



HM TREASURY

Furnished holiday lettings :

summary of responses



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ISBN 978-1-84532-808-5
PU1059

Contents

	Page
Chapter 1 Introduction	3
Chapter 2 The Consultation	5
Chapter 3 Response to the consultation	7
Chapter 4 Key Findings and Government's Response	13
Chapter 5 Next Steps	17
Chapter 6 Annex	19

1

Introduction

1.1 The Chancellor confirmed in the June Budget that the Government would not repeal the special tax rules for furnished holiday lettings. Instead, the Budget announced that a public consultation would be held on a proposal to change the existing rules in a way that both meets our obligations under EU law and does so in a fiscally responsible way.

1.2 On 27 July the Government published "*Furnished Holiday Lettings Consultation*". This invited interested parties to respond by 22 October. The consultation sought views on the impact of proposals balancing the need to:

- meet obligations under EU law;
- provide support to commercial businesses;
- ensure changes are affordable.

1.3 The proposals were, from April 2011, to:

- increase the minimum period over which a qualifying property is **available to let** to the public during a year (the "availability threshold") from 140 days to **210 days**;
- increase the minimum period over which a qualifying property is **actually let** to the public during a year (the "occupancy threshold") from 70 days to **105 days**;
- **restrict** the use of **loss relief** from furnished holiday lettings so that losses can only be set against income from the same business.

This document summarises the responses received to the consultation, sets out the Government's response and sets out next steps.

2

The Consultation

Summary of questions

2.1 The consultation asked nine questions:

- 1 How would increasing the minimum period over which a property is available for letting from 140 to 210 days impact on businesses?
- 2 Would the increase in the minimum availability period cause current suppliers to stop providing furnished holiday lettings? If so what would the impact be on:
 - The furnished holiday lettings industry that continued to operate; and
 - The tourism industry as a whole?
- 3 How would increasing the minimum period over which a property is actually let to the public from 70 to 105 days impact on businesses?
- 4 Would the increase in the minimum occupancy period cause current suppliers to stop providing furnished holiday lettings? If so what would the impact be on:
 - The furnished holiday lettings industry that continued to operate; and
 - The tourism industry as a whole?
- 5 Is the proposal likely to impact differently in different regions of the UK or the EEA, for example because of the differences in letting patterns or the length of the tourism season? If so, what evidence is there to suggest a regional or national variation?
- 6 What would be the impact of the proposed restriction to loss relief on qualifying furnished holiday lettings businesses? What proportion of businesses would be affected by this restriction? What types of business would be most affected? What would the commercial impact on the businesses be? Would this be due to a lack of capacity to use losses against the same qualifying furnished holiday lettings business in the future?
- 7 How should the proposed restrictions to loss relief be implemented? How should losses brought forward be treated for furnished holiday lettings businesses that are no longer qualifying? How should losses brought forward be treated for furnished holiday lettings businesses, some lettings of which are no longer qualifying?
- 8 What are the potential commercial impacts of applying the current rules to every person operating furnished holiday letting businesses and bringing in a capital allowance disposal event every time they failed to qualify under the new qualifying conditions?
- 9 What effect would the proposed treatment of notional pools be likely to have on the administrative burden placed on a businesses that:
 - continually operates as a furnished holiday letting under the new conditions; and
 - sometimes qualified as a furnished holiday letting under the new conditions.

3

Response to the consultation

3.1 A total of 229 responses to the consultation were received. Responses came from MPs and MSPs, professional and trade associations, accountants, tax specialists, small businesses and individuals. A meeting was held with bodies representing the sector and other interested groups.

3.2 The retention of special furnished holiday letting rules was almost universally welcomed. There was also widespread recognition of the need for this to be affordable and to prevent unintended exploitation of the provisions – particularly around the letting of second homes. Many of those who benefited more from the old rules, including the unlegislated extension to the EEA, said they would prefer to keep these. A summary of the responses to the consultation is set out below.

1. How would increasing the minimum period over which a property is available for letting from 140 to 210 days impact on businesses?

3.3 Approximately half of the respondents answered this question. It was thought that raising the threshold would incentivise owners of holiday lettings to increase occupancy, increase investment in holiday locations and by so doing extend the season in those locations. This was considered especially important for keeping employment in rural locations where income is derived from tourism. Most agreed that increasing the thresholds would not affect genuine holiday lettings businesses and would reduce the potential abuse of the rules by the owners of second homes (although some doubted there was widespread abuse).

3.4 However, there were some concerns. Some thought that more seasonal or remote locations or types of provision (e.g. caravans and camping) which are not designed for winter months could be particularly affected. Those having to abide by a planning condition or operating licence where this prevented 210 day availability would suffer.

3.5 The increased threshold could reduce incentives for new entrants where they would not meet the new threshold. This could affect farm diversification by dissuading farmers from converting farm buildings into holiday lets.

2. Would the increase in the minimum availability period cause current suppliers to stop providing furnished holiday lettings? If so what would the impact be on:

- The furnished holiday lettings industry that continued to operate; and
- The tourism industry as a whole?

3.6 A majority of respondents thought increasing the threshold would have only a small impact on the sector and would not affect genuine businesses. Some commented that it would bring in greater investment and income to areas reliant on the tourism industry, incentivise owners to increase occupancy and extend the season in many locations. This would be especially important in rural locations where many local services like shops, post offices and pubs increasingly depend on income from tourism. It was not generally thought that suppliers would stop providing accommodation.

3.7 In seasonal or remote locations, some suggested that businesses would have to offer large discounts to attract visitors, causing some businesses to close down.

3.8 Overall, the increased occupancy threshold was thought to have a minimal effect on the industry. It could have a favourable impact and generate additional revenue for the economy, but could in certain areas cause an imbalance in supply and demand thereby increasing rental prices over time or causing some holiday makers to go elsewhere.

3.9 Many commented on the proposal itself, as well as the two questions posed on its impact. About a third disagreed with increasing the availability threshold, with two thirds agreeing. A small number suggested a higher threshold than proposed.

3.10 A few respondents asked for a degree of flexibility or adjustment in meeting the rule so planning restrictions could be renegotiated. Others wanted an averaging of the availability days for multiple properties or averaging over a four year period to help new start-ups. Some wanted the threshold to cover the business rather than the units let and some wanted an opt-out election where businesses could choose to be a simple property businesses rather than a furnished holiday letting. Some wanted an “escape clause” for extraordinary events like foot and mouth and floods.

3. How would increasing the minimum period over which a property is actually let to the public from 70 to 105 days impact on businesses?

3.11 This question generated the highest number of responses. Those were concerns about meeting the threshold, for example in areas with short seasons, in remote locations or for new businesses. Respondents highlighted problems associated with uncertainty as to whether or not the threshold would be met; this could potentially inhibit investment.

4. Would the increase in the minimum occupancy period cause current suppliers to stop providing furnished holiday lettings? If so what would the impact be on:

- The furnished holiday lettings industry that continued to operate; and
- The tourism industry as a whole?

3.12 From surveys carried out by some respondents it would seem unlikely that the minimum occupancy period would stop the majority of current commercial suppliers from providing furnished holiday lettings or would have much impact on the industry as a whole. Indeed it could even have a beneficial effect where occupancy levels are increased. It was thought that owners with very short “high seasons” or who let on a more casual basis may wish to leave the market, but these tended not to be clustered in great numbers and the revenue lost to the area would not be substantial as the properties were not generating significant amounts of revenue to start with. Overall, it was thought there would not be any major financial impact on the tourism industry as a whole and supply was unlikely to be adversely affected.

3.13 However, a number of respondents believed that there would be an impact in remote areas where there is little other industry and where tourism contributes proportionately more to the local economy. Others felt that if marginal businesses are excluded from the rules, they may go out of business and not be replaced. Some felt that the new thresholds could consolidate the dominance of established tourist centres at the expense of untapped tourism potential and that new entrants could be deterred. This could result in a lack of suitable accommodation for visitors, higher unemployment, falling revenues for local economies, increased accommodation costs for visitors and less competition in a global market.

3.14 Again, many commented on the proposal itself, as well as the two questions posed on its impact. Just over half agreed with the proposed increase in threshold, with the remainder against. Those in favour agreed the proposal reflected the changes that had occurred to the length of the holiday lettings industry since the current furnished holiday lettings rules were devised in the 1980s. Some suggested that a genuine business needed to achieve as many lettings as possible in order to generate sufficient income to be truly profitable.

3.15 Many proposed a degree of flexibility in some form or another. For example, flexibility was proposed for new businesses in their first year of trading when they are struggling to get a foothold in the sector. Other suggestions included averaging across properties or over time. Also suggested were void periods which are effectively ignored when making furnished holiday letting calculations.

5. Is the proposal likely to impact differently in different regions of the UK or the EEA, for example because of the differences in letting patterns or the length of the tourism season? If so, what evidence is there to suggest a regional or national variation?

3.16 Nearly a quarter of respondents commented on this question. Those that did, said the impact was likely to depend on issues around the length of the season, access (e.g. time taken to drive from major conurbations, distances from airports, reliance on ferries), shorter daylight hours and adverse weather conditions in certain parts of the UK. It was considered that the proposal would impact differently with properties in the extremities of the UK, for example, on the islands of Scotland, the far north of England, remote parts of Wales or Northern Ireland. Others suggested particular types of holiday accommodation (e.g. skiing) would be disproportionately affected.

6. What would be the impact of the proposed restriction to loss relief on qualifying furnished holiday lettings businesses? What proportion of businesses would be affected by this restriction? What types of business would be most affected? What would the commercial impact on the businesses be? Would this be due to a lack of capacity to use losses against the same qualifying furnished holiday lettings business in the future?

3.17 This question received the second highest number of responses.

3.18 Some considered the restriction to loss relief would hit new entrants into the sector hardest with high start-up costs. These are said often to take 2-3 years before becoming profitable. Respondents believed fewer furnished holiday lettings businesses would start up. Other than this, greatest impact might be on those that spend large sums refurbishing and those that are expanding. This risks reducing standards and some businesses moving out of furnished holiday lettings. Some respondents went on to predict long term damage to the industry, particularly since turnover is estimated to be significant, implying a reliance on new entrants to maintain capacity.

3.19 Impacts might also be disproportionately felt by self-catering properties on farms, where losses can currently be offset against farm profits. Some thought it could affect ancillary economic activities and employment (e.g. restaurants, bars and visitor attractions) which are heavily dependent on the tourism.

3.20 Again, many commented on the proposal itself, as well as the question posed on its impact. Around a third disagreed with the restriction to loss relief; a minority agreeing with it. Although the actual proportion is unknown, one association thought an estimated 79 per cent of businesses could be affected by the restriction.

3.21 Some suggested that to ensure loss relief is limited to genuine businesses it should be allowed for the first four years of that business. It was also suggested that it becomes available for only one of every four subsequent years to facilitate relief for irregular major refurbishment to help owners maintain standards.

3.22 Some respondents thought that losses brought forward for businesses that are no longer qualifying for furnished holiday lettings should be offset against any other property income. Alternatively, to encourage investment in tourism, losses could be offset against any other income derived from tourism. Another suggestion was that losses arising from one property should be available against any other property profit.

7. How should the proposed restrictions to loss relief be implemented? How should losses brought forward be treated for furnished holiday lettings businesses that are no longer qualifying? How should losses brought forward be treated for furnished holiday lettings businesses, some lettings of which are no longer qualifying?

3.23 Under 15 per cent of respondents replied to this question. One suggestion offered was that all income from UK rental properties, including brought forward losses, could be pooled together, and any net loss be offset against future profits from the UK rental business. Most who responded thought the implementation should be phased in over a year or two or even four years for genuine commercial businesses that set up with a view to making a profit. A suggestion was that this should be supplemented by the tax return pages being amended to require owners to make declarations about the viability of the business and its trading performance.

8. What are the potential commercial impacts of applying the current rules to every person operating furnished holiday letting businesses and bringing in a capital allowance disposal event every time they failed to qualify under the new qualifying conditions?

3.24 Questions 8 and 9 received the fewest responses. It was thought the accounting, tax and capital gains implications could be considerable and that the rule would be complex and burdensome for businesses. Many improvements not specific to a property, e.g. to the water supply, would cause accounting complications. It was thought businesses would not understand how the rules would affect them until the impact hit them.

3.25 Some thought that where there was more than one property or unit let, there should be an averaging of weeks between the units to prevent triggering unnecessary disposal events. This would counter the problem where some owners with a number of properties find that some of their cottages do better than others in the winter but overall between them achieve a high average which will qualify for the 105 day letting rule.

3.26 One solution offered was to disclaim any capital allowances in non-qualifying years and carry the pool forward until the furnished holiday lettings business achieves the thresholds, with allowances being claimed on the brought forward, valued under the prescribed rules of the day.

9. What effect would the proposed treatment of notional pools be likely to have on the administrative burden placed on a business that:

- continually operates as a furnished holiday letting under the new conditions; and
- sometimes qualified as a furnished holiday letting under the new conditions.

3.27 Those who responded mentioned that maintaining notional pools could be complex and could involve more work and expense for the owner particularly small businesses. However, others thought it could provide a simple and more practical solution for the business to operate under than the current rules. Some thought there would be limited compliance impact until businesses were familiar with the new system.

3.28 Simplicity was the key for some. To have cessations every time a void period arises increases complexity and administrative costs. The carry forward of pools was recommended until the business ceased permanently, with notional writing down allowances in non-qualifying periods and a separate pool for each property.

4

Key Findings and Government's Response

Key Findings

4.1 The Government has found this consultation valuable. A wide range of thoughtful and informative responses were received. The Government would like to thank all those who responded.

4.2 The responses described in section 3 tend to reinforce the data which underpinned the Impact Assessment. For example the estimate of 75 per cent as being approximately the proportion of Furnished Holiday Letting businesses that would continue to qualify under the Government's proposals, should there be no behavioural change, is unaltered. The government data used in the Impact Assessment remain the best source with regard to numbers affected and financial impact.

4.3 In addition to the quantitative evidence supplied, the Government also valued the opinions expressed, in particular from those with direct experience of the sector. Some of those who responded expressed concern that negative impacts had been underestimated, and useful illustrations of impact in particular circumstances were provided. However, since there was a balance of views, the Government believes that the assessment of average impact and wider effects set out in the Impact Assessment remains the best estimate.

4.4 The key findings from the consultation responses were that:

- 1 The proposals would be unlikely to have any material effect on UK tourism.
- 2 Impact would be likely to be greater for properties in more remote areas.
- 3 Some commercial businesses with UK properties (up to 25 per cent), particularly smaller businesses, could be excluded by the higher thresholds, particularly the proposed occupancy threshold.
- 4 Some of the concern over thresholds came from those feeling their circumstances were such that they would never be in a position to meet the revised levels (particularly occupancy); additionally there was significant concern from those who foresaw an increased chance of failing to meet requirements in a single year, or for some properties but not others, perhaps because of temporary circumstances. There were concerns this could cause uncertainty, inhibiting investment, and add complexity, increasing costs.
- 5 The restriction of loss relief would be effective in targeting support away from those whose businesses were not, in practice, profitable in the medium term. For commercial businesses, the cash-flow disadvantage would create potential risks for new businesses and for those reinvesting in order to maintain quality of provision.

Government response

4.5 The Government is encouraged by the positive reception of its proposals in the respect that they improve on the previous Government's policy which was to repeal the rules.

4.6 Some respondents took the opportunity to comment on issues which went well beyond the scope of the questions posed, making proposals for wider and more fundamental reforms. The Government is grateful for these responses, which will feed in to its longer term thinking. Such proposals would require further consultation before adoption. Bearing in mind the Government's objectives, there is a need for more immediate action. The Government's priority response is therefore focused on the consultation questions and related proposals, and the immediate action to be taken.

4.7 In the light of the responses provided, and the ideas put forward for refining the proposals, the Government has reflected further on the effects, in particular on three groups: (i) businesses which would continue to meet qualifying conditions; (ii) businesses which would not meet qualifying conditions in any year; (iii) businesses for which the qualifying conditions would be met in some years, but not others.

Businesses which continue to qualify

4.8 The majority of businesses are expected to continue to meet the revised qualifying conditions. For these businesses, the main impact will be the change in treatment of loss relief. For the commercial businesses the policy is intended to benefit, profits can be expected over the medium term. Losses will eventually be relieved, and the impact is one of timing.

4.9 The Government acknowledges that withdrawal of these timing benefits will disadvantage businesses, and will have particular relevance for those investing heavily either because they are new or because they wish to maintain or improve the quality of provision. This has to be balanced against the risks associated with providing relatively generous capital allowances alongside sideways loss provision for properties throughout the EEA.

4.10 The Government considered the proposal to provide for sideways loss relief in the first years of the business and every fourth year thereafter. The effect of this in practice would be likely to be very close to maintaining the previous loss relief rules. There being no change in the assessment of impacts, **the Government continues to consider that the best way to deliver its objectives for reform is to proceed with the loss relief proposals it has put forward.**

4.11 The Government acknowledges that the proposals for loss relief are more restrictive viewed in isolation than those that apply to other property businesses. However, furnished holiday lettings rules are a package which include capital allowances and capital gains tax reliefs. The maintenance of the latter, coupled with some, albeit restricted, provision for loss relief, provide appropriate incentives to those who want to invest, without disproportionately benefiting the luxury end of the market over more popular provision. No significant deterioration is expected in the quality of UK holiday accommodation relative to competitors. The symmetric treatment of UK and qualifying non-UK properties is consistent with the Government's objectives.

Businesses which cease to qualify

4.12 A minority of businesses, estimated to be up to a quarter, currently fall short of the revised qualification conditions. The Government believes that in some cases, the entrepreneurial spirit and innovative capacity of those involved will enable them to develop their businesses so as to meet revised thresholds. At the same time, the Government does not underestimate the challenges involved, helpfully illustrated in a number of consultation responses. It appreciates that in some circumstances, businesses which meet existing thresholds would have difficulty in meeting the revised ones.

4.13 Consultation responses provided evidence that customers may book holiday accommodation up to eighteen months in advance, and that there can be a lag between businesses acting to increase occupancy, and higher occupancy levels being achieved. Bearing this in mind, for the benefit of those businesses which do have a prospect of adapting, the

Government has decided to modify its proposals. **The revised availability and occupancy thresholds will now apply with effect from April 2012** rather than April 2011 (changes to loss relief will still apply from April 2011).

4.14 This deferral may in some cases be of assistance to those who face restrictions on the period for which their property can be made available imposed by third parties, allowing time for renegotiation of such restrictions. How the interests of third parties and furnished holiday lettings business owners should best be resolved will depend on local circumstances. The Government considered proposals that availability thresholds should be adjusted in certain circumstances. Such arrangements would further complicate the tax system, and would risk creating anomalies. The Government was not persuaded by the case put that the proposed availability threshold be reduced to enable properties let for periods of six months or more out of season to benefit from furnished holiday letting rules.

4.15 The Government acknowledges that the amendment it is proposing will still mean that some commercial businesses currently benefiting from Furnished Holiday Letting rules will no longer do so. These businesses are likely to fall within the standard rules for property businesses. These rules allow for relief for expenditure and losses, as well as some further reliefs such as wear and tear allowance. The Impact Assessment indicates that in most cases, commercially viable furnished holiday accommodation would continue to be able to operate as a successful business under property income rules.

4.16 The likelihood that effects may be particularly felt in more remote areas is not an intended consequence of the policy. The Government recognises the distinct needs of rural and remote areas, and views this potential consequence as a drawback. However, evidence suggests it is not of sufficient scale to outweigh the considerations which have led to the Government's proposals. The Government has other policies for supporting rural economies. The Government has decided to **proceed with proposals to increase the availability threshold to 210 days and the occupancy threshold to 105 days**.

Businesses which may qualify intermittently

4.17 The consultation revealed concerns that businesses with multiple properties might face considerable complications where some properties met thresholds and others did not. There were calls for averaging across properties to be allowed. In fact, the current system allows for all properties within a business to qualify where on average they meet the occupancy threshold (and other qualifying conditions)¹. This will be maintained under the Government's proposals.

4.18 Under the current system, some businesses meet qualifying conditions in some years but not others. Consultation responses suggested that the increased thresholds would be likely to increase the frequency of this happening.

4.19 The Government has considered representations made, and agrees that intermittent qualification causes uncertainty and cost. To address this, it proposes that **businesses which meet the occupancy threshold in one year may elect to be treated as having met the occupancy threshold in each of the two following years**, providing that they meet certain criteria in each of those two following years. This will reduce the frequency of capital allowances valuation and disposal events (for which existing rules will continue to apply). The Government believes this provides a better solution than the proposal for notional pools made in the consultation document. Full guidance on the operation of this provision will be published in good time for April 2012 implementation of the increase in availability and occupancy thresholds.

¹ See Section 326 of the Income Tax Trading and Other Income Act 2005, and Section 268 of the Corporation Tax Act 2009

4.20 This proposal will also go a long way to allaying concerns about the impact of one-off extraordinary events on the ability of a business to meet furnished holiday letting qualifying conditions. The Government considered the proposal to take a power to vary conditions by secondary legislation to provide flexibility, but considers that its proposal above provides adequate protection. In the unlikely event of unforeseen circumstances in which this is inadequate, the Government could consider if further primary legislation might be appropriate.

Summary of Government Response

4.21 The Government has decided:

- to proceed with proposals for restriction of loss relief;
- to proceed with proposals for an availability threshold of 210 days and an occupancy threshold of 105 days;
- to retain the current treatment of capital allowances and capital gains tax reliefs;
- to highlight that all properties within a business can qualify where on average they meet the occupancy threshold;
- to delay the introduction of the revised thresholds until April 2012;
- to reduce uncertainty and complexity by allowing businesses which meet the revised occupancy threshold in one year to elect to be treated as having met it in the two following years, providing certain criteria are met.

5

Next Steps

5.1 Alongside this document, the Government is publishing draft Finance Bill 2011 clauses , which include draft legislation to give effect to the furnished holiday letting proposals as revised by the response set out in Chapter 4. Explanatory notes and a Tax Information and Impact Note accompany this legislation. If you wish to comment on the draft legislation, please use the contact details provided at the end of the Tax Information and Impact Note.

5.2 HM Revenue and Customs will issue detailed guidance on the operation of the revised rules in advance of the implementation dates. In doing so, they will call upon the help of interested professional and other bodies.

6

Annex

6.1 There were 229 responses to the consultation. These included:

ABTA

AccountingWEB

Association of Scotland's Self-caterers

Country Land and Business Association

Baker Tilly International

Best of Brighton & Sussex Cottages

British Holiday & Home Parks Association Ltd

British Hospitality Association

Bournemouth, Poole & Christchurch Self-catering Forum

Bucklegrove Caravan, Camping & Holiday Park

Bury & Walkers LLP

Clanville Manor

Clarke Willmott LLP

Deloitte LLP

Dennis Fuller Consultancy

Derwent House Holidays

DHC Accounting

Dunster Beach Holidays Ltd

Ecosse Unique Limited

English Association of Self Catering Operators

Ernst & Young

Evolution abs, Chartered Certified Accountants

Farmers Union of Wales

Federation of Small Businesses

Francis Clark LLP

Glenprosen Cottages

Graver & Co Accountants

Historic Houses Association
Huston & Co Tax Consultants & Accountants
Institute of Chartered Accountants for England and Wales
Langdowns DFK Chartered Accountants & Business Advisors
Lighthouse Consulting Ltd
London Society of Chartered Accountants
Mar Estate
Measurable Benefits Ltd
Mitchells Chartered Accountants
Morrell Middleton Auditors Ltd
National Farmers Union
National Farmers Union Scotland
National Landlords Association
Northern Ireland Tourist Board
North Wales Tourism
Philip J Milton & Company Plc
Rhos Country Cottages
Robinson Reed Layton
Rosemoor Country Cottages & Nature Reserve (Redrose Ltd)
Sage (UK) Ltd
Schofields Partnership LLP
Scottish Rural Property & Business Association
Skylight Trading
Smith & Williamson LTd
Sylvester Machett solicitors
The Central Association of Agricultural Valuers
The Chartered Institute of Taxation
The Concorde Club & Hotel
The Hoseasons Group
The Tranquil Otter Ltd
The Scottish Parliament
Tom Dicker & Co
Tourism Alliance

Tourism South East
Ulster Farmers' Union
Varne Ridge Holiday Park
VisitBritain
VisitScotland
Wales Association of Self Catering Operators
Wales Tourism Alliance
West Country Cottages
Wicks Farm Holiday Park
Woodland Lodges

Alasdair Allan MSP
Alun Cairns MP
Alistair Carmichael MP
Geoffrey Cox MP
Conor Burns MP
Stephen Gilbert MP
William Cash MP
Mark Field MP
David Heath MP
Norman Lamb MP
Peter Lilley MP
Jim Murphy MP
Andrew Turner MP
Michael Weir MP
John Whittingdale MP
Stephen Williams MP

Plus 142 other businesses and members of the public

HM Treasury contacts

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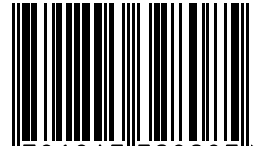
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ISBN 978-1-84532-808-5



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