

2020 No. 382

RATING AND VALUATION

The Valuation Appeal Committee (Procedure in Civil Penalty Appeals) (Scotland) Regulations 2020

Made - - - - - *17th November 2020*

Laid before the Scottish Parliament *19th November 2020*

Coming into force in accordance with regulation 1

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 15(2) of the Local Government (Financial Provisions) (Scotland) Act 1963(a), sections 31(7) and 34(5) of the Non-Domestic Rates (Scotland) Act 2020(b) and all other powers enabling them to do so.

In accordance with sections 31(10) and 34(8) of the Non-Domestic Rates (Scotland) Act 2020, before making these Regulations the Scottish Ministers have consulted such persons as they consider appropriate.

Citation and commencement

1.—(1) These Regulations may be cited as the Valuation Appeal Committee (Procedure in Civil Penalty Appeals) (Scotland) Regulations 2020.

(2) These Regulations come into force—

- (a) as regards any appeal against a penalty notice issued under section 30 of the 2020 Act (assessor penalty notices), on 21 December 2020, and
- (b) as regards any appeal against a penalty notice issued under section 33 of that Act (local authority penalty notices), on 1 April 2021.

Interpretation

2.—(1) In these Regulations—

“the 2020 Act” means the Non-Domestic Rates (Scotland) Act 2020,

“appellant” has the meaning given by regulation 4(a),

“assessor” means an assessor appointed under section 27(2) of the Local Government etc. (Scotland) Act 1994(c) and includes a depute assessor,

(a) 1963 c.12. Subsection (2) was amended by paragraph 25(a) of schedule 6 of the Local Government (Scotland) Act 1975 (c.30) and paragraph 60(3)(d) of schedule 13 of the Local Government etc. (Scotland) Act 1994 (c.39). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(b) 2020 asp 4.

(c) 1994 c.39.

“authorised officer” has the same meaning as in section 27 of the 2020 Act (see subsection (5) of that section),

“committee” means a valuation appeal committee,

“party” means the appellant or respondent,

“respondent” means the assessor who issued a notice under section 30 (assessor penalty notices) of the 2020 Act, or the authorised officer who issued a notice under section 33 (local authority penalty notices) of that Act,

“secretary” means a secretary of a valuation appeal panel, and includes an assistant secretary,

“valuation appeal panel” means the panel constituted under regulation 2 of the Valuation Appeal Panels and Committees (Scotland) Regulations 1996(a).

(2) Where the criteria in paragraph (3) are met—

- (a) any document sent in relation to an appeal may be sent by electronic communication, and
- (b) a notice or document sent electronically fulfils any requirement in these Regulations that a notice or document is to be in writing.

(3) The criteria are—

- (a) the recipient consents either—
 - (i) explicitly by nominating and, in the case of an assessor, publishing an address for the purposes of electronic communications, or
 - (ii) implicitly by having used electronic communications in relation to an appeal, and
- (b) the notice or document sent by electronic communication—
 - (i) is capable of being accessed by the recipient,
 - (ii) makes the information it contains available to the recipient to no lesser extent than it would be if sent as a document in printed form, and
 - (iii) is sufficiently permanent to be used for subsequent reference.

Application

3. These Regulations apply to any appeal to a committee under section 31(1) (assessor penalty notice appeals) or section 34(1) (local authority penalty notice appeals) of the 2020 Act, and any further appeal as provided for by regulation 11.

Appeal requirements

4. Any appeal to a committee under section 31(1) or section 34(1) of the 2020 Act must—

- (a) be made in writing by or with the authority of the person to whom the penalty notice was given (“the appellant”),
- (b) be received by the respondent before the end of the period of 28 days beginning with the day on which the notice was given,
- (c) specify the ground or grounds on which the appeal is made,
- (d) be accompanied by—
 - (i) a copy of the relevant assessor information notice or local authority information notice (unless the appellant does not have that notice), and
 - (ii) a copy of the penalty notice,
- (e) state whether the appellant requires a hearing to be arranged,

(a) S.I. 1996/137.

- (f) where the appeal is based on, or includes, the appellant having a reasonable excuse for not complying with the notice, be accompanied by an explanation of what that excuse is, and
- (g) be accompanied by any material to which the appellant wishes the committee to have regard in support of the appeal.

Payment of penalties while appeal is pending

5. Until an appeal under section 31(1) or section 34(1) of the 2020 Act is decided or withdrawn an appellant is not obliged to pay—

- (a) any penalty being appealed,
- (b) any further penalty under section 30(4) or (5) of the 2020 Act to which the appeal relates,
- (c) where the appeal relates to a penalty under section 33 of that Act, any other penalty under that section in relation to the same information.

Notification of appeals to the secretary

6.—(1) The respondent must—

- (a) within 28 days of receipt of an appeal in accordance with regulation 4, notify the secretary that the appeal has been made,
- (b) provide the secretary with the material submitted along with that appeal, and
- (c) provide the secretary with a copy of any further written information the appellant has provided in support of their appeal up to the date of the notification.

(2) The duty in paragraph (1) does not apply if, within the 28 day period—

- (a) the appellant withdraws their appeal, or
- (b) the respondent advises the appellant that they have decided to remit^(a) the penalty being appealed, along with any further penalty to which the appellant may be subject under section 30(4) or (5) of the 2020 Act, or as the case may be, any other penalty under section 33 of that Act.

(3) The respondent must along with the notification under paragraph (1)—

- (a) advise the secretary whether or not the respondent requires a hearing to be arranged, if the appellant has not required a hearing,
- (b) provide the secretary with a statement of—
 - (i) what information the respondent considers has not been provided,
 - (ii) why the respondent believes the appellant should have been able to provide that information, and
 - (iii) why it was considered reasonable to require the appellant to provide that information,
- (c) where the appellant has not provided a copy of the relevant assessor information notice or local authority information notice, provide the secretary with a copy of that notice, and
- (d) provide the secretary with any further material to which the respondent wishes the committee to have regard.

(4) The respondent must at the same time as making the notification to the secretary under paragraph (1)—

- (a) provide the appellant with a copy of the notification made to the secretary and copies of all material provided along with that notification, and

(a) See sections 30(7) and 33(4) of the 2020 Act as regards mitigation and remission of penalties.

- (b) if neither party has required a hearing to be arranged, advise the appellant that any comments the appellant wishes to make in relation to the statement provided under paragraph (3)(b) should be made in writing to the secretary and received by the secretary within 14 days, otherwise the committee might not have regard to them.

Withdrawal of appeals after intimation to the secretary

7.—(1) The appellant may withdraw their appeal at any time before it has been decided by the committee.

(2) Where the appellant advises the respondent that they wish to withdraw an appeal that has been intimated to the secretary, the respondent must immediately notify the secretary, unless the appellant indicates that they are informing, or have informed, the secretary.

(3) If, after intimating an appeal to the secretary, the respondent decides to remit the penalty that is being appealed, along with any further penalty to which the appellant may be subject under section 30(4) or (5) of the 2020 Act or, as the case may be, any other penalty under section 33 of that Act, the respondent must immediately notify the secretary and the appellant.

(4) On receipt of a notification under paragraph (2) or (3) the secretary must treat the appeal as withdrawn, if the secretary has not already done so.

Consideration of appeals

8.—(1) Where either the appellant or the respondent has required that a hearing be arranged, the secretary must arrange with the chair of the valuation appeal panel for a hearing date to be set.

(2) Where neither the appellant nor the respondent has required that a hearing be arranged—

- (a) the secretary must arrange with the chair of the valuation appeal panel for a committee to decide the appeal without a hearing,
- (b) that decision must not be made within 14 days of the date the respondent notifies the appeal to the secretary (see regulation 6(1)), and
- (c) no hearing may subsequently be held unless a party requests a hearing and a committee decides that a hearing is required.

(3) Whether or not a hearing is required, the committee must aim to decide the appeal within 12 weeks of the date on which the secretary was notified of the appeal.

(4) Where a hearing is to be held (whether in accordance with paragraph (1) or (2)(c)), the secretary must give the parties at least 28 days' notice in writing of the date, time and place at which the appeal is to be held including, where the appeal is to be held by telephone or electronic means, the arrangements by which the hearing will be conducted, and must advertise the date, time and place on an appropriate website.

(5) Subject to paragraph (6), the written material to be used to decide the appeal is to be—

- (a) that submitted to the secretary in accordance with regulation 6, including any comments submitted by the appellant as provided for by sub-paragraph (b) of regulation 6(4) (whether or not submitted within the period mentioned in that sub-paragraph), and
- (b) any further written information submitted by either party, but only if the committee considers that it is appropriate in all the circumstances to have regard to it.

(6) Where the committee considers that it needs further written information to decide the appeal, it may request that information from either party and have regard to any information provided as a result of that request.

(7) Where the committee requests further information from any party in a case where no hearing is being held, it must—

- (a) advise the party from whom it is requested of the deadline by which it has to be provided, otherwise the committee may decline to have regard to it or proceed without it,
- (b) notify the request to the other party,

- (c) where the appellant has submitted written comments as provided for by regulation 6(4)(b), give the respondent a copy of those comments, and
- (d) before having regard to any further information submitted in response to the request, provide a copy to the other party and advise that party of a period within which they may provide comments on the information submitted, which period must be at least 14 days.

Conduct of hearings

9.—(1) The public must be allowed to observe a hearing, unless the committee, with reasonable cause, decides otherwise.

(2) The committee may, at its discretion, determine the order in which its business is to be conducted on the day of any hearing and may postpone or adjourn any hearing.

(3) The committee may refuse to permit a person to assist or represent a party at a hearing, but must state its reasons for that refusal.

(4) The manner in which the hearing is conducted, including the order in which the parties make submissions, is for the committee to determine.

(5) Where a party wishes the committee to have regard to written material that was not submitted to the secretary in accordance with regulation 6, or produced in response to a request from a committee under regulation 8(6), the committee must decide, as a preliminary matter, whether it is appropriate in all the circumstances to have regard to it, and must consider—

- (a) whether it is fair to both parties to have regard to it, and
- (b) whether it could reasonably have been produced sooner.

(6) Nothing in paragraph (5) prevents a committee from adjourning a hearing with a request that a party produce further written information.

(7) A party is permitted to make a record of the evidence led at a hearing, at that party's expense.

(8) If the appellant fails to attend or be represented at the hearing, the committee may dismiss the appeal, but a committee may recall that dismissal and set a further date for a hearing if the appellant so requests in writing, with reasons for that failure which a committee is satisfied justify recalling its dismissal of the appeal.

(9) A request under paragraph (8) must be made within 14 days of the dismissal of the appeal, unless a committee is satisfied that there is a good reason for the request not having been made sooner.

Decisions on appeals

10.—(1) A committee must issue its decision, and its reasons for that decision, in writing to both parties.

(2) A decision must, if mitigating or remitting any penalty imposed under section 30 (assessor information notices) of the 2020 Act, state which of the grounds described in section 31(5) of that Act the committee considers to be established.

Further appeal

11.—(1) A party may appeal a decision of a committee on any appeal under section 31(1) (assessor penalty notice appeals) to the Lands Valuation Appeal Court, but only on the ground that the committee has erred in law.

(2) An appeal must be made by a party no later than 28 days after the day on which the committee issued its decision.

(3) The Lands Valuation Appeal Court may entertain an appeal made after the expiry of the period prescribed by paragraph (2), if satisfied that there is good reason for the appeal not having been made sooner.

(4) The procedure to be followed in relation to an appeal under paragraph (1) is for the Lands Valuation Appeal Court to determine.

(5) For the avoidance of doubt, the making of an appeal under paragraph (1) suspends, until the appeal is decided or withdrawn, any obligation on an appellant to pay any penalty being appealed or any further penalty under section 30(4) or (5) of the 2020 Act to which the appeal relates.

(6) A committee must provide the Lands Valuation Appeal Court with any information it requires in relation to the conduct of an appeal under paragraph (1).

(7) In an appeal under paragraph (1), the Lands Valuation Appeal Court may—

- (a) confirm or revoke the decision of the committee,
- (b) make a different decision, or order the committee to make a different decision,
- (c) remit the appeal to the committee with or without directions as to how the committee is to proceed.

Amendment of the Valuation Appeal Committee (Procedure in Appeals under the Valuation Acts) (Scotland) Regulations 1995

12.—(1) The Valuation Appeal Committee (Procedure in Appeals under the Valuation Acts) (Scotland) Regulations 1995^(a) are amended as follows.

(2) At the start of regulation 1(2) (application), insert “Except as described in paragraph (3),”.

(3) After regulation 1(2) insert—

“(3) These Regulations do not apply to any appeal to a committee under section 31(1) (assessor penalty notice appeals) or section 34(1) (local authority penalty notice appeals) of the Non-Domestic Rates (Scotland) Act 2020^(b).”.

BEN MACPHERSON

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
17th November 2020

(a) S.I. 1995/572, to which there are amendments that are not relevant to this regulation.

(b) 2020 asp 4.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for appeals to a valuation appeal committee (“VAC”) in relation to assessor penalty notices and local authority penalty notices under the Non-Domestic Rates (Scotland) Act 2020 (“the 2020 Act”). These are penalty notices issued where a requirement to provide information is not complied with. On appeal, a VAC can mitigate or remit any penalty.

Regulation 3 sets out when the procedures in these Regulations are to apply, with regulation 12 making a consequential amendment to disapply the Valuation Appeal Committee (Procedure in Appeals under the Valuation Acts) (Scotland) Regulations 1995 where these Regulations apply instead.

Regulation 4 sets out who can make an appeal, how appeals are to be made and the material that must accompany an appeal. A person making an appeal must state whether they require a hearing by a VAC to be arranged, the alternative being for the appeal to be considered by a VAC without a hearing. An appeal is made by intimation to the assessor or authorised officer who issued the penalty notice (“the respondent”).

The obligation the 2020 Act imposes on an appellant to pay any penalty that is under appeal is disapplied, while the appeal is undecided, by regulation 5.

The respondent is empowered by the 2020 Act to remit or mitigate the penalty. If the respondent remits the penalty under appeal, and any further penalty due in respect of the notice, the appeal will cease. Otherwise, and unless the appellant intimates that they are withdrawing their appeal, the respondent is required by regulation 6 to advise the secretary of the relevant valuation appeal panel of the appeal within 28 days and forward to the secretary the accompanying material described in that regulation. The respondent must also advise the secretary whether they require a hearing to be arranged, where the appellant has not required a hearing.

Regulation 7 enables an appellant to withdraw their appeal at any time before it has been decided and sets out procedures to be followed in that situation. It also provides for an appeal to be withdrawn if, before the appeal has been decided, the penalty is remitted.

Regulation 8 sets out arrangements that are to apply to decide appeals, where a hearing is not required and where a hearing is required. In either case, a VAC must aim to decide an appeal within 12 weeks from when the appeal was notified by the respondent. Paragraph (6) of this regulation describes the written material that is to be used to decide appeals.

Regulation 9 prescribes further matters in relation to hearings of appeals, including that the public may not be excluded from observing a hearing without good cause and that parties may make a record of proceedings if they wish. It also gives a VAC the right to dismiss an appeal if the appellant does not attend a hearing, but with the ability to recall that dismissal if satisfied that there was a sufficient justification for the failure to attend.

Regulation 10 requires a written decision, with reasons for it, to be provided to the parties in all appeals that are decided by a VAC.

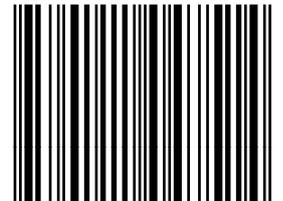
A party may appeal a decision of a VAC in relation to an assessor penalty notice if the party considers the VAC to have erred in law. Regulation 11 provides for such appeals to be made to the Lands Valuation Appeal Court and prescribes the powers of that Court in relation to such appeals. The making of such an appeal disapplies any obligation on the appellant to pay any penalty under appeal, while the appeal is undecided. The procedure to be followed in such appeals is for that Court to decide.

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