*These notes refer to the Rates (Amendment) Act (Northern Ireland) 2012 (c.1) which received Royal Assent on 28th February 2012*

# Rates (Amendment) Act (Northern Ireland) 2012

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## EXPLANATORY NOTES

### INTRODUCTION

1. These Explanatory Notes relate to the Rates (Amendment) Act (Northern Ireland) 2012 which received Royal Assent on 28th February 2012. 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 does not seem to require any explanation or comment, none is given.

### BACKGROUND AND POLICY OBJECTIVES

3. The Act 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 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 Act 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 agreed to moderate the impact of the levy, reducing it from an average of 20% to 15%.

The Act 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 agreed measures to improve the appearance of shopping areas without increasing rate liability for ratepayers. The Act 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 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 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 Act.

## 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.

## OVERVIEW

14. The Act has 8 sections 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: Additional rate in respect of large retail hereditaments for the years ending on 31st March 2013, 31st March 2014 and 31st March 2015*

This section 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.

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.

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.

### *Section 2: Temporary rebate for certain previously unoccupied hereditaments, etc.*

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

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.

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.

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.

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

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.

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.

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

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.

Paragraph (15) contains a general power to make an order, subject to the affirmative resolution, 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 Act.

### *Section 3: Window displays not to constitute occupation in certain cases*

This section 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.

### *Section 4: Restriction on same state and circumstances assumption for new NAV lists*

Subsection (2) of this section 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).

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

This section 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.

### ***Section 6: Interpretation***

This section provides for the interpretation of the phrase "the principal Order" as used in the Act.

### ***Section 7: Commencement***

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

### ***Section 8: Short Title***

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

## HANSARD REPORTS

The following table sets out the dates 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 | 11th January 2012 |
| Introduction to the Northern Ireland Assembly ("Assembly") | 16th January 2012 |
| Assembly motion on accelerated passage | 24th January 2012 |
| Second stage debate in the Assembly | 24th January 2012 |
| Committee stage – none due to use of accelerated passage procedure | – |
| Consideration stage in the Assembly | 31st January 2012 |
| Further consideration stage in the Assembly | 6th February 2012 |
| Final stage in the Assembly | 7th February 2012 |
| Royal Assent | 28th February 2012 |