



THE NON DOMESTIC RATES (CORONAVIRUS) BILL 2021

**CALL FOR EVIDENCE BY THE SCOTTISH
PARLIAMENT'S LOCAL GOVERNMENT, HOUSING
AND PLANNING COMMITTEE**

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INTRODUCTION

Background

The Non-domestic Rates (Coronavirus) Bill legislates to remove the right to submit a rating appeal based on a material change of circumstances related to the coronavirus measures, on or after 2 April 2020. The Bill also provides for Assessors to disregard any changes to rateable values made based on a successful rating appeal for a material change of circumstances related to the coronavirus before the 2 April 2020.

INTRODUCTION

Information about your organisation

The Scottish Property Federation (SPF) is the voice for the real estate 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. Our members build Scotland's workplaces, homes, shops, schools and other facilities and the infrastructure that serves them. Our industry is therefore central to the Scottish economy.

QUESTIONS 1-7

Administrative questions entered online.

QUESTION 8 Please tell us your views on the Bill

We do not agree with this legislation. The Bill retrospectively removes the rights of ratepayers to challenge their rateable value due to a material change of circumstances caused by public health emergency measures. This restricted their rights to use and occupy the very premises the tax is based upon. This tax measure is wrong, fundamentally and does not support the Adam Smith principles so regularly highlighted by the government. In effect it retrospectively (from 2 April 2020) removes a right to challenge a rating assessment on the grounds of a material change of circumstance from tens of thousands of ratepayers.

Retrospective disregard of March 2020 MCC appeals

The Policy memorandum is in our view incorrect to assert that the Bill's retrospective measures are not unreasonable (Paragraph 40). It clearly states that Assessors are to disregard any changes made to the valuation roll because of appeals lodged for the two week period of lockdown in March 2020. If reduced rateable values were justified for late March 2020, why were they not equally justified after 2 April 2020? This policy change in essence seeks to put aside any approved changes to rateable value made before this date (2 April) because of the coronavirus. Given the restrictions of the time, it would be difficult to see any change in the circumstances affecting the premise between 1 April 2020 and 2 April 2020.

Beyond this there is the determination of the government not to view the Covid-19 measures as a material change in circumstances for ratepayers. On the notion of MCCs and economic circumstances themselves we have previously criticised the restrictions imposed on MCC appeals by the 2020 Act. We could not have foreseen that within a few weeks of the passing of that legislation an event so clearly relevant to the MCC power would become apparent. As we stated in our comments on the Valuation and Rating (Coronavirus) Order 2021:

'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.'

MCCs were designed to deal with extraordinary circumstances that could not have been foreseen. The pandemic restrictions and lockdowns surely represented such an occasion. The unfairness of the 2020 changes to the definition of MCC appeals is also very well revealed by this legislation.

In effect the Bill seeks to extend an incorrect picture of the commercial property rental market from 2 April 2020 and until the next revaluation date of 1 April 2023. The reality of this period is that our major economic centres saw declines of activity of between 45% and 52%, and this may take some time to recover. In addition, the Committee will recall that the government have already delayed the date of this revaluation by a year, meaning that until 31 March 2023 many ratepayers will face liabilities based on 1 April 2015 values.

We believe that it is important that the Scottish Government considers the position of ratepayers unable to draw on support through its Coronavirus relief schemes. There has been debate in the Scottish Parliament about the use of consequential funds from the UK Government that are based upon the UK's business support measures. We believe it is important that the government therefore uses UK consequential funds flowing from business support schemes, to seek to support businesses impacted heavily by the pandemic, yet thus far unable to benefit from RHL(A) rates relief.

QUESTION 9 Please tell us if there are any issues the Committee did not consider when looking at the Order and should consider now

We have made the point previously that the measures in this Bill and indeed the Valuation and Rating (Coronavirus) Order 2021 fall far short of the principles adopted by the Scottish Government in relation to the setting of taxation policy. This was not addressed previously.

We remain concerned therefore that the respective removal of a ratepayer's right to challenge their rates liability in the context of the enormous impact of the pandemic on the Scottish economy, is simply unfair. We do not think it correct that these rights should be simply set aside. Taxpayers should have the right to challenge their rates liabilities and this was the position at the introduction of the lockdown. This should have seen rateable values reduced where appropriate and this should have set the tax base for the April 2020 to March 2021 tax year.

The current revaluation

The pandemic saw rents set aside, slashed or delayed yet the rates system makes no acknowledgement of this fundamental change in the commercial property rental market. The government will argue that these changes are to be reflected in the forthcoming revaluation, due to take effect on 1 April 2023. This would still leave some ratepayers paying rates higher than their post-pandemic market rental values for up to three years – and we are concerned that this may then set the basis for the 2023 revaluation.

Future emergency events

One additional issue for the Committee to consider is the role of the Non-domestic Rates system in responding to future emergency circumstances. We have previously welcomed and credited the government's wide-ranging NDR relief measures for retail, hospitality, leisure and aviation subjects. We stand by that credit. The relief package was however a broad policy instrument that benefitted not just hard pressed businesses but also some who were able to trade effectively during the pandemic. This leads to anomalies where some businesses seriously affected by the pandemic had no support; and others able to continue to do business were granted relief at the same time. This includes public sector ratepayers who also lodged over six thousand appeals which will now not be considered.

The Committee should consider whether a targeted reduction in rateable values, possibly adjusted by sector or size of business, would be a more appropriate tool for dealing with material changes of circumstances and wider economic emergencies. This approach could better respect the integrity of the NDR system we feel and is arguably a better policy tool because it directly adjusts the tax base upon which liabilities are based.

And further to our response to Question 8, the Committee should reconsider the decision to exclude economic circumstances from the definition of an MCC proposal/appeal.

