These Notes refer to the Rates (Amendment) Act (Northern Ireland) 2009 (c.8) which received Royal Assent on 3 November 2009

RATES (AMENDMENT) ACT (NORTHERN IRELAND) 2009

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Rates (Amendment) Act (Northern Ireland) 2009 which received Royal Assent on 3 November 2009. They have been prepared by the Department of Finance and Personnel in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by the Assembly.

2. The Notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section or schedule does not seem to require an explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. Following the restoration of devolution in May 2007 the Executive ordered a comprehensive review of the domestic rating system, aimed at making the system of local taxation more acceptable. A number of outcomes of this review were introduced in 2008 and 2009, including a lone pensioner allowance, an increase in the savings limit for pensioners under the low income rate relief scheme, a lower maximum capital value and the closure to new applicants of the relief scheme for those in post school education or training and leaving care.

4. The Act gives effect to a number of the remaining decisions arising from the Executive's Review, as well as three issues relating to the non domestic rating system.

5. In terms of the domestic rating reforms it is intended to introduce two schemes aimed at encouraging householders to act in a more environmentally responsible way. This was a key theme to emerge from consultation during the Review. It has also been decided to introduce the rating of empty homes at 100%, provide new powers for a rates deferment scheme for owner occupier pensioners and improve data sharing powers. The detail of each of these measures is set out in the following paragraphs.

6. The Act enables the Department of Finance and Personnel to make regulations providing for a one-off reduction in rates for owner occupiers who install loft or cavity wall insulation in their homes. The amount of the reduction will be prescribed in the regulations and the scheme itself will be time limited to 31 March 2015. This date can however be changed by subordinate legislation to allow for a second phase should it be decided, following a review of the insulation based scheme, that it should be broadened to include other measures such as solar panels, etc. The Department will also be able to extend the scheme to other sectors, including the social rented sector, through

subordinate legislation should this be considered necessary in the future. The overall aim of the scheme will be to encourage investment in, and thereby improve, the housing stock in Northern Ireland which aligns with the Executive's wider commitment to promote sustainable development.

7. The Act also provides the Department of Finance and Personnel with a power to make regulations to introduce a scheme giving full rate relief to the first occupiers of new zero-carbon and new low-carbon homes for up to five years and two years respectively. This enabling power limits the life of the scheme to 31 March 2016 in respect of new zero-carbon homes and 31 March 2013 in respect of new low-carbon homes to align with existing UK government targets. These dates can however be changed through subordinate legislation should this be required. The overall aim of this scheme will be to encourage the demand for zero-carbon and low-carbon homes and thereby stimulate developers in Northern Ireland to build them.

8. As part of its Review the Executive also agreed that the rating of empty homes should be introduced, in order to encourage people to make use of empty property and improve the availability of housing. The Act makes provision that will enable this to be introduced and to allow empty homes (including garages and storage premises) to be rated at 100%. There will be no initial exemption period (with the exception of new property developments which will be subject to an initial 12 month exemption). Given that rating empty homes now would place an unfair burden on households when the housing market is weak the rating of empty homes has been postponed until April 2011, though this will be kept under review.

9. The Executive reduced the maximum capital value that applies for domestic rating purposes to £400,000. This ensures that the maximum rate bill in Northern Ireland is no higher than the average bill within the highest council tax band in England, around £2,800. This was given effect through subordinate legislation, using existing powers in the principal Order, that is the Rates (Northern Ireland) Order 1977 (S.I. 1977/2157 (N.I. 28)). The change became operational on 1 April 2009. The Act makes provision for compensating payments to be made to district councils affected by the reduction in the maximum capital value to £400,000, in respect of the 2009/10 and 2010/11 rating years. Assistance will be provided at 100% and 50% respectively of the difference between the product of the rate for the £500,000 and £400,000 capital value thresholds.

10. As part of the wider package of measures aimed at providing assistance to pensioners the Executive also agreed that a rates deferment scheme should be introduced for owner occupiers of pensionable age. The power to introduce such a scheme is already provided for in the Rates (Northern Ireland) Order 1977, with the Act substituting this provision and slightly extending the scope of the scheme. Eligibility will be subject to the person being an owner occupier aged 60 or over (to subsequently increase in line with changes to pensionable age through to 2046). The Department of Finance and Personnel will have the power to enter into a deferment agreement with an owner occupier of pensionable age as well as the partner or surviving partner of such a person where he/she also owns and occupies the property. Further eligibility conditions will include minimum equity levels in the property with account also taken of personal circumstances. Interest will be charged on the amount outstanding under a deferment

agreement and applicants will be responsible for the initial set up costs associated with entering into such an agreement.

11. In relation to data sharing, new powers are being taken in this Act to allow the relevant Government agencies to better target likely recipients of, and verify claims relating to, rate relief, the disabled persons allowance and the lone pensioner allowance, as well as for the purposes of assessing housing benefit claims for owner occupiers. It is recognised that these powers are only part of a package of measures which will collectively help address the issue of low take up of reliefs. This issue emerged from the research and analysis carried out during the Executive Review of domestic rating following which a study was commissioned by the Executive, and carried out by Access to Benefits for Older People, to inform the development of effective take up strategies. These powers will be accompanied by a number of actions at administrative level around data security, audit trail and independent scrutiny all of which featured in the responses received during the consultation on the issue last year. The Act also creates a new offence relating to the unauthorised disclosure of information pursuant on the new power dealing with certain rate reliefs and allowances.

12. In terms of the non domestic rating system there are three main areas covered. For the next revaluation exercise some changes will be needed in the legislation to facilitate this. In particular the provisions which relate to the former public utilities whose valuation assessments will move from being prescribed in legislation to the conventional method of assessment. The changes needed are largely in the form of repeals.

13. The second main area concerns industrial derating. The rating liability for the manufacturing sector currently stands at 30% and the Assembly approved placing a hold on this level until March 2011. To date this has been given effect through subordinate legislation. Provision had to be made in the primary legislation, otherwise 100% rates liability for manufacturing will apply from April 2011. This amendment provides the necessary flexibility for the Assembly to set the rating liability by subordinate legislation, post April 2011.

14. The third main provision which is required for the non domestic sector is an enabling power to allow for a small business rate relief scheme to be introduced (temporary reduction of rates for specified hereditaments). It also provides enhanced rate relief for sub Post Offices in Northern Ireland. The scheme was announced on 15 December 2008 as part of the Executive's response to the economic downturn and as part of the December monitoring round.

CONSULTATION

15. Views were sought on the broad direction of domestic rating policy during a 12 week consultation in 2007, which initiated the Executive's Review. The Executive agreed to take forward a range of measures in November 2007 subject to further research and consultation.

16. Policy documents, setting out detailed proposals, were subsequently published for twelve weeks consultation in 2008 on:

- the reduction in the maximum capital value and the possible provision of transitional relief (4 April);
- the rating of empty homes (21 May);
- a rates deferment scheme for owner occupier pensioners (24 June);
- data sharing (27 June); and
- energy efficiency and zero carbon reliefs (4 July).

17. In total there were 288 responses to these consultation exercises, representing 63 organisations (including 20 district councils) and 156 individuals. This was supplemented by meetings with a range of key stakeholders. By and large there was support for the proposals set out in the consultation papers. A consultation report, setting out the way forward on the range of policy issues, as well as providing an update on various rating matters, was published on 6 January 2009.

18. On the non domestic side, changes are needed to the way in which the former public utilities are valued at the next rating revaluation and beyond, allowing them to be conventionally assessed instead of the valuations being prescribed in legislation. The revaluation was intended to take effect from April 2010 but this exercise has recently been postponed to April 2011. The policy changes given effect in this legislation are not expected to increase the rate liability of the majority of these undertakings following the revaluation, however, it may alter the assessments on the railway network and Belfast Port. Detailed discussions between the District Valuer and Translink and the Belfast Harbour Commissioners have been ongoing and will continue before the new valuations are published.

19. A targeted consultation on the impact assessment for the small business rate relief scheme has been completed and no major issues were raised. A wider consultation around the case for a small business rate relief scheme was carried out in 2007 by the Economic Research Institute for Northern Ireland, on behalf of the Department of Finance and Personnel. Meetings were also held during 2008/2009 with the National Federation of Sub-postmasters on how the post office elements of the scheme might work.

20. The consultation documents, the responses received and the associated consultation report, setting out decisions on the way forward, can be accessed at http://www.ratingreviewni.gov.uk

21. In addition to the public consultation undertaken in 2007 and 2008 there was extensive liaison with the Assembly's Finance and Personnel Committee over the last two years. The Committee also responded to the Review of domestic rating, as part of which it undertook evidence sessions and produced a comprehensive report in November 2007 containing 33 recommendations. All of these recommendations were taken into account in taking forward the various measures included in this legislation.

OPTIONS CONSIDERED

22. On the return of devolution the Executive undertook a comprehensive review of the domestic rating system, aimed at making it more acceptable and taking account of the concerns that had been expressed by ratepayers. This included options for change that could be brought forward in the short to medium term and included measures relating to both the tax base and reliefs. Consideration was given to:

- a single pensioner discount;
- reducing the maximum capital value;
- the levying of a minimum rates payment;
- the rating of empty homes;
- retargeting the rate relief scheme;
- revising the scheme providing assistance to those engaged in full time education and training;
- introducing a rates deferment scheme for owner occupier pensioners;
- reprofiling the transitional relief scheme; and
- revising the early payment discount.

23. In addition, consideration was also given to longer term measures that could be introduced, that would require major legislative change. These included consideration of:

<u>Alternative or supplementary taxes</u>
- a local income tax;
- a derelict property and brownfield site tax; and
- land value tax;

<u>Modification of the capital value system</u>:

- applying a graduated tax rate to different levels of value;
- introducing a single person discount;
- broadening the disabled persons allowance scheme;
- applying circuit breakers for particular groups;
- providing a discount for owner occupiers; and
- extending the discount for farmhouses.

24. On the non domestic side revaluations are meant to take place periodically. The last one was in 2003 for Northern Ireland (2005 for GB). One change that occurred in GB in 2005 was to change the way the former public utilities, such as electricity, docks and railways, were treated for rating purposes. This involved removing from legislation the precise means of valuing these undertakings, so that they are assessed in the same way as other comparable businesses. It is necessary for Northern Ireland to do likewise for the next Northern Ireland revaluation, recently postponed to April 2011. Failure to do so could attract criticism from the EU in terms of preferential treatment for Northern Ireland businesses.

25. On industrial derating the option of doing nothing would result in the rating liability for manufacturing premises moving from 30% to 100% in April 2011. The provision included in the legislation provides flexibility for the Assembly to decide at which level (including 100%) the liability should be set at in subsequent years.

26. The enabling provision for a small business rate relief scheme is the result of a detailed economic appraisal of the alternatives which emerged following the report from the Economic Research Institute of Northern Ireland into the need for a small business rate relief scheme for Northern Ireland. Among the alternatives considered were a rural rate relief scheme, a scheme to support urban regeneration, and a scheme to boost productivity in the small business sector.

OVERVIEW

27. The Act has 20 sections and two Schedules 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 SECTIONS

Section 1: Temporary reduction of rates for specified hereditaments

This section substitutes Article 31C of the Rates (Northern Ireland) Order 1977, providing for reductions in rates for certain properties to be specified in regulations. The percentage reduction, the years to which it applies and the net annual value (NAV) limits will also be set out in regulations. The provision also allows the Department of Finance and Personnel to make provision by regulations for any other matters which it considers are necessary or expedient for the purposes of the Article. The scheme to be introduced by the regulations will commonly be known as the Small Business Rate Relief Scheme.

Section 2: Zero-carbon or low-carbon homes

This section inserts a new Article 30C into the Rates (Northern Ireland) Order 1977. Paragraph (1) enables the Department of Finance and Personnel to make regulations providing full rate relief to the first occupiers of new zero-carbon and low-carbon homes. Provision is made in paragraphs (2) and (3) of the new Article for the relief to apply for up to two years in respect of new low-carbon homes and for up to five years in respect of new low-carbon homes. These paragraphs also provide for the scheme to be time limited to 31 March 2013 in respect of new low-carbon homes and 31 March 2016 in respect of new zero-carbon homes. Paragraph (4) enables the Department of Finance and Personnel to alter these end dates by subordinate legislation subject to affirmative resolution and make any transitional or savings provisions required on the ending of the scheme.

Provision is also made in paragraph (5) enabling certain key terms, including zero-carbon home and low-carbon home, to be defined in regulations. Paragraphs (6) and (7) make further provision in relation to the definition of the terms zero-carbon home and low-carbon home. Paragraph (8) allows the regulations to provide for the method of claiming relief and for the circumstances in which the relief can be withdrawn. Paragraph (9) allows provision to be made regarding the evidence required to show that the definitions of zero-carbon home and low-carbon home have been satisfied. In connection with this, paragraph (10) further enables regulations to refer to an existing statutory scheme or process about building and make provision concerning certification, approval and associated fees.

Paragraph (11) provides for an appeal against a decision made by the Department under the regulations. Paragraph (12) makes provision for certain exclusions. Paragraph (13) allows the relief to be applied in respect of a period before the making of the regulations but not before the beginning of the rating year. Paragraph (14) enables the Department through regulations to make any other provisions deemed necessary for the purposes of this scheme.

Section 3: Energy efficiency

This section inserts a new Article 30D into the Rates (Northern Ireland) Order 1977. Paragraph (1) enables the Department of Finance and Personnel to make regulations providing in prescribed cases for the rates payable in respect of a dwelling house to be reduced by an amount to be prescribed in regulations. Paragraph (2) stipulates that the dwelling house must be one to which prescribed measures to improve its energy efficiency have been taken to a prescribed standard and which meets certain prescribed conditions. Paragraph (3) defines certain terms for the purposes of the Article. Paragraph (4) confines the reduction to one year except in prescribed cases and time limits the scheme to 31 March 2015. Paragraph (5) enables the Department of Finance and Personnel to alter this end date by subordinate legislation subject to affirmative resolution and make any transitional or savings provisions required on the ending of the scheme.

Paragraph (6) enables the Department of Finance and Personnel to stipulate in the regulations that a reduction will not be made unless a person has consented to the inspection of the dwelling and to make further provision in relation to such inspections. Paragraph (7) also enables provision to be made in regulations for the method of claiming a reduction and the method of making a reduction under this Article.

Paragraph (8) allows regulations to provide for certain functions to be carried out by persons other than the Department. Appeals against a decision by the Department of Finance and Personnel made under the regulations can also be provided for in regulations by virtue of paragraph (9). Paragraph (10) lists certain exclusions which can also be provided for in regulations.

Paragraph (11) allows the reduction in rates to be applied in respect of a period before the making of the regulations but not before the beginning of the rating year. Paragraph (12) enables the Department of Finance and Personnel through regulations to make any other provisions deemed necessary for the purposes of this scheme.

Section 4: Exemption for industrial hereditaments

This section amends the Rates (Amendment) (Northern Ireland) Order 2004. Subsection (2) provides that the provisions relating to the removal of industrial derating may be brought into operation by means of an order which has been approved in draft by a resolution of the Assembly. Subsection (3) removes the date of 1 April 2011 as the date for the removal of the industrial derating provisions. Subsections (5) and (6) amend the Rates (Northern Ireland) Order 1977 to allow the percentage liability for industrial hereditaments to be set from 1 April 2011 by means of an order subject to affirmative resolution of the Assembly.

Section 5: Agreements for deferred payment of rates on dwellings

This section substitutes Article 29A of the Rates (Northern Ireland) Order 1977 (agreements for deferred payment of rates on dwellings). Paragraph (1) provides that the Department of Finance and Personnel may enter into an agreement with a person for the payment of rates in respect of a dwelling to be deferred. Paragraph (2) enables regulations to stipulate that the person must be the owner occupier of the property, that the property is a dwelling-house or used partly for the purposes of a private dwelling and that certain conditions must be met. Paragraph (3) enables regulations to stipulate that those entering into a deferment agreement must be of pensionable age, the partner of a person of pensionable age or the surviving partner of a person who has entered into a deferment agreement. Paragraph (4) makes provision that regulations may provide for the terms of the deferment agreement (including repayment, interest and termination), for the debt to be a charge on the property, for the enforcement of this, for an agreement with a surviving partner to transfer the amount outstanding under a deceased partner's agreement and for the definition of specified terms.

Paragraphs (5) and (6) make provision that regulations may provide for a deferment agreement to apply to payment of rates for the whole of the rating year in which the agreement is entered into. Paragraph (7) enables regulations to modify paragraphs (2) and (3) as well as other provisions in the Rates (Northern Ireland) Order 1977 for the purpose of the deferment scheme. Paragraph (8) enables the Department of Finance and Personnel, through regulations, to make any other provisions deemed necessary for the purposes of the deferment scheme. Paragraphs (9) to (11) deal with who is to be treated as a partner for the purposes of the deferment scheme.

The regulations will have to be laid in draft and approved by the Assembly.

Section 6: Extension of liability for unoccupied hereditaments to dwelling-houses, etc.

This section amends Schedule 8A to the Rates (Northern Ireland) Order 1977. Subsection (2) makes provision for the rating of unoccupied properties to be extended to the domestic sector. This includes dwelling-houses, private garages and private storage premises. Subsection (3) introduces separate provision for a reduction in the amount of a rate in respect of unoccupied domestic property and a reduction in the amount of a rate in respect of unoccupied non-domestic property. No reduction will apply in respect of unoccupied domestic property. Subsection (4) provides that where a property is used for both non-domestic and domestic purposes, that the domestic part of the property will no longer be exempt from rates when empty. Subsection (5) applies the power of the Department to require information under Article 26(2B) of the Rates (Northern Ireland) Order 1977, in respect of unoccupied properties, to properties in the capital value list prior to the rating of empty homes. Subsection (6) applies definitions in the Rates (Northern Ireland) Order 1977 for that purpose.

Section 7: Capital value of hereditaments: change of state of property to be disregarded

This section provides an enabling power to alter the valuation assumptions that apply to properties with a capital value (dwelling houses, garages and private storage premises). This allows the Department of Finance and Personnel to make regulations to deal with steps that owners might take (or omit to take) in an attempt to avoid rates when unoccupied, through causing or allowing the state of their property to change.

The section provides that regulations may make provision for the circumstances in which, and the length of time for which, a change in the state of the property may be assumed not to have occurred. It also provides the power to include additional matters in regulations, including assumptions in relation to changes in the state of a property in comparison with an earlier time, provisions relating to the person by whom acts may be treated as done and provisions that the regulations apply to omissions as well as acts.

Provision is also made in the Act that any regulations must be laid in draft and approved by the Assembly.

Section 8: Repeal of exception from general valuation reference date and other special provisions

Subsection (1) repeals Article 39A(4) of the Rates (Northern Ireland) Order 1977 which provides that an order setting a date by reference to which valuations are made for a new NAV list does not apply to a hereditament which is occupied by a public utility undertaking. Subsection (2) provides that such an order made before subsection (1) comes into operation shall have effect as if subsection (1) had been in force when the order was made.

Subsection (3)(a), (b) and (c) provides that Articles 39C, 39D and 39E which enable orders to prescribe methods for valuing hereditaments occupied by electricity, gas undertakings and water supply or sewerage services respectively for the purposes of a NAV list shall cease to have effect. Such hereditaments will henceforth be valued conventionally.

Subsection (3)(d) provides for the repeal Schedule 3 to the Order which provides for definitions relating to railway hereditaments.

Subsection (3)(e) provides for the repeal of Parts 4 and 10 of Schedule 12 to the Rates (Northern Ireland) Order 1977 which respectively provide for methods for valuing railway and dock hereditaments. Such hereditaments will henceforth be valued conventionally.

Section 9: Sharing of social security information

This section enables the Department for Social Development (or a person providing services to that Department) to share information relating to social security with the Department of Finance and Personnel and the Northern Ireland Housing Executive (or persons providing services to those organisations) for certain purposes. Those purposes are specified in subsection (3) and include improving the take up of certain reliefs and allowances, namely rate relief under Article 30A of the Rates (Northern Ireland) Order 1977, disabled persons allowance and the lone pensioner allowance, and the administration of such reliefs and allowances.

Section 10: Unauthorised disclosure of information relating to particular persons

This section creates a new offence relating to the unauthorised disclosure of information by persons employed by the Department of Finance and Personnel and members, officers or employees of the Northern Ireland Housing Executive as well as persons employed in the provision of services to those organisations. The relevant penalties are specified in subsection (5).

Section 11: Provisions relating to sharing of social security information extended to Department

This section extends certain references in the Social Security Administration (Northern Ireland) Act 1992 to enable the Department for Social Development to share information with the Department of Finance and Personnel for the purposes of the Department of Finance and Personnel's functions relating to the administration of housing benefit.

Section 12: Power to alter existing agreements under Article 21 of the principal Order

This section amends Article 22 of the Rates (Northern Ireland) Order 1977. Subsection (2) provides that where the Department of Finance and Personnel makes an order altering the maximum level of allowance which may be allowed to a landlord under an agreement under Article 21 of the Rates (Northern Ireland) Order 1977, it may by order alter an allowance in an existing agreement. Provision is also made which enables the Department of Finance and Personnel, by order, to alter an allowance in relation to hereditaments of specified classes. The latter power will be available whether or not a change in the maximum level of allowance under Article 21 is being made. It is likely that this will be applied in respect of NIHE properties and also the domestic private rented sector (following the introduction of the rating of empty homes). Subsection (3) provides for such orders to be subject to affirmative resolution of the Assembly.

Section 13: Certain regulations under Article 23A of the principal Order to be subject to negative resolution instead of affirmative resolution

This section provides that regulations made only for the purpose of amending the list of registered housing associations whose properties are subject to standardised rating liability will be subject to negative resolution, rather than affirmative resolution, of the Assembly.

Section 14: Removal of exclusion of private dwellings from deemed completion days for new buildings

This section is consequential on the introduction of the rating of unoccupied domestic properties. It removes the exclusion of private dwellings from the completion notice process used to determine when properties are deemed to be completed for the purposes of rating unoccupied property.

Section 15: Temporary power to make grants to councils relating to maximum or minimum capital value changes

This section enables grants to be awarded to councils in respect of the 2009/10 and 2010/11 rating years, as regards the reduced maximum capital value of £400,000. This will be levied at 100% of the difference in the product of the rate, between a £500,000 and £400,000 threshold, in 2009/10 and 50% in 2010/11.

Section 16: Interpretation

This section provides for the interpretation of certain words and phrases used in the Act.

Section 17: Minor and consequential amendments

This section introduces Schedule 1 (Minor and consequential amendments), which makes minor and consequential amendments to certain statutory provisions.

Section 18: Repeals

This section introduces Schedule 2 (Repeals), which sets out the statutory provisions that are to be fully or partly repealed.

Section 19: Commencement

This section provides for the commencement of the provisions of the Act.

Section 20: Short Title

This section provides that the new legislation shall be known as the Rates (Amendment) Act (Northern Ireland) 2009.

HANSARD REPORTS

28. The following table sets out the date of the Hansard reports for each stage of the Act's passage through the Assembly.

STAGE	DATE
Introduction of the Act to Committee for Finance and Personnel – pre-introduction briefing	9 September 2009
Introduction to the Northern Ireland Assembly ("Assembly")	14 September 2009
Assembly motion on accelerated passage	22 September 2009
Second stage debate in the Assembly	22 September 2009
Committee stage – none due to use of accelerated passage procedure	-
Consideration stage in the Assembly	29 October 2009
Further consideration stage in the Assembly	6 October 2009
Final stage in the Assembly	13 October 2009
Royal Assent	3 November 2009

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