

## POLICY NOTE

### THE VALUATION APPEAL COMMITTEE (PROCEDURE IN CIVIL PENALTY APPEALS) (SCOTLAND) REGULATIONS 2020

#### SSI 2020/382

This instrument is made in exercise of the powers conferred by section 15(2) of the Local Government (Financial Provisions) (Scotland) Act 1963, and sections 31(7) and 34(5) of the Non-Domestic Rates (Scotland) Act 2020. The instrument is subject to negative procedure.

These Regulations put in place procedures for appeals to valuation appeal committees (“VACs”) under section 31(1) (assessor penalty notice appeals) or section 34(1) (local authority penalty notice appeals) of the Non-Domestic Rates (Scotland) 2020 Act, and any further appeal as provided for by regulation 11 of the Regulations (to the Lands Valuation Appeals Court (“LVAC”) for assessor penalty notices.

#### Policy Objectives

The independent Barclay Review of Non-Domestic Rates, finding that “the provision of information by ratepayers to Assessors to enable Assessors accurately to calculate rateable values was often poor”, recommended that: “The current criminal penalty for non-provision of information to Assessors should become a civil penalty and Assessors should be able to collect information from a wider range of bodies” (Recommendation 13).<sup>1</sup> It further recommended that: “A new civil penalty for non-provision of information to councils by ratepayers should be created.” The Scottish Government accepted both these recommendations in its Implementation Plan<sup>2</sup> and Parliament legislated for this in the Non-Domestic Rates (Scotland) Act 2020 (“the Act”).

Section 26(1) of the Act provides for assessor information notices and section 27(1) provides for local authority information notices, while section 28(1) creates a duty to notify changes of circumstances to the local authority. Section 30(1) creates a civil penalty for failure to comply with assessor information notices, and section 33(1) a civil penalty for failure to comply with local authority information notices as well as failure to notify changes of circumstances. An assessor, under section 30(7), and an authorised officer, under section 33(4), issues such notices and may mitigate or remit any penalty made under those respective sections. Under section 31(4) the VAC may also mitigate or remit any penalty under section 30 (assessor penalty notices) under specific circumstances. It may also, under section 34(4), do so for any penalty made under section 33 (local authority penalty notices) if it is satisfied that the penalty is excessive.

The Act also provides for assessor penalty notice appeals (Section 31(1)) and local authority penalty notice appeals (section 34(1)).

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<sup>1</sup> <https://www.gov.scot/publications/report-barclay-review-non-domestic-rates/>

<sup>2</sup> <https://www.gov.scot/publications/barclay-review-of-non-domestic-tax-rates-implementation-plan/>

These Regulations provide specific procedures around these appeals as requested by the Barclay Implementation Advisory Appeals sub-group (“the Appeals sub-group”).<sup>3</sup>

Not all appeals will require a hearing. 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 on the appeal papers. If either the appellant or the assessor/authorised officer wish a hearing, one must be arranged, but otherwise the VAC is expected to deal with the appeal without a hearing. This will assist prompt decisions.

To avoid an appellant having to pay a penalty until the appeal has been determined, regulation 5 so provides. This would also apply to any further penalty provided for by the Act in relation to the notice.

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. Exclusion may for instance be required if there were disruptive behaviour at the hearing and similar provisions exist in the Valuation Appeal Committee (Procedure in Appeals under the Valuation Acts) (Scotland) Regulations 1995 for other appeals made under the Valuation Acts. It also gives a VAC the right to dismiss an appeal if the appellant does not attend a hearing, but also allows the appellant within 14 days of the dismissal to request a recall and for the VAC to recall the dismissal if it is satisfied that there is justification for the failure to attend.

## **Consultation**

Before making regulations under section 34(5) (local authority penalties), the Scottish Ministers must consult such persons as they consider appropriate.

The drafting of the Regulations was informed by discussions in the Appeals sub-group, and the draft regulations were shared in two consultation rounds with the Appeals sub-group and the Scottish Ratepayers’ Forum<sup>4</sup> and Scottish Rating Surveyors’ Forum.<sup>5</sup>

## **Impact Assessments**

The Financial Memorandum of the Non-Domestic Rates (Scotland) Bill<sup>6</sup> provides estimates for the direct impact on ratepayers’ liabilities, and concurrent opposite impact on non-domestic rates liabilities arising from civil penalties for failure to comply with local authority notices and failure to notify changes of circumstances to the local authority.

A Supplementary Financial Memorandum, published of the Non-Domestic Rates (Scotland) Bill as amended at Stage 2, provides estimates for the direct impact on ratepayers’ liabilities,

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<sup>3</sup> <https://www.gov.scot/publications/barclay-implementation-appeals-sub-group/>

<sup>4</sup> <https://www.saa.gov.uk/non-domestic-valuation/scottish-ratepayers-forum/>

<sup>5</sup> <https://www.saa.gov.uk/scottish-rating-surveyors-forum/#:~:text=Scottish%20Rating%20Surveyors%20Forum%20The%20remit%20of%20the.and%20related%20bodies%20such%20as%20the%20water%20industry.>

<sup>6</sup> [https://www.parliament.scot/S5\\_Bills/Non-Domestic%20Rates%20\(Scotland\)%20Bill/SPBill44FMS052019.pdf](https://www.parliament.scot/S5_Bills/Non-Domestic%20Rates%20(Scotland)%20Bill/SPBill44FMS052019.pdf)

and concurrent opposite impact on non-domestic rates liabilities arising from civil penalties for failure to comply with assessor information notices.<sup>7</sup>

### **Financial Effects**

This instrument has no direct financial implications.

Scottish Government  
*Local Government and Communities Directorate*  
*November 2020*

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<sup>7</sup> [https://www.parliament.scot/S5\\_Bills/Non-Domestic%20Rates%20\(Scotland\)%20Bill/SPBill44ASFMS052019.pdf](https://www.parliament.scot/S5_Bills/Non-Domestic%20Rates%20(Scotland)%20Bill/SPBill44ASFMS052019.pdf)