This document relates to the Non-Domestic Rates (Coronavirus) (Scotland) Bill (SP Bill 8) as introduced in the Scottish Parliament on 14 December 2021

Non-Domestic Rates (Coronavirus) (Scotland) Bill

Financial Memorandum

Introduction

1. As required under Rule 9.3.2 of the Parliament’s Standing Orders, this Financial Memorandum is published to accompany the Non-Domestic Rates (Coronavirus) (Scotland) Bill introduced in the Scottish Parliament on 14 December 2021.

2. The following other accompanying documents are published separately:

- Explanatory Notes (SP Bill 8-EN);
- a Policy Memorandum (SP Bill 8-PM);
- statements on legislative competence by the Presiding Officer and the Scottish Government (SP Bill 8-LC).

3. This Financial Memorandum has been prepared by the Scottish Government to set out the costs associated with the measures introduced by the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

4. The Financial Memorandum should be read in conjunction with the Bill and other accompanying documents.

Background

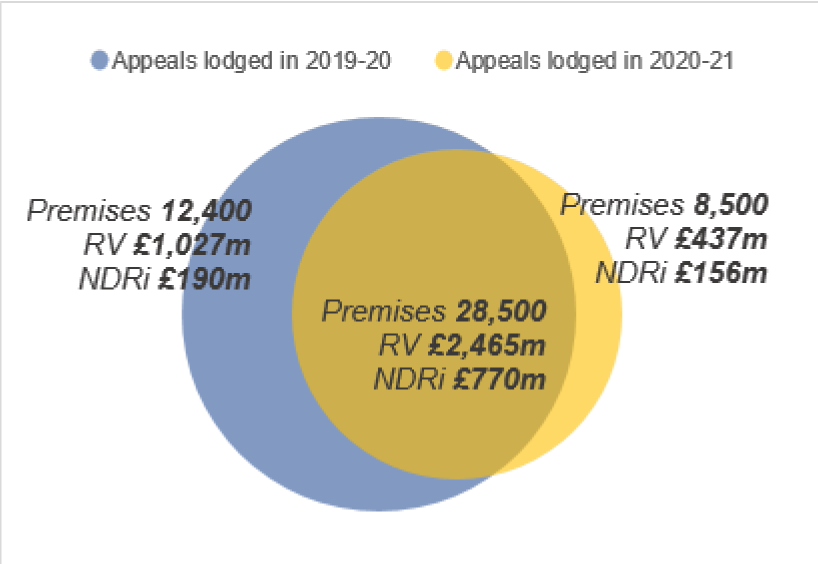
5. Non-domestic rates (NDR), also known as business rates, are a property tax based on the rateable value (RV) of a property. RVs are derived from Net Annual Values (NAVs), themselves based on the annual rental value that a property would attract in an open market. Rating valuations are carried out by independent Scottish assessors and all 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. It is at revaluations that NAVs and RVs are updated to reflect changes in the general level of rents including those caused by economic factors.

6. Outside of revaluation, NAVs and RVs can be amended for instance to reflect a “material change of circumstances” (MCC). 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.

7. Appeals on revaluation values are known as ‘revaluation appeals’ while other appeals, including MCC appeals, are referred to as ‘running roll’ appeals. According to data provided to the Scottish Government by the Scottish Assessors Association in respect of financial years 2019-20 and 2020-21, approximately 40,900 properties with a total RV of £3,492 million were appealed in 2019-20 after the outbreak of the COVID-19 (coronavirus) pandemic. Approximately 37,000 properties with a total RV of £2,902 million were appealed in 2020-21. By comparison, 5,774 ‘running roll’ appeals were lodged during 2018-19[1]. Snapshots of Valuation Roll data indicate that, between the latest revaluation (1 April 2017) and 1 April 2020, on average 6,800 properties were under MCC appeal at any time. It is likely given the atypical spike in running roll appeals in 2019-20 and 2020-21, at this point in a revaluation cycle, that the majority of these appeals were lodged as a result of COVID-19. These are therefore referred to as ‘COVID-19 appeals’ in the below.

8. As stated, appeals were lodged in 2019-20 against 40,900 premises in total. A second appeal was also lodged in 2020-21 for 28,500 premises that also had an appeal lodged in 2019-20. Of the 37,000 properties overall which appealed overall in 2020-21, 8,500 are therefore additional appeals on premises that are only under appeal in 2020-21. The Venn diagram below (Figure 1) illustrates the interaction between COVID-19 appeals and how the overall total is derived. The total estimated number of premises under COVID-19 appeal considering both years of appeals data is 49,400, with a total RV of £3,929m corresponding to an estimated NDR income of £1,117m (see Table 1).

Figure 1: Number of premises, RV and estimated corresponding NDR income (NDRi) under COVID-19 appeal



[1] SAA-Annual-Report-2018.pdf

Table 1: Number of premises, rateable value and net NDR income under appeal in 2019-20 and 2020-21

	2019-20	2020-21	2019-20 and 2020-21*
Number of NDR Premises on Valuation Roll at April 2021	40,900	37,000	49,400
Total RV as at April 2021	£3,492m	£2,902m	£3,929m
Estimated net NDR income 2020-21**	£961m	£926m	£1,117m

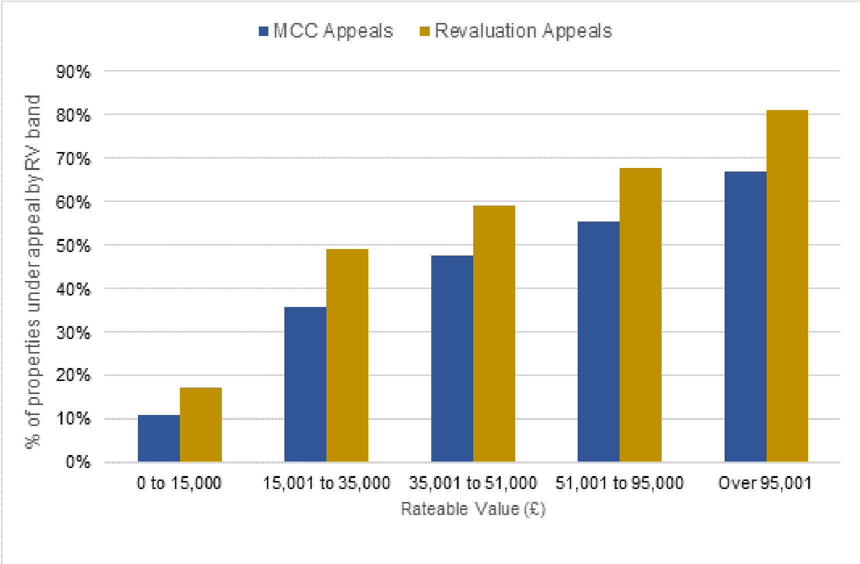
* Properties appealed in both years counted as one (see paras 6-7).

**Scottish Government estimates based on an analysis of data provided by the Scottish Assessors Association on COVID-19 appeals, data relating to NDR reliefs awarded in 2020-21 (the 2020 Billing System) and the valuation roll. It should be noted that 'net NDR income' is net of any NDR reliefs including Retail, Hospitality, Leisure and Aviation Relief.

9. Evidence also points to a correlation between RV and the likelihood of a COVID-19 appeal, with properties with higher RVs submitting relatively more COVID-19 appeals than properties with smaller RVs (as well as more 2017 revaluation appeals – the Scottish Government does not hold data on other NDR appeals). Figure 2 below shows this trend for both types of appeal. Under 20% of premises with an RV below £15,000 submitted a 2017 revaluation (17%) appeal, or a MCC (COVID-19) appeal (11%) (data is not held for other running roll appeals).[2] In contrast, more than two thirds of premises with an RV over £95,000 submitted a revaluation (81%) appeal, or a MCC (COVID-19) appeal (67%).

[2] This is the upper RV threshold for individual properties to qualify for 100% relief subject to a cumulative RV cap.

Figure 2: Proportion of NDR Premises under 2017 revaluation; and MCC (COVID-19) appeal, by Rateable Value Bands[3]



Costs on the Scottish Administration

10. The Scottish Government has responsibility for setting NDR policy (including rates, reliefs and exemptions) and the legislative framework for the tax (such as this Bill).

11. NDR income is pooled at a Scottish Government level and redistributed back to local authorities to help fund local services, including those benefiting non-domestic properties. The Scottish Government then distributes additional central government grants to each local authority according to a needs-based formula which has been agreed by the Convention of Scottish Local Authorities (COSLA) on behalf of Scotland's 32 local authorities. It also guarantees the sum of General Revenue Grant (GRG) and NDR income for each local authority. This protects local authorities from volatility in NDR income and ensures that each local authority budget is not solely determined by its revenue-raising capacity (NDR, council tax and various fees and charges for services provided by the authority).

12. Typically, reductions in RV due to appeals are anticipated based on historical precedent in the NDR forecast and therefore any NDR income reductions due to appeals are budgeted for over the long-term. For example, after each NDR revaluation it is anticipated that a certain percentage of total RV will be lost each year due to successful appeals, with a corresponding impact on NDR income. As COVID-19 was

[3] Note that some properties will have lodged a 2017 revaluation appeal, a COVID-19 appeal and potentially (an)other running roll appeal(s).

unprecedented, any loss in RV as a result of COVID-19 appeals being successful is not currently factored into NDR income forecasts.

13. In the absence of case law, it is not known to what extent the impact of COVID-19 could still be deemed an MCC. Therefore it is assumed that these COVID-19 appeals could potentially, should they be successful, impact the level of RVs across a wide range of properties and sectors ahead of the next revaluation and therefore NDR income as well. As noted above, this is not currently factored into NDR income forecasts and as the Scottish Government guarantees the sum of GRG and NDR income for each local authority, this could put significant pressure on Scottish public revenues. The Bill will help avoid exposing public finances to this significant potential risk in respect of COVID-19 appeals.

14. Statistics on the progress and results of non-domestic rates revaluation appeals following the 2017 Revaluation are published quarterly[4]. These are however not comparable with 'running roll' appeals and in the absence of case-law regarding COVID-19 appeals it is not possible to predict outcomes. Due to the uncertainty of legal treatment of the matters under appeal as well as the lack of historic data on outcomes for this particular type of appeal, the forecasts of the Scottish Fiscal Commission (which is responsible for forecasting non-domestic rates income) do not include any consideration for potential COVID-19 appeal losses i.e. assume that this will be nil. Giving evidence to the Scottish Parliament Finance and Constitution Committee in October 2020, the Scottish Fiscal Commission noted: "we cannot forecast how any individual appeal will turn out; all that we can do is to look at the history of the appeals process and try to judge what effect appeals might have on NDR revenues in the future (…) inevitably, how appeals turn out is quite a random process. We know something about the appeals that are in the system, but it is very hard to predict when and how they will be settled"[5]. Given that no COVID-19 appeal has been resolved, there is no historic data that can be relied on to speculate the outcome of COVID-19 appeals.

15. Table 2 shows the estimated effect of different percentage reductions in total RV under appeal in the dataset provided in Table 1. This illustrates the potential effect that different percentage reductions in RV would have on net NDR income. This illustration assumes a single percentage reduction for the aggregate RV under appeal for each percentage scenario and quantifies different illustrative loss scenarios for financial year 2020-21 only. It does not consider any period outwith 2020-21. This is likely to paint an incomplete picture as it does not cover previous or subsequent years, nor does it make any projection on further appeals which could be made in relation to COVID-19.

[4] Non-domestic rates revaluation appeals - gov.scot (www.gov.scot)
[5] Official Report (parliament.scot)

Table 2: Illustrative NDR income reductions in 2020-21 under different percentage reductions in total RV under appeal

Percentage reduction in RV	Illustrative NDR income reductions for total RV under appeal in 2020-21 (£ million)
50%	558
40%	447
30%	335
20%	223
10%	112
5%	56
0%	0

16. It should also be noted that the Scottish Government is a ratepayer in its own right for the rateable non-domestic properties it occupies. This is however not relevant here given Scottish Government policy that market-wide changes should only be considered at revaluation.

Costs on Local Authorities

17. Responsibility for the day-to-day administration of the NDR system, including the billing and collection of NDR due, rests with each of Scotland's 32 local authorities. The Bill may have a financial impact on local authorities as the billing authorities for NDR insofar as any rateable value that is reduced would require the reissuance of a NDR bill for the ratepayer, the cost of which would be dependent on the volume of cases which required a billing amendment. Savings should therefore be incurred should the Bill preclude changes to property entries that may potentially otherwise have occurred.

18. Local authorities are also ratepayers in their own right when they occupy rateable non-domestic properties. Any financial gain from a successful appeal by a local authority in the form of a lower NDR bill following an RV reduction would currently accrue to the local authority.

19. There are approximately 5,600 properties with a total RV of £360 million occupied by Scottish local authorities which had an appeal lodged after the outbreak of the pandemic in either 2019-20 or 2020-21. This equates to £143 million in NDR income (see Table 3), and represents 62% of NDR income for premises occupied by all Scottish public sector subjects which had an appeal lodged in the same period.

Table 3: Number of Local Authority premises, RV and net NDR income under appeal in relation to the impact of COVID-19 or COVID-19 restrictions in 2019-20 and 2020-21.

	2019-20	2020-21	2019-20 and 2020-21 *
NDR Premises on the roll at April 2021	4,700	5,000	5,600
Total RV as at April 2021	£315m	£330m	£360m
Estimated net NDR income 2020-21**	£126m	£131m	£143m

* Properties appealed in both years counted as one (see paras 6-7)

** Scottish Government estimates based on an analysis of data provided by the Scottish Assessors Association on COVID-19 appeals, data relating to NDR reliefs awarded in 2020-21 (the 2020 Billing System) and the valuation roll. It should be noted that net NDR income is net of any NDR reliefs including Retail, Hospitality, Leisure and Aviation Relief.

Costs on other bodies, individuals and businesses

Costs on ratepayers

20. Firstly, Table 2 provides illustrative reductions in NDR income when RV is reduced by different percentages, which corresponds to potential reductions in NDR bills for the ratepayers of premises should RVs be reduced following appeal. The Bill would rule out potential reductions in RVs and NAVs due to the effects of COVID-19 from 2 April 2020 onwards. Market-wide economic changes will be considered at revaluation – the next one being on 1 April 2023 based on rental values at of 1 April 2022 (the ‘tone date’).

21. Secondly, while at a first-tier level, appeals to the Valuation Appeal Committee are free to lodge and it is not necessary to be professionally represented, there is a fee to lodge an appeal to the Lands Tribunal for Scotland (see Table 4) and most if not all appellants would tend to be professionally represented at this level. Cases which are particularly complex or technical tend to be referred to the Lands Tribunal for Scotland and fees and charges for professional representation are agreed between the client and their representative. The Bill is likely to reduce the incentive to pursue COVID-19 appeals and if appeals are withdrawn as a result the ratepayer will not incur further costs, such as Land Tribunal for Scotland fees, professional representation or personal time preparing for appeal.

Table 4: Land Tribunal for Scotland Fees

Rating appeal:	Fee
where the net annual value does not exceed £10,000	£100
where the net annual value exceeds £10,000 but not £50,000	£150
where the net annual value exceeds £50,000 but not £100,000	£300
where the net annual value exceeds £100,000	£500
Appeal on non-referral of valuation appeal or complaint	£78

Costs on assessors and other public bodies

22. Costs on Valuation Appeal Committees and Scottish assessors are funded by the local authority, or Valuation Joint Board of the area they cover. Arguably, therefore, any costs to Valuation Appeal Committees and assessors could also alternatively be considered costs to these bodies instead, which are funded by the Scottish Government (in addition to Council Tax, fees and charges, etc.).

23. Appeals incur administrative costs for Valuation Appeal Committees and assessors in the form of Valuation Appeal Committee expenses, the resourcing of negotiations and hearings as well as referrals to the Lands Tribunal for Scotland, any second-tier appeals to the Lands Valuation Appeal Court, etc. The Bill may reduce the incentive to pursue COVID-19 appeals and some may be withdrawn as a result, which would mean the above costs for corresponding appeals do not have to be incurred, therefore creating savings for the public sector.

24. 6,800 properties with a total RV of £575 million occupied by Scottish public sector subjects (which includes premises occupied by Local Authorities and Arm's Length Organisations) lodged a COVID-19 appeal. This corresponds to an estimated £231 million in NDR income (see Table 5).

Table 5: Number of Scottish Public Sector premises, RV and corresponding estimated net NDR income under appeal in relation to the impact of COVID-19 or COVID-19 restrictions in 2019-20 and 2020-21

	2019-20	2020-21	2019-20 and 2020-21 *
NDR Premises on the roll at April 2021	5,700	5,900	6,800
Total RV as at April 2021	£493m	£514m	£574m
Estimated net NDR income 2020-21**	£198m	£205m	£231m

* Properties appealed in both years counted as one (see paras 6-7)

** Scottish Government estimates based on an analysis of data provided by the Scottish Assessors Association on COVID-19 appeals, data relating to NDR reliefs awarded in 2020-21 (the 2020 Billing System) and the valuation roll. It should be noted that net NDR income is net of any NDR reliefs including Retail, Hospitality, Leisure and Aviation Relief.

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All documents are available on the Scottish Parliament website at: www.parliament.scot/documents