

Local Government, Housing and Planning Committee

10th Meeting, 2021 (Session 6)

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

- David Magor, Chief Executive, Organisation - Institute of Revenues Rating and Valuation;
- Martin Clarkson, Member of the Business Rates Working Group, Scottish Property Federation;
- Pete Wildman, Vice President, Scottish Assessors Association;
- Alastair Kirkwood, Past President, Scottish Assessors Association;
- Charles Golding, Senior Specialist – Valuation and Investment Advisory, Royal Institute of Chartered Surveyors; and then from
- Jonathan Sharma, Policy Manager, Local Government Finance Organisation, COSLA;
- Kevin Fraser, Principal Officer (Local Taxes), Perth & Kinross Council.

10. The Committee has received written submissions (available at Annexe B) from the Scottish Property Federation and the Scottish Wholesale Association at Annexe C.

11. The Committee will consider the instrument on 16 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

Annexe B

Background Note from the Scottish Property Federation on the Valuation and Rating (Coronavirus) Order 2021

1. The Scottish Property Federation (SPF) is pleased to provide this informal note in support of the evidence session we will speak at next week, represented by Mr Martin Clarkson, a partner from our member firm of Gerald Eve.
2. The SPF is the voice for the property industry in Scotland. We include among our members: property investors, including major institutional pension and life funds; developers; landlords of commercial and residential property; and professional property consultants and advisers.

Impact of Coronavirus and the Government response

3. Few could have foreseen in late February 2020 just how far the Covid-19 virus would impact lives, society, and our economy at large. This was an unexpected event that ushered in the greatest economic fall since records began some 300 years ago. In Scotland, the economy contracted by 19.4% in terms of GDP in the March to June 2020 period. Neither government, nor business were prepared for the scale of the Covid-19 crisis.
4. When it came the government response in March 2020 was unprecedented in peace time. Cities and businesses were locked down and aside from essential services and amenities, large parts of society were instructed to stay at home. For many ratepayers the use and occupation of the buildings they required for their business purposes were now unusable. Construction was halted in Scotland and high streets fell silent.
5. Without income many businesses simply could not pay their commercial rent. The government took measures to provide protections to tenants and most landlords agreed alternative or new measures with tenants unable to pay. We know that there were some conflicts between landlord and tenant but by and large there really was no alternative but to make alternative arrangements on rent. The SPF's [survey](#) in April 2020 provided an assessment of the sector's early responses to the pandemic.
6. The government also provided unprecedented rate support by exempting retail, leisure, hospitality, and airports from rates liability altogether. An estimate of the number of these subjects, based on the Scottish Assessors Association portal, suggests over 92,000 properties fell within these categories (although a number

would already be exempt potentially via the Small Business Bonus Scheme). This was hugely welcome and indeed is a policy continued for this public finance year. However, not all businesses were supported with rate relief despite being unable to provide goods or services from their buildings and it is for these ratepayers that we feel the decision to negate appeals based on Covid-19 grounds is wrong and unfair. Indeed, if we use the same SAA portal assessment then potentially over 168,000 ratepayers did not fall within the retail, hospitality, leisure, or airports criteria (although again a number would be otherwise exempt or supported through relief schemes, principally the SBBS For many of these ratepayers also saw their businesses significantly impacted by the Coronavirus and not all were able to benefit from other public support.

7. For example, an industry deeply affected by the inability to discuss the merits of an MCC is that of car park operators whose income fell off a cliff overnight as people stayed home. While some office occupiers may have been able to successfully maintain their operations and income by working from home, those operating car parks could not as it relied 100% on physical occupation. This was one missing sector that was deserving of Retail, Hospitality and Leisure style covid relief. The inability to argue for an MCC is therefore fatal to them. Beneficial occupation is one of the core principles in rating valuations. To argue that buildings not capable of beneficial occupation should have a rateable value is illogical and goes against the core principles and foundations of rating.
8. The SPF is of the view that the most appropriate government response would have been to reduce the rateable value applied for the period of the public health emergency. There is precedent for this action, Glasgow deployed this policy in response to a major fire in its city centre previously.

MCC Appeals and the 2020 non-domestic rates act

9. The SPF supported most measures recommended by the Barclay review of business rates and the Non-domestic Rates (2020) Act implemented a great deal of these recommendations. However, we argued then that we felt the decision to restrict MCC appeals based on economic grounds was wrong because while the move to a 3-year revaluation is welcome, the fact remained that there can be some events that have an immediate impact and thus quicker than even this shorter revaluation period. The financial crisis, the impact in the northeast of the collapse of the oil and gas price in 2015 and the covid-19 crisis are recent examples. The government intends to introduce primary legislation to disallow MCC appeals based on coronavirus reasons and this Order applies that same policy ahead of this primary legislation. We believe this to be wrong and not in keeping with the principles of tax policy otherwise espoused by the government.

The lodging of MCC appeals in March 2020

10. Despite the changes in primary legislation heralded by the 2020 Act, in March 2020 these provisions had yet to come into force and therefore MCCs remained a viable aspect of rating legislation. The ratepayer had a right to make an appeal based on MCC and the impact of the coronavirus was so severe that many ratepayers either directly appealed on MCC grounds or instructed agents to appeal on their behalf. In all this led to some 49,000 MCC appeals related to the coronavirus being submitted in 2020.
11. There is no doubt this created a major workload for the Scottish Assessors. At the same time the Assessors were themselves now working from home. We believe there are concerns that at least initially there were some difficulties in ensuring Assessors had the appropriate technological support to support their workload, and, as valuation professionals they were also subject to restrictions on movement or access to buildings.

Summary

12. We continue to believe that the decision to restrict the basis for MCCs in the 2020 Act was wrong and has been shown to be deficient by the experience of Covid-19. This draft Valuation and Rating (Coronavirus) Order 2021 and the proposed primary legislation are in effect retrospective measures that remove the rights of ratepayers to have their business rates liabilities reassessed. This is wrong and cases should be considered on their merits. Natural justice should prevail and that the MCCs should be allowed to proceed and allow the Courts to make a determination on whether COVID is an MCC event or not.

13. One of our major members commented succinctly:

'If covid cannot be considered an MCC now, we remain deeply concerned about the future of rating and what actually constitutes an MCC going forward as any future MCC will ultimately pale into insignificance compared to this.'

14. Covid-19 caused many of these applicants to have the right to use their business properties to trade, or produce goods and services, removed. The public health emergency was in many respects a situation for which MCCs were designed: an unforeseeable sudden and drastic event which caused ratepayers to lose effective use of their property. We believe it was an error to vote to remove the right to appeal on economic grounds in the first place and we believe this retrospective legislation is simply wrong in principle.
15. It was proposed by a number of rating practitioners that the better response to the public emergency would have been to reduce rateable values to reflect the impact of the event, perhaps with greater reductions for more drastically affected properties. We feel this is how the rating system should have been used as part of the government response to the pandemic and may have been better than

selecting business sectors for grants or reliefs, which has resulted in controversy in some cases. There has been little or no support for many other ratepayers who suffered considerable economic losses because of the pandemic, and the public health measures required to deal with the pandemic. MCCs, assessed through the Appeals system, could help to redress this situation.

Annexe C**The Scottish Wholesale Association submission**

We note the Local Government, Housing and Planning Committee are currently taking evidence into the Valuation and Rating (Coronavirus)(Scotland) Order 2021 which is before Parliament. The Scottish Wholesale Association (SWA) would be keen to present evidence to you and your Committee colleagues on this issue.

The Scottish Wholesale Association is the official trade body for Scotland's food and drink wholesaling sector which represents a significant part of the food and drink supply chain. SWA members supply products to 1/5th of the total food retail sector through the 5,000 independent convenience stores as well as 30,000 catering, hospitality, tourism and leisure businesses and public sector establishments including schools and hospitals.

Given the nature of their business, most wholesalers require large storage buildings and non-domestic rates remain a significant cost. The wholesale sector tends to employ a high turnover, low margin business model with average pre Covid net margins of 1.3%.

90% of the sector is made up of Scottish family run SMEs and the pandemic has had a devastating impact on them with some operating at only 5% of pre-covid sales up until April 2021. This was particularly evident within on-trade wholesalers purely serving licensed hospitality venues and in the more remote parts of Scotland, heavily reliant on tourism.

The Scottish wholesale sector is still under severe financial pressure due to Covid while our members now face rising fuel and workforce costs as well as the well-publicised labour shortages and subsequent stock availability issues across our marketplace.

Our most recent members survey undertaken this month showed that year on year sales reductions compared to 2019 ranged from 10-15% for one major UK foodservice wholesaler to 60% for a central belt food wholesaler. The average sales drop amongst those experiencing a reduction was 32%.

Highland & Islands businesses are particularly concerned as they have had 2 sets of winter losses, a summer of losses and now face a 3rd winter. For example, one wholesaler in April & May 2021 saw sales of 10-50% of normal levels and June to Sept sales are between 65 to 78%. Growing Covid case numbers have led to increased anxiety about the possibility of further Winter market restrictions.

From the initial days of the pandemic in March 2020 it has been clear that a lack of understanding of the role wholesalers fulfil in the delivery of food and drink may have led to a reluctance amongst local authorities and other agencies to provide financial grants to the majority of SWA members.

Non-domestic rates relief has been made available throughout to our sector's customers in retail, hospitality, leisure and tourism, who the Committee heard from

on 26th October, **but not to the wholesale businesses impacted directly by their closure and the restrictions on those businesses.** Marc Crothall from the Scottish Tourism Alliance rightly highlighted the plight and critical importance of the supply chain.

While many food retailers including supermarkets have experienced increased profits during this period, foodservice and licensed trade wholesalers have experienced devastating drops in turnover and income, increased debt and significant mental and financial stress.

Throughout the past nineteen months we have worked with the Scottish Government and we appreciate the financial support some of our members received, initially through the PERF and then through the Wholesale Sector Resilience Fund awarded to many wholesalers last December. No further financial assistance has been forthcoming for our sector since then. Meanwhile, the wholesale sector remains caught in a perfect storm of crisis with rising costs, staffing, debt, cash flow and supply chain issues causing major concern.

While we engage regularly with Scottish Government officials we have not been particularly consulted on this affirmative motion and would suggest further engagement with business should be undertaken. We have previously raised the UK Government's initial statement on 25th March 2021 on this issue with them as the Chancellor made it clear the available £1.5 Billion "Business Rates Relief Fund" was to be used to support businesses which had not had rates relief to date i.e outside the retail, hospitality and leisure sectors. He specifically drew attention to wholesalers as an example of such businesses. Willie Coffey MSP and John Lamont MP have both raised these matters on behalf of SWA members.

While there are £145m of consequentials due to the Scottish Government as a result, the Scottish Government have not received yet received these funds. SWA believe this delay is partly due to the UK Government decision to include these rates relief changes within the Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill which is currently at Second Reading in the House of Lords.

However, the need to support Scotland's wholesalers remains urgent. Without access to rates relief or other financial support many Scottish wholesale businesses will continue to struggle with consequential impact on the supply of food and drink.

While we welcome the Scottish Government's commitment to pass on all of the consequentials in business support we have no detail of whether or not our sector will be eligible. We, therefore, remain concerned at the loss of the rights of our members to retain the existing MCC appeal options given the ongoing challenges they face.

We note that the next revaluation is scheduled to take effect on 1st April 2023 based on rental values at 1st April 2022. It will be critical that, in due course, the 2023 NDR Revaluation is robust and accurately reflects the very negative economic environment faced by Scotland's food and drink wholesalers and other businesses.

Should you wish, I would be delighted to discuss this further with you, or the committee, directly.