

From the Minister of Finance

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Your reference:

Our reference: EXEC-0280-2021

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Dear Steve,

PRE-INTRODUCTION:

NON-DOMESTIC RATES VALUATIONS (CORONAVIRUS) BILL

Please see the Pre Introduction paper in relation to the Non domestic Rates Valuations (Coronavirus) Bill setting out the background and my intentions in relation to this matter.

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CONOR MURPHY MLA
MINISTER OF FINANCE

PRE-INTRODUCTION:

NON-DOMESTIC RATES VALUATIONS (CORONAVIRUS) BILL

Introduction

1. As noted in my meeting with you on 19 October, my Department wishes to progress an emergency Bill as a matter of urgency and public interest, and seeks the Committee's consent to accelerated passage of that Bill.
2. At its meeting of 21 October, the Executive agreed to a short Assembly Bill (**Annex A**). The Bill consists of one substantive clause to mitigate any associated loss that may occur to the overall net annual value of a non-domestic valuation list within the rating system, as a result of public health measures implemented by the Executive on 28 March 2020, or any future pandemic that may necessitate similar measures.
3. Specifically the proposed new Bill allows for:
 - i. retrospective provision for "the matters" affecting the net annual values (as referred to in Article 39A(1A) of the Rates (Northern Ireland) Order 1977) to be treated as not including, and as never having included, any matter directly or indirectly attributable to coronavirus;
 - ii. the provisions in the Bill to apply for future non-domestic revaluations in the case of any further pandemics or public health restrictions;
 - iii. an enabling power to allow the Department of Finance to make any consequential retrospective changes to the clause in the event of any future change to the medical naming convention surrounding the coronavirus or any future pandemic outbreak.
4. The Bill addresses a similar, but not identical issue, to that facing the non-domestic rating systems in England, Wales and Scotland where significant value within the taxbase has also been put at risk due to the potential for the Health

Protection restrictions implemented in those jurisdictions to act as a grounds for valuation challenges.

5. The Bill agreed to by the Executive is set out for the Committee at **Annex A**. The associated Explanatory and Financial Memorandum is attached at **Annex B**.

Background to the need for the Bill

6. The need for the Bill arises from the interaction of the timing of the publication of the revised non-domestic Valuation List on 1 April 2020 and the introduction of significant restrictions by the Health Protection regulations that took effect on 28 March 2020.
7. In a non-domestic revaluation, the Net Annual Values of all properties are assessed at a common date known as the Antecedent Valuation Date, or AVD. The NAVs take effect from the date of publication of the new Valuation List, which is usually on the 1 April to coincide with the start of the new rating year. Because a revaluation is a complex exercise which takes some time to complete, there is typically a two year gap between the AVD and date of publication.
8. To ensure transparency and certainty of the taxbase (for both ratepayers and government and district councils), economic changes that happen between the AVD and date of publication do not usually have any effect on the NAVs in the new List. There are some exceptions to the rule, for example where certain types of *physical* (as opposed to economic) changes affect a property between the AVD date and the date of publication of the list. These are specified in Article 39A(1A) of the Rates Order:
 - (a) *matters affecting the physical state or physical enjoyment of the hereditament;*
 - (b) *the mode or category of occupation of the hereditament;*
 - (c) *matters affecting the physical state of the locality in which the hereditament is situated; and*

(d) the use or occupation of other premises situated in the locality of the hereditament.

9. When the Art 39A(1A) provision was added to the rating statute book, it was intended to deal with matters affecting property on an individual or local level. The kind of circumstances envisaged at the time were long term roadworks, extensions to or demolitions of the premises, and flooding. For example, the Primark fire created a set of circumstances where the provision worked as intended – a localised event with a specific impact on a number of properties that should properly be taken into account in assessing the NAVs of those properties.
10. On 28 March 2020, Health Protection restrictions imposed physical limitations on almost all businesses insofar as they were prevented by law from opening. Legal advice has confirmed that there is significant potential for Health Protection restrictions to be regarded as Article 39A matters and, therefore, ought to have been taken into account in respect of the NAVs published on 1 April 2020. Clearly, given that the Health Protection Regulations came into force a mere 3 days before publication of the new valuation list, there was no practical possibility of the 74,000 NAVs changing before a new List was published on 1 April 2020. However, the legal advice has confirmed that the 2020 valuation list remains vulnerable to challenges on grounds that the Covid-19 related lockdowns and health protection restrictions represent physical limitations on the use of property that should have been taken into account in the published NAVs. Obviously, these effects could not have factored in the setting of either the district or regional rates struck for the 2020/21 rating year.
11. Rates revenue is currently the Executive's only form of devolved taxation provided for under the Rates (Northern Ireland) Order 1977. If the proposed new Bill were not to be enacted by accelerated passage, departmental officials have given a realistic estimate of rates revenue loss reaching up to £255M over a three year period, from 1 April 2020 to 31 March 2023. The latter date is relevant as the department has announced that a general valuation, to rebalance the system, will come into force on 1 April 2023.

12. This Bill is therefore a necessary measure, in the public interest, to address the potentially profound effects of the pandemic on the rating system and to continue to ensure required funding is available for Executive Departments and Councils.

Policy detail

13. The new Bill is specifically required to clarify that the COVID-19 pandemic, and the Executive's response to that pandemic, may not be used as a basis for reducing a business property's valuation within the rating system under certain technical valuation provisions contained within the Rates (Northern Ireland) Order 1977.
14. The Committee has spent the period since March 2020 working with the Department and the Executive to ensure that, for 2020/21 and 2021/22, a 100% business rates relief was provided to all those sectors worst affected by the acute and direct impact of COVID-19 restrictions. Those measures include over **£515 million** of relief provided to 29,000 business ratepayers over the last two years and ensured that those properties worst affected by the pandemic paid no business rates. This was in addition to the **£317 million** in LRSS grant payments provided to businesses affected by the Health Protection restrictions between October 2020 and May 2021, as well as the other grants provided by the Department of Finance and other Executive departments.
15. Emergency legislative provision is now being brought forward for England, Scotland and Wales to ensure that the response to, and restrictions related to, COVID-19 by Government is not taken into account for the purposes of certain valuation appeals in England, Scotland and Wales. A Bill is currently progressing through Westminster in respect of England and Wales, and the Scottish Government are also preparing to introduce an equivalent Order in their local context.
16. Instead, market wide economic changes affecting property values, including those arising from COVID-19, will be properly considered during the general revaluation process. General Revaluation exercises have already been

announced for both here and Britain for April 2023. In June, I announced our intention to introduce a new valuation list here for business properties, to rebase the system after the pandemic, and this will also come into operation on 1 April 2023.

17. I share the view taken by Ministers in Britain that revenue losses within the Business Rates system occurring as a result of Covid-19 related challenges, following the unprecedented levels of support provided to business ratepayers over the pandemic period, would be unsustainable, unjustifiable and contrary to the public interest. The loss would be particularly unsustainable for local councils here. Around half the forecasted loss would impact across our local councils, who typically rely on the rates base to make up around 70-75% of their annual income. Such systemic losses would create a need for further Executive and Assembly intervention to support local government, an unneeded financial outlay at this critical time.

Financial compensation package

18. Contingent with the Bill at Westminster passing successfully, the English Minister of State for Regional Growth and Local Government has committed to providing £1.5 billion of additional support to businesses in England and Wales. That relief will result in a Barnett Consequential for the Executive in the region of £50 million. I have committed to ring-fencing this allocation for a compensation package here.
19. In England, the compensation package will be administered using an application based process administered by local authorities. The Department considers that this approach may not be appropriate for our local circumstances and will explore how best the compensation may be applied here.

Accelerated Passage

20. To avoid the revenue loss issue arising, and to secure support for the Bill and accelerated passage, I and the Chief Executive of LPS met with the Committee Chair on 19 October. At that meeting it was explained that the Department

intends to bring forward the Bill by accelerated passage. This need is dictated by three main influences.

21. Firstly in terms of the issues that needed to be resolved prior to finalising a Bill, my Department sought detailed legal advice on the implications of the Executive's Health restrictions on the rating system, and on balance it was decided that this Bill should be prepared to put the matter beyond doubt. This assessment is supported by the decision at Westminster to take forward similar legislation for England and Wales, and the publically announced decision of the Scottish Government to also take forward similar legislation in their local context. The Westminster Bill (The Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill) is progressing through their system, and is currently at House of Lord stage. I am moving this Bill along a similar trajectory, timing wise, to counterparts in Britain.
22. Secondly, the pressing factor at the other end of the timetable is the impending close of the Assembly mandate, meaning accelerated passage has to be sought if a Bill is to complete passage within the time remaining in this mandate.
23. And thirdly, the Bill's introduction on this basis also assists in establishing greater certainty in the taxbase for both the setting of the regional rate and the district council rates for 2022/23. The absence of a Bill to address the situation heightens the risk of greater uncertainty as to the taxbase stability, and could lead to higher poundages being struck in the 2022/23 rates to mitigate any perceived risks of losses to the taxbase during that year.
24. The only feasible timetable available to ensure passage of the Bill is detailed below, illustrating the requirement for this written briefing.

Date	Stage
4 Nov 2021	Minister writes to Speaker giving notice to introduce <i>Very latest possible date</i> to give notice to introduce

Mon 15 Nov 2021	Introduction
Tue 23 Nov 2021	Accelerated passage debate Second Stage Debate
Mon 6 Dec 2021	Consideration Stage
Tue 14 Dec 2021	Further Consideration Stage
Christmas Recess	
Mon 17 Jan 2022	Final Stage

Consultation

25. There has been no consultation in respect of this emergency Bill. For public consultation to take place, there is a requirement for any consultation taken forward to be meaningful. This Bill is being brought forward out of necessity, and within timescales that would not allow any associated consultation to be categorised as meaningful.
26. The Bill aims only to implement statutory mitigation measures within the non-domestic rating system, made necessary as a result of the public health measures imposed by the Executive in March 2020 to limit the spread of coronavirus.
27. The Committee will wish to note that neither England and Wales, nor Scotland, has undertaken a specific consultation on the detail of their new legislation proposals.
28. Although the rating systems here and in England and Wales are not identical, they operate on broadly similar principles and procedures.
29. Clause 1 of my Department's new Assembly Bill (**Annex A**) makes similar provision to England and Wales to address the potential effects on rateable valuations of the necessary pandemic response.

Financial Implications

30. There are no cost implications associated with the implementation of the Bill.
31. If the Bill is not passed by the Assembly, the most realistic assessment of risk by Department of Finance officials indicates financial losses of **between £196 million and £255 million of revenue** accumulated across the three years from 2020 to 2023.
32. The Executive has already provided compensatory and mitigating rate relief to business ratepayers affected by Health restrictions, through the separate provision of over £515 million in COVID-19 related business rate relief for both the 2020/21 and 2021/22 rating years.
33. The Bill will ensure that certain ratepayers who might otherwise have sought a reduction in their net annual value, or the deletion of their property from the valuation list and therefore a reduction in their business rates bill due to coronavirus, will be unable to argue for such a change.

Impact Assessments

34. No new issues arise in relation to this Bill regarding associated impact assessment requirements. The Department has conducted the required screening exercises in relation to Equality Impact, Rural Needs and Regulatory Impact.
35. These exercises identified the policy being taken forward within the Bill as a necessary mitigation. The Bill addresses the unforeseen impact of Health protection legislation at a taxbase level, and is a necessary measure to safeguard against wider adverse impacts resulting from the inability to fund central and local government commitments due to a systemic loss of tax revenue.
36. The Committee will also wish to note that, in relation to that Bill, there has been a Ministerial statement of compatibility with the Human Rights Act 1998; no

references have been noted to any human rights concerns in Parliamentary Hansard, including Committee stages and no references to human rights concerns have been noted in Parliamentary research for the imminent Lords Stages.

Attorney General

37. The Attorney General's Office has also written to me to advise that, "The Attorney has considered the Bill and has formed the view that, as currently drafted, the Bill is within the legislative competence of the Assembly".

Next Steps

38. As outlined in the meeting of 19 October 2021, the Department requires the Committee's agreement to the proposed Bill advancing in this mandate through the accelerated passage process.

39. LPS officials are willing to provide any other oral briefing on 3rd November, or written materials to the Committee in order to allow for the fulfilment of the requirement under Standing Order 42(3) of the Standing Orders of the Northern Ireland Assembly.

40. As per Standing Order 42(4) I will be required to take the accelerated passage motion through the Assembly and I am conscious of the fact that a motion under Standing Order 42 shall require cross-community support within the meaning of section 4(5) of the Northern Ireland Act 1998.

41. I also intend to write to the Speaker with the full text of the Bill, and to recommend the Bill to the Assembly as may be required by section 63 of the Northern Ireland Act 1998.

Annex A



Non Domestic Rates
Valuations (Coronavir

Annex B



Explanatory and
Financial Memorandu