, and subsequent annual costs are the payments that splits would have made under the schedule of payments.

27. The final payment is reduced as businesses end their payment schedules at various times through the year; as a result it is not a full year of payment by all liable businesses.

28. As all costs are foregone tax revenues, these equal the benefits to business.

29. All costs in this table are in constant prices. The base year is 2010-11.

30. Beginning in 2011-12, a discount rate of 3.5 per cent and published Treasury estimates as consistent with the June 2010 Budget for the Gross Domestic Product deflator (http://www.hm-treasury.gov.uk/data_gdp_fig.htm) have been used.

Sensitivities around estimates

31. The extreme case for an increase in cost would be if a much greater proportion, than the 50 per cent estimate made in this analysis, of the non-port properties identified by the Valuation Office Agency as splits qualify for the eight year instalment scheme as new assessments. (Numbers of port splits have been taken as actuals from Valuation Office Agency data.)

32. The estimated effects of a variation in this percentage are listed in Table 4, below:

Table 4: Sensitivity Analysis on percentage of non-port splits liable for backdated liability (to nearest £m net present value)

	If percentage of eligible splits is greater	Current Working Assumption	If percentage of eligible splits is fewer (improved scenario)
	70% eligible	50% eligible	30% eligible
Option 1	65	53	40
Option 2	363	293	224
Option 3	268	198	129

33. The 2.5 per cent figure used to estimate annual losses to bad debts is a conservative estimate based upon the 97.8 per cent collection rate for National Non-Domestic Rates and the annual business insolvency rate of around 1 per cent.

34. Another possibility is that the annual rate of losses due to insolvency or other bad debts varies from 2.5 per cent. The greater the amount of future payments, the greater the effect of this will be to the estimate. The greater the proportion of future payments that are cancelled, the smaller this effect will be, as whether those liable are in a position to pay becomes moot once their liability is cancelled. This is highlighted in table 5 below which illustrates that for Options 2 and 3, where the all and some (respectively) liabilities would be waived, the impact on the estimate is reduced).

Table 5: Sensitivity Analysis on proportion of bad debts for backdated liability (to nearest £m net present value)

	If proportion of bad debts is greater	Current Working Assumption	If proportion of bad debts is fewer (improved scenario)
	5% annual losses to bad debts	2.5% annual losses to bad debts	1.5% annual losses to bad debts
Option 1	66	53	47
Option 2	293	293	293
Option 3	204	198	196

Table 6: Sensitivity Analysis combining effect of both high/low scenarios occurring (to nearest £m net present value)

	If bad debts and splits are both greater	Current Working Assumption	If bad debts and splits are fewer (improved scenario)
	5% annual losses to bad debts, 70% splits eligible	2.5% annual losses to bad debts, 50% splits eligible	1.5% annual losses to bad debts; 30% splits eligible
Option 1	81	53	36
Option 2	363	293	224
Option 3	274	198	126

Key assumptions, sensitivities and risks

35. The estimates are based on a snapshot of data provided by the Valuation Office Agency. It is important to note that this estimate could change, as it is possible that alterations will be made to the assessments of properties, for example, following an appeal.

36. We only know the aggregate numbers of properties and rateable values who could potentially fulfil the eligibility criteria listed above. A decrease in the numbers of people who are eligible will decrease the cost of the scheme.

37. Properties added to the list with an effective date of 1 April 2005 may be eligible for transitional relief (see paragraph 21c). We have made no provision for this in our above analysis.

38. We have made the assumption in our analysis that 50 per cent of the rateable value of properties resulting from 'splits' will be eligible for the waiver.

39. For the 22 June 2010 Budget, the analysis of the extent of backdated liability did not include assessments thought to be duplicates for the port splits as duplicate assessments would be ineligible for the waiver. Only the liability up to the initial alteration (i.e. the original port splits assessments) would get the cancellation and these were included in the analysis.

40. Subsequent to the 22 June 2010 Budget further information from the Valuation Office Agency indicated that the properties previously identified as duplicates may not all be ineligible for the cancellation. However, from the aggregated data we could not identify those duplicate assessments that would result in double counting. Therefore, as a precaution, we have included all these assessments in this estimate of the extent of backdated liability that may be cancelled (applying the same assumptions at paragraph 39) while extending the 50 per cent estimate of eligible split properties from non-ports to include ports. This is why this estimate of £177m varies from the one used to estimate the 22 June 2010 Budget figure of £175m.

41. We have assumed that all properties that have backdated liability will pay the large business multiplier (the small business multiplier with the small business supplement added). This may overestimate the true cost of the backdated liability and as such the cancellation. It is possible that some of the hereditaments within this analysis would be eligible to pay the small business multiplier, but we do not have any information about the individual Rateable Values for these properties and whether they meet the sole occupation criteria for Small Business Rate Relief. We therefore cannot 'guess' the split between those that would pay the small/large business rate multiplier.

42. For option 1 (do nothing) we have assumed that all properties will be granted the ability to pay their backdated liabilities over a period of eight years including the moratorium to 31 March 2011. This is an likely to be an overestimate as the un-audited local authority collection statistic (http://www.communities.gov.uk/documents/statistics/pdf/1710229.pdf) show that the less than the estimated all properties that meet the criteria have entered into a schedule of payment. However, as these are un-audited local authorities returns; may not take account of all properties that could meet the criteria that had an alteration date towards the end of the March 2010, and to be consistent with the costs set out in the 22 June 2010 Budget we have not altered our assumption. For the options 2 and 3, we have also assumed that all properties eligible for the cancellation will also have occupying ratepayers who have a backdated rates bill form the qualifying property for more than 33 months as well.

43. For options 2 and 3, we are aware that due to the date of introduction for the Localism Bill (November 2010) it is unlikely the necessary legislation to implement the favoured option for a cancellation will be in place before 31 March 2011, when the current freeze on repayments of such liability comes to an end. Therefore the calculations take into account an extension of the freeze into 2011/12.

44. We have assumed a non-payment rate of 2.5 per cent per annum, including bad debts due to insolvency for those not eligible for the cancellation.

45. Estimates for the high and low potential levels of costs given on page 3 list the outcome of both the high-cost or low-cost scenarios outlined in the sensitivities (paragraphs 31-34) occurring simultaneously.

46. Initial information from local authorities for 2007-08 indicated that 20 per cent of backdated liability was paid immediately by businesses. This figure has been used as an estimate for the backdated liability immediately repaid in the other years eligible for the schedule of payments scheme.

Admin Burden and Hampton Principles

47. Local authorities are under a statutory duty to bill and collect rates on behalf of the Government. They are provided a fee for this function known as the annual allowance for billing and collection.

48. This policy will amend legislation such that in specific circumstances, the liability for the backdated element of certain bills will be zero. Therefore as part of their statutory duty for billing and collection of rates, local authorities will be responsible for implementing the waiver for the backdated element of significant and unexpected rates bills to those that meet the criteria.

49. Although this is likely to require local authorities to make refunds (where payments have already been made towards the liability eligible to be waived), it is no different to the administration of the current system whereby adjustments and refunds are made where changes are made to the rateable values, for example following an appeal. Therefore we do not envisage that this additional administrative requirement will be significant to implement or impact upon the annual allowance for the collection of rates.

50. This policy does not impact on the ongoing rates liability for the property which must be discharged in the usual manner and we do not envisage that this policy will pose an administrative burden for businesses.

Social costs and benefits

51. This policy is aimed at ratepayers who have received an unexpected and significant back dated bill as a result of being split from a larger rateable hereditament. This is a permanent measure to alleviate the backdated element of such bills.

52. Receiving a waiver, rather than discharging the backdated liability in instalments, will alleviate the tax burden on affected businesses, and guard against financial difficulties for those businesses who do not have reserves. Supporting businesses in being able to trade, and keeping employees employed, has many social and economic benefits for the areas surrounding the business.

Impact on ‘main affected groups’

53. *Businesses* and other occupiers of non-domestic property, that pay non domestic rates (are ratepayers) are the main group affected by this policy. Ratepayers that meet the criteria will be able to benefit from the cancellation of certain backdated business rates liabilities. The cancellation of a significant liability has clear beneficial effects for the finances and the cash flow of individual and businesses that benefit both in the short and long term. For example, in cash flow terms and in accruing a liability on the accounts.

54. *Local authorities* are the other main group that this policy will affect as they will be responsible for implementing the waiver.

Statutory equality duties

55. Race, disability and gender equality - the initial screening tests were completed and concluded that this policy would not require a full equality duties impact assessments.

Economic impacts

56. Competition assessment - the initial screening test was completed and we do not anticipate this policy proposal having an adverse impact upon fair and open business competition. We concluded that this policy would not require a full competition assessment.

57. Small Firms Impact Test - the proposal for this policy is expected to have broadly equivalent benefits for both large and small businesses who may meet the criteria for the cancellation of certain backdated business rates liabilities. The increase in liquidity from not having to make payments for backdated rates means these revenues may be used for other purposes which may be of particular benefit to small businesses.

Environmental impacts

58. Greenhouse gas emissions and wider environment issues - the proposal for the cancellation of certain backdated business rates liabilities will not in itself have any effect on greenhouse emissions or on wider environment issues.

Social impacts

59. Health and well-being - the initial screening test was completed and concluded that this policy would not require a fully health impact test as this policy does not have a significant impact on human health.

60. Human rights and justice system - there are two provisions Article 14 of the European Convention which could be relevant to the amendment - Article 1 of the First Protocol and Article 14.

    a. Article 1 of the First Protocol provides that everyone is entitled to the peaceful enjoyment of his possessions, and may not be deprived of them except in the public interest and subject to the conditions provided for by law and by the general principles of international law. There is an exception for the right of the State to secure the payment of taxes and discretion for the State to impose taxes in the public interest. The Department is confident that this policy is in the public interest and proportionate to the policy aims.

    b. The second provision is Article 14 of the Convention which provides that the enjoyment of the rights and freedoms set out in the Convention shall be secured without any discrimination. This means that any differential treatment in terms of the right to peaceful enjoyment of property, protected by Article 1 of the First Protocol, including differential treatment for tax purposes, is in principle unlawful. The European Court has, however, consistently said that differential treatment is not unlawful provided that it is objectively and reasonably justified.

Rural proofing

61. The proposal for the cancellation of certain backdated business rates liabilities is

expected to have broadly equivalent impacts in rural and urban areas.

Sustainable development

62. This policy does not impact upon sustainable development.

EU requirements

63. The proposal for the cancellation of certain backdated business rates liabilities does not relate to any EU Legislation.

Implementation/next steps

64. Pending royal assent to the necessary primary legislation, the Government will seek to implement policy option 3 as soon as possible. Once the necessary legislation is in place, we will be issuing local authorities with guidance on how to apply the waiver along with a Business Rates Information Letter to inform them of the cancellation of certain backdated business rates liabilities. Local authorities, who are responsible for the collection and enforcement of business rates, will be able to liaise with affected businesses. Authorities will also be required to include information in future demand notices about the cancellation so that any ratepayers not automatically identified that believe they may be eligible, can come forward.

Summary

65. The Government has concluded that due to the unexpected nature of certain significant backdated rates bills (more than 33 months) incurred by ratepayers during the economic downturn following the property they occupy being split out from the assessment of a larger rateable property and backdated by more than 33 months on the 2005 ratings list, that it is right to intervene and cancel the backdated element due to the perceived unfairness on affected ratepayers.

66. The preferred option is option 3 because it addresses the perceived unfairness by specifically targeting those who may genuinely have found the backdated rates bill unexpected.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

Basis of the review: There have been a number of changes affecting the Business Rates System, including amendments to empty property rates, small business rate relief, two deferral schemes for payment of rates as well as the introduction of the Business Rates Supplement. To look at these incremental changes individually would not assess the impacts cumulatively of the policies on ratepayers and the property market. The Department is therefore considering the possibility and feasibility of a proposed review which would cover the changes to business rates policy as a whole, using evidence from as wide a range of individual policy interventions as is practical.

Review objective: If such a review is feasible the objective of the review would be to assess the extent to which individual business rates policy objectives have been met and the wider cumulative impact upon ratepayers and the property market. We will look to review all the recent Government policy changes, of the current and previous administration, to the Business Rates system and to assess the impact of these policies cumulatively. The purpose of such a review is to understand the efficiency of business rates as a policy tool for local authorities and/or central Government.

Review approach and rationale: It is envisaged that research will be commissioned to provide evidence for the Post Implementation Review Report. The full scope of this research has yet to be worked up but the focus will extend to whether this policy and other Business Rate policies under the Bill as well as other recently implemented rates policies have/are working as intended or are causing distortions in the property market or having other unintended consequences on business behaviour. This should help to refine the use of business rates policy towards achieving value for money in any future interventions.

Over the coming months, further details of any proposed research and analysis will be considered by a Localism Bill review steering group, to ensure that the methods are appropriate, proportionate, and cross-cutting where possible, so that we collect only essential information/data at both the baseline and follow-up review stages.

Baseline: The proposed research specification will be developed further in the months ahead and it will set out in greater detail the baseline measurements, suggested data sources and methodology to compare where possible outcomes against policy aims across the range of business rates polices. The policy objective here (in this IA) is to address an unfairness that has occurred due to the significant and unexpected nature. of certain backdated rates liabilities incurred during the economic downturn.

Success criteria: The potential impact of this and the other Business Rate policies under the Bill will be covered by the full review and the respective success criteria will be considered. For this particular policy (In waiving certain backdated rates liabilities incurred under a specific set of circumstances) the objectives that we intend to achieve include:

- Ratepayers that have incurred such liabilities do not have to make payments towards these backdated liabilities and;
- Where payments towards such liabilities have been made, that ratepayers will get the relevant refund/credit.

Together the above bullet points will meet the overall policy aim which is to correct an unfairness that arose under a specific set of circumstances. By allowing people to get refunds/have the liability waived, the unfairness will be addressed and the policy criteria will be met and will therefore be a success.

However, as highlighted in this document, it is possible that in waiving certain backdated liabilities, that there will be incidental benefits to businesses and their local areas. For example, by removing the backdated liability, companies will not have to find extra resources/use current resources to repay the

backdated liabilities. Therefore this ‘saving’ could in theory be used by ratepayers to create or preserve jobs, expand their business and or retain competitive prices that may all help to keep the business going and therefore contribute in the long term to the prosperity of the business’ respective area and the country. In view of this, we propose that, as part of the wider research project into the various business rates policies (if such a review is considered feasible and dependent on resources,), when undertaking the review, consideration is given to assessing/capturing whether any incidental benefits are realised as a result of the waiver. This will be dependent on resources and whether it is possible to identify a representative cross-section of those that have benefited from this measure.
Monitoring information arrangements: In the mean time Local Authorities are required to provide an annual assessment of their contribution to the national ratings pool. As part of that process the Department will through the annual collection of Rating Statistics from Local Authorities be able to monitor how many properties the cancellation is applied to and what amount of backdated rates have been cancelled to gauge the accuracy of the estimate made.
Reasons for not planning a PIR: N/A