Local Government, Housing and Planning Committee

8th Meeting, 2021 (Session 6)

Tuesday 26 October 2021

Valuation and Rating (Coronavirus) (Scotland) Order 2021

Background

1. On 22 September 2021, the Scottish Government laid the draft Valuation and Rating (Coronavirus) (Scotland) Order 2021 in the Scottish Parliament.

2. The Order is subject to affirmative procedure (Rule 10.6) and it is for the Local Government, Housing and Planning Committee to recommend to the Parliament whether the Order should be approved.

Purpose of the instrument

3. 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.

4. 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.

5. 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.

6. 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.

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

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

Meeting

9. At its meeting on 5 October 2021, the Local Government, Housing and Planning Committee agreed to take evidence on the draft order. At this meeting the Committee will hear from:

- Marc Croathall, Chief Executive, Scottish Tourism Alliance
- Stuart Mackinnon, Head of Communications and Public Affairs, Federation of Small Businesses
- Paul Togneri, Senior Policy Manager, Scottish Beer & Pub Association
- Leon Thompson, Executive Director, UK Hospitality
- Colin Wilkinson, Managing Director, Scottish Licensed Trade Association

10. The Committee has received written submissions (available at Annexe B) from the following:

- Scottish Chambers of Commerce
- Federation of Small Businesses

11. The Committee will take further evidence on 9 November before considering the instrument on 16 November.

Clerks
Local Government, Housing and Planning Committee

Annexe A

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.

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[1] https://www.parliament.scot/chamber-and-committees/written-questions-and-answers/question?ref=S6W-00997

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

The Scottish Chambers of Commerce

The Scottish Chambers of Commerce have shared the following items with the Committee:

- The Scottish Chambers of Commerce Response to the Request for Evidence by the Scottish Parliament – October 2021
- Correspondence to the Cabinet Secretary for Finance and the Economy – 15 April 2021
- Correspondence to the Cabinet Secretary for Finance and the Economy – 2 August 2021
- Correspondence to the Scottish Chambers of Commerce from the Cabinet Secretary for Finance and the Economy – 21 April 2021
- Correspondence to the Scottish Chambers of Commerce from the Cabinet Secretary for Finance and the Economy – 24 August 2021

The Scottish Chambers of Commerce Response to Request for Evidence by the Scottish Parliament – October 2021

SCC have been asked to attend the Committee to give evidence on the above Order at its sitting on the morning of 26th October 2021.

Regrettably representatives from SCC are not available to attend that morning and have agreed to lodge formal written evidence in advance.

The SCC network have set out below our position on the matter which we wish the Committee to consider and would be pleased to follow up on any of the issues raised. In the request for Evidence the Committee Clerk advised:

> "The Scottish Government recently laid the draft Valuation and Rating (Coronavirus) (Scotland) Order 2021 before the Parliament.
>
> The Order seeks to ensure that for the period 1 April 2021 onwards the impact of COVID 19 can't 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. We understand that the Scottish Government will be introducing a Bill later this year applying the same provisions to the period from the beginning of the pandemic up until 1 April.
>
> The Committee wishes to inform its scrutiny of the Order and would be keen to take evidence from the Scottish Chambers of Commerce as part of that process."

SCC Network Position

SCC Network Position The position of SCC on the particular issue of Covid 19 MCC appeals has been clearly set out in a number of letters over the last few months to Kate Forbes.

These are attached at Appendices 1 and 2 and the responses are attached as Appendices 3 and 4.

It is clear in our view that the rationale for the introduction of this Order and the proposed Bill relates to protecting the state of the public finances rather than considering the impact on businesses potentially impacted by this proposed legislation. This does not sit well within the context of the consultation on Tax Framework recently launched by the Scottish Government.

The impact of this policy decision and the engagement that has taken place are not on an equal footing. SCC believes more meaningful engagement needs to have taken place with clear economic impact assessments presented to businesses and to offer our Network an opportunity to clearly articulate our concerns to Ministers and officials.

SCC RECOMMENDATION TO THE COMMITTEE:

1. Reject the Order

ABOUT SCC: The Scottish Chambers of Commerce Network sits at the heart of local business communities, representing over 12,000 businesses in Scotland. With 30 local Chambers rooted in communities across Scotland, the Chamber Network provides practical advice and support to Scottish companies through unrivalled expert leadership, business-to-business connections, mentoring/coaching, business support services and international trade support

Correspondence to the Cabinet Secretary for Finance and the Economy – 15 April 2021

I write to firstly thank you for your letter of 26th February responding to our concerns around the new Assessor and Local Authority Information Notices. Secondly, we wish to seek views from the Scottish Government in regard to the UK Government's recent announcement that they are legislating to prohibit appeals on basis of material changes of circumstance, made due to the COVID-19 pandemic.

We are aware that your officials have been liaising with the Chancellor's officials on NDR matters and we note this change was mentioned in your letter to the Chancellor before his March budget.

We also note that the Chancellor announced simultaneously a new "Business Rates Relief Fund" to be distributed by local authorities in England. In that announcement it was stated that an extra £145 million of consequential funding will come to Scotland as a result. We would ask for clarity on where this money will be spent in Scotland. Our position is that any consequential funds should be used to provide immediate support to businesses in Scotland and should not be used to soften the blow of Government intervening to retrospectively limit or remove the existing appeal rights of ratepayers, as appears to have been done in England.

The Scottish Chambers of Commerce see this action to retrospectively prohibit MCC appeals in England as a fundamental breach on the rights of the ratepayer. We would not be supportive of any similar proposal in Scotland and as such seek urgent clarification that the Scottish Government will not look to do the same now or in the future should you return to Government after the election.

We would be happy to arrange a follow up discussion with you and your officials in due course to discuss this important matter.

We look forward to hearing from you.

Yours Sincerely,
Dr Liz Cameron OBE Director & Chief Executive
Scottish Chambers of Commerce

Correspondence to the Cabinet Secretary for Finance and the Economy – 2 August 2021

Following on from our letter of the 15th of April, the Scottish Government have recently confirmed that they intend to legislate to rule out COVID-19 appeals on non-domestic properties, as outlined by Minister Tom Arthur MSP on the 24th of June in an answer to a parliamentary question where the Minister said:

"On 25 March 2021 the UK Government committed to ruling out COVID-19 appeals on non-domestic properties in England. It concurrently announced a new Business Rates relief fund of £1.5 billion for businesses affected by COVID-19 outside the retail, hospitality, and leisure sectors.

We anticipate that this will result in consequential funding for the Scottish Government, but at this point we are still waiting for confirmation of when this will be received. Once that confirmation is provided, we remain committed to passing on all business support consequentials through a tailored package of measures for Scottish business during the recovery period.

In the interim, 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.

The Scottish Government can therefore confirm its intention to also take measures to rule out COVID-19 appeals, whilst continuing to ensure that we best support the most affected businesses and sectors in the recovery period. We will set out our legislative plans after the summer."

Please note our letter sent on this matter on 15th April 2021 before Mr Arthur's statement which set out our position and desire for the Scottish Government to retain the existing material change of circumstance "MCC" appeal options for Scottish businesses irrespective of the position taken in England.

After a meeting last week of SCC's expert Non-Domestic Rates Advisory Group, including chartered surveyors representing hundreds of Scottish businesses, we maintain that position and have concluded, that this intended policy of the Scottish Government:

i i) is completely at odds with key principles of certainty and fairness in a modern taxation system
ii ii) goes against the main aim of the Barclay review to design a rates system that better reflects changing marketplaces and
iii iii) could burden the Scottish business community with hundreds of millions in Non-Domestic rate charges which it would otherwise not have had to bear, and which will not be offset by the consequential funding promised.
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We would therefore be grateful to understand if the Scottish Government is planning to formally consult with ratepayers on this proposed legislation.

We would also hope the Scottish Government could inform the business community immediately where it proposes the consequential funding of £145 million will go, outline who will be eligible for it and confirm the plan for its distribution.

We would be happy to arrange a follow up discussion with you and your officials in due course to discuss this important matter.

We look forward to hearing from you.

Yours Sincerely,

Dr Liz Cameron OBE
Director & Chief Executive
Scottish Chambers of Commerce

Correspondence to the Scottish Chambers of Commerce from the Cabinet Secretary for Finance and the Economy – 21 April 2021

Thank you for your letter of 15 April to the Cabinet Secretary for Finance regarding non-domestic rates COVID-19 appeals and the use of £145 million of consequential funding for Scotland as a result of the UK Government's announcement of a new "Business Rates Relief Fund" to be distributed by local authorities in England. I have been asked to thank you for your correspondence and to reply on this occasion.
As you will be aware, the next Scottish Parliament election is scheduled to be held on 6 May 2021, and the pre-election period began on 25 March. As such, it will be for the next administration after the election to consider the UK Government's announcement on COVID-19 appeals and the best use of the consequential funding set out above.

I hope that this information is helpful.

Yours sincerely Eilidh McCabe LGAS : LGFinance, Local Taxation Policy & Business Rates Unit

Correspondence to the Scottish Chambers of Commerce from the Cabinet Secretary for Finance and the Economy – 24 August 2021

As outlined in the answer to the Parliamentary Question on 24 June 2021, the Scottish Government agrees in principle with the UK Government that market-wide economic changes to rateable values should only be considered at a revaluation and that COVID-19 appeals are not the appropriate mechanism for ratepayers to seek reductions in their business liabilities because of disruption linked to COVID-19.

As you will be aware, the Minister for Public Finance, Planning and Community Wealth, the Minister for Business, Trade, Tourism and Enterprise and I 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. Those meetings 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's position on Non-Domestic Rates Material Change of Circumstance appeals was not identified as a substantive concern through that exercise.

As was the case in England, legislation will require to be laid and approved by the Scottish Parliament in order to rule out COVID-19 appeals in Scotland as well. As part of the exercise, the Scottish Parliament will have the opportunity to scrutinise this legislation and may choose to take evidence from stakeholders.

The UK Government's Bill regarding COVID-19 appeals, the Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill completed the Committee stage in the House of Commons on 8 July and its report and third stage are scheduled on 9 September.

Ahead of the Bill's introduction, the UK Government announced a £1.5 billion discretionary relief scheme for businesses. The associated news release on 25 March 2021 stated "The devolved administrations will receive an additional £285 million through the Barnett formula" with the Scottish Government notionally due to receive £145 million. Regrettably, the UK Government have yet to disperse any of the £1.5 billion and therefore no consequentials have actually been provided to any of the devolved administrations. We will continue to press the UK Government for further clarity on their 25 March commitment, and while no decisions have yet been taken on how these funds can be put to best use, we remain committed to passing on all UK Government business support consequentials to Scottish business in the recovery period through a tailored package of measures.

As you will know, the next revaluation is scheduled to take effect on 1 April 2023 based on rental values as at 1 April 2022. This will give sufficient time for market conditions to fully adjust to any post COVID effects, more so than anywhere else in the UK, and these will be reflected in the rateable values assessed which should be more accurate and sustainable. This also delivers our commitment to the Barclay Review's recommendation to move to revaluations with a one-year tone date ahead of schedule. This move, along with the move to three-yearly revaluations following the 2023 revaluation will reduce the shocks that might otherwise have taken place at future revaluations.

Yours sincerely,
KATE FORBES

Federation of Small Businesses submission on the Draft Valuation and Rating (Coronavirus) (Scotland) Order 2021

Ahead of the Committee’s evidence session on the above Order on Tuesday 26 October, I thought it would be helpful if I outlined the Federation of Small Businesses’ views, both on the regulations and the current non-domestic rates landscape in Scotland.

Over the last two years, the coronavirus pandemic has had a major impact on Scotland’s small business community. More than half of our members in Scotland had to shut their doors to custom for prolonged periods according to FSB survey work, with many firms having to open and close on multiple occasions.

The UK Government and the Scottish Government sought to support businesses, the economy and local communities through this difficult period with the introduction of support such as the furlough scheme; direct government grants; rates reliefs; and more. While much of this help was very welcome, Ministers were clear that these measures were not intended to fully compensate firms for lost trade.

At the height of the crisis, governments in Edinburgh, Cardiff and London chose to introduce new 100% reliefs to support businesses. This move meant that governments were not making tax demands on properties which public health measures had prevented from being used.

We accepted policymakers’ argument that this was a far more effective means of supporting the large numbers of businesses hit by the covid crisis, as opposed to relying upon the non-domestic rates’ (NDR) appeals system to adjust rateable values. And we were especially supportive when the Scottish Government chose to extend 100% relief for the hardest hit sectors for the current financial year.

As part of our evidence to the Barclay review of business rates, FSB highlighted that less than a fifth (18%) of our members in Scotland appealed following a revaluation. The bulk of our members (57%) chose to represent themselves through this process. Discussions with assessors and officials suggest that firms that take this approach are unlikely to succeed.

Conversely, the Barclay review noted that many large public and private organisations chose to appeal their entire estate at the point of revaluation – a move they noted “inevitably clogs the system”.

It is our view, therefore, that even if a mid-revaluation cycle appeal route remained open for Scottish small businesses, few firms would take this route and fewer still would be successful. If the policy choice is between this route remaining open and ongoing rates relief support, then the latter option will be of greater benefit to the bulk of Scottish businesses.

However, we would highlight to the committee at least some concern in the small business community about the end of the current covid reliefs, especially amongst small business who operate out of high value premises (outside the scope of the Small Business Bonus Scheme) and whose markets have not returned since the crisis began. That's why in a recent report, FSB urged the Scottish Government to commit to ongoing 2022/23 rates support for businesses in this position.

Further, during the crisis, we saw the relationship between tenants and landlords put under intense strain. And at times we raised concerns about the lack of flexibility granted to small tenants by large landlords.

As our local communities, high streets and economies recover from the crisis, we need to ensure that the Scottish commercial property market adapts to changes in how we use property and treats small tenants fairly. That's why we were interested to see the UK Government signal a review into the legislative and regulatory framework that governs the relationship between landlord and tenant in England. We have for some time been arguing for a review of the law and regulations of Scotland's non-domestic and commercial property market to ensure the system is fit for our current challenges.

For many of the reasons outlined above, it will also be vitally important that the 2023 business rates revaluation delivers accurate valuations for businesses without access professional property advice. With substantial changes planned to how the NDR system works in Scotland due to be in place before this valuation, we would suggest to the committee that they may wish to get an update from councils, the assessors, and the Scottish Government about the delivery of a more comprehensible and user-friendly rates system ahead of the April 2022 tone date.

Yours sincerely
Andrew McRae Chair, Scotland Policy Unit, Federation of Small Businesses (FSB)