

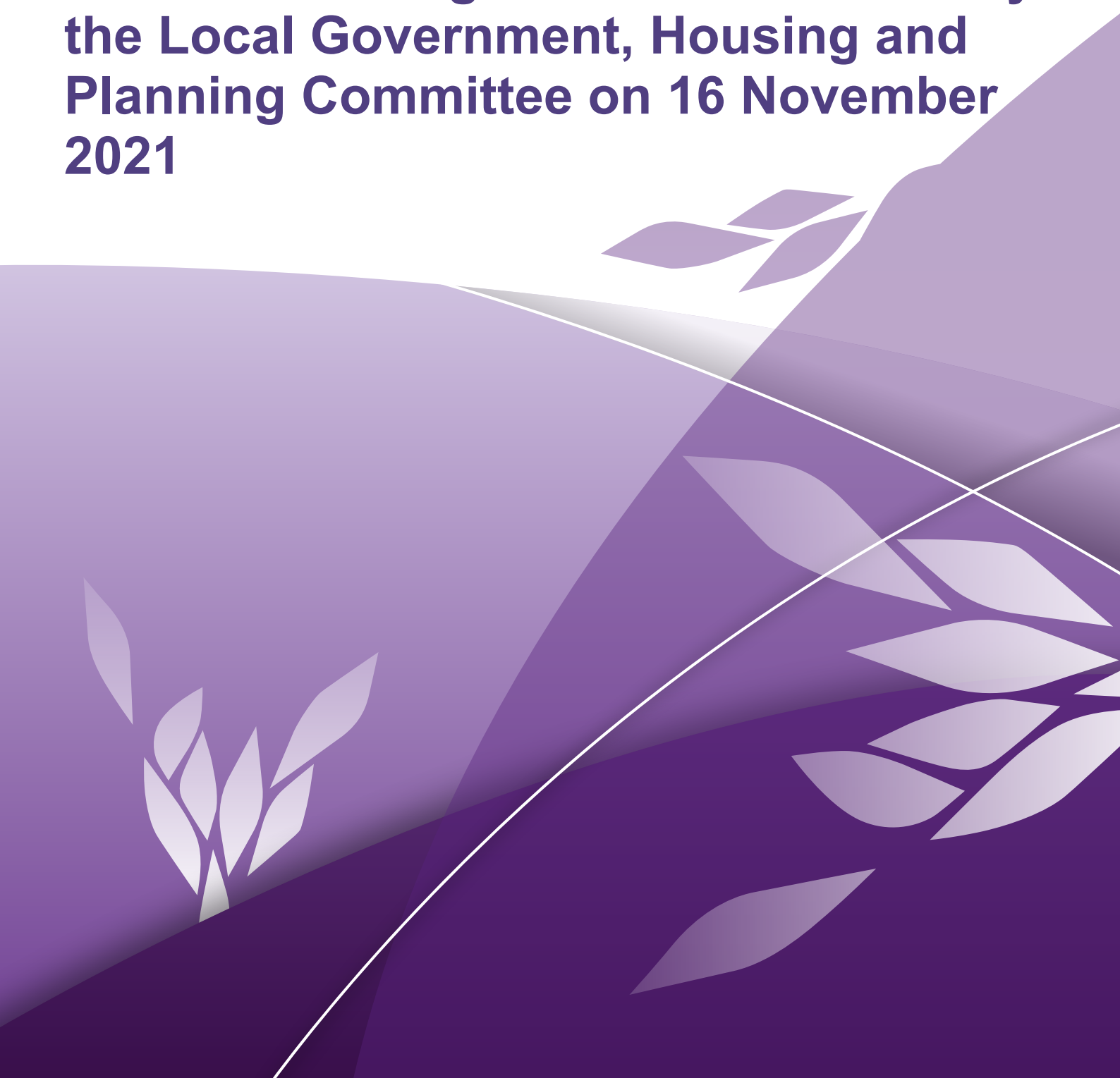


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Local Government, Housing and Planning Committee

Subordinate Legislation considered by the Local Government, Housing and Planning Committee on 16 November 2021



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Local Government, Housing and Planning Committee

To consider and report on matters relating to local government, housing and planning falling within the responsibility of the Cabinet Secretary for Social Justice, Housing and Local Government and the Cabinet Secretary for Finance and the Economy, and matters relating to the Local Government Boundary Commission and local governance review and democratic renewal within the responsibility of the Deputy First Minister.



localgov.committee@parliament.scot

Committee Membership



Convener
Ariane Burgess
Scottish Green Party



Deputy Convener
Elena Whitham
Scottish National Party



Meghan Gallacher
Scottish Conservative
and Unionist Party



Willie Coffey
Scottish National Party



Miles Briggs
Scottish Conservative
and Unionist Party



Mark Griffin
Scottish Labour



Paul McLennan
Scottish National Party

Introduction

1. At its meeting on 16 November 2021 (11th meeting, 2021), the Local Government, Housing and Planning Committee considered the following affirmative instruments:
 - [The Valuation and Rating \(Coronavirus\) \(Scotland\) Order 2021](#);
 - [The Relevant Adjustments to Common Parts \(Disabled Persons\) \(Scotland\) Amendment Regulations 2021](#)
2. The Delegated Powers and Law Reform Committee considered both instruments and determined that it did not need to draw the attention of the Parliament to either instrument on any grounds within its remit.

Valuation and Rating (Coronavirus) (Scotland) Order 2021

3. On 22 September 2021, the Scottish Government laid the draft Valuation and Rating (Coronavirus) (Scotland) Order 2021 ("the Order") in the Scottish Parliament.
4. A large number of appeals over rateable values 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.
5. On 25 March 2021 the UK Government committed to ruling out COVID-19 being used as a ground to appeal rateable values 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 take measures to rule out these appeals out in Scotland.
6. The Order 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 Scottish Government has indicated the it will introduce primary legislation to apply the same rule to appeals for the period prior to April 2021.

Committee consideration of the Valuation and Rating (Coronavirus) (Scotland) Order 2021

8. The Committee took evidence on the Order at its meetings on 26 October, 9 November and 16 November.
9. The Order makes a significant change to the grounds for appeal on non-domestic rates mid-way through the valuation cycle. It also presents the same issues as the Committee expects to see in the forthcoming associated Bill. For both these reasons the Committee agreed to undertake a thorough programme of scrutiny on the Order.
10. The Committee would like to thank those who informed its scrutiny of the Order. The Committee took evidence from the following organisations:
 - Institute of Revenues, Rating and Valuation;
 - Scottish Property Federation
 - Scottish Assessors Association
 - Royal Institute of Chartered Surveyors
 - COSLA

- Scottish Tourism Alliance
 - Federation of Small Businesses
 - UK Hospitality
 - Scottish Beer and Pub Association
 - Scottish Licensed Trade Association
11. In addition, the Committee received written evidence from the following organisations:
- Scottish Chambers of Commerce
 - Mike Rose, Director, Property Tax Group, CBRE
 - Scottish Wholesale Association
12. In taking evidence on the Order the Committee noted a number of points that it wished to highlight to Parliament.
13. Firstly, the Committee noted the Scottish Government's contention that factors that have widespread implications across a range of sectors and business types, such as Covid 19, should not be dealt with mid-way through the revaluation cycle and are more appropriately dealt with in the context of the next revaluation which will take effect on 1 April 2023, based on property values as at 1 April 2022.
14. The Committee does not disagree with that view, but at the same time considers that there are other, perhaps more significant, factors which are informing the Scottish Government's decision to lay this order. Specifically, the Committee considers that much of the drive for this order arises from a need to protect local government revenues, which could be significantly reduced in the event that appeals were successful.
15. Another key driver for bringing forward this Order would appear to the Committee to be the capacity of assessors to deal with the volume of appeals that would have to be processed in the event that appeals on the basis of Covid-19 were to be allowed.
16. In evidence to the Committee on 9 November, representatives from the Scottish Assessors Association (SAA) indicated that the number of MCC appeals lodged into Covid 19 could rise to around 130,000 if the Order is not passed and MCC appeals on the grounds of coronavirus are permitted.
17. The Committee recognises that the volume and complexity of such appeals would place an unmanageable burden on assessors.
18. The Committee also recognises that this additional workload comes at a time when assessors are beginning the process of revaluation, with the next revaluation date of April 2023 being based on valuations as at April 2022. In giving evidence to the Committee on 9 November, the SAA highlighted that it is already struggling to recruit appropriately-qualified staff to deal with the forthcoming revaluation.

19. The Committee is concerned by these workforce issues and would welcome an update from the Scottish Government on what is being done to ensure that there are sufficient resources in place to facilitate the revaluation.
20. The Committee explored with witnesses whether they felt there had been sufficient consultation prior to the laying of the Order.
21. The Scottish Government is required to carry out consultation in relation to any secondary legislation proposed under Section 6 of the Local Government (Scotland) Act 1975. However, there has been no specific consultation on these proposed regulations. The policy note explains that:
 - ” 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.
22. Amongst others, the Scottish Chambers of Commerce expressed their concerns to the Committee about the lack of consultation or economic impact assessment undertaken prior to the laying of the Order.
23. The Committee recognises that there will be a Bill forthcoming on this same issue very shortly. The Committee notes that the Minister for Public Finance, Planning and Community Wealth highlighted the greater opportunity that the Bill will afford for parliamentary scrutiny of this issue. The Committee would also encourage the Scottish Government to take the opportunity afforded by the Bill to undertake further consultation with stakeholders on the issues raised by the proposed legislation.
24. Many of the witnesses that have given written and oral evidence to the Committee have voiced the opinion that the principle of changing legislation to retrospectively alter the business rates regime is not welcome or appropriate. Such views have been voiced by the Scottish Property Federation, the Royal Institution of Chartered Surveyors, the Institute of Revenues, Rating and Valuation, CBRE and the Scottish Chambers of Commerce.
25. Moreover, the Scottish Government's [consultation on Tax policy and the budget](#), sets out six principles that the Scottish Government consider should underpin its tax policy. These six principles include 'certainty' and 'engagement with stakeholders'. The consultation document defines these as follows:
 - Certainty: Taxpayers must know if they are liable to pay tax, the amount to be paid and when it is to be paid. Changes to the tax system should be justified and, where possible, follow a predictable fiscal cycle or published roadmap.

- Engagement: The public and businesses should understand the tax system and governments must be open and transparent about tax policies and their decision-making, consulting widely. This is crucial for accountability and trust.
26. In oral evidence to the Committee on 9 November, Charles Golding of the Royal Institute of Chartered Surveyors conceded that, although the situation was not ideal, the realities of COVID-19 meant that a less-than-ideal situation in relation to appeals might need to be tolerated.
27. The Committee would echo the sentiments expressed by Charles Golding. In saying that, the Committee would not want to see this as setting any kind of precedent and welcomes the principles of "certainty" and "engagement" as set out in the Scottish Government's consultation on Tax policy and the budget. The Committee would seek assurance from the Scottish Government that these principles will apply to the future setting of non-domestic rates policy.
28. In the written statement that announced the UK Government's decision to legislate to exclude Covid-19 from MCCs, the UK Government also announced an additional £1.5 billion to fund further reliefs from business rates in the 2021-22 financial year. Justifying this decision, the UK Government stated:
- ” “The new relief will ensure a fairer and more proportioned allocation of support [than would result from a large number of MCCs], by awarding funding through local authorities, who will be able to use their knowledge of their local businesses and the local economy to award dedicated support to those businesses who need it most. Funding will be allocated to councils taking into account the economic impact COVID-19 has had on specific sectors. This approach will ensure relief is awarded quicker than would be the case if businesses sought support under the sometimes drawn out process of a rating appeal, which can often last years.”
29. In the accompanying press release, the UK Government provided some examples of how the MCC appeals approach could result in a poor targeting of support, with some unaffected businesses potentially able to successfully appeal under MCC, and other businesses that had suffered more through the pandemic less likely to succeed under the MCC appeals route.
30. The majority of stakeholders that have given evidence to the Committee agree that targeted support measures are a more effective way to direct public sector funds to those businesses most severely impacted by the pandemic. The Scottish Assessors Association noted in its oral evidence to the Committee that the property market and associated appeals is an imperfect way to target support.
31. However, in its written submission the Scottish Property Federation noted that some businesses had “fallen through the cracks” of the business support measures. While acknowledging the welcome support that had been provided to businesses, the Scottish Property Federation noted that this had not benefited all businesses. They cited the example of car park operators who had received no support and so would see a reduction in their rateable value (and consequently, their rates bill) as a means to offset some of their losses.

32. In written evidence to the Committee, the Scottish Wholesale Association noted that wholesalers had not benefited from the rates relief extended to the retail, hospitality and leisure sector and had had limited support through other business support measures.
33. The Scottish Government expects to receive £145 million in Barnett consequentials as a result of the UK Government announcement, which it will be able to use as it chooses. In advance of the Barnett consequentials being confirmed, the Scottish Government said:
- ” “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.”
34. The Committee asked the Minister for Public Finance, Planning and Community Wealth for an update on when the Scottish Government might receive these consequentials, but he was unable to provide any certainty on when those funds might be forthcoming.
35. The Committee would appreciate being kept updated on any developments in the provision of this consequential funding. In addition, the Committee would welcome further information on what the Scottish Government intends to do to ensure that any additional resources are targeted at those most in need of the support and in particular small and mid size enterprises.
36. At its meeting on 16 November the Committee considered motion S6M-01401 in the name of the Minister for Public Finance, Planning and Community Wealth, that the Local Government, Housing and Planning Committee recommends that the Valuation and Rating (Coronavirus) (Scotland) Order be approved.
37. Notwithstanding the concerns set out above, the Committee agreed unanimously to recommend approval of the Order.

Relevant Adjustments to Common Parts (Disabled Persons) (Scotland) Amendment Regulations 2021

38. On 20 October 2021, the Scottish Government laid the Relevant Adjustments to Common Parts (Disabled Persons) (Scotland) Amendment Regulations 2021 in the Scottish Parliament.
 39. This instrument amends The Relevant Adjustments to Common Parts (Disabled Persons) (Scotland) Regulations 2020 to provide time-limits for the various parts of the process enabling disabled persons to make relevant adjustments to common areas as originally intended by the existing legislation. It will also specify that, where an owner of the common parts consents to the proposed works subject to conditions, the disabled person must confirm whether they accept or reject the conditions.
 40. At its meeting on 16 November the Local Government, Housing and Planning Committee considered motion S6M-01817 that the Local Government, Housing and Planning Committee recommends that the Relevant Adjustments to Common Parts (Disabled Persons) (Scotland) Amendment Regulations 2021 be approved.
41. The Committee agreed unanimously to recommend approval of the Regulations.

