Communities and Local Government Committee

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Rishi Sunak MP
Parliamentary Under Secretary of State (Minister
For Local Government)
Ministry of Housing, Communities and Local Government

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Dear Rishi,

Draft Non-Domestic Rating (Property in Common Occupation) Bill

Firstly, may I congratulate you on your ministerial appointment. I and the Committee look forward to engaging with you constructively on a wide variety of local government issues as we did with your predecessor who was a regular visitor to the Committee. I am writing to you now in response to the letter of 3 January from your predecessor regarding the publication of a consultation document and draft Bill on business rates in multi-occupied properties.

As you know, the default position should be that Bills will be published in draft and submitted to Parliament for pre-legislative scrutiny. If a Bill is published, the expectation is that pre-legislative scrutiny will be conducted by the competent committee, should it wish (Cabinet Office, *Guide to Making Legislation*, July 2017, chapter 22). Whilst also inviting views from the Committee in your letter, it seems that in this case it is the Government's intention that the primary objective of the draft Bill and short eight-week consultation are to elicit responses from rating experts and other key stakeholders. This may be justified given the short nature of the draft Bill and its policy objective which seeks to return the Valuation Office Agency's practice, which dates back more than 50 years, to its position prior to the Supreme Court judgment to which you refer. Equally, it is quite possible that there may be broad consensus among these stakeholders regarding the policy objective. But Committees conducting pre-legislative scrutiny have often benefitted from seeing the results of public consultation before reporting, which is why departments are urged to consider the timetable if issuing a draft Bill at the same time as consulting the public (*Guide*, para 22.32). The views of stakeholders, and any consensus among them, can often shape a committee's approach to scrutinising a draft Bill.

In this context, appended to this letter please find a number of questions related to the consultation and draft Bill, alongside more detailed commentary, from the Committee. I would be grateful if you could respond to these questions within the next four weeks. This will allow the Committee to consider your response and whether there is a need for us to question the Government any further on this issue. You will know that we have invited you to appear before the Committee pursuant to our separate inquiry on business rates retention on 26 February. While this inquiry is clearly not related to the draft Bill, this session may also be an opportunity, if necessary, to raise any further questions or issues that the Committee has on the draft Bill with you.

Given their role and interest in the wider process of pre-legislative scrutiny, I am copying this letter to the Chair of the Liaison Committee and the Minister for the Cabinet Office.

Clive Betts MP
Chair, Communities and Local Government Committee

Q1. Is it correct as a matter of policy to consider contiguous properties as one hereditament where they are in common occupation?

The consultation document (paras 22-32) sets out the Government's intention to reinstate the practice of the Valuation Office Agency (VOA) prior to the Supreme Court judgment in *Woolway v Mazars* [2015] UKSC 53. The practice was to treat contiguous properties as a single hereditament when occupied by the same person. The VOA's approach to the meaning of contiguous was to treat two units of property as being contiguous where they were separated by a wall or floor/ceiling. Voids between otherwise contiguous offices (possibly containing services) were not considered by the VOA to prevent the units from being contiguous. The practice which the Government intends to reinstate is clear but it has provided no reason for its policy. In this context:

a. *Why is this particular treatment of hereditaments attractive to the Government such that it wants to enshrine it in legislation?*
b. *Why is this approach preferable to the view expressed in Mazars that to be assessed as a single hereditament, two contiguous properties must be in the same occupation and must not be separated by common parts or facilities?*
c. *Is the Government's approach based solely on a desire to enable the VOA to return to is previous practice or is there a more principled view held by Government which is not evidenced in the consultation document?*

We note that the consultation exercise doesn't extend to the principle behind the policy decision to reverse the effect of the views expressed by the Supreme Court. In answering this question, we would be grateful for information about what consultation and analysis was undertaken before coming to the decision.

Q2. How will the draft Bill be implemented?

The Government has made clear its intention to return to the position prior to the *Mazars* decision but it is not clear how this is to be achieved. The draft Bill makes no provision for secondary legislation to permit amendment of rating lists already compiled.

The consultation document (at paragraph 34) refers to the 2010 rating list, noting that some ratepayers may have had the *Mazars* decision backdated to 1 April 2010 in relation to their property. It explains the Government wants ratepayers to have the right to request a reassessed rateable value on the basis of previous VOA practice (paragraph 35 of the consultation document), but that there is no suitable procedure available for alterations to the 2010 list. The right would only apply to ratepayers affected by *Mazars* who think that two or more hereditaments ought, as a result of the draft Bill, to be merged to form one hereditament (paragraph 36 of the consultation document). The Government also states that it will ensure that the former 2010 list proposals and appeals process will apply. Ratepayers will be able to discuss the implications of a backdated change to the 2010 list with the VOA and only proceed if they wish, thus ensuring that the previous VOA practice is only applied in the case of the 2010 list if the ratepayer desires it (paragraph 37 of the Consultation Document)

Though section 55(6)(a) of the Local Government Finance Act 1988 permits retrospective alteration of the rating lists, the Government envisages retrospective amendment to implement new law (reinstating old VOA practice). There are no additional powers in the draft Bill for alteration of lists, so the Government will need to ensure that section 55(6) achieves its objectives in relation to the 2010 list. It is not clear that this will necessarily be the case: although Section 55(6) allows retrospective alteration the intention which the Government is expressing is that the basis upon which alterations should take place is changed, aligning law with practice prior to the *Mazars* decision.

Alternatively, fresh legislation with retrospective effect will be needed. Retrospective legislation is unusual; it is generally reserved for urgent situations or for those where the UK is found to be in breach of international obligations. It would be helpful to know why the Government feels that it has to act in this way to address what might be classed as a sectoral issue.

In summary, the implementation of the draft Bill requires a detailed explanation to ensure that the Government's plans are clearly understood and are achievable without the need for further legislation.

Q3. Does the Government propose to ensure that no local authority's funding is reduced in respect of any period before the draft Bill comes into force, as a result of the draft Bill? If so, how?

The consultation document explains, in respect of periods from 2010 to date, that ratepayers may have seen their rateable value increase (eg, by loss of 'quantum discount' on valuation or Small Business Rate Relief, or due to rounding on multiple hereditaments). As we note above, the Government intends to allow ratepayers to apply for reassessment of rateable value retrospectively back to 2010. So, the rate bills for some ratepayers will presumably be reduced. There will be no corresponding increase in the bills of others; there would doubtless be problems retrospectively increasing taxation.

Paragraph 40 of the consultation document is unclear but appears to suggest that local authorities will not be negatively impacted by the retrospective reassessments:

> *For local government, any additional business rates revenue arising from the Supreme Court decision which they would have held under the rates retention scheme will be offset by the reinstatement of the previous practice of the Valuation Office Agency. The overall impact on rates income will, therefore be nil and no compensation will be payable under the rates retention scheme.*

However, this paragraph leaves unclear what the Government believes will be the impact on funding of individual local authorities in respect of the period from April 2010 until commencement of the draft Bill, and the reasons for that belief.

Q4. Has there been an impact assessment? If so, please provide us with a copy.

Draft Bills should be published as command papers (Cabinet Office, *Guide to Making Legislation*, July 2017 para 22.14), and an impact assessment made available alongside Bills published in draft for pre-legislative scrutiny (paras 14.5 and 22.14). We would welcome the Government's explanation for the decision not to follow this good practice.

In addition to any impact on ratepayers, and on local authorities as recipients of a proportion of non-domestic rates, we would expect to see an assessment of the impact on VOA and local authorities in implementing the draft Bill.

Q5. Why does the department take the view—as set out at paragraph 29 of the consultation document—that a void between two otherwise contiguous properties will not prevent them from being treated as contiguous under the draft Bill?

It is not immediately obvious to the Committee why this would be the case, or that this is the effect of the draft.