

NON-DOMESTIC RATES (CORONAVIRUS) (SCOTLAND) BILL

[AS AMENDED AT STAGE 2]

REVISED EXPLANATORY NOTES

INTRODUCTION

1. As required under Rule 9.7.8A of the Parliament’s Standing Orders, these revised Explanatory Notes are published to accompany the Non-Domestic Rates (Coronavirus) (Scotland) Bill (which was introduced in the Scottish Parliament on 14 December 2021) as amended at Stage 2. Text has been added or amended as necessary to reflect the amendments made to the Bill at Stage 2 and these changes are indicated by sidelining in the margin.
2. These revised Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.
3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section, or a part of a section, does not seem to require any explanation or comment, none is given.

THE BILL: AN OVERVIEW

4. Non-domestic rates are a property tax based on the rateable value of a property. Rateable values are based on net annual value: that is, the annual rental value that a property would attract in an open market. Rating valuations are carried out by independent Scottish assessors. Rateable values are periodically updated at revaluations, the most recent one being on 1 April 2017 based on rental values as at 1 April 2015, and the next set to take place on 1 April 2023 based on rental values as at 1 April 2022. It is at revaluations that rateable values are updated to reflect changes in the general level of rents including those caused by economic factors.
5. Outside of revaluation, net annual values and rateable values can be amended to reflect a “material change of circumstances”, as defined in section 37 of the Local Government (Scotland) Act 1975. This includes for instance physical alterations to the property (e.g. extension or demolition); major, localised and impactful alterations in the area such as the Edinburgh Tram Works; and relevant decisions by the Valuation Appeal Committee, Lands Tribunal for Scotland or Lands Valuation Appeal Court. This definition was amended with effect from 2 April 2020, under the Non-Domestic Rates (Scotland) Act 2020, to exclude changes in general economic circumstances: specifically, changes in the rent of particular lands and heritages or any other lands and heritages; or in the level of valuations generally; or in the value of lands and heritages generally.

6. However, following the outbreak of COVID-19, according to data provided to the Scottish Government by assessors, approximately 40,900 properties had a material change of circumstances appeal lodged in respect of them in relation to financial year 2019-20, and 37,000 properties in relation to 2020-21, in connection with the impact of COVID-19, or COVID-19 restrictions. This could potentially have a substantial impact on the level of rateable values across a wide range of properties and sectors ahead of the next revaluation.

7. Accordingly, the [Valuation and Rating \(Coronavirus\) \(Scotland\) Order 2021 \(S.S.I. 2021/445\)](#) was made on 30 November 2021 and came into force the next day. The Order specifies that in calculating the rateable value of any properties in the 2017 valuation roll after the instrument comes into force, no account can be taken of any matter arising on or after 1 April 2021 that is directly or indirectly attributable to coronavirus. The purpose of this Bill is to extend this rule to cover both net annual value and rateable value and to cover the period back to 2 April 2020 (the date on which the Scottish Government amended the definition of “material change of circumstances” to exclude changes in economic circumstances.) The extent of this retrospective application would not have been possible using existing powers to make subordinate legislation.

THE BILL: SECTION BY SECTION

Section 1: Effect of coronavirus on net annual values and rateable values of lands and heritages

8. This section sets out the principal rule in the Bill: that in calculating the net annual value or rateable value of any lands and heritages for the purposes of any entry in the valuation roll, no account is to be taken of any matter that is attributable to coronavirus.

9. This rule is set out in subsection (1) of section 1 and is retrospective in operation, dating back to 2 April 2020.

10. Subsection (2) then sets out an exception to the rule, to the effect that the physical state of the lands and heritages may be taken into account in making a relevant determination, whether or not the matter is attributable to coronavirus.

11. This will ensure, for example, that alterations to the physical structure of a property (such as internal structural changes or a new extension) continue to be reflected in the valuation roll when they arise even if they are attributable to coronavirus. It will also ensure that changes to the mode or category of occupation of the property (for example from a restaurant to a shop) may still be reflected, as these will be linked to any physical changes to the property.

12. Subsection (2A) clarifies the application of the rule in subsection (1) to the situation where a matter attributable to coronavirus first occurred or arose before 2 April 2020 but continued to occur after that date: with effect from 2 April 2020, no account is to be taken of a matter of this kind. For example, should any effect on the value of a property be attributable to regulations on coronavirus which first came into force before 2 April 2020 and continued to be in force after that date, the effect from 2 April 2020 onwards is to be disregarded.

13. Subsection (3) sets out what is a “relevant determination” for the purpose of the rule on the effect (or rather the non-effect) of coronavirus in subsection (1). This includes any calculation of the net annual value or rateable value of a property for the purposes of any entry in the valuation roll for non-domestic rates; but does not include a determination as to whether property is or is not to be included in the valuation roll at all.

14. Subsection (4) sets out a non-exhaustive definition of “matters attributable to coronavirus” for the purpose of the rule in subsection (1). This includes, under subsection (4)(a)(i), actions taken by persons in response to legislation directly concerned with coronavirus, such as the series of Health Protection Regulations under schedule 19 of the Coronavirus Act 2020 that imposed the public health “lockdowns”; it includes, under subsection (4)(a)(ii), actions taken by persons in response to other kinds of legislation but for reasons relating to coronavirus, such as where occupiers have decided that in order to comply with health and safety legislation, they have had to implement social distancing in their buildings; and it includes actions taken by persons in response to public health guidance relating to coronavirus, e.g. on office working. It also includes changes in rent due to coronavirus, and changes in the value of property in general which are due to coronavirus (i.e. overall market trends).

Section 2A: Alteration of valuation roll

15. This section creates a duty on assessors to apply the principal rule in the Bill, imposed by section 1(1), to the valuation roll made up on 1 April 2017; and to make any change to the net annual value or the rateable value of any property which results from that (conversely, if there is no change to the value of a property as a result of the application of the rule from section 1(1), that property’s entry in the roll would not need to be altered).

16. Subsection (2) of this section provides that this duty applies even when the valuation roll made up on 1 April 2017 is no longer in force.

17. The effect of this section is that, for example, where the net annual value and / or rateable value of a property is reduced as a result of a matter occurring before 2 April 2020 which is attributable to coronavirus, the application of the rule in section 1(1) of the Bill, read together with section 1(2A), would require that reduction in value to be reversed as of 2 April 2020, with the assessor obliged to carry this into effect by altering the valuation roll to reflect the new revised value from that date.

Section 3: Interpretation

18. This section provides the meaning of other defined terms in the Bill, including the meaning of “net annual value” and of “rateable value”. The term “lands and heritages” is to be construed in accordance with section 42 of the Lands Valuation (Scotland) Act 1854, so it includes lands, houses, shootings, deer forests, fishings, and all the other categories of property listed in that section.

19. The term “valuation roll”, for the purposes of the Bill, means a valuation roll made up on 1 April 2017 and maintained by the assessor for each valuation area under Part 1 of the Local Government (Scotland) Act 1975. The effect of this is that nothing in the Bill will extend forward

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to the next valuation roll, to be made up on 1 April 2023 – it is only the current valuation roll which is affected by the Bill’s provisions.

Section 4: Revocation of the Valuation and Rating (Coronavirus) (Scotland) Order 2021

20. This section revokes the [Valuation and Rating \(Coronavirus\) \(Scotland\) Order 2021 \(S.S.I. 2021/445\)](#), as its operation is superseded by section 1 of the Bill.

Section 5: Commencement

21. The effect of this section is that the entirety of the Act comes into force on the day after the day that the Bill for the Act receives Royal Assent.

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