ANNEX A

FOI DOF/2025-0421

Request

1. How many non-domestic premises are in receipt of the industrial derating grant for each of the last five years.
2. Without identifying the recipient, outline how much the top 10 recipients each saved on non-domestic rates through the grant in the last five years
3. A copy of internal documentation that outlines how the grant is determined and applied.

DoF response

I can confirm the department holds some of the information requested.

Individuals and staff names/details are withheld (redacted) as this information is exempt under Section 40(2) of the Freedom of Information Act because such disclosure would contravene the first principle of the Data Protection Act 2018, which requires that personal data must be processed lawfully, fairly and in a transparent manner. Disclosure would be unfair, because the sole trader would not expect that this information would be made available to others.

Section 40(2) exempts personal information from disclosure if that information relates to someone other than the applicant and if disclosure of that information would contravene one of the data protection principles in the General Data Protection Regulations (GDPR) (or certain other provisions of the Data Protection Act 2018).

Having considered all the information contained within the Lawfulness, Fairness and Transparency Test (which we are providing as a separate attachment – Annex D), the department has established that, on balance, there is no lawful basis for the disclosure of third-party personal data falling within the scope of the request of which the requester is not the data subject.

Industrial Derating is not considered a grant but is considered a relief and is processed as a rate reduction by Land & Property Services (LPS). Please note that all figures provided have been extracted from LPS General Ledger data as at 31st March in each rating year. Awards may relate to previous rating years.

1. Table 1 below details the total number of non-domestic properties where Industrial Derating of greater than £0 was paid, for each of the last five rating years.

Table 1: Number of properties receiving Industrial Derating relief by rating year

Rating Year	Number of non-domestic properties
2020/21	4,518
2021/22	4,558
2022/23	4,540
2023/24	4,568
2024/25	4,510

2. Table 2 below details the amount of rate reduction applied through Industrial Derating relief for the top 10 recipients in each of the past five rating years. It should be noted that awards may relate to more than one rating year.

Table 2: Top 10 amounts of Industrial Derating relief awarded by rating year

2020/21	2021/22	2022/23	2023/24	2024/25
£695,596	£2,428,443*	£810,036	£841,165	£622,425
£605,038	£798,426	£618,892	£547,541	£580,361
£503,825	£607,239	£518,002	£535,723	£577,147
£483,961	£508,790	£491,869	£526,856	£550,708
£462,373	£483,966	£480,100	£508,350	£523,358
£431,209	£471,059	£472,961	£500,693	£503,437
£417,599	£456,243	£462,878	£496,511	£493,990
£399,911	£435,459	£443,343	£447,342	£467,905
£376,716	£417,603	£399,999	£446,345	£464,193
£362,113	£380,203	£385,732	£408,737	£455,008

*This reflects 5 years backdating of relief following reassessment of NAV.

3. Copies of relevant internal documentation are attached as ANNEX B-C

The link below provides information on eligibility for Industrial Rating relief and how to apply

Industrial Derating | nibusinessinfo.co.uk

INDUSTRIAL DERATING

Background

Industrial derating was first introduced in Great Britain and Northern Ireland in 1929 at a general level of 75% relief. The economic rational underlying its introduction was twofold

- Between 1924 and 1929 manufacturing industry in the UK faced considerable foreign competition and the introduction of rate relief was seen as a way of helping industry to compete.
- Secondly, rates, as a tax on the value of property and occupation as opposed to a tax on profits, were thought to have a disproportionate impact on industrial undertakings which tend to require more extensive premises that, for example, retailing operations.

The level of relief was reduced to 50% in England and Wales in 1959 and totally abandoned in 1963. In Scotland, although formally repealed by the Local Government [Financial Provisions] [Scotland] Act 1963, the system was for many years preserved by Statutory Instrument with the deductions from net annual value to reach rateable value, formerly 50% having reduced progressively to 10% for the year 1994/95 before finally disappearing at the 1995 general revaluation

In 1983 a decision was taken to increase industrial derating in Northern Ireland from 75% to 100% - Article 3 (4)(1) of the Rates [Amendment No 2] [Northern Ireland] Order 1983. This was part of a package of economic measures, known as the “New Economic Initiative” which was introduced in the light of the serious erosion of the manufacturing base and the severe difficulties faced in attracting inward investment to Northern Ireland at that time. The increased relief was intended to provide some support to industry by assisting liquidity and to compensate in part for the additional transport, energy and insurance costs borne by Northern Ireland industry compared with Great Britain.

In December 1997 the NAV attributable to industrial hereditaments or parts thereof in the valuation list was £122,656,948. The overall average non-domestic rate poundage for 1997/98 was 41.39p, which means that the revenue to Government that is foregone as a result of 100% industrial derating is circa £50.76 million per annum

What is an Industrial Hereditament?

Schedule 2 to the Rates [Northern Ireland] Order 1977 [the 77 Order] defines an industrial hereditament. The definition contained in the schedule was amended by Article 8 of the Rates [Amendment] [Northern Ireland] Order 1996. The amended definition is a follows

Paragraph (1)

- Industrial hereditament means a hereditament, exclusive of any part of the hereditament for which the net annual value is apportioned under Article 44(2) as being used for the purpose of a private dwelling, which is occupied and used as –
  (a) a mine of quarry; or
  (b) subject as provided in this Schedule, a factory

Paragraph (2) (a)

- For the purpose of sub-paragraph (b) of the definition of "industrial hereditament" –
  (a) a hereditament shall be deemed not to be occupied and used as a factory if it is primarily occupied and used for any of the following purposes, or for a combination of any such purpose-
  (1) the purposes of a retail shop;
  (2) the purposes of distributive wholesale business;
  (3) the purposes of storage;
  (4) the purposes of a public supply undertaking;
  (5) any other purpose whether or not similar to any of the foregoing, which are not those of a factory

An industrial hereditament is then a factory that is not primarily occupied and used for any of the excepted purposes listed at paragraph 2(a) of the 77 Order.

What is a factory?

The definition of a "factory" is found in Section 175 of the Factories Act [Northern Ireland] 1965 as follows:

175 (1) Subject to the provisions of this section, the expression "factory" means any premises in which, or within the close or curtilage or precincts of which, persons are employed in manual labour in any process for or incidental to any of the following purposes, namely: -

(a) the making of any article or part of any article; or
(b) the altering, repairing, ornamenting, finishing, cleaning, or washing or the breaking up or demolition of any article; or
(c) the adapting for sale of any article

being premises in which, or within the close or curtilage or precincts of which, the work is carried on by way of trade or for purposes of gain and to or over which the employer of the persons employed therein has the right of access or control.

If then you find that within the curtilage of a premises there is an article, that the article is being manufactured, altered of adapted, that the process involves manual labour and that the whole process is for the purposes of trade or gain then technically there is a factory.

The Principle in Moon's case

At this point it is relevant to consider a fundamental rule that was established in the case of Moon v London County Council [1931] AC 151. This is that when considering whether or not there is a factory or indeed whether or not there is an industrial hereditament it is the use to which the hereditament itself is put which alone can be considered not the use made elsewhere of the products of the hereditaments or of the work that is carried out there. Thus a factory occupied by London County Council to print tickets, bills etc for use on the council's tramway was held to be a factory.

An Article

Turning then to look in some more detail at the various elements that together comprise a "factory" the first of these is "an article".

In the case of Hoare v Robert Green Ltd [1907] 2 KB 315 it was held that the word "article" means something made or manufactured. This relatively narrow view was however rejected by the Appeal Court in Longhurst V Guilford, Godalmining and District Water Board [1963] AC 265. Lord Reid said that the word "article" appeared to him to be capable of meaning anything corporeal [having a material body] and Lord Guest said that in his opinion the word "article" must be given its ordinary

meaning in the English language and so held that the water in the case in question was "an article".

An electrical signal was held by the House of Lords not to be an article – Ulster Television Ltd v The Commissioner [1968] NI 104 but in Softwear Ireland Ltd V The Commissioner [VR/21/1984] the Tribunal said:

> "Whether an electro-magnetic signal is an article has no effect for that is merely the means by which the data is transferred to the disk or tape. The article is the disk or tape…"

A carcase in a slaughterhouse is an article but a live animal is not – Fatstock Marketing Commission Ltd v Morgan [1958] 1 All E R 646 CA. Although the live animals were not articles the process carried out on the carcasses after slaughter constituted the primary purpose of occupation and use of the hereditament. See also Unipork Ltd v The Commissioner [VR/20/1979].

In other cases the "article" was considered to be a quantity of goods rather that a single item thus in John Kelly Ltd V The Commissioner the "article" was held to be a quantity of coal rather that a single piece.

As can be seen from the above the definition of "an article" has been given a wide meaning and although the exceptions noted above must be noted, almost anything can be regarded as "an article".

Making; Altering; Repairing; Finishing; Adapting for sale

The phrase "make" should not cause too much difficulty, the dictionary definition being to fashion or create.

The question of what was meant by the word "repairing" was raised in the case of British Helicopters Ltd v Assessor for Orkney and Shetland [1982]. The hereditament was used for the maintaining, repair, and overhaul of helicopters used by the ratepayers in supplying a service for the offshore oil industry. Much of the work done and time spent was concerned with component changes and overhaul. It was argued for the Assessor that time spent on these matters was not time spent on repair. In the decision, Lord Ross dealt with this point as follows:

"In Assessor for Perth v Shields Motor Car Co. Lord Patrick said that repair means 'restoration to a sound condition after injury or decay' but with all respect I am of the opinion that this is too narrow a definition. In the same case Lord Sorn stated that there was nothing in the context to justify giving 'repair' a restricted meaning and I respectfully agree with him. In the Shorter Oxford English Dictionary the primary meaning of 'repair' is given as 'the act of restoring to a sound or unimpaired condition'. In my opinion replacing a component of a helicopter after a fixed period of flying hours is just as much repairing the helicopter as replacing a component, which has actually become defective; both operations serve to restore the helicopter to a sound or unimpaired condition. I see no reason to confine 'repair' to replacement of parts which have actually been found to be damaged. So far as overhaul is concerned I find myself in agreement with Lord Sorn in the last-mentioned case where he stated

‘when replacements are incidental to overhaul, it seems to me that the whole of the work done falls within the description of repair work’.”

The definition of repair is then a wide one and again should not cause too much difficulty. We have however on occasion difficulty with the next phrase i.e. *altering or adapting* for sale.

Viscount Dunedin in Hines v Eastern Counties Farmer’s Co-Operative Association Ltd [1931] AC formulated one of the principal tests as to whether an article is altered of adapted in the following terms:

“You must look at what is the finished article to be turned out. If that finished article is only put into the condition of a finished article by the processes to which it has been subjected in the hereditament, then the process will fall within the expression ‘altered or adapted for sale’.”

In Grove v Lloyds British Testing Company Ltd [1931] AC he observed:

“I think ‘adapting for sale’ points clearly to something being done to the article in question which makes it a little different from what it was before.”

A number of cases involve goods in bulk

In Hudson’s Bay Co. v Thompson [1958] the court of appeal held that the sorting, grading and matching of furs and their arrangement in matched lots of skins of uniform grade for sale at the company’s fur auctions was not an industrial process. This decision was however overturned by the House of Lords. Viscount Simonds in his judgement said:

“The processes which adapt the contents of crates of eggs, bales of furs, and ‘amorphous masses’ of rags for sale are widely different, but in all something takes place which transforms an unsaleable article into one that is legally and commercially saleable. [I interpolate that, when the statute speaks of adapting for sale, it must mean a commercial sale; presumably even an ‘amorphous mass’ of rags or an unsorted bale of furs might be saleable at some price to somebody].

In the judgement their Lordships were influenced by the fact that the sorting and grading of the skins was a highly skilled process and that the method of selling skins in graded lots produced better prices that sales of skins by owners individually i.e. it was commercially led. That being the case there was an “adaption for sale” and the hereditament was entitled to be distinguished as industrial.”

In the case of Wilkins v Paul Pac Ltd. the Lands Tribunal looked at a case which concerned a hereditament used for the cleaning, trimming, sorting, and packing in polythene bags of vegetables and fruit. The type of processes that were applied to the various products included removal of dirt, washing, sorting, removal of defective and undersize specimens, removal of outside leaves etc. It was held by the Tribunal that as some process was applied to the bulk of each variety of fruit and vegetable there was an adaption for sale.

In a similar case which was heard by the Lands Tribunal in Northern Ireland – George Robinson trading as Robipak v The Commissioner VR/10/93, the processing of potatoes was held to be an adaption for sale but the processing of sprouts, apples and onions was not.

Another category of "bulk" cases is where the articles processed cannot be sold by law until they are sorted and graded e.g. eggs – see McAllister v The Commissioner of Valuation [1954] NI 54 or coal – see Kelly v the Commissioner of Valuation VR/2/1978

Manual Labour

Almost all types of work involve some amount of manual labour but this does not mean that this condition is always satisfied. The rational was explained by Lord Justice Fry in the case of Bound v Lawrence [1982] 1 QB 226 when he said:

"It is to be observed that it is difficult to imagine any work done by man so purely intellectual as to require no kind of work with the hands and the converse is equally true, that there can hardly be work with the hands that requires no intellectual effort. If, then, the words 'manual labour' are to have the full significance, which could be put on them, they would be extended to every kind of employment. That cannot be the true meaning of the statute, but some more confined interpretation must be arrived at."

In deciding what this "more confined interpretation" is we can turn to the case of J & F Stone Lighting and Radio Ltd v Haygarth [1966] ALL ER 539. In that case Lord Pearson said:

"A person is not employed in 'manual labour' for the purpose of the Acts if his occupation is primarily or substantially an activity of a different kind and the manual labour that he does is merely ancillary or accessory to that activity".

The Stone Lighting case involved a TV engineer who was repairing television sets. It was agreed that he was intelligent and highly trained but this was incidental to the manual labour which he carried out i.e. the manual labour provision was satisfied.

Relevant cases decided by the Lands Tribunal in Northern Ireland include Emerald Records Ltd v The Commissioner [VR/22/83] and Softwear Ireland v The Commissioner [VR/21/84]. In the "Emerald" case the Tribunal said that the artistic and creative work carried out by the appellant was predominate – any manual work done in moving light acoustic panels to alter sound, move slide controls on the recording desk console when mixing etc being merely ancillary. The same theme was echoed in "Softwear" where highly qualified engineers were engaged in writing computer programmes.

The definition of a factory predates much modern technology and we run into difficulty where modern processed have taken over a trade. We have some guidance from the Tribunal as the issue was raised in Newtownards Chronicle Ltd v The Commissioner [VR/4/1992]. The Tribunal adopted a liberal interpretation as follows:

"It is apparent to the Tribunal that prior to modern techniques (such as computers) being generally used in a composition room compositors and typesetters were always accepted to be primarily manual workers whose dexterity at the keyboard and whose knowledge of the requirements of the newspaper industry were always some of the top craftsmen (time served of necessity). The Tribunal, appreciating that new skills were learned by those craftsmen in using new machinery, does not consider that changes the fact that they are still manual workers and form part of the process of producing a newspaper".

On the advice of Counsel the Commissioner has also agreed that Ready Mixed Concrete Plants are industrial hereditaments although much of the work formerly carried out manually has been mechanised and computerised.

It is difficult to give any firm guidelines as to when manual labour predominates over creativity. Perhaps the best that can be done is to refer to the argument of the Commissioner's Counsel in the "Softwear" case who said:

"The Tribunal must look at the degree of creativity, imagination, and innovation on one side and on the other the physical work. The distinction to be made is: -

(a) The craftsman is intelligent and highly trained but that is incidental to the manual labour
(b) The innovator/creator who is creating from scratch a new computer programme. The manual work is incidental to the creativity".

The question then arises as to how many people must be involved in manual labour in premises. The leading Scottish textbook on rating is "Armour on Valuation for Rating". It deals with this question as follows:

"It was stated in the third edition of this book that premises do not qualify as a non textile factory of a workshop simply because among their staff working in them are a few manual workers. This statement was based upon a dictum of Lord Alverstone C J in Hoare v Robert Green Ltd to the effect that the Acts apply if the employment of persons in manual labour was the substantial purpose for which the place was used, but not if the place was only incidentally used for this purpose. The validity of this test was subsequently doubted, however, in Haygarth v J & F Stone Lighting and Radio Ltd. Lord Reid expressed his agreement with Griffiths and Ferrier in which it was held that a factory within the meaning of the statute includes premises where only one person is employed in manual labour".

The point has never been tested in the Courts but it is probable that premises would be regarded as a factory [all other factors being satisfied] where only one person is engaged in manual labour.

By Way of Trade of for Purposes of Gain

This condition is clearly met when the process involved is the manufacture of goods for sale. It has also been held to apply to cases where the manual labour is exercised in manufacturing articles or property that are required in the carrying on of a business conducted for the purposes of gain. As an example the section was held to apply to

premises used by a bus company to manufacture spare parts for their buses [Potteries Electric Traction Co v Bailey (1931) A C 151]. On the other hand premises occupied by the RAC could not qualify as the club was bound to apply the whole of its funds to the provision of its services and facilities and was accordingly engaged in activities more akin to a social club than those of a trading concern [Automobile Proprietary Ltd. v Brown (1955) 48 R&IT 334 CA].

Hereditaments Deemed To Be Factories

The definition of a factory as noted above is found at Section 175 (1) of the Factories Act. The Act also goes on however at Section 175 (2) to list premises which are deemed to be factories. Where premises fit within the Section 175 (2) definitions they are factories whether or not they are factories by virtue of Section 175 (1). Note that manual labour is required and usually there is some reference to an "article" but there need not be an "alteration" as defined by caselaw or a profit motive unless specifically mentioned in the Section 175 (2) definition. For a full list see appendix A

Further Definitions

The following additional definitions relating to a factory should be noted. They can all be found at paragraph 2 of Schedule 2 to the 77 Order:

- A hereditament shall not be deemed not to be occupied and used as a factory by reason only of the fact that the owner or occupier of the hereditament is the only person working therein or that no other person working therein is in his employment.

- Any place used by the occupier for the housing or maintenance of his road vehicles or as stables shall, notwithstanding that it is situated within the close, curtilage or precincts forming a factory and used in connection therewith, be deemed not to form part of a factory

- Where two or more properties within the same curtilage, or contiguous to one another are in the same occupation and, although treated for any reason as two or more hereditaments for the purposes of valuation for rating, are used as parts of a single mine, quarry of factory, then, for the purposes of determining whether the several hereditaments are industrial hereditaments, they shall be treated as if they formed parts of a single hereditament comprising all those hereditaments.

THE FIVE EXCLUSIONS

If a hereditament is a factory it is prima facie an industrial hereditament and should be distinguished accordingly unless one of the five exclusions apply. The onus is on the District Valuer or Commissioner to prove that the exclusions apply rather that on the ratepayer to prove that they do not.

A Private Dwelling

Many readers will know that initially there were six exclusions and I want to deal firstly with the one that is no longer an issue. Before it was amended the 77 Order noted that a hereditament would not be an industrial hereditament if it were primarily occupied for the purposes of a private dwelling. This meant that if the NAV of the house was greater that of the factory then the whole hereditament would be primarily occupied for the purposes of a private dwelling and thus will not be an industrial hereditament. This led to many problems where small workshops, that considered by themselves would have been industrial, were built behind private dwellings.

This problem was resolved as noted earlier by the amendments introduced by the 1996 Amendment Order. The procedure now is that where a hereditament contains both a private dwelling and a factory, the dwelling should be valued in the normal way and placed in the PD column. It needs no further consideration and plays no part in the decision process.

A Retail Shop

A retail shop is defined in Schedule 2 of the 77 Order as follows:

“retail shop” includes any premises of a similar character where retail trade or business [including repair work] is carried on.

Unfortunately this definition is capable of interpretation and it has led to a multitude of cases, many at first sight contradictory. We have however a summary, albeit a lengthy one, which is contained in the Tribunal’s decision in the case of Graham Harron v The Commissioner [VR/10/1994] the relevant parts of which are attached as Appendix B.

If you have a case that is at all complicated a study of the Tribunals judgement in “Harron” will be time well spent but in summary what should we be looking for and what inferences should be drawn from the facts of any particular case:

(a) Where the typical physical characteristics of a retail shop are present, a display window, counter, till etc., coupled with retail trade on the premises from members of the public, this will be straightforward
(b) The public means anyone who wants the type of article sold in the shop or the type of repair provided on the premises
(c) In the absence of these physical characteristics normally associated with the retail shop remember that the definition is extended to include premises of a similar character. A repair garage for example is a retail shop
(d) The fact that sales are retail as opposed to wholesale is not conclusive. There must not only be a retail shop or something like it but retail trade or business must be carried on there
(e) If there are no physical characteristics but retail trade consider:
    - Is there an invitation to the public to resort
    - Do they in fact resort

- Do the sales take place on the hereditament – Sliderobes [NI] Ltd v the Commissioner [VR/2/1986] was decided on the basis that no sales take place on the hereditament

If all three apply in all probability there is a retail shop but if not then the shop exclusion may not apply.

If you find that the hereditament is technically a retail shop that is not the end of the matter because the exclusion does not apply unless the hereditament is *primarily occupied and used* for this purpose. A factory that includes a small factory shop is technically a shop but in is not primarily a shop and is not then denied distinguishment.

In the Harron case at page 25 the Tribunal dealt with the primacy question as follows:

" But that is not the end of the matter. The Tribunal returns to the question posed by Lord Evershed:

> 'Is the presence of … this so-called shop, such as to give the shop colour and character to the whole premises or is it a case in which you can fairly ask: Looking at the business as a whole, is it primarily one conducted for the purposes of that shop or is it not'".

I will return to this topic but for now note that this comment was made on the basis that Mr Harron's business was a unified one and there was no issue of separate and independent purposes.

The Purpose of a Distributive Wholesale Business

It is only when the article is finished and ready for delivery that distribution begins – per Lord Sands in Pilkinton Bros v Assessor for Glasgow 1932 SC 330.ie a distributive wholesale business comes into being after goods have been made ready for distribution by adaption.

Storage of finished goods within what could be regarded as a normal manufacturing process should not cause any problems because it can be argued that this use is ancillary to the factory production and in any event storage and or distribution is unlikely to be the primary purpose.

One of the few premises that have been held to fall within this category was considered by the Tribunal in Debretta Ltd v The Commissioner [VR/23/1983]. In that case finished garments were brought to the premises from three separate factories and were made up into "ratio packs" to meet the orders of particular customers. The Tribunal was of the opinion that this activity in no way altered the essential use and purpose of the hereditament that was wholesale distribution.

The Purposes of Storage

One of the leading cases on this exception is Hines v Eastern Counties Farmers' Co-operative Association Ltd. [1931] AC 456. Viscount Dunedin said:

"As regards storage, I am of the opinion that storage in section 3 (1)(d) means storage as a purpose and end in itself, and that such storage as is merely a necessary and transitory incident of the manufacturing process which is being carried on does not fall within the definition."

Storage that is merely ancillary or subsidiary to the occupation and use of premises as a factory or workshop may therefore be disregarded

There can on occasion be difficulty when an article undergoes a process of change within the premises where it is stored. In such cases one test is to consider the *purpose* for which the premises are occupied and used. In the case of Assessor for Lanarkshire v Arbuckle Smith & Co. [1968 SC 26] where the premises consisted mainly of bonded warehouses in which whisky was kept while undergoing the process of maturation, Lord Hunter said:

"In the context with which the present case is concerned the word 'storage' is in my opinion used in the sense of articles being placed in premises and being kept or stored there until they are required for use, rather than in the sense of articles being put in premises in order that they may there undergo a process of change or reach a certain stage in alteration of their character… In short, when one is considering proviso (d) the test is, in my opinion, the purpose for which the warehouses were occupied and used, and having regard to the findings of fact, I consider that the purpose in the present case was to secure a change in the whisky by maturation, a purpose to which any element of storage was at best for the Assessor ancillary."

In the same case Lord Avonside drew attention to dictionary definitions that pointed to the fact that storage, as such, means simply "safe keeping."

Use as a Public Supply Undertaking

A Public Supply Undertaking is defined at schedule 2 of the 77 Order as follows:

"public supply undertaking means any undertaking primarily carried on for the supply of gas, water, electricity or hydraulic power for public purpose, or to members of the public, or for the treatment of sewage, or to any one or more undertakings carried on under any statutory provision (including such a provision contained in or made under a local or personal Act or Measure or and Act or Measure confirming a provisional order).

Note that this definition is as amended by paragraph 9 of Schedule 2 to the Rates [Amendment][Northern Ireland] Order 1998 which was made to confirm that a sewage disposal works could not be considered to be an industrial hereditament.

Any Other Purposes….. Which are Not Those of a Factory

In Assessor for Paisley v Inland Revenue [1930] SC 339 Lord Hunter said:

"I think that the intention of that exception must be that one must consider the purpose for which the premises are used, and if, taking a reasonable and commonsense view of the matter one finds that no one would think of describing the purpose for which the premises are used as a factory or workshop purpose, then the subjects are not industrial lands or heritages."

The exception has been held to apply in the cases of:

- A testing establishment primarily occupied and used for the purpose of testing cables and anchors – Grove v Lloyds British Testing Co. Ltd [1931] AC 450
- Premises used for the construction and testing of prototype vehicles and the development of the ideas tested in the prototypes – Harry Ferguson Research v Dawkins [1960] 2 All ER 283

In relation to the latter case Wilmer L J observed that the use of the word "purpose" connotes the subjective intention of the person occupying the premises:

"The question has to be solved by considering the purposes of the occupiers. If their main purpose is to make articles, then, without question, that is a factory purpose, the proviso to s 3 (1) of the Act does not apply, and the hereditament is plainly an industrial hereditament. But if the main purpose is something other than the mere making of articles, different considerations apply."

PRIMARILY OCCUPIED

If one of the exclusions applies that is not the end of the matter. The test is not whether the hereditament is technically a shop etc but whether or not it is *primarily* occupied as such. When deciding primary occupation different considerations apply to a situation where there is a unified business to one where there are separate and independent purposes.

A Unified Business

In the case of a unified business everything will be done to facilitate the main purpose and no separate minor uses will have a separate existence but will cease if the main purpose ceases. None of the minor uses is done for its own sake. If that is the case i.e. if there is a unified business, it is not permissible to use a quantative approach to decide the primary purpose.

In the case of Ulster Television Ltd v The Commissioner Lord Justice Gibson in the Court of Appeal said:

"Where in any hereditament there is a primary purpose of occupation to which the other uses are ancillary or subordinate, it is not legitimate to dissect that unified business between its factory and non-factory uses."

In the same case, but this time in the House of Lords, Lord Simon of Glaisdale said that "primarily" stands in contradistinction to "secondarily." He continued that to construe "primary" as "major" of "most" might be misleading as involving a quantitative connotation which might invite a balance sheet approach.

Using this logic it would be permissible to have the "other" part of the hereditament valued at a higher nav that the "ind" part if the industrial element is the primary use.

Given then that a "balance sheet" approach is not permissible in the case of a unified business how do we determine the "primary" use?

The Tribunal dealt with this question in the case of Debretta Ltd v The Commissioner [VR/23/1983] and the relevant part of the decision is attached as appendix C From what the Tribunal say I think that it is clear that you have to look at the activities that are taking place within the hereditament and form an opinion as to why these activities are being carried out i.e. is the primary purpose of the hereditament to manufacture goods which are mainly sold through a shop within the hereditament or is it for some other purpose. In the UTV case the courts concluded that the primary purpose of all of the activity within the hereditament was to transmit an electrical signal.

Separate and Independent Purposes

If you find within the hereditament activities that each have an existence in their own right i.e. each will continue even if the other or others stop then it is permissible to look at a quantative test. The test most often used is the "Scrutton Test" i.e. the tests used by Scrutton L J in Bailey v Potteries Electric Traction Co 1931 1 KB 479. This proposed a comparison of:

- The floor area used for industrial and for non-industrial purposes.
- The net annual values applicable to the respective industrial and non-industrial areas
- The throughput of the hereditament by reference to the volume of goods adapted for sale on the premises and the volume of goods brought in and sent out without being adapted
- The number of employees engaged respectively in industrial and in non-industrial work

Armed with the results of these four tests and relying not on any particular test but on the results of all four, it should be possible in the majority of cases to say what is the primary occupation and use.

Examples of the test being used can be found in John McKibben and Son Ltd v The Commissioner VR/9/1970 and more recently CCS [NI] T/A Granville Cold Storage Company v The Commissioner VR/4/1995. The relevant extract from the Granville case is attached as appendix D and it will be noted that while agreeing the principle of the use of the test the Tribunal cautions that care must be taken not to loose site of the underlying principle i.e. it should be remembered that this simply a method to aid us in deciding the primary use.

Schedule 14 Apportionments

Having found that a factory is entitled to industrial treatment i.e. it is primarily industrial; we must then carry out an apportionment between those portions used for industrial purposes and those used for other purposes.

The rules are contained in Schedule 4 to the 1977 Order and briefly are:

- If the net annual value does not exceed £1,800 [or such other figure as may be prescribed following a revaluation] no apportionment is required – wholly industrial

- Where the value apportioned to the portions used for other purposes is less that 10% of the value of portions used for industrial purposes then no apportionment is required – wholly industrial

- Where the non – industrial value exceeds 10% of the industrial value then only the excess over 10% is not derated.

What are these “other” purposes? As noted previously schedule 2 specifically excluded garages but in addition the following types of use have been held to be non-industrial:

- Managerial and administrative offices

- Shops and showrooms

- Recreation grounds

- Canteens, toilets and car parks used exclusively by the staff of any of the above

- Advertising signs

- Areas used for the storage of goods which leave the premises in the same condition as that in which they arrive.

It should be remembered that any place that is vacant must be apportioned industrial – in order to be apportioned as other i.e. non- industrial it must be positively used for a non-factory purpose.

There can be some confusion as to how to apply the 10% rule mentioned above and an example should help. Assume that the apportionment has taken place and the various parts of a primarily industrial hereditament have been sorted as follows:

IN	**ND**	**Total**
£70,020	£10,075	£80,095

The apportionment continues:

	IN		**ND**	**Total**
	£70,020		£10,075	
say	£70,000		£10,100	£80,100
+10%	£ 7,000	-10%of IN	£ 7,000	
	£77,000		£ 3,100	£80,100

There should be no further "rounding" following the apportionment

Any room used partly for industrial purposes and partly for other purposes is apportioned industrial unless the room can be apportioned physically [by means of a partition or chalk line] between industrial and non-industrial use. The parts so apportioned must be capable of separate entry in the valuation list i.e. capable of being portioned off and valued separately.

SURVEY AND VALUATION

In October 1997 [redacted] produced a paper that reviewed procedures and standards for considering and reporting on industrial cases. This is attached at appendix E The following is however a summary of the main points to note when carrying out a survey and valuation:

- The essential first step is getting the valuation right. If the valuation is incorrect this may impact on the decision as to whether or not to grant industrial distinguishment and on the Schedule 14 apportionment.

- For new or altered hereditaments which require survey work the code of measuring practice for rating purposes should be used. In practice surveys will adopt net internal area.

- Where a survey already exists it is good practice to verify it with one or more check measurements

- When carrying out a survey it should be remembered that an apportionment might be required between parts used for factory and non-

factory purposes. This will mean that each separate block should be shown separately

- The pricing adopted for each block should be capable of being defended as fair and reasonable when compared to those adopted for hereditaments in the same state and circumstances

- As this type of casework requires not only the net annual value to be assessed but also the distinguishment, the survey and inspection should record the precise use of each block. If a block is being used for two or more distinct purposes one of which is a factory purpose and the other or others are not the areas devoted to factory and non-factory uses should be noted.

KEY CASES

The Finn Case

This case was considered to be the leading case concerning a unified business. A house, a baker's shop and bake house opening on to a yard, all physically capable of separate occupation were held to be primarily occupied for the purpose of a retail shop, a unified business that could not be dissected.

Sales of all the goods produced in the bake house were disposed of through the shop: 12% of the orders were taken over the counter; 65% was delivered to premises of customers on orders given to rounds men; 25% consisted of sales to clubs, hotels, restaurants etc for resale. The judgement stated that these sales to clubs etc were the typical retail trade of a retail shop.

This was a decision of the House of Lords and was not therefore open to challenge but it is clear from subsequent decisions that it was not universally popular – not as regards the argument that a unified business could not be dissected but as regards the finding that sales to clubs, hotels etc was ordinary retail trade. Many decisions avoided its strictures by distinguishing cases on their particular facts.

The last NI case where "Finn" was argued was Newry Building Supplies Ltd v The Commissioner VR/8/1997. The Tribunal was not keen on the line taken in Finn and found no difficulty in avoiding it.

In my view the law is now clear in that "Finn" will only apply where the facts found are virtually identical to the facts in "Finn". Anyone contemplating arguing the "Finn" line should first read the Newry Building Supplies case

Other Relevant Cases

The University of Ulster and Deane and Curry produced a useful booklet on Northern Ireland Lands Tribunal decisions that included a synopsis of the key industrial cases. A copy of the industrial section is included as appendix F This is not totally up to date but the only cases that need to be added are I think the following:

CCS [NI] Ltd T/A Granville Cold Storage Company v The Commissioner VR/4/1995

This case confirmed that blast freezing altered an article and that the alteration continued in the cold stores. This meant that the cold stores were treated as industrial in the schedule 14 apportionment. The case also contains a useful discussion on the relevance of the "Scrutton" tests.

Newry Building Supplies v The Commissioner
VR/8/1997
This case dealt with a building supply company that adapted timber for sale and supplied it plus the whole range of building products to a variety of customers. The main finding of the Tribunal was that sales in bulk to builders were not retail sales and "Finn" did not therefore apply. It was acknowledged that there was a shop and that there were retail sales on the premises, but this was not the primary purpose. Industrial distinguishment therefore applied

Samuel Stevenson [Enterprise Stationery Ltd] v The Commissioner
VR/18/1989
Appealed by the Commissioner to the Court of Appeal
In this case the Tribunal essentially adopted a schedule 14 apportionments when attempting to decide primary purpose. This was clearly wrong and was so held by the Court of Appeal

Geddis Enterprises Ltd v The Commissioner
VR/13/1990
This case considered whether or not premises were within the "same curtilage" for the purposes of paragraph 3 of schedule 2 to the 77 Order. It decided that they were not

APPENDIX A

APPENDIX B

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

Industrial Derating Primary Legislation

Rates (N.I.) Oder 1977

43. Distinguishment in ►([1]) NAV◄ list of industrial hereditaments and freight-transport hereditaments

43. Where the Commissioner or the district valuer is satisfied that a hereditament is a hereditament of a description specified in paragraph 1 of Schedule 14, he shall distinguish the hereditament, or cause it to be distinguished, in the ►([2]) NAV◄ list in accordance with the provisions of that Schedule; and, where by any provision of that Schedule the net annual value of such a hereditament is required to be apportioned, the apportionment shall be shown in the ►([3]) NAV◄ list.

([1]) Article 43, in the heading, word was substituted by paragraph 27 of Schedule 2 to the 2006 Order
([1]) In Article 43 word was substituted by paragraph 27 of Schedule 2 to the 2006 Order
([1]) In Article 43 word was substituted by paragraph 27 of Schedule 2 to the 2006 Order

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►([4]) SCHEDULE 2

Article 3

DEFINITIONS RELATING TO INDUSTRIAL HEREDITAMENTS

1. In this Order—

"factory", subject to the provisions of this Schedule, has the meaning assigned to it by section 175 of the Factories Act (Northern Ireland) 1965([5]);

([6])

►([7])"industrial hereditament" means a hereditament, exclusive of any part of the hereditament ►([8]) which is◄ used for the purposes of a private dwelling, which is occupied and used as—

(a) a mine or quarry; or

(b) subject as provided in this Schedule, a factory;◄

([7]) In paragraph 1 the definition of "industrial hereditament" was substituted by Article 8(1)(a) of the 1996 Order
([8]) In Schedule 2 in paragraph 1 in the definition of "industrial hereditament" words were substituted by paragraph 40 of Schedule 2 to the 2006 Order

"mine" has the meaning assigned to it by section 156 of the Mines Act (Northern Ireland) 1969([9]) and includes anything which by virtue of that section is deemed to form part of a mine;

"public supply undertaking" means any undertaking primarily carried on for the supply of gas, water, electricity or hydraulic power for public purposes, or to members of the public, or ►([10])for the treatment of sewage, or◄ to any one or more undertakings carried on under any statutory provision (including such a provision contained in or made under a local or personal Act or Measure or an Act or Measure confirming a provisional order);

"quarry" has the meaning assigned to it by ►([11])Article 2(2) of the Quarries (Northern Ireland) Order 1983◄ and includes anything which by virtue of that ►([12])Article◄ is deemed to form part of a quarry;

"retail shop" includes any premises of a similar character where retail trade or business including repair work) is carried on.

2. For the purposes of this Order—

([13])

►([14])**2A.** For the purposes of sub-paragraph (b) of the definition of "industrial hereditament"—

(a) a hereditament shall be deemed not to be occupied and used as a factory if it is primarily occupied and used for any of the following purposes, or for a combination of any such purposes—

(i) the purposes of a retail shop;

(ii) the purposes of distributive wholesale business;

(iii) the purposes of storage;

(iv) the purposes of a public supply undertaking;

(v) any other purposes whether or not similar to any of the foregoing, which are not those of a factory;◄

(b) ([15]) a hereditament shall not be deemed not to be occupied and used as a factory by reason only of the fact that the owner or occupier of the hereditament is the only person working therein or that no other person working therein is in his employment;

(c) any place used by the occupier for the housing or maintenance of his road vehicles or as stables shall, notwithstanding that it is situated within the close, curtilage or precincts forming a factory and used in connection therewith, be deemed not to form part of the factory.

2.Where two or more properties within the same curtilage, or contiguous to one another are in the same occupation and, though treated for any reason as two or more hereditaments for the purposes of valuation and rating, are used as parts of a single mine, quarry or factory, then, for the purposes of determining whether the several hereditaments are industrial hereditaments, they shall be treated as if they formed parts of a single hereditament comprising all those hereditaments.◄

([9]) 1969 c. 6

([10]) In paragraph 1 in the definition of "public supply undertaking" words inserted by paragraph 9 of Schedule 2 to the 1998 Order

([11]) In paragraph 1 in the definition of "quarry" words substituted by Schedule 1 to the 1983 Quarries Order

([12]) In paragraph 1 definition of "quarry" word substituted by Schedule 1 to the 1983 Quarries Order

([13]) Paragraph 2(a) was repealed by the Schedule to the 1994 Order

([14]) Paragraph 2A (which consisted of the lead in words and sub–paragraph (a)) was inserted after paragraph 2(a) by Article 8(1)(b) of the 1996 Order

([15]) The insertion of paragraph 2A after paragraph 2(a) seemed to have the effect of making sub–paras (b) and (c) of para 2 become sub–paras (b) and (c) of new para 2A. Thus leaving para 2 as "For the purposes of this Order–" and therefore otiose

SCHEDULE 14

Article 43.

DISTINGUISHMENT OF INDUSTRIAL HEREDITAMENTS AND FREIGHT-TRANSPORT HEREDITAMENTS

1. This Schedule applies to—

(a) ►([16])(a) industrial hereditaments; ◄

(b) (b) freight-transport hereditaments.

►([17])**2.**—(1) In the ►([18]) NAV list◄, every industrial hereditament occupied and used either wholly or partly for industrial purposes shall be distinguished as being so occupied and used, and, as respects every such hereditament occupied and used partly for industrial purposes, the net annual value thereof shall be apportioned by the Commissioner or the district valuer between the occupation and use of the hereditament for industrial purposes and the occupation and use thereof for other purposes.

(2) For the purpose of determining in which proportions an industrial hereditament is occupied and used for industrial purposes and for other purposes respectively—

(c) the hereditament shall be deemed to be occupied and used for industrial purposes except in so far as any part of it is, under this Order or the transferred provisions relating to the regulation of mines, quarries and factories, to be deemed neither to be, nor to form part of, a mine, quarry or factory;

(d) where the net annual value of the hereditament does not exceed ►([19])£2,290◄, or where the part of the net annual value of the hereditament attributable to purposes other than industrial purposes does not exceed 10% of the part thereof attributable to industrial purposes, the hereditament shall be treated as if it were occupied and used wholly for industrial purposes, and, where the part of the net annual value attributable to such other purposes exceeds 10% of the part thereof attributable to industrial purposes, the part attributable to such other purposes shall not be treated as being attributable to those other purposes except in so far as it exceeds 10% of the part attributable to industrial purposes;

(e) where two or more hereditaments in the same occupation are, by virtue of paragraph 3 of Schedule 2, treated as if they formed parts of a single hereditament, each of the several hereditaments shall be deemed to be occupied and used for industrial purposes and for other purposes respectively in the proportion in which, if all the hereditaments formed a single hereditament, that single hereditament would be deemed to be so occupied and used.

►([20])(3) The Department may, by order subject to negative resolution, substitute for the amount of net annual value specified in sub-paragraph (2)(b) such amount as may be specified in the order.◄

3.—(1) In the ►([21]) NAV list◄, every freight-transport hereditament which is occupied and used either wholly or partly for transport purposes shall be distinguished as being so occupied and used, and,

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([16]) Paragraph 1(a) is repealed from 1/4/2011 by Schedule 4 to the 2004 Order
([17]) Paragraph 2 is repealed from 1/4/2011 by Schedule 4 to the 2004 Order
([18]) In Schedule 14 in paragraph 2 words were substituted by paragraph 49(2) of Schedule 2 to the 2006 Order
([19]) In paragraph 2(2)(b) amount substituted by the Schedule to S.R. 2003 No. 73
([20]) In Schedule 14 paragraph 2(3) was inserted by Article 8(2) of the 1996 Order
([21]) In Schedule 14 in paragraph 3(1) words were substituted by paragraph 49(3)(a)(i) of Schedule 2 to the 2006 Order

as respects every such hereditament occupied and used partly for transport purposes, the net annual value thereof shall be apportioned by the Commissioner or the district valuer between the occupation and use of the hereditament for transport purposes and the occupation and use for other purposes ►([22]) (so far as relevant to its net annual value)◄.

(2) A freight-transport hereditament shall be distinguished in the ►([23]) NAV list◄ by reference to the transport purpose or purposes for which it is occupied and used; and, where a freight-transport hereditament is occupied and used partly for one transport purpose and partly for either or both of the other transport purposes, the proportions of the net annual value of the hereditament attributable to the occupation and use thereof for the several transport purposes shall be shown in the list.

(3) Subject to sub-paragraphs (4) and (5), for the purpose of determining in which proportions a freight-transport hereditament is occupied and used for transport purposes and for other purposes respectively, the hereditament shall be deemed to be occupied and used for transport purposes except in so far as it is occupied and used for the purposes of a hotel, refreshment room, dwelling-house or residence.

(4) Any part of a freight-transport hereditament which is so let out as to be capable of being separately valued shall not be deemed to be occupied and used for transport purposes unless it is actually so occupied and used.

(5) In the case of a hereditament occupied and used for canal transport purposes as part of a canal undertaking or occupied and used for dock purposes as part of a dock undertaking, any part of the hereditament, being a building, yard or other place primarily occupied and used for warehousing merchandise not in the course of being transported, shall not be deemed to be occupied and used for transport purposes.

([22]) In Schedule 14 in paragraph 3(1) words were added by paragraph 49(3)(a)(ii) of Schedule 2 to the 2006 Order
([23]) In Schedule 14 in paragraph 3(2) words were substituted by paragraph 49(3)(b) of Schedule 2 to the 2006 Order

LAWFULNESS, FAIRNESS AND TRANSPARENCY TEST

Application of FOI exemption Section 40(2)

DOF/2025-0421 ANNEX D

A Lawfulness, Fairness and Transparency Test must be carried out by the Department of Finance when considering disclosure of third-party personal data which falls within the scope of an FOI or EIR request.

FOI / EIR request

1. How many non-domestic premises are in receipt of the industrial derating grant for each of the last five years.
2. Without identifying the recipient, outline how much the top 10 recipients each saved on non-domestic rates through the grant in the last five years
3. A copy of internal documentation that outlines how the grant is determined and applied.

Consideration of the personal data falling within the scope of the request

Guidance from the Information Commissioner's office states that personal data only includes information relating to natural persons who:

- can be identified or who are identifiable, directly from the information in question; or
- who can be indirectly identified from that information in combination with other information.

Description of personal data/issue(s) under consideration:

LPS Staff names/details.

Lawfulness

Do either of the two lawful basis below, which allow for the disclosure of personal data, apply? **No**

☐ **Consent:** This applies when the data subject(s) clear consent exists, allowing the department to disclose personal data falling within the scope of this request.

☐ **Legitimate interests:** This applies when disclosure is necessary for the department's legitimate interests or the legitimate interests of a third party that overrides the data subject(s) rights and freedoms, particularly their right to privacy.

Conclusion

Having considered all the information contained within the Lawfulness, Fairness and Transparency Test, the department has established that, on balance, there is no lawful basis for the disclosure of third-party personal data falling within the scope of the request (of which the requester is not the data subject).