

Local Government, Housing and Planning Committee

11th Meeting, 2021 (Session 6)

Tuesday 16 November 2021

Valuation and Rating (Coronavirus) (Scotland) Order 2021

Procedure for Affirmative instruments

1. The Order for consideration today is subject to affirmative procedure (Rule 10.6). It is for the Local Government, Housing and Planning Committee to recommend to the Parliament whether the Order should be approved.
2. The Minister for Public Finance, Planning and Community Wealth, Tom Arthur, has proposed, via motion set out in the agenda, that the Committee recommends the approval of the Order.

Recommendation

3. At the meeting, the Committee will take evidence from the Minister for Public Finance, Planning and Community Wealth, on the Order. It will then separately debate the Order.
4. The Committee must decide whether or not to agree to the motion, and then report to Parliament accordingly, by 16 November 2021.

Background

5. On 22 September 2021, the Scottish Government laid the [draft Valuation and Rating \(Coronavirus\) \(Scotland\) Order 2021](#) in the Scottish Parliament.
6. A number of appeals over rates for non-domestic properties were lodged after the outbreak of the COVID-19 pandemic claiming that the pandemic, or its consequences, constituted a material change of circumstances (MCC) warranting a reduction in rateable value.

7. On 25 March 2021 the UK Government committed to ruling out COVID-19-being used as a ground to appeal rates on non-domestic properties in England and the Welsh Government has also confirmed its intention to rule out such appeals in Wales. On 23 June 2021 the Scottish Government also confirmed its intention to also take measures to rule these appeals out in Scotland.

8. In order to rule out these appeals in Scotland, the Scottish Government has laid secondary legislation and has announced its intention to introduce primary legislation.

9. The draft Valuation and Rating (Coronavirus) (Scotland) Order 2021 was laid in the Parliament on 22 September. This instrument will ensure that for the period 1 April 2021 onwards, the impact of Covid-19 cannot be used when determining the rateable value of a non-domestic property unless it has resulted in change to the physical state of the property.

10. The primary legislation will apply the same rule to appeals for the period prior to April 2021.

11. Further information can be found in the policy note to the draft order at Annexe A.

Delegated Powers and Law Reform Committee consideration

12. At its meeting on 26 October 2021, the Committee considered the instrument and determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit. You can read the report of the Committee below:

- [Subordinate Legislation Considered by the Delegated Powers and Law Reform Committee on 26 October 2021](#)

Local Government, Housing and Planning Committee consideration

13. This is the Committee's third session considering the Order. The Committee previously took evidence on the Order at its meetings on 26 October and 9 November.

Clerks

Local Government, Housing and Planning Committee

POLICY NOTE**THE VALUATION AND RATING (CORONAVIRUS) (SCOTLAND) ORDER 2021
SSI 2021/XXX**

The above instrument will, if approved by the Scottish Parliament, be made in exercise of the powers conferred by sections 6 and 37(1) of the Local Government (Scotland) Act 1975. The instrument is subject to affirmative procedure.

Purpose

The purpose of this Order is to set out a rule for the determination of rateable values of specified non-domestic properties. It will apply only to the 2017 valuation roll and will ensure that, in calculating the rateable value of any specified properties, no account can be taken of any matter arising on or after 1 April 2021 that is directly or indirectly attributable to coronavirus. The rule will not apply to changes in the physical state of a property.

Background

Non-domestic rates are a property tax based on the rateable value (RV) of the property. RVs are based on the annual rental value that a property would attract in an open market. Rating valuations are carried out by independent Scottish assessors. RVs are periodically updated at revaluations, with the most recent being on 1 April 2017 which were based on rental values as at 1 April 2015 (the 'tone date'). It is at revaluations that rateable values are updated to reflect changes in the general level of rents including those caused by economic factors.

The independent Barclay Review of Non-Domestic Rates which reported in 2017 had recommended the move to three yearly revaluations and a one-year tone date in order to reduce shocks that might otherwise take place at future revaluations. The Scottish Government accepted both of these recommendations and legislated for three yearly revaluations in the Non-Domestic Rates (Scotland) Act 2020 and a one-year tone date in The Valuation (Postponement of Revaluation) (Coronavirus) (Scotland) Order 2020.

The next revaluation will take place on 1 April 2023 with a tone date of 1 April 2022. Prior to the start of the COVID-19 pandemic this was scheduled for 1 April 2022 with a tone date of 1 April 2020. However, in order to allow time for the property market to adjust post-COVID-19, Scottish Ministers chose to delay the revaluation by one year and also move to a one-year tone date for the 2023 revaluation, therefore delivering a one revaluation cycle ahead of schedule.

Between revaluations RVs can only be changed to reflect "material changes of circumstances" (MCC) including, for instance, physical changes to the property - e.g. an expansion, or potentially following the outcome of an appeal by a new owner, tenant or occupier.

Following the outbreak of COVID-19, according to data provided to the Scottish Government by assessors, over 40,000 properties had an appeal lodged in respect of them between 1 January 2020 and 31 March 2021 in relation to the impact of COVID-19, or COVID-19 restrictions. This could potentially impact the level of rateable values across a wide range of properties and sectors ahead of the next revaluation.

On 25 March 2021 the UK Government committed to ruling out COVID-19 MCC appeals on non-domestic properties in England. The Welsh Government has also confirmed its intention to rule out such appeals in Wales.

Scottish Government announced on 23 June 2021 that it also intended to take measures to rule these appeals out in Scotland. It stated:¹

“we agree in principle with the UK Government that market-wide economic changes to rateable values, such as from COVID-19, should be only considered at revaluation to ensure fairness to all ratepayers; and that it is not appropriate to use the material change of circumstances provisions in the non-domestic rates legislation in relation to COVID-19, or COVID-19 restrictions.”

Should COVID-19, or restrictions due to COVID-19, have an impact on rental values, this would form part of general market conditions and should therefore be reflected at revaluation. If this were not the case, assessors would be required to change RVs constantly to reflect any relevant changes in rent.

This Order implements the above policy by setting out a rule for the determination of RVs of specified non-domestic properties. It applies only to the 2017 valuation roll and ensures that, in calculating the RV of any specified properties, no account can be taken of any matter arising on or after 1 April 2021 that is directly or indirectly attributable to coronavirus. The rule will not apply to changes to the physical state of a property.

Until this Order has come into force, a new entry on the valuation roll or a change to an entry in the valuation roll can potentially reflect matters directly or indirectly attributable to coronavirus. There is therefore a risk of a daily loss of non-domestic rates income for the Scottish Government.

Primary legislation is required to ensure that RVs cannot reflect COVID-19 for any period before 1 April 2021 and the Programme for Government announced plans to lay a Bill to this effect.

Consultation

Section 6(4) of the Local Government (Scotland) Act 1975 requires that Scottish Ministers consult such associations of local authorities or of persons carrying on undertakings as appear to them to be concerned, and with any local authority, person or association of persons with whom consultation appears to them to be desirable.

The Cabinet Secretary for Finance and the Economy, the Minister for Public Finance, Planning and Community Wealth, and the Minister for Business, Trade,

Tourism and Enterprise have just concluded an extensive consultation and engagement exercise with all the major business representative bodies as well as a large number of businesses from a diverse range of sectors and regions across Scotland. Although these meetings were not specifically intended to discuss COVID-19 MCC appeals, they nevertheless presented a comprehensive and constructive opportunity to discuss the Scottish Government's approach to supporting businesses during the current COVID-19 crisis and the priorities in terms of the next stages of re-opening and recovery.

The Scottish Government has also frequently consulted with relevant public bodies including COSLA, local authorities and assessors throughout its response to the COVID-19 pandemic. This includes the government's position on MCC appeals.

Impact Assessments

No Business and Regulatory Impact Assessment has been carried out because the impact of the instrument cannot be estimated in the absence of any robust evidence of a change in rental values. Making assumptions about such evidence, and its potential effect on RVs, for the purposes of an impact assessment would be speculative, with a wide error margin, and would also be potentially prejudicial to the independence of those public bodies which are responsible for carrying out valuations (assessors) and for hearing valuation rating appeals (valuation appeal committees, the Lands Tribunal for Scotland, the Lands Valuation Appeal Court).

Financial Effects

There is no direct financial effect.

Scottish Government
Local Government and Communities Directorate
September 2021