EXPLANATORY MEMORANDUM TO

The Lands Tribunal (Amendment) Rules (Northern Ireland) 2015

S.R. 2015 No. 302

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Northern Ireland Courts & Tribunals Service (NICTS) to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2. The Statutory Rule is made under powers conferred by section 9(1) of the Lands Tribunal and Compensation Act (Northern Ireland) 1964 and is subject to the negative resolution procedure.

2. Purpose

2.1. This Statutory Rule is required in order to amend the fees charged by the Lands Tribunal for Northern Ireland (the Tribunal) for non-domestic rating valuation appeals and for administrative services specifically certifying and photocopying copies. The purpose of the fee amendment is to achieve full cost recovery in the provision of non-domestic rating valuation appeals.

3. Background

3.1. The fees currently charged by the Tribunal do not reflect the current costs associated with the non-domestic rating valuation appeal process as they have not been reviewed since 1976.

4. Consultation

4.1. Public consultation for the proposals started on 3rd October 2014 and concluded on 31st December 2014. From approximately 300 consultees, five substantive and two nil responses were received. These generally recognised the need to increase the fee charged for the non-domestic rating valuation appeals, however, concerns were raised about the equitability of the proposals, particularly in relation to small businesses and the potential risk of preventing access to justice. In response to this, the proposed fee structure is variable, with the fee based on 1% of the applicant's pre-appeal Net Annual Value (NAV), which addresses the access to justice issue by ensuring that smaller businesses pay a more affordable fee that is relative to the size of their premises.

5. Equality Impact

5.1. The proposal for the revised fee structure was screened for an equality impact and no equality issues were identified.

6. Regulatory Impact

6.1. A Regulatory Impact Assessment (RIA) has been completed and findings indicate that an increase in fees for non-domestic rating valuation appeals will have an impact on businesses in Northern Ireland, but this is thought to be moderate. The proposed fee structure allows for the size of the NAV

to be taken into account in the assessment of the fee applied and is therefore likely to be more sensitive to small businesses.

6.2. Within the RIA four options were considered: Option A: "A fixed single fee of £2,000", Option B: "A single fee based on the band the applicant's NAV falls into", Option C: "A single fee based on 1% of applicant's pre-appeal NAV subject to a minimum fee of £250 and a maximum fee of £15,000" and Option D: "Do nothing".

6.3. Option A allows for an element of cost recovery and could limit the number of frivolous appeals, allowing a better targeting of resources. However, it would mean a small business with a lower NAV paying the same fee as a larger business with a higher NAV, and it was thought that the cost may be prohibitive for those smaller businesses.

6.4. Option B addresses the equitability issue in Option A as the fee is proportionate to business size. Weighting of the NAV bands means that most of the properties would fall into the lower cost bands, which is beneficial to smaller businesses. However, there is no direct correlation between the size of NAV and profitability of business, and larger NAV properties would bear more cost for the same service.

6.5. Option C allows for a more proportionate cost based on size of business.

6.6. Option D allows uninhibited access to the appeals framework and could encourage frivolous appeals. There is also no allowance for any element of cost recovery, which places pressure on the appeals structures and increases the cost to taxpayers in funding appeals.

6.7. NICTS has considered the potential impact on the different sizes of businesses, although any impact is difficult to predict. While each option ensures that all properties would be subject to the same fee regime, Options B and C, which allow for the size of a property to be taken into account in the fee value, are likely to be more sensitive to small businesses.

6.8. NICTS's final policy position is to adopt Option C as the fees model. Overall, Option C best strikes the balance between ensuring access to justice and meeting cost recovery objectives. This option provides a single upfront fee mechanism which is in line with other NICTS business areas.

6.9. Option C also avoids the "cliff edge" scenario that would inevitably be encountered with Option B where, for example businesses with almost identical NAVs could fall within different fee bands, which could be viewed as unfair.

6.10. In addition to increasing the fees associated with appeals, NICTS will also implement revised administrative fees within the Tribunal for providing certified copies and photocopies of an order, award or decision. This is in line with the fees charged in other NICTS business areas.

6.11. On balance NICTS has judged that Option C best meets the needs of the Tribunal and its customers.

7. Financial Implications

7.1. An increase in fees will result in additional income for NICTS but the fundamental aim of the proposals is cost recovery.

8. Section 24 of the Northern Ireland Act 1998

8.1. NICTS is satisfied that no issues arise regarding section 24 of the Northern Ireland Act 1998.

9. EU Implications

9.1. Not applicable.

10. Parity or Replicatory Measure

10.1. The proposed fee structure is comparable to arrangements that already exist in the rest of the United Kingdom for the equivalent appeals service.

11. Additional Information

11.1. Not applicable.