

From the Minister of Finance

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Dear Steve

THE NON-DOMESTIC RATES VALUATIONS (CORONAVIRUS) BILL

Following the Finance Committee session on Wednesday I am writing to address the questions posed. I hope this is satisfactory and allays your concerns, as it is vitally important to proceed with accelerated passage of this Bill and I have written to the Speaker accordingly.

I will respond to the questions as below:

Does current legislation not contain force majeure to address such situations?

The Rates (NI) Order 1977 does not contain force majeure provisions.

Legal advice provided to the Department is clear that the current non-domestic valuation list, which came into force on 1 April 2020, should reflect the impact on Net Annual Values (NAVs) of the Health Regulations introduced on 28 March 2020. The physical enjoyment of property and the use of property in the locality are both relevant in this matter.

Since there was neither time to identify the properties affected, or quantify the impact on NAVs, the List was published.

Why did DoF not consider the Westminster legislation in May when DfE did and raise this issue?

As Ian Snowden advised the Committee, the Department has been aware since Spring of 2020 that there may be an issue arising from the impact of Covid-19 and the associated restrictions on property valuations and business rates. Although the specifics of the legislation are quite different in each jurisdiction, the issues are broadly the same in England, Scotland and Wales and it was considered to be important to take a common approach.

When the Westminster legislation was announced, without any significant prior notification by the British Government, we started working on introducing legislation to deal with the matter in the local context. As I have noted, there are significant differences in the detail of the rating legislation here compared to England, so a straight replication of the legislation was not possible. Therefore, a considerable amount of work was done in engaging with counterparts in other jurisdictions to understand the policy intent. Detailed analysis was also undertaken to cost the options of proceeding or not with a local legislative solution. It was appropriate that this work was done in detail to inform my decision on whether we should proceed with this course of action. As the Committee noted yesterday, these are not inconsequential issues.

I know that the Committee is aware that in tandem with this work, LPS was continuing work on dealing with grants and business support which had diverted resources on a huge scale since April 2020, and continued to do so. Work had also commenced on the next revaluation, again taking time and resource to arrange and bring forward.

The stage we are at now was actually achieved in a relatively short space of time.

How many of the appeals submitted have stated Covid-19 as part of the appeal?

Just under 2,000 specifically listed the pandemic as a reason for the appeal. However, it has been clear in discussions with ratepayers that Covid-19 underlies many of the challenges received. This is particularly evident in the cases where the business was not forced to close but its neighbours were, so the locality in which it is situated has been adversely affected.

That factor has far reaching consequences as the Rates Order directs that the NAV on similarly affected property must also be revised. For example, a shop NAV that is reduced as a result of the Health Protection Regulations restrictions could have a consequential impact on all other shops in the locality. It could also have a consequential impact on other related businesses in the locality, such as a car park

that services a shopping centre which was not required to close but had no trade as the shops were closed.

Have any businesses who have no rates to pay this year submitted an appeal?

LPS has received appeals from all property sectors including those who have had 4 months and 24 months rate holidays. There is an expectation that the number of rate appeals will spike in the first year after a revaluation. The number received has been dampened somewhat by the rate holidays.

How many businesses would have to appeal to realise the upper end of the anticipated loss of revenue?

As explained above, the number of appeals is not the principal factor driving the cost implications; it is the obligation on LPS to treat similarly circumstanced property in the same way as a single property that has been reduced has been treated.

To put this into context there are 20,000 shops in the non-domestic valuation list, 16,700 offices, 14,000 warehouses, and 4,200 factories. This is not to say all will be impacted and all will have the NAV reduced, but it does go to illustrate the widespread nature of the consequential impacts of making changes to NAVs under appeal.

Why was the option of a LCM not taken forward?

As noted previously in this letter, there are many similarities between our rating legislation and English rating legislation and the underlying principles are the same. However, there are also significant differences in detail which mean that the English legislation does not read across to ours.

The Westminster Bill (*Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill*) does not deal exclusively with the issue we are facing. Our approach of a single clause Bill keeps the focus very squarely on our local issue and ensures the Bill not diluted in any way.

Why has it taken so long to bring this legislation forward?

The proposal for the legislation was put forward at the end of August, we have got to this stage quite quickly. If we are able to maintain the accelerated passage timetable it will mean a degree of parity between Northern Ireland and England and Wales.

Scotland is slightly further behind in introducing their Bill as they were delayed at the outset because of their election this year.

Did the Department not consult on the legislation? Why not?

LPS took advice from Departmental Solicitor's Office on the obligation to consult. In this specific case which addresses an urgent taxation matter, against which the courts grant a wider than usual margin of appreciation, the Department will be relying upon the fact that there is neither statutory obligation to consult, nor a legitimate expectation to consult. This is not "ordinary" legislation; it is an emergency response as part of the overall Covid response.

Further, if a consultation is not going to be "meaningful", as would be the case with this legislation, it should not be undertaken. No outcome of the consultation would change the intent or nature of the Bill, which is necessitated by an examination of the revenue losses which will be incurred at both Executive and District council level.

I can confirm that the Scottish Government did not consult on their legislation in this regard. The British Government launched a Fundamental Review of Business Rates consultation for England, which included a consideration of their "Material Change of Circumstances" legislation (due to be revised as a result of that process), but did not consult on this specific issue. Wales carried out a 6 week technical consultation on their draft regulations (which are forward-looking only) but did not consult on their intention to join the Westminster Bill.

The decision taken to introduce legislation in these jurisdictions was borne out of an assessment of the fiscal risk in processing the appeals.

For clarification, Impact Screening has been carried out in line with Departmental obligations for assessing Regulatory Impact, Rural Needs Impact and Equality impact.

If there was no consultation should the department not have advised businesses of what might happen?

Executive approval to proceed with accelerated passage was granted on 21 October. We fully intend to engage with stakeholders including business representative bodies and district councils. It has been a matter of timing only that has prevented this to date.

Were the legal opinions sought before the department was aware of what Westminster intended to do?

From April 2020 onwards, the Department sought **extensive legal opinion** on this matter, to advise on the impact of the Health Protection Regulations on the Rates Order, specifically Art 39A (1A). Our counterparts in England Scotland and Wales did the same for their contexts.

This advice pointed towards the need to take the health restrictions into account, specifically those restrictions that prevented or restricted physical enjoyment of the property, when establishing its rateable value.

The question was, what impact, if any, the actual and anticipated restrictions at that point (1 April 2020) would have had on the value of a property that came under the restriction. As the restrictions on opening were extended it became clear that there were further impacts to be considered including social distancing and the impact of the Stay at Home message. So advices were sought on additional matters throughout 2020 and into early 2021.

It remained a matter to be considered until the option for legislation was tabled as a means of addressing the instability caused to the taxbase.

Will the Barnett Consequential come to NI even if we do not proceed with the NI legislation?

We have been seeking clarification on Barnett Consequential funding for some time, but it is my understanding the funding will be allocated on the passage of the Westminster Bill and is not conditional on any action here.

Has it been ring-fenced – what is the Minister’s intention for it?

I intend to ring fence this funding to provide much needed assurance to the widest possible number, and spread of business types, in the next financial year (2022/23) when bills will be issued, to help ease the transition back into normal rate billing.

Is it right to deny a right of appeal to sectors who were particularly hard hit during the pandemic e.g. travel agents?

The right of appeal is unchanged, the Bill preserves those matters in Art 39A where they occur for reasons other than the Health measures. In other words, the right to appeal continues to apply as normal for non covid matters.

The purpose of the Bill is to mitigate the unforeseen impacts of the Health restrictions on the rating system. It will restore rating law to its intended purpose and will clarify it so that the Health restrictions put in place in response to covid cannot be used as a basis for making a successful appeal.

It will ensure that the general economic impact of the pandemic will be reflected at the next revaluation which has a valuation date of 1 October 2021. Allowing values to fall for economy-wide matters such as Covid measures would be out of line with the principles of rating, where such matters are properly reflected at a revaluation.

All businesses here were awarded a 4 month rate holiday in 2020, which is equivalent to a 33% reduction in rates. Critically though, those businesses worst affected by the pandemic, including Travel Agents, in occupation of a business property, received 24 months rates holiday and have paid no rates at all during that period. There was further compensation in the form of business support grants plus The Executive Office support scheme.

Asked for confirmation of the amount of money paid out in error and still outstanding i.e. as part of the support schemes?

The total value of grants paid in error and rates relief awarded is error which is still outstanding (before any assessment of whether Good Faith write off is justified) is just under £4.5 million. This is out of a total of £969 million worth of rate relief and grants administered by LPS.

What approach is being taken to address this?

In summary, each case will be assessed to establish whether Good Faith write off of the amount paid in error is justified by the circumstances of the case. Where that is not justified, LPS will seek repayment of the amount paid in error. A detailed paper on the grant schemes will be provided to the Committee on these issues.

Retrospective element of the legislation

The Bill is designed to remove the impact of the closures brought about by the Health Regulations, which came into force on 28 March 2020. If the legislation is to be effective in dealing with that issue, the Department has no choice but to address it from the point of impact. That necessitates the Bill having retrospective effect. The Bill will also address the matter of it ever happening again, all of which is a response taken to protect revenue at an Executive and district council level.

Removal of right of appeal.

As I have noted previously in this letter, the Bill will act solely to remove the impact of Covid-19 as a valid ground for challenging a Net Annual Value. All other rights to appeal valuations are unaffected.

Art 39A in our rating legislation was never designed to deal with this particular set of circumstances. The right and proper mechanism for dealing with widespread economic impacts is a revaluation. As the Committee is aware, I have announced another revaluation and work on this has already been started. This is the same conclusion that has been reached in England, Wales and Scotland.

No consultation, businesses not aware of what is coming down the track.

That is more a matter of timing than anything else. The intention to engage with stakeholders was predicated on an assurance that the legislation would actually be introduced. We are at that stage now and fully intend to meet with key stakeholders including district council representatives. It will be imperative to also brief councils on the consequences of the Bill not being introduced in this mandate and will, we believe, inevitably lead to hikes in non domestic rate poundages for the 2022/23 year. This will coincide with the end of the rate holidays and the business moratorium on eviction. Expectations are that this will lead to increased reliance from councils on additional Executive support at a time when budgets are being reduced in support of Health.

Concern about setting a precedent if the Committee agrees to Accelerated Passage.

These are exceptional circumstances and, I would argue, do not set a precedent for 'normal' business of the Executive.

How the reval information has been provided to businesses and what the department is doing to stress the importance of supplying requested information

LPS has a Reval2023 website which provides details on the process and the importance of the business community providing LPS with rent and lease information when requested as this is their opportunity to influence the outcome of the revaluation. Requests for information was sent out at the start of October and reminders are now

being sent to those businesses who have yet to respond. It should be noted there is a statutory duty under the Rates Order to provide this information.

LPS also an active social media profile which is updated regularly.

Details of this will be provided to the Clerk for circulation to the Committee members.

Clarification of the figures provided in respect of anticipated loss of revenue

An in-depth analysis was carried out in LPS of all property sectors valued for rates, applying the likely outcomes of a successful challenge in terms of a percentage change to the NAV.

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.

LPS looked at two scenarios and took an optimistic (over 3 months) and a pessimistic (over 6 months) view of each possible scenario.

Scenario 1 assumed a wider interpretation of how the Covid restrictions could have affected NAVs. The results indicated revenue losses between £196m and £255m.

Scenario 2 took a much narrower interpretation by limiting the impacts to clear physical restrictions. The results indicated revenue losses between £39m and £100m.

This was extrapolated over each of the three rating years from 2020 to the backstop created in March 2023 by the next general revaluation.

It is the view of the Commissioner of Valuation and Director of Rating Policy Division that the courts are likely to adopt the wider interpretation leading to larger losses.

Although the majority of revenue loss will occur in the year without a rates holiday (2022/23) the cumulative cost will include the impact felt since April 2020. The cumulative losses will be split on a 55:45 basis between losses to the Executive and to the district councils.

The same assessment in England, Wales and Scotland has led to the primary legislation being introduced in those jurisdictions

Appeals will lead to significant amounts of taxpayer support going to businesses which have been able to operate normally throughout the pandemic and to businesses which

have already benefitted from the rates relief we have provided throughout 2020-21 and 2021-22.

Furthermore making no legislative change would mean Art 39A would continue to be used by commercial rating agents or ratepayers to seek a valuation reduction in addition to any rates relief provided.

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

Is mise le meas,

A handwritten signature in black ink, reading "Conor Murphy", written in a cursive style. The signature is centered within a light gray rectangular box.

**CONOR MURPHY MLA
MINISTER OF FINANCE**



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Our Ref: 2021:461

5 November 2021

Dear Conor,

Non-Domestic Rates (Coronavirus) Valuation Bill

Please accept the Committee's thanks for the oral and written Departmental briefing provided at the meeting of 3 November 2021 regarding the proposal for accelerated passage for the Non-Domestic Rates (Coronavirus) Valuation Bill. I also note with thanks your correspondence of 5 November 2021 in which you have sought to address some of the Committee's concerns.

The Committee recognises the unique and particular governance challenges for departments that have accompanied the pandemic (and the related restrictions) and the difficulties this has presented for officials. Indeed, Members commended Land and Property Services for its prompt and efficient response to the demands of different and changing business support measures. Further to this, the Committee has written separately to the Department of Finance and the Department for the Economy seeking an update on covid business support overpayments by fraud or error and the level of recoupment and write-off.

In respect of the Bill, the Committee noted with concern that it will reduce the availability of appeal mechanisms in respect of business rates valuations owing to the impact of the pandemic. Although Members understood the Department's reasoning, they were surprised that this important matter had not been the subject of either a public or a private consultation with representative business organisations and local government. The Committee therefore agreed that I should write to you suggesting that the Department urgently makes stakeholders aware of the legislation and explaining its retrospective nature, if only to prevent speculative and unnecessary increases in business rates, as suggested by officials.



The Committee was also surprised by the proposed timing of the introduction of the legislation. The Committee didn't accept the explanation provided (and reiterated in your letter) and noted that a Legislative Consent Motion relating to other parts of the relevant Westminster legislation was brought before the Committee for the Economy in May 2021. A satisfactory explanation for the Department's handling of this matter is required.

Members were also surprised that the Antecedent Valuation Date Statutory Rule (which was recently brought before the Committee) was described as having no financial implications. Officials conceded that there were indeed financial implications and went some way to explain these. The Committee found this unsatisfactory and agreed that I should write to you seeking a fuller explanation for the basis of the £250m financial impact of the failure to pass the Bill. It is anticipated that the Committee will not find your recent response on this matter to be entirely adequate.

You have kindly provided some clarification on the conditionality of the £50m Barnett consequential and have indicated that this is to be ring-fenced for related purposes. The Committee agreed that I should write to you: seeking clarity as to how you will ensure the actions of a future Executive in this regard; and requesting details of the process under which businesses will receive this support.

Members noted that during the pandemic various business sectors had fared very differently - some experiencing a significant loss of business while others have grown and prospered. Members expressed concerns in respect of how the differing levels of business success and failure will be fairly and reasonably taken into account as part of Reval2023. The Committee therefore agreed that I should write to you seeking clarification in this regard. Members also asked if your Department would provide information and links relating to Reval2023 which might be shared with constituents.

As you are aware, the Committee indicated its concerns in respect of the Bill and the request for accelerated passage. Although the Committee has no formal role in this regard, Members indicated that prior to confirming their position, they would require responses in respect of the above. A response as soon as possible would therefore be greatly appreciated.

If you require further information or clarification in respect of the above, please do not hesitate to have officials contact the Clerk to the Committee for Finance.



Yours sincerely,

Steve Aiken

Dr Steve Aiken OBE MLA
Chairperson of the Committee for Finance