These notes refer to the Rating (Valuation) Act 1999 (c.6) which received Royal Assent on 26 May 1999

RATING (VALUATION) ACT 1999

EXPLANATORY NOTES

BACKGROUND

Valuation for non domestic rating

5. The legislative framework for non-domestic rating is set out in Part III of the Local Government Finance Act 1988 (c.41). Property which is subject to non-domestic rating is valued every five years. A valuation is carried out by a valuation officer. He is appointed by the Commissioners of Inland Revenue, and he has a duty to compile and maintain an accurate list of property subject to non-domestic rating (a 'rating list'). There is a local rating list for the area of each local authority to which non-domestic rates are payable. Certain special classes of property are entered on the central rating list for England or the central rating list for Wales, as appropriate. These classes of property consist for the most part of property of the former nationalised industries which extends beyond the boundaries of a single local authority. New rating lists come into force at five year intervals.

6. A rateable value, entered in the appropriate rating list in respect of each property, when multiplied by the national non-domestic rating multiplier specified annually by the Secretary of State, determines the amount of rates payable in respect of that property for each of the five years during which each rating list is in force.

7. The way in which the rateable value is determined is for present purposes virtually the same as that applicable under the previous legislation, the General Rate Act 1967 (c. 9). That Act consolidated legislation dating from 1925 and earlier. Methods and principles established in a considerable body of case law decided in relation to pre-1988 legislation are still considered to be relevant to the estimation of the rateable value for the purposes of the present system of non-domestic rating, though domestic property is no longer taxed in the same way.

The hypothetical tenancy

8. The rateable value is a notional annual rental value attributed to a property on the basis of certain assumptions. The valuer is required to determine the annual amount of rent which, if the property were vacant and available for letting on the open market, it would attract for a tenancy from year to year. The tenancy is a notional, or hypothetical one, not based on the actual characteristics of the landlord or the tenant (if there are a landlord and a tenant) or the terms of any tenancy to which the property may be subject.

9. The physical characteristics of the property, and its surroundings, which are taken into account in the valuation are, for the most part, those which are assumed to be attributable to the property on the day on which the list comes into force or, if there is a subsequent change of circumstances, on a day determined in accordance with regulations made by the Secretary of State.

10. The rental levels to be considered for the purposes of estimating rateable values, whether on the list first coming into force or in relation to its subsequent alteration, are however those applicable by reference to a day falling two years before the day

on which the lists in question come into force (the 'antecedent valuation date'). Thus unless there is a subsequent change of circumstances, the value attributed to a property on the day on which a list comes into force will apply for the calculation of each year's rates bill for that property until the next list comes into force five years later.

Responsibility for repair under the hypothetical tenancy

11. Under the legislation in force until 1990, there was a distinction drawn between industrial and other property for the purposes of valuation. For non-industrial property, valuation was on the assumption that the hypothetical landlord rather than the tenant was responsible for keeping rateable property in repair.

12. Under the pre-1990 case law, there was an established exception to the assumption that the physical characteristics of a property were to be taken as at the time applicable to the valuation. This exception was that, whatever the actual state of repair of the property, the landlord under the hypothetical tenancy was to be deemed to have put the property in a state of reasonable repair. Thus general disrepair actually in evidence on the property was disregarded. However, although the exception was widely believed to be equally applicable whether the landlord or the tenant was assumed to be responsible for repair under the hypothetical tenancy, the cases which established this were, like the leading case of *Wexler v Playle (VO)*, [1960] 1 Q.B. 217, decided in relation to non-industrial property.

13. Under the present legislation, which came into force on 1st April 1990, it is assumed for the purposes of estimating the rent that the hypothetical tenant under the assumed tenancy would be responsible for meeting the cost of repairs, and of any other outgoings required to maintain the property (paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988). It is normal practice for leases of non-domestic property to impose responsibility for repairs on the tenant. Such leases provide the evidence of market rentals which are used for estimating rateable values. When the present legislation was enacted, it was widely assumed that the previous case law in relation to the assumed state of the property would continue to be applicable. The valuation provisions of the Local Government Finance Act 1988 were constructed on this assumption.

14. In the case of *Benjamin v Anston Properties Ltd.* mentioned in paragraph 4 above, it was however held by the Lands Tribunal that because the exception mentioned in paragraph 12 above depended on an assumption that it was the hypothetical landlord who had put the property into repair, it was only applicable in cases where the hypothetical landlord was deemed to be responsible for such repair. Thus though the exception had been understood to apply in relation to non-industrial property under the legislation applicable before 1990, it can on the basis of the decision have no application under the present legislation as all rateable property falls to be valued on the basis that the tenant is responsible for repair.

15. The rating lists compiled in 1990 and 1995 have, however, as under the system that applied before 1990, been compiled on the assumption that the exception applied.