



Government Response to the Housing, Communities and Local Government Select Committee Report on Pre-legislative Scrutiny of the Draft Non-Domestic Rating (Property in Common Occupation) Bill

Presented to Parliament
by the Secretary of State for
Housing, Communities and Local Government
by Command of Her Majesty

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Introduction

1. The established and recognised rule in business rates was for many years that businesses which occupied more than one contiguous (touching) unit of property received one rates bill. This was cast into doubt by a Supreme Court decision in *Woolway (VO) v Mazars* [2015] UKSC 53 and as a result some ratepayers saw their rate bills increase.
2. At Autumn Budget 2017 the Chancellor announced that the Government would reinstate the previous practice of the Valuation Office Agency. The Draft Non-Domestic Rating (Property in Common Occupation) Bill (now part of the Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Bill) delivers upon this commitment.
3. The Government recognised this was a technical and complex area of the law and, while wanting to move quickly to help ratepayers, also wished to prepare the legislation in partnership with rating practitioners. We therefore published the legislation in draft on 29 December 2017 for comments by 23 February 2018.
4. In the weeks that followed officials from Ministry of Housing, Communities and Local Government held several meetings and seminars with rating practitioners to discuss the draft legislation and the Minister for Local Government answered questions from the Select Committee. Having considered reactions from these engagements and the responses to the consultation the Government made a number of changes to the draft legislation. The Government is pleased to note that the final legislation is recognised as having met the objectives of our policy by rating practitioners as well as the Select Committee.

Responses to the recommendations

Recommendation: We ask the Government to assess what lessons can be learned for future best practice related to the publication of draft Bills. Particular consideration should be given to processes prior to a subsequent Bill's presentation to Parliament, in order to ensure that departments have appropriately completed any engagement on pre-legislative scrutiny with Parliamentary committees. The Cabinet Office should also take steps to ensure that all departments are fully aware of the processes related to pre-legislative scrutiny of draft Bills and their engagement responsibilities with Parliament and its committees, and that its guidance is clear in this regard.

Government's response

5. The Government fully supports the normal pre-legislative scrutiny process for draft Bills. The normal timetable for carrying out scrutiny is explained in the Guide to Making Legislation. The Cabinet Office regularly reviews its guidance and how it engages with Departments to ensure they are aware of the pre-legislative process.
6. In the case of the Non-Domestic Rating (Property in Common Occupation) Bill, the Government wanted to move as quickly as practicable to change the law to allow ratepayers to see refunds on their rate bills. We therefore allowed 8 weeks technical consultation on the draft provisions. By working closely with rating practitioners and stakeholders during these 8 weeks, and by holding stakeholder events to hear views, we were able to gather comments and amend the draft Bill to reflect responses. This allowed us to introduce a Bill quickly thereafter which the rating practitioners consider to be technically sound.

7. At the time of preparing the draft legislation the Government had considered the normal timetable for pre-legislative scrutiny as described in paragraphs 22.23 to 22.28 of the Guide to Making Legislation and was aware that we planned to move more quickly than was usual. Therefore, the Minister for Local Government wrote to the Select Committee when the consultation was published explaining that we intended to allow 8 weeks for consultation and that this shorter timetable was necessary to support ratepayers. The Government understood this would allow little time for the Select Committee to prepare a report and, therefore, promptly responded to the Committee's requests for further information. We provided all copies of the responses to the consultation alongside the summary of responses when published on 28 March.
8. In this case, delaying introduction of the Bill to allow for further scrutiny would have meant delaying when businesses would see refunds on their business rates. That is not something which would have been supported by businesses or groups such as the Federation of Small Businesses. However, the Government agrees with the Select Committee that it would have been desirable to hear the Committee's recommendations prior to introducing the Bill. In the future the Ministry of Housing, Communities and Local Government will consider carefully the time allowed for the Select Committee to consider and report on draft legislation before that legislation is introduced in Parliament.

Recommendation: We therefore recommend that as early as possible during the progress of the Bill the Government should:

- a) take steps to quantify by whatever means possible the potential effect on individual local authorities of the provisions in the Bill; and***
- b) explain in detail why it does not now plan to honour its Autumn Budget 2017 commitment to compensate local government fully for the loss of income resulting from the provisions.***

Government's response

9. Prior to the Supreme Court decision the practice of the Valuation Office Agency in relation to contiguous properties in the same occupation was widely accepted and understood. The change following the Supreme Court decision was fundamental to the meaning of a hereditament, was not sought by either party to the appeal and was unexpected. The imposition of the 'staircase tax' was not an intentional Government policy decision: rather the policy has been to reverse the legal ruling through legislation and restore the previous practice. The Government therefore remains of the view that the additional revenue flowing from that decision is an unexpected windfall. Accordingly, the Bill will return this windfall to ratepayers and no compensation will be payable to local government.
10. The Government recognises the importance of, as far as is possible, quantifying the impact of the Bill. The Ministry of Housing, Communities and Local Government and the Valuation Office Agency have examined in detail whether it is possible to measure at individual local authority level the impact of the Supreme Court decision and then the Bill on rateable values and local authority incomes. The challenges behind quantifying these impacts were described in the Minister for Local Government's letter of 8 March to the Committee.

11. The Valuation Office Agency will be able to track the outcome of new proposals on the 2010 rating list made once the Bill has come into force. However, not all amendments to the 2010 rating list to implement the Bill will arise from those new appeals and the changes to rateable values as a result of those appeals may also cover factors unrelated to the Bill. Nor will it be possible to track the impacts of the Bill on the 2017 list as the measure will be implemented through the Valuation Office Agency's business as usual practices. Therefore, while the Government continues to discuss this with the Valuation Office Agency and local government, it remains the case that it is not possible to give a full estimate of the change in rateable value due to the Bill.
12. The Government understands that the initial documentation could have been clearer as to whether local authorities would be compensated for the measures in the Bill. The Ministry of Housing, Communities and Local Government moved quickly after the Budget to remove this uncertainty and issued a letter to all local authorities two days after the Budget to make clear that local government would not be compensated for the abolition of the 'staircase tax' measure. This was restated in the consultation document accompanying the draft Bill.