

From the Minister of Finance

Dr Steve Aiken OBE MLA

Committee.Finance@niassembly.gov.uk

Private Office
2nd Floor
Clare House
303 Airport Road West
BELFAST
BT3 9ED

Tel: 028 90816216
Email: private.office@finance-ni.gov.uk

Your reference: 2021:461
Our reference: CORR-1397-2021

Date: 10 November 2021

Dear Steve

THE NON-DOMESTIC RATES VALUATIONS (CORONAVIRUS) BILL

Thank you for your letter of 5 November subsequent to the Finance Committee session on 3 November. I am writing to address in details the concerns raised. I hope you find the details contained herein satisfactory.

The Bill will reduce the availability of appeal mechanisms in respect of business rates valuations owing to the impact of the pandemic.

The ratepayers' right of appeal is not changing as a result of this Bill. I appreciate that the change I am introducing does impact on the appeal process, but I must reiterate that it is strictly limited to the right of appeal on the very specific grounds of the unintended impact of Coronavirus on Net annual Values (NAV). The impact of the pandemic should rightly and properly be regarded as an economic matter that ought to be taken into account at a general revaluation, which LPS has already commenced work on.

The effect of the legislation will be to prevent the impact Covid being used to appeal under Article 39A of the Rates Order. Article 39A is intended to take account of physical changes between the Antecedent Valuation Date (AVD) and the date the List comes into force; that is, between 1 April 2018 and 1 April 2020.

Article 39A was never intended to give ratepayers the right to seek reductions to their valuations and rate bills for events such as the Covid pandemic which impact on almost all businesses across the whole of the region. Therefore, while the Bill does remove a right to appeal a rating valuation, this is a right that it was never envisaged that ratepayers would have in relation to the specific circumstances of the Covid-19 pandemic.

Furthermore, if the Health Regulations had been introduced four days later than they were, this Bill would not be necessary as the impact of the Regulations, according to the Rates Order, would be taken into account at the next Antecedent Valuation Date, which is 1 October 2021. The criticality of the timing demonstrates that the very serious impact on rate revenue which this Bill aims to address arises because of an arbitrary set of circumstances and, to a large degree, hinges on a technicality.

When set against the very generous package of rate reliefs that I have provided since April 2021, I consider that this is a proportionate measure that is necessary to protect the wider public interest.

The Department urgently makes stakeholders aware of the legislation and explains its retrospective nature.

The Department is in the process of undertaking this.

It would have been premature to brief councils on the matter until Executive approval to proceed had been given. However, Land & Property Services are in regular contact with district council finance teams with regard to the district rate setting process, and are setting up briefing sessions on the Bill.

LPS Valuation has been engaged with RICS members since April 2020, and I can confirm the topic of the Westminster Bill and the potential for a local solution to his problem, have been on the table for discussion. It is no surprise to private practice agents, who represent some of the large multi nationals and property owners here, that this legislation is in progress.

LPS Rating Policy Division is issuing letters to other stakeholders for the purposes of briefing and explaining the implications of the Bill including its retrospective nature.

I would anticipate district councils welcoming the Bill as it offers surety and certainty for them in their rate setting for the year 2022/23.

Legislative Consent Motion

The Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill being introduced in Westminster has two distinct parts: one provides for the restriction of appeals against rating valuations; the other seeks to extend powers to investigate the conduct of company directors to include former directors of dissolved companies, with the aim of addressing public concerns about the abuse of limited liability and the voluntary dissolution process.

As I mentioned in my previous letter, rating legislation here and in England is similar but there are important differences in the detail and some provisions do not read directly across between the jurisdictions. Although the same course of action (to remove Covid-19 impacts as a grounds for appealing a rating valuation) is being proposed here and in England, the need for the action arises from quite different provisions in our respective legislation.

As I have explained, the need for our legislation arises from the interaction of Article 39A in our legislation and the timing of the Coronavirus Health Protection regulations.

In England, the issue is the ratepayers right to challenge the assessment of their property's rateable value between general revaluations by making a Material Change of Circumstances appeal. The Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill will rule out MCC appeals relating to COVID-19 and instead require that any changes in rateable values be reflected at the next revaluation in 2023.

We do not have the provision in the Rates Order for appeals on the grounds of Material Change of Circumstances here. Therefore, the legislative change that is being brought forward for England could not have been applied here. Furthermore, the English legislation is retrospective to 1 April 2017, whereas ours is retrospective to 1 April 2020. The combination of these factors means that the option to deal with our issues by way of a Legislative Consent Motion was not available to us.

Antecedent Valuation Date Statutory Rule was described as having no financial implications.

I think that a number of different factors have been conflated in this and it is important to clarify some points.

The Antecedent Valuation Date Statutory Rule in itself does not have any financial implications for the Department and the Executive's wider budget, or indeed for the budgets of district councils. All that this Statutory Rule does is set the date on which the rating valuations that will make up the new valuation list are to be assessed.

The revaluation exercise produces a new Valuation List. In the new list, some NAVs will increase and some will decrease compared to the previous list and, when all the changes are aggregated together, the total value of the list will also change compared to the previous list. The degree of change in the total value is known as the growth factor. In 2020, the growth factor was 1.068, or 6.8%

Revaluations are intended to redistribute the rates burden in line with changes in the market rather than change the amount of money raised. To ensure that the impact of the revaluation is revenue neutral, the regional rate and district rates are adjusted by the growth factor.

As has been explained previously in this letter and other briefing to the Committee, the significance of the Antecedent Valuation Date to the proposed Bill is that the Health Protection Regulations came into force between the Antecedent Valuation Date of 1 April 2018 and the publication of the current valuation list on 1 April 2020.

The basis of the £255m financial impact of the failure to pass the Bill

There are 74,000 non domestic properties in the valuation list. Not all were impacted by the Health Regulations, and those that were, were impacted to different degrees.

I know you appreciate that the number of appeals in hand is not the issue here, that it is the knock on effects of processing appeals which will have to be taken into account in the valuation of similarly circumstanced properties.

The analysis undertaken by LPS, who are most experienced in this matter, was carried out in stages which I will explain in greater detail here.

There are two elements that were taken into consideration when estimating the potential level of revenue loss. The first was the nature of the restrictions, this was based on the extensive legal advice sought from Senior Council. The second is how those restrictions were then translated into an estimated revenue loss within the local tax base.

Nature of the restrictions to be taken into account

The following matters are significant:

- a. The statutory closures and restrictions on business premises arising from the Covid Regulations interfered with the physical enjoyment of property, and to the use and occupation of other property in the locality, and ought to have been taken into account in the assessment of NAVs effective from 1 April 2020.

- b. The government's stay at home message in the 28 March 2020 Regulations was mandatory but with specific exceptions. As a consequence, occupation of, for example, office buildings and carparks, was significantly reduced at 1 April 2020 even though neither was forced to close by the Covid Regulations. As such there is scope for the Court accepting valuation changes on this basis.
- c. The full extent of the now familiar social distancing measures would not have been known on 1 April 2020. The requirements in properties which remained open, for example shops, may not have resulted in a large discrepancy in their trading due solely to the social distancing requirements. The impact on premises not forced to close (for example offices, warehouses and factories) was less visible but nevertheless also impacted on operating capacity.
- d. The Covid financial support measures (rates holidays, furlough, grant assistance for example) put in place by the Executive and British government are not directly matters that come within the valuation considerations under the rating legislation here. These interventions are not directly related to the Article 39A physical matters existing at 1 April 2020, and therefore not able to be reflected in the rental value negotiated by the landlord and tenant.
- e. The expected duration of coronavirus measures at 1 April 2020 was largely thought to be transient, and that it would be a matter of weeks, not months before the Covid Regulations were reviewed. However, given the greater length the restrictions are known to have lasted, the Courts may view the period of restriction as amounting to the full 6 months duration envisaged by the Covid Regulations, significantly impacting the rental negotiations (and hence NAV) between the landlord and tenant.

Tax base implications associated with application of legal advice

LPS Valuation has received over 4,200 challenges to the 2020 list. The consequence of processing these challenges is that the application of Article 39A will manifest within the rating system through losses to the tax base as rateable values are reduced across a large proportion of the non-domestic valuation list as consequential reductions are applied in respect of comparable properties to those under appeal challenge.

If an NAV is changed following a challenge, the impact of the adjustments is backdated to the start of the List (in this case, to 1 April 2020) and lasts for the life of the List, that is, until 31 March 2023. Additionally, the time taken to process challenges should be borne in mind, as these can go through 3 stages including to the Lands Tribunal and can take several years to complete. Therefore, the wider effect will be felt over a sustained period of time and certainly beyond the end of the current Valuation List in March 2023. In practical terms, this means backdated refunds to ratepayers affecting

both the Department and District Councils.

Calculating the size of the impact is not entirely straightforward because Valuation law creates the hypothetical scenario of the tenant and landlord striking the deal for the property on 1 April 2020. Therefore, the modelling has been based on two core scenarios. Scenario 1 assumes a *wide* (and therefore more beneficial to the ratepayer) interpretation of how the Covid Regulations could have affected the assessed NAVs. Scenario 2 assumes a much *narrower* interpretation of how the Covid Regulations would have affected NAVs (i.e., it is limited only to clear physical restrictions). Both scenarios are then profiled on the basis of an optimistic (i.e., the duration of the restrictions to be taken into account in assessing the impact on NAV being 3 months) and pessimistic (i.e., the duration of restrictions to be taken into account is 6 months) outcomes from the appeals.

The valuation list holds data in a format that classifies each properties' use (for example, shops, offices, warehouses, factories, schools, airports, etc). Each classification was considered separately, and a likely outcome of a successful challenge was calculated in terms of % change to NAV according to the four scenarios, and then for each rating year; 2020, 2021 and 2022.

This was converted to rate revenue by taking account of valuation 'distinguishments' including Exemption, Industrial Derating, Sport and Recreation relief and then applying rate poundages.

The table on the next page is an extract from an extensive working document for the 2021/2022 rating year. This illustrates a good cross section of the analysis to show how that first stage was carried out. You will note the percentage reductions in NAV estimated in many sectors is significant but not excessive, and some would argue in some cases are modest. Also, some sectors will have had no adjustment made at all because the pandemic had little or no direct impact on their NAV. It is the conversion of these estimated reductions into revenue, extrapolated over three years, that results in the worst case scenario of a loss in the region of £255m.

Rating year 2021/2022	Scenario 1 optimistic	Scenario 1 pessimistic	Scenario 2 optimistic	Scenario 2 pessimistic
advertising stations	0	0	0	0
custodial centres	0	0	0	0
filling stations	0	10	0	0
hotels/b&bs	40	60	25	50
pubs	40	60	25	50
offices	10	10	0	0
shops	30	20	10	20
warehouses	10	10	0	10
sites and yards	0	0	0	0
sporting facilities.	30	50	25	50

The view of both the Commissioner of Valuation and the Director of Rating Policy is that the courts are more likely to adopt the wider interpretation leading to the larger revenue losses. The same assessment in an English, Welsh and Scottish context has led to primary legislation being prepared in those jurisdictions.

Further segmental analysis was conducted on the profile of the appeals dataset at a district council level.

Clarity as to how you will ensure the actions of a future Executive with regard to the ring fenced Barnett consequential, and details of the process under which businesses will receive this support.

The Barnett funding will not be available until the Westminster Bill has passed, it will only be in January or February 2022 that it will be confirmed the money will be available; it could be in the region of £50m. If this Bill proceeds, given that the Barnett arises from similar action in England, I intend to ring fence that money to provide additional business rate support in the 2022/23 rating year. Likewise, if this bill does not proceed it will lessen the case for this money to be used for rates support. Departmental officials are currently costing the options available and I will announce my plans in this regard prior to the money being available.

Reval2023

The Committee has asked how the differing levels of business success and failure will be fairly and reasonably taken into account as part of Reval 2023.

In setting the Net Annual Value (NAV) for an individual property, it is not the specific business which is valued but rather the premises from which it operates. The Rates Order directs LPS to value the property as if it is vacant and available to let. In this way it is the hypothetical rent, not the success or otherwise of the occupier, which is considered in the assessment of the NAV. Therefore, a business which is in decline will not receive a rates reduction between revaluations, in the same way that a business which is doing well will not see an increase in NAV between revaluations. Rather, it is the hypothetical rent for the property which is being assessed and the best way to do that is to collect rents from ratepayers and analyse those to show how the market is performing, across locations and over time.

To illustrate how the principle works, a parade of 4 identical shops should have the same NAV regardless of what type of business occupies them.

The NAV represents the statutory assessment of the rental value of the property at the Antecedent Valuation Date of 1 October 2021. In order to prepare the new NAVs, LPS issued questionnaires to business ratepayers in early October 2021 to request rental and trading information.

LPS analyses all actual rents collected for shops, offices, warehouses and factories, and for some sectors trading information such as turnover or throughput where there is limited or no rental evidence available and the property's rental value is related to its level of trade. Examples of such premises are pubs, hotels and petrol filling stations. In all cases the point is to arrive at an annual rent.

The information provided by businesses from the questionnaire exercise will be used to assess the new rateable values and capture how the value of the property has changed since 1 April 2018, the Antecedent Valuation Date for the 2020 Revaluation, and October 2021 the new valuation date for Reval 2023.

LPS follows the market evidence, and Reval2023 can be expected to reflect the recent difficult economic conditions to the extent that their impact is reflected in current market rents. It is recognised however that the full impact may unfold over more than one revaluation, and the move to more frequent revaluations will enable the regular rebalancing of the rates system called for by the business community.

It is important that all businesses co-operate with the Reval2023 exercise to ensure that a full picture of the market activity is captured. Reminders were issued on 1 November to businesses who have not already made a return, and a further reminder will be issued at the beginning of December. The deadline for return of the rent and lease questionnaires is 31 December 2021.

Committee members are encouraged to share widely links to the Reval2023 web page which includes lots of detail on the Reval2023 process.

<https://www.finance-ni.gov.uk/landing-pages/ni-reval2023>

Reval2023 Media Coverage

LPS hosted a Press Conference at the beginning of October. This resulted in coverage in three local media outlets and the articles can be found by following these links:

Belfast Telegraph

<https://www.belfasttelegraph.co.uk/business/reval2023-ni-businesses-urged-to-participate-in-rates-process-40915695.html>

<https://www.belfasttelegraph.co.uk/business/northern-ireland/businesses-have-to-speak-out-now-for-fairer-rates-says-retail-chief-glyn-roberts-40916500.html>

The BBC

<https://www.bbc.co.uk/news/uk-northern-ireland-58792730>

Irish News

<https://www.irishnews.com/business/2021/10/05/news/businesses-urged-to-respond-to-latest-rates-revaluation-process-2467952>

Social Media

There have been regular tweets from the Department of Finance twitter account (@dfpfinance). Examples include:

<https://twitter.com/dptfinance/status/1455492381810245635>

<https://twitter.com/dptfinance/status/1453708129221308418>

<https://twitter.com/dptfinance/status/1446425220810788888>


Stakeholder Engagement

LPS held a series of meetings with stakeholders prior to the publication of the RALQ's and will continue to liaise with the stakeholders throughout the reval process.

- Federation of Small Business
- NI Chamber of Commerce
- Confederation of British Industry
- NI Retail Consortium
- Manufacturing NI
- Northern Ireland Local Government Association
- Hospitality Ulster
- Northern Ireland Hotel Federation
- Retail NI
- RICS Rating Forum

I trust that these answers address the Committee's concerns.

Is mise le meas,

A handwritten signature in black ink that reads "Conor Murphy." The signature is written in a cursive style with a period at the end.

**CONOR MURPHY MLA
MINISTER OF FINANCE**