

RATES (AMENDMENT) BILL

EXPLANATORY AND FINANCIAL MEMORANDUM

INTRODUCTION

1. This Explanatory and Financial memorandum has been prepared by Department of Finance and Personnel (“DFP”) 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 a comprehensive outline of the Bill. Where a clause or part of a clause or schedule does not merit an explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. The Bill contains three new provisions, namely:
 - an enabling provision to grant enhanced rate relief under Article 31 of the Rates (Northern Ireland) Order 1977 (“the 1977 Order”), subject to prescribed criteria;
 - a provision to provide for “Pigeon Racing” to be added to the list of specified recreations within the Schedule to the Rates (Recreational Hereditaments) Order (Northern Ireland) 2007; and
 - a substantive provision providing that the use of certain window displays in empty shops will not result in the shops being treated for the purposes of the 1977 Order as occupied, thus losing 50% empty property relief.
4. The Bill also contains ancillary provisions associated with these particular measures which are not substantive in nature relating to defined expressions and consequential repeals.
5. Article 31 of the 1977 Order provides for a reduction of 80% in the normal rate in respect of certain hereditaments which are shown in the NAV list as used solely for the purposes of a prescribed recreation. A prescribed recreation is a recreation, whether conducted indoors or outdoors, which, in the opinion of DFP, demands an appreciable degree of physical effort and which is of a kind specified by DFP by order. Such recreations are currently prescribed in the Rates (Recreational Hereditaments) Order (Northern Ireland) 2007. A link to that Order is contained here.
6. <http://www.legislation.gov.uk/nisr/2007/72/contents/made>
7. Where a hereditament is shown in the NAV list as used partly for the purposes of prescribed recreation, the 80% reduction is applied to the amount payable in respect of

- the part of the net annual value shown in the NAV list as apportioned to the part or parts of the hereditament used solely for the purposes of a prescribed recreation.
8. The Bill proposes that DFP should have a new regulation-making power to increase the level of rate reduction under Article 31 from 80% to 100% in circumstances set out in the Regulations.
 9. DFP is presently minded to use such a power to increase the level of rate reduction from 80% to 100% in the case of hereditaments in which intoxicating liquor is not sold. This is dependent, however, on further research and analysis by DFP and consultation with stakeholders and others.
 10. The Bill also provides for “Pigeon Racing” to be added to the list of specified recreations within the Schedule to the Rates (Recreational Hereditaments) Order (Northern Ireland) 2007. That list is prescribed under the aforementioned Article 31 of the 1977 Order. Prescription under Article 31 is typically done following consultation with sports bodies and representatives of district councils as required under Article 31(6) of the 1977 Order.
 11. The Bill also proposes that the use of certain window displays in empty shops will not give rise to rateable occupation and will not, therefore, result in the loss of 50% empty property relief. This will extend to the display of goods which are sold in neighbouring shops. A similar proposal had support during the 2012 review of commercial rating but was ruled out at that stage due to concerns about creation of a competitive advantage or a loophole within the rating system. The Department has consulted further on this since to reassure itself that this risk can be mitigated.

OPTIONS CONSIDERED

12. The new provision to allow DFP to increase rates reduction provided under Article 31 of the 1977 Order was developed against a backdrop of alternative policy proposals and consultation undertaken as part of the Rates (Relief for Community Amateur Sports Clubs) Bill [NIA Bill 59/11-16] which fell at second stage on 20th October 2015. Stakeholders and other Departments had raised issues to DFP on the consequences and risks associated with that Bill’s proposals. It was DFP assessment that there were major shortcomings in due process in bringing those proposals forward, despite DFP pointing these out well before the Bill was introduced.
13. Despite those concerns DFP always recognised the merit in some aspects of the Private Members Bill proposals. This Bill secures an enabling power that will afford the Department the opportunity to undertake targeted specific consultation for an 8 week period on the use of that power in order to set out the details of the scheme in subordinate legislation.
14. No consultation was undertaken in relation to the second clause. The clause is included in the Bill following the tabling of an amendment at Further Consideration stage.

15. As regards the third substantive clause in the Bill, regarding the treatment of window displays, the policy options open to Northern Ireland were distinct from those that may have applied in the rest of the United Kingdom on rating of empty premises.
16. In Northern Ireland we have retained empty property relief at 50% unlike England and Wales where full rates are payable and Scotland where 90% is payable. Therefore, the introduction of these measures in the rest of the United Kingdom would not provide the same level of savings to businesses as it would in Northern Ireland, because in the rest of the United Kingdom they pay virtually the same level of rates on empty properties as they do when the same premises are occupied.
17. Therefore there would not be the same risk of abuse in Great Britain as could be experienced in Northern Ireland.
18. The disregard from occupation for commercial window displays operates in a similar way to the provision for non-commercial window displays that was implemented through section 3 of the Rates (Amendment) Act (Northern Ireland) 2012 (“the 2012 Act”). The new clause builds on that provision in light of consultation outcomes last year. A link to section 3 of the 2012 Act is contained here.
19. <http://www.legislation.gov.uk/nia/2012/1/section/3>

OVERVIEW

20. The Bill consists of 7 Clauses and a Schedule.

COMMENTARY ON CLAUSES

Clause 1: Power for Department to increase rates reduction provided under Article 31 of the 1977 Order in certain cases

Subsections (1) and (2) of clause 1 will insert a new paragraph (5A) into Article 31 of the 1977 Order which enables DFP by regulations to provide that the reduction in the normal rate provided under that Article may be increased from 80% to 100% in cases prescribed in the regulations.

Subsections (1) and (3) of clause 1 will provide that regulations under the proposed Article 31(5A) will be subject to affirmative resolution control by the Northern Ireland Assembly. Subsection (2) outlines that the first set of Regulations under new paragraph (5A) shall be made no later than 30 September 2016.

Clause 2: Specified recreations: pigeon racing

Clause 2 provides for “Pigeon Racing” to be added to the list of specified recreations within the Schedule to the Rates (Recreational Hereditaments) Order (Northern Ireland) 2007.

Clause 3: Window displays not to constitute occupation under the 1977 Order in certain cases

Clause 3 will insert a new paragraph 10 into Schedule 8A to the 1977 Order. Sub-paragraph (1) of the new paragraph 10 will provide that a hereditament which is deemed to be occupied only by virtue of a window display is to be treated, for the purposes of the 1977 Order, as unoccupied. This will apply for the period beginning with the date on which the clause comes into operation and ending on 31st March 2017. Sub-paragraph (2) of the new paragraph 10 sets out the conditions which must be satisfied for this to apply, while sub-paragraph (3) of the new paragraph 10 prescribes the hereditaments to which the new paragraph will apply, namely, hereditaments that when last used were used for the retail provision of goods or services or, where the hereditaments were never occupied, constructed or adapted for those purposes.

Sub-paragraph (4) of new paragraph 10 enables DFP by order subject to affirmative resolution, to substitute a different date for the date for the time being specified in sub-paragraph (1) of that paragraph.

Sub-paragraph (5) of new paragraph 10 enables DFP by order subject to affirmative resolution, to amend the conditions and criteria in sub-paragraphs (2) and (3) of that paragraph.

Clause 4 and the Schedule: Repeals

Clause 4 and the Schedule contain repeals.

Clause 5: Interpretation

Clause 5 defines “the 1977 Order” for the purposes of the Bill

Clause 6: Commencement

Clause 6 provides for commencement.

Clause 7: Short title

Clause 7 sets out the short title

FINANCIAL EFFECTS OF THE BILL

21. The provisions included in the Bill do not have a significant impact in terms of public service manpower or finances.
22. There are no financial implications associated with the enabling power for sport and recreation.
23. If the enabling power is subsequently used to allow for the provision of 100% exemption for unlicensed clubs the cost will not exceed £750,000 per annum.

24. The cost of the inclusion of ‘pigeon racing’ list of specified recreations within the Schedule to the Rates (Recreational Hereditaments) Order (Northern Ireland) 2007 has not been assessed by the Department, and is included in the Bill following the tabling of an amendment at Further Consideration stage.
25. There is likely to be a modest cost associated with the commercial window display provision. The underlying purpose of the measure is to help struggling retail areas; in doing so the measure may help secure rate revenue that would otherwise be lost by traders going out of business due to the blight of neighbouring empty shop fronts.

HUMAN RIGHTS ISSUES

26. The provisions of the Bill are considered compatible with the Human Rights Act 1998.
27. Having considered the proposed Bill for the purposes of section 75 of the Northern Ireland Act 1998, the Department has concluded that no section 75 issues arose in the context of the Bill as introduced.

EQUALITY IMPACT ASSESSMENT

28. The Department will engage in a separate section 75 assessment before any policy is implemented through the new Article 31 enabling provision. Such an assessment will accompany the subordinate legislation brought forward to the Assembly in due course.
29. Section 75 issues resulting from the inclusion of ‘pigeon racing’ within list of specified recreations within the Schedule to the Rates (Recreational Hereditaments) Order (Northern Ireland) 2007 have not been assessed by the Department. The clause is included in the Bill following the tabling of an amendment at Further Consideration stage.
30. No section 75 issues presented themselves in light of the further consultation exercise on disregarding occupation on commercial window displays.

SUMMARY OF THE REGULATORY IMPACT ASSESSMENT

31. The Department will be conducting a Regulatory Impact Assessment before any new subordinate legislation, made under the revised Article 31 powers is brought before the Assembly.
32. Regulatory Impact issues resulting from the inclusion of ‘pigeon racing’ within list of specified recreations within the Schedule to the Rates (Recreational Hereditaments) Order (Northern Ireland) 2007 have not been assessed by the Department. The clause is included in the Bill following the tabling of an amendment at Further Consideration stage.

33. No issues relating to regulatory impact were raised as part of the consultation exercise conducted by the Department in relation to the commercial window display provision. Given the modest nature of that provision and the safeguards within the associated clause the Department has assessed that there is no impact in this area.

LEGISLATIVE COMPETENCE

34. The Minister of Finance and Personnel had made the following statement under section 9 of the Northern Ireland Act 1998:
35. “In my view the Rates (Amendment) Bill would be within the legislative competence of the Northern Ireland Assembly.”

RECOMMENDATION

36. The Minister of Finance and Personnel has 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.”