RATES (AMENDMENT) BILL

EXPLANATORY AND FINANCIAL MEMORANDUM

INTRODUCTION

1. This Explanatory and Financial Memorandum has been prepared by the Department of Finance and Personnel in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.

2. The Memorandum needs to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not require an explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. The Bill gives effect to a number of decisions arising from the Executive's consultation on the rating of commercial properties in 2011, which arose following the Budget announcement, on 4th March 2011, by the Minister for Finance and Personnel, Sammy Wilson, MP, MLA. That announcement set out the intention to rebalance the non-domestic rating system so that during the continuing economic downturn additional smaller businesses would get help, while the very largest retailers would pay more. It was proposed to achieve this through expanding the small business rate relief scheme, funded through a large retail levy. The measures will last for three years, from 1st April 2012 through to 31st March 2015.

4. Having taken account of the issues raised during consultation the Executive has decided to provide 20% relief to small businesses with a net annual value of between £5,001 and £10,000. This will be dealt with through subordinate legislation. The Bill provides the mechanism for raising revenue to fund it through the imposition of a levy on the largest retail premises; those hereditaments with a rateable value of £500,000 or above that are occupied and used primarily for the retail sale of goods.

5. Given a modest increase in regional rates revenue, more than anticipated when the original budget announcement was made, the Executive has agreed to moderate the impact of the levy, reducing it from an average of 20% to 15%. The Bill

provides for the additional regional rate to be levied on large retail hereditaments and for the definition of those hereditaments.

6. Policy proposals were also brought forward to deal with the issue of empty shops (retail premises) and the blighting effect that they are having on town and city centres. The Executive has agreed measures to improve the appearance of shopping areas without increasing rate liability for ratepayers. The Bill provides that where shop window displays are used for (non-political) community or other non-commercial purposes the property will still be considered unoccupied. Therefore, ratepayers will effectively continue their entitlement to receive 50% empty property relief (or an exclusion if applicable).

7. A number of consultation responses also commented on the need for measures to encourage empty retail properties back into use. In response, the Executive has agreed to the introduction of a one year concession, in 2012/13. This will provide a 50% rebate where long term empty retail properties become occupied. This will effectively allow empty property relief to continue for the first year that the property is subsequently occupied, whether used for retail purposes or not. The property will have to have been empty for at least a year, with the rebate then awarded for 12 months. The measure will apply for the 2012/13 rating year.

8. A final policy area addressed as part of the consultation process was the intention to clarify the legislation relating to the valuation assumptions used at non-domestic revaluation, by being more specific about the matters to be taken into account when valuing a property for the purposes of a new valuation list. The change does not alter the way revaluations have always been undertaken but will ensure consistency and relativity of assessment between business ratepayers. It will also ensure that the valuation assumptions are as clear and explicit as possible, to deal with all eventualities. Changes were also proposed to repeal the rule applied to properties valued by reference to their volume of trade, for example public houses, which will clarify the law and provide for greater consistency of treatment with other non domestic properties. The Executive has agreed that these changes, which will take effect at the next general revaluation (scheduled for 2015), should be taken forward. This is provided for in the Bill.

CONSULTATION

9. The consultation paper set out a range of proposals aimed at rebalancing the rating system during a period of economic downturn through to recovery.

10. The main consultation proposals were:

- extending the reach of the small business rate relief scheme;

- paying for this by introducing a levy on retail properties with a rateable value of £500,000 and above;

- allowing the use of window displays in empty shops for non-commercial purposes, preserving 50% empty property relief (or any exclusion);

- clarifying the legislation relating to valuation assumptions for the next general revaluation in 2015 and repealing the rule applied to properties valued by reference to their volume of trade.

11. The published proposals were subject to a 16 week consultation which commenced on 28th June 2011. The consultation paper was issued to a wide range of interested parties, placed on the Department's website and its publication was advertised in the local press. During the consultation period the Finance Minister held a series of meetings with both large and small businesses and their representative organisations.

12. Consultation finished on Tuesday 18th October, with 70 written responses. Of these 23 were from representative organisations and professional bodies, 22 from businesses, 16 from district councils and six from political representatives (including political parties). There were also responses from two public bodies and one ratepayer. The responses focused on the proposed expansion of the small business rate relief scheme and its funding through a large retail levy. Following this a consultation outcomes report was published on 9th November 2011, providing an overview of the issues raised during consultation.

13. The consultation paper and responses received as well as the outcomes report and way forward report (published on 15th December 2011 and setting out final decisions) can be accessed at http://www.dfpni.gov.uk/rating-review

OPTIONS CONSIDERED

14. It was intended that the main measures would apply from 1st April 2012 through to 31st March 2015 (covering the remainder of the spending review period).

15. The preferred approach outlined in the June consultation paper was to provide for:

- the general expansion of the small business rate relief scheme with 20% relief to be provided to eligible premises with an NAV of £5,001 - £10,000 (which will be given effect through existing powers);

- no additional relief to be provided to those currently receiving small business rate relief (NAV of £5,000 or below);

- an average levy on rate bills of around 20% to be applied to those retail premises with a rateable value of £500,000 or more, in the form of a regional rate supplement;

- allowing the use of shop fronts or shop window displays for (non-political) community, artistic or other non-commercial purposes so that the full occupied rate is not charged on otherwise empty properties. Entitlement to 50% empty property relief (or exclusion if applicable) would be preserved.

16. Views and evidence on alternative options were sought from consultees.

17. This included increasing the net annual value threshold for the small business rate relief scheme and targeting relief towards small retail premises. In terms of the large retail levy views were sought on alternative options, such as imposing it on additional sectors and applying other rateable value thresholds. Consideration was also given to targeting it at particular classes of shop or locations, graduating the levy and capping it.

18. In addition, the consultation proposals explained the need to clarify existing legislation relating to the valuation assumptions used at non-domestic revaluation. Views were sought about the proposal to define in the legislation the matters to be taken into account in compiling a new valuation list. This would take effect at the next general revaluation in 2015 and largely mirrors similar provisions that exist in the corresponding GB legislation.

OVERVIEW

19. The Bill has 8 clauses and amends the Rates (Northern Ireland) Order 1977. A commentary on the provisions follows. Comments are not given where the wording is self-explanatory.

COMMENTARY ON CLAUSES

Clause 1: Additional rate in respect of large retail hereditaments for the years ending on 31st March 2013, 31st March 2014 and 31st March 2015

20. This clause inserts a new Article 7A into the Rates (Northern Ireland) Order 1977, providing for an additional regional rate to be levied on large retail hereditaments. Provision is made in paragraph (1) for an additional regional rate of 8.52 pence in the pound for the rating year ending 31st March 2013. Paragraph (2) allows an additional regional rate to be made and levied on the rateable net annual value of every large retail hereditament for the years ending 31st March 2014 and 31st March 2015. Paragraph (3) provides for the definitions of 'large retail

hereditament', 'retail sales' and 'sales of goods' for the purpose of the Article, while paragraph (4) allows these definitions to be modified by subordinate legislation subject to affirmative resolution.

21. Paragraph (5) provides that the additional regional rate under paragraph (1) will be treated for the purposes of the Rates (Northern Ireland) Order 1977 as a rate made by the Department of Finance and Personnel on the day that section 1 of the Rates (Amendment) Act (Northern Ireland) 2012 comes into operation.

22. Paragraphs (6) to (11) deal with consequential matters to allow the additional regional rate to be collected in line with the general rate (regional rate and district rate) in respect of any hereditament.

Clause 2: Temporary rebate for certain previously unoccupied hereditaments, etc.

23. This clause inserts a new Article 31D into the Rates (Northern Ireland) Order 1977, providing for a temporary 50% rebate for certain previously unoccupied hereditaments, etc.

24. Provision is made in paragraph (1) of the new Article, subject to the further provisions of that Article, for the Department to grant to a relevant person a rebate from the rates chargeable in respect of the net annual value of a hereditament to which the Article applies. The rebate will therefore only apply to non-domestic properties.

25. Paragraph (2) provides that no rebate shall be granted except where an application is made to the Department before 1st April 2013 by a relevant person. It also provides that the application must contain such information as the Department may reasonably require.

26. Paragraphs (3) and (4) specify the hereditaments to which the Article applies, namely hereditaments which become occupied during the 2012/13 rating year after having been unoccupied for a continuous period of twelve months or more and which, when last occupied, were used for retail purposes or which, if never previously occupied, could reasonably have been considered by the Department as likely, when next in use, to be used for retail purposes.

27. Paragraphs (5) and (6) set out a range of definitions used in the new Article.

28. Paragraph (7) provides that the rebate shall be granted for a period of 12 months from the date of occupation, and shall be 50% of the rates chargeable in respect of the net annual value of the hereditament.

29. Paragraph (8) provides that a rebate shall come to an end if a person ceases to occupy the hereditament and shall be reduced to the extent (if any) that it breaches EU state aid rules.

30. Paragraphs (9) and (10) disapply other reliefs and exemptions where a rebate is granted under the new Article 31D.

31. Paragraphs (11) to (14) provide that a relevant person may require the Department to review its decision on an application for a rebate and, if dissatisfied with the result of a review, appeal to the Lands Tribunal.

32. Paragraph (15) contains a general power to make an order, subject to the affirmative resolution control of the Assembly, to modify paragraphs (2) to (8) of the new Article. Paragraph (16) then sets out certain things which an order may do, without prejudice to the provisions of paragraph (15). While these provisions contain the power to extend the measure beyond the 2012/13 rating year it is seen strictly as a downturn measure similar to other measures in the Bill.

Clause 3: Window displays not to constitute occupation in certain cases

33. This clause inserts a new paragraph 9 into Schedule 8A to the Rates (Northern Ireland) Order 1977. Sub-paragraph (1) provides that a property which is deemed to be occupied only by virtue of a window display is to be treated, for the purposes of the Rates (Northern Ireland) Order 1977, as unoccupied. This will apply for the period 1st April 2012 to 31st March 2015. Sub-paragraph (2) lays out the conditions that must be satisfied for the exclusion to apply, while sub-paragraph (3) outlines the hereditaments to which the new paragraph will apply. This includes property that when last used was used for the retail provision of goods or services. Where the property has never been occupied it must have been constructed or adapted for those purposes. Sub-paragraph (4) allows sub-paragraphs (2) and (3) to be modified by subordinate legislation, subject to affirmative resolution.

Clause 4: Restriction on same state and circumstances assumption for new NAV lists

34. Subsection (2) of this clause amends Article 39A of the Rates (Northern Ireland) Order 1977 to restrict the matters at the date of the coming into force of a new NAV list which can be taken into account in a valuation of a property for the purposes of the new list. The matters which will be able to be taken into account are listed in subsection (3).

Clause 5: Repeal in relation to new valuation list of special provision where net annual value fixed having regard to volume of trade

35. This clause amends paragraph 4 of Part I of Schedule 12 to the Rates (Northern Ireland) Order 1977 (special provision where net annual value fixed having regard to volume of trade or quantity of minerals or other substances extracted). The effect is to repeal the rule applied to properties valued having regard to the volume of trade carried on at the property that the volume to be taken into account shall be the probable volume for the first year with respect to which the valuation will have effect. This change is made to ensure consistency of treatment between business sectors. Subsections (2) to (4) provide the detail of the amendments made. Subsection (5) sets out that the change will not apply to a valuation list that is in force prior to the provision being commenced. As a result the change will take effect at the next revaluation, currently scheduled for April 2015.

Clause 6: Interpretation

36. This clause provides for the interpretation of the phrase "the principal Order" as used in the Bill.

Clause 7: Commencement

37. This clause provides for the commencement of the provisions of the Bill.

Clause 8: Short Title

38. This clause provides that the new legislation shall be known as the Rates (Amendment) Act (Northern Ireland) 2012.

FINANCIAL EFFECTS OF THE BILL

39. It is estimated that the implementation of the large retail levy will give rise to marginal additional administrative costs. The measure is expected to raise additional regional rate revenue of around £5 million in 2012/13, providing the main funding for the expansion of the small business rate relief scheme.

40. The cost associated with the temporary rebate for certain previously unoccupied hereditaments is nominal. The rebate will act as an incentive for occupation of premises, but that occupation may otherwise not have occurred. As a result the amount of revenue brought in during the 12 month rebate period, in respect of those properties, will be no less than that which would otherwise have been collected had the property remained unoccupied.

41. The costs associated with the window displays in empty retail premises provision, as well as the revenue implications, are considered to be minimal.

42. There are no significant financial costs, or revenue impacts, associated with the state and circumstances assumption for new NAV lists or the repeal of the legislation where net annual value is fixed having regard to volume of trade. These provisions will be taken forward as part of the normal valuation work associated with the scheduled 2015 revaluation.

HUMAN RIGHTS ISSUES

43. The provisions of the Bill are considered to be compatible with the European Convention on Human Rights.

EQUALITY IMPACT ASSESSMENT

44. Equality impact assessments were carried out in relation to the key provisions dealing with the large retail levy and the associated expansion of the small business rate relief scheme. For the expansion of the small business rate relief scheme the final impact assessment suggests that there should be no disproportionate impact (favourable or unfavourable) on any of the Section 75 sub groups. In relation to the large retail levy the final impact assessment shows that there would be no significantly disproportionate impact for any Section 75 sub group from implementation of the levy.

SUMMARY OF THE REGULATORY IMPACT ASSESSMENT

45. The Regulatory Impact Assessment concludes that the levy will not be detrimental to competitiveness, given that it will apply to all large retailers with a rateable value of £500,000 or above. The levy will only be operational for three years. Considering the scale of the levy, its duration and the competition that exists between the large retailers, it is the Department’s assessment that this is unlikely to affect behaviour or long-term decisions made by large retailers.

46. The impact of the measures on small businesses is considered to be positive given that the revenue raised will be used to fund an expansion of the small business rate relief scheme.

47. Adjustments to rate bills will be made automatically; therefore there are no hidden implementation costs to business.

LEGISLATIVE COMPETENCE

48. The Minister of Finance and Personnel had made the following statement under section 9 of the Northern Ireland Act 1998:

"In my view the Rates (Amendment) Bill would be within the legislative competence of the Northern Ireland Assembly."

RECOMMENDATION

49. The Minister with responsibility for the Bill, Sammy Wilson, MP, MLA, the Minister of Finance and Personnel, had made the following recommendation as required under section 63 of the Northern Ireland Act 1998.

"As Minister of Finance and Personnel, I recommend this Bill to the Assembly as is required by section 63 of the Northern Ireland Act 1998."