



OFFICIAL REPORT
AITHISG OIFIGEIL

Local Government, Housing and Planning Committee

Tuesday 16 November 2021

Session 6



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LOCAL GOVERNMENT, HOUSING AND PLANNING COMMITTEE

11th Meeting 2021, Session 6

CONVENER

*Ariane Burgess (Highlands and Islands) (Green)

DEPUTY CONVENER

*Elena Whitham (Carrick, Cumnock and Doon Valley) (SNP)

COMMITTEE MEMBERS

*Miles Briggs (Lothian) (Con)

*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)

*Meghan Gallacher (Central Scotland) (Con)

*Mark Griffin (Central Scotland) (Lab)

*Paul McLennan (East Lothian) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Tom Arthur (Minister for Public Finance, Planning and Community Wealth)

Anouk Berthier (Scottish Government)

Naeem Bhatti (Scottish Government)

Shona Robison (Cabinet Secretary for Social Justice, Housing and Local Government)

CLERK TO THE COMMITTEE

Euan Donald

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Local Government, Housing and Planning Committee

Tuesday 16 November 2021

[The Convener opened the meeting at 10:03]

Decision on Taking Business in Private

The Convener (Ariane Burgess): Good morning and welcome to the 11th meeting in 2021 of the Local Government, Housing and Planning Committee. I ask members and witnesses to ensure that their mobile phones are on silent and that all notifications are turned off during the meeting.

Our first agenda item is consideration of whether to take items 6 and 7 in private. Item 6 is an opportunity for members to reflect on the evidence that we are about to hear on the draft Valuation and Rating (Coronavirus) (Scotland) Order 2021 and item 7 is an opportunity for the committee to consider its approach to scrutiny, communications and engagement for its work on the national planning framework 4. Do members agree to take items 6 and 7 in private?

Members indicated agreement.

Subordinate Legislation

Valuation and Rating (Coronavirus) (Scotland) Order 2021 [Draft]

10:04

The Convener: Agenda item 2 is the committee's third evidence-taking session on the draft Valuation and Rating (Coronavirus) (Scotland) Order 2021. I welcome Tom Arthur, Minister for Public Finance, Planning and Community Wealth, as well as Anouk Berthier, head of non-domestic rates policy, and David Smith, lawyer, from the Scottish Government.

We will take evidence from the minister before moving to a formal debate on the order. I invite the minister to make a short opening statement.

The Minister for Public Finance, Planning and Community Wealth (Tom Arthur): Thank you for the opportunity to give evidence. The purpose of the draft order is to ensure that, in calculating the rateable value of specified properties after the order comes into force, no account can be taken of any matter arising on or after 1 April 2021 that is attributable to coronavirus.

Since the start of the coronavirus pandemic, more than 40,000 non-domestic properties have been appealed on the basis that there has been a material change of circumstances due to the pandemic. Typically, a "material change of circumstances" has been used to reflect either physical changes to a property, such as an extension or demolition, or certain major works in a specific area, such as the tram works in Edinburgh. The Scottish Parliament amended the definition to exclude changes in rent, in valuations generally or in values generally under the Non-Domestic Rates (Scotland) Act 2020, with effect from 2 April 2020.

The draft order further clarifies that definition in relation to coronavirus by specifying that, in calculating the rateable value of any properties in the 2017 valuation roll,

"no account is to be taken of any matter arising ... after 1 April 2021 that is directly or indirectly attributable to coronavirus."

The use of that date is due to the fact that subordinate legislation cannot take us further back. Primary legislation is needed for that, and we confirmed in our programme for government our intention to introduce a bill on the matter in year 1.

The draft order applies only to the current 2017 valuation roll, which is consistent with our view that any impact of Covid-19 should be reflected at

the next revaluation. Also, the order does not take into account whether a property should be included in the valuation roll. For instance, if someone started working from home as a result of the pandemic, the legislation would not affect whether their office space might be considered rateable.

The intention of the change in definition was to remove general economic factors from the category of relevant factors to consider in the context of valuation.

Although appeals have been submitted for more than 40,000 properties, that is less than a fifth of all non-domestic properties in Scotland and, as the Federation of Small Businesses pointed out, not many small businesses are among them. That may reflect our existing generous support package for small businesses, but it is likely that it also reflects the fact that well-resourced professionally advised property owners and occupiers are more likely to know about the material change of circumstances provisions and are therefore more likely to have appealed.

I am aware that some large firms under appeal have been successful during the pandemic. As was highlighted in evidence last week, there is a disconnect between how Covid has felt to businesses and how it has impacted on rents in the commercial property market. It is a hugely complex issue and Covid-19 appeals could take years to resolve. The outcome is also uncertain. It cannot be assumed that those appeals would be successful, or their outcome fair.

In light of that complexity and the provisions in the 2020 act, it seems to me that the question here is quite a dry and technical one. When is the right time for market-wide economic changes, including any effects of coronavirus, to be reflected in rateable values? We believe that the right time for such changes to be reflected is at revaluation.

We strengthened revaluations following the independent Barclay review of non-domestic rates in order to ensure that they more closely reflect market circumstances. First, we increased the frequency of revaluations from every five years to every three years and reduced the time between the tone date and the revaluation. Secondly, with the support of your predecessor committee, we delayed the next revaluation by one year to 2023 and brought forward that commitment to a one-year tone date. The tone date for the next revaluation will therefore be 1 April 2022 in order to give sufficient time for the property market to adjust post Covid.

Covid-19 has had a major impact on the economy, and we responded swiftly and on an unprecedented scale to support businesses

through the pandemic. We introduced 100 per cent retail, hospitality, leisure and aviation relief in 2020-21, and we are the first Government to confirm a full extension of that relief to 2021-22.

The extension of the RHLA relief into 2021-22 takes the total level of support that the Scottish Government has provided to businesses since the beginning of the pandemic to £4.5 billion, which includes £1.6 billion of Covid-related reliefs. That demonstrates that the Scottish Government has acted quickly to support the business community when it most needed that support. We have been able to support businesses through the pandemic, but we must bear in mind that we must also continue to fund the public services on which we all rely.

I return to my opening comments. The draft order seeks to ensure fairness for all Scottish ratepayers while maintaining the integrity of the non-domestic rates system as well as the stability of the public finances. If the instrument is not approved, the non-domestic rates system and, therefore, the public finances will carry significant long-term risks for years.

I look forward to answering any questions that the committee has.

The Convener: Thank you, minister. I will start with some questions on the Government's rationale for the measures. As committee members and our witnesses are aware, we have already held two evidence sessions on the draft order, and the majority of stakeholders who have provided evidence have expressed concern about the principle of changing the rules on appeals midway through the revaluation cycle. Does the Scottish Government consider coronavirus to represent a general economic circumstance in relation to MCC appeals? Alternatively, has the pandemic had such a varied effect on different sectors that those differential impacts must be taken into account?

Tom Arthur: As I said in my opening remarks, the rationale is about clarifying the measures in the 2020 act. As the committee will appreciate, a material change of circumstances is normally considered to involve quite specific, delineated local cases—arising from roadworks, for example—in which individual properties are impacted. That has to be viewed in the context of the broader principles that underpin the non-domestic rates system. A key principle is a regular cycle of revaluation, and broader market-wide changes should be considered as part of that cycle.

It is important to understand the context. We have moved from a five-year cycle to a three-year cycle and we have reduced the tone date to one year. That provides a more appropriate means of

assessing any changes that have taken place as a result of market-wide effects.

I hope that that explains the position. I reiterate that the order seeks to clarify what was intended with the measures that were introduced through the 2020 act.

The Convener: We move on to our second theme, which is the principles of taxation. Miles Briggs will ask some questions on that.

Miles Briggs (Lothian) (Con): Good morning to the minister and the panel. I have a couple of questions with regard to the principles with which the Government has approached taxation. Is it appropriate to alter the basis of taxation retrospectively, as the order that is before us will do?

Tom Arthur: Yes. On balance, we believe that the change is justified and necessary and that it is in the public interest. The order aims to prevent inappropriate use of the material change of circumstances provision. It is about ensuring fairness for all ratepayers and, importantly, protecting revenues for local authorities to enable them to fund the services on which we rely.

As a point of context, I note that, as the committee will be aware, the intervention is not unique to Scotland. Similar measures are being implemented in Wales, and the United Kingdom Government is taking similar action in respect of its responsibilities regarding the non-domestic rates system in England.

Miles Briggs: Do you accept that that goes against the Government's approach to date, which has looked at certainty and wider stakeholder engagement on taxation? Is the approach purely due to the circumstances of the pandemic or is it a direction of travel that ministers are considering?

10:15

Tom Arthur: The member will be aware that the Government has consulted on a draft framework for tax and that engagement is one of the key principles that underpin our approach. The Cabinet Secretary for Finance and the Economy, my ministerial colleague Ivan McKee and I have had extensive engagement with business since our respective appointments following May's election.

As I mentioned, the UK Government announced a similar measure in March that indicated its direction of travel. The Scottish Government indicated our intention in June. That has been clearly communicated and we have had extensive conversations with business, but I have to be frank. The matter has not been routinely raised with ministers, and that has been reflected in the

evidence that the committee has taken over recent weeks.

The Convener: We move on to our third theme, which is parliamentary process.

Meghan Gallacher (Central Scotland) (Con): I refer members to my entry in the register of members' interests. I am a sitting councillor at North Lanarkshire Council.

My first question relates to the consultation process. Stakeholders have expressed the view that there has been insufficient consultation on the order. A panel member in a previous evidence session said that what is proposed has come as a surprise to businesses and that they believe that there has not been sufficient opportunity to engage in the process. What are your views on that?

Tom Arthur: I reiterate the points that I made in my answer to Mr Briggs. There is on-going engagement between ministers, individual businesses and representative bodies. That is a routine feature of the engagement in the finance and economy portfolio, so there has been the opportunity for discussion. As I said, the issue has not been raised in a significant way, and that has been reflected in contributions that were made in the committee's previous evidence sessions. I highlight that there is an on-going process of engagement that provides a forum for businesses to raise any issues with ministers, including on the matter that the member mentions.

Meghan Gallacher: What plans are in place for consultation on the proposed primary legislation that, if passed, will introduce similar changes to the appeals process for the period prior to April 2021?

Tom Arthur: As the member will appreciate, there is a commitment in the programme for government, and the bill will be introduced in line with normal processes and procedures. As it will be primary legislation, it will go through the standard parliamentary procedure with three stages, and it will ultimately be for Parliament to determine how it wishes to scrutinise the bill. The options that normally apply to primary legislation will be available to the Parliament in making decisions.

The Convener: We move to the next theme, which is workload issues. Mark Griffin, who joins us online, will ask the first question.

Mark Griffin (Central Scotland) (Lab): If the order were not to pass and coronavirus-related MCC appeals were to continue, what would be the implications for processing existing appeals and future appeals, and would that have an impact on preparation for the next valuation?

Tom Arthur: I am conscious that the committee has taken evidence on that issue. It would not necessarily be appropriate for a minister to comment on operational aspects of how assessors conduct their business. I will ask Anouk Berthier to provide some more detail.

Anouk Berthier (Scottish Government): I echo the minister's thoughts. Ultimately, it is for assessors, valuation appeal committees and possibly the Lands Tribunal for Scotland, if cases are referred to it, to determine how they organise their workload, as they are independent.

The committee spoke to the Scottish Assessors Association about the issue last week. It was clear that, if the appeals were to continue, the workload would be quite challenging.

Tom Arthur: I echo that point. Although it is not appropriate for me as a minister to comment specifically, I have read through the evidence that was provided to the committee last week, which will help the committee to reach an informed and rounded view on the matter.

Elena Whitham (Carrick, Cumnock and Doon Valley) (SNP): Before I ask my question, I, too, refer to my entry in the register of members' interests: I am a councillor in East Ayrshire.

I will follow on from Mark Griffin's question. If the order is not passed, will the Government provide more resources to support Scottish assessors' consideration of appeals? Obviously, the number of appeals could multiply if the order is not passed. Should we consider workload issues when we are making our decision? Should those issues impact on the decision that we make today?

Tom Arthur: As you will be aware, we support assessors in carrying out their job. I ask Anouk Berthier to provide some detail on the matter.

Anouk Berthier: I believe that, since 2019, the Government has, via local authorities, as is normal, agreed with the Convention of Scottish Local Authorities on funding for assessors to implement the Barclay review. I think that it is safe to say that officials have a good relationship with the Scottish Assessors Association, in the sense that we would expect the organisation to speak to us if there were any issues in that regard. We have a discussion about the implementation of the Barclay review every year, and the Government has supported the association in the past few years in implementing the review.

Tom Arthur: It is not for me to speak on behalf of assessors, but I know that, in a previous committee evidence session, they articulated their views quite clearly on the potential implications.

Elena Whitham: Do you have any thoughts on my question about whether workload should be a

valid consideration in deciding whether to allow coronavirus-related appeals?

Tom Arthur: As I have said, our intent in the order is to clarify what is, in our view, an appropriate use of a material change of circumstances appeal. The intent was set out in the Non-Domestic Rates (Scotland) Act 2020; the order clarifies that. To reiterate my previous point, market-wide changes of circumstance are better considered in the context of revaluation, whereas a material change of circumstance is usually more a matter for specific delineated local circumstances.

I hope that that clarifies the motivation, purpose and thinking behind the Government's introduction of the order. Obviously, the matter that you raise is for assessors, who operate independently, to determine.

The Convener: We will move on to our fifth theme, which is local authority revenues. I invite Paul McLennan to introduce the theme.

Paul McLennan (East Lothian) (SNP): I, too, refer everyone to my entry in the register of members' interests: I am a serving councillor on East Lothian Council.

Minister, you have touched on whether the proposed measures are primarily about protecting public finances, on whether allowing appeals would reduce non-domestic rates income and require the Government to compensate local authorities, and on whether that would be an effective use of public funds. Do you want to expand on what you have said?

Tom Arthur: It would not be appropriate for me to speculate on hypotheticals as to what the outcome of any appeal might be. However, I am sure that, given the information that I have mentioned about there being more than 40,000 properties on appeal, I think that the member and the committee will be able to infer the potential magnitude and the impact that that could have.

Yes, there is a case in relation to fairness for ratepayers, and that is why it is appropriate that the issue is considered in the context of revaluation. There is also the need for greater certainty around public funds. Uncertainty in relation to the outcome of appeals can lead to uncertainty around public funds, too. There is a balanced approach, which is about fairness for ratepayers and about protecting public funds.

The Convener: We move on to our sixth theme, which is other forms of business support, which Willie Coffey will ask about.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): Good morning, minister. As you know, the UK Government also plans to rule out the use of the MCC process in such circumstances. On the

back of that, in March, it announced a £1.5 billion scheme to support businesses, Scotland's share of which would be about £145 million. Have we received any of that money yet?

Tom Arthur: [*Inaudible.*]

The Convener: Willie, did you hear that response?

Willie Coffey: I did not hear a word of it. The minister's microphone is dropping in and out.

Tom Arthur: You asked whether we had received any of the money. I gave a monosyllabic response. No, we have not received any of it. I followed that up by saying that I understand that no businesses in England have yet received any of that money, either. We have no certainty about when we are likely to receive that funding from the UK Government.

Willie Coffey: If and when the money finally appears, what is your view on that mechanism being applied, rather than the mechanism of the appeals process? We were told in evidence that small and medium-sized enterprises in particular very rarely appeal or are successful in their appeals, because of the difficulty of the process. SMEs can lose out in the appeals process, but it was stated in evidence to us that the mechanism that is proposed can be much fairer and can reach many more local businesses if local government is at the heart of the distribution of the relevant funds. What is your view on that aspect?

Tom Arthur: Mr Coffey articulates the matter very well. With an appeals process, there is great uncertainty—there is uncertainty over timescales and over the outcome. As Mr Coffey will be aware, since the start of the pandemic, the Scottish Government has supported business through a combination of reliefs and grants of about £4.5 billion.

Another important point to make is that we cannot assume that the link between the rental value and the economic circumstances of an individual business is clear cut. From a fairness perspective, I believe that the model whereby we have provided support through business grants is far more effective and provides far more certainty. That is the approach that we have taken, and it will continue to inform how the money that we will, I hope, eventually receive from the UK Government will be deployed to support businesses.

Willie Coffey: Has the Scottish Government done any preparatory work in anticipation of it receiving those funds? You will be aware that, during the pandemic, some of the many local businesses that sought help and assistance sometimes fell through the net. An example of that is wholesalers, who were able—technically and legally—to trade, but had nobody to trade with.

They felt particularly disadvantaged, as did many other local businesses. Have we looked at that aspect to make sure that those who need help locally can get it, should the sum of money in question come to the Scottish Government?

Tom Arthur: Mr Coffey raises a very important point. In responding to it, I refer to the answer that I gave earlier about the engagement process, which is continuous. That is important, because it provides a forum in which businesses and representative organisations can raise specific issues in the context of the pandemic and the support that is required. Collectively, those views will inform the position that the Government will take. However, I am sure that Mr Coffey appreciates that the uncertainty about when we will receive that funding creates barriers to preparation. It is difficult to anticipate what the broader context will be when we receive that funding.

We continue to have engagement and dialogue with business, which is important in understanding what the needs of business are. That will, of course, inform future decisions that are taken.

10:30

Willie Coffey: We heard about difficulties when local authorities felt that there was no flexibility or discretion for them to assist companies that do not fall within the guidelines on and scope of the various schemes. If any further support funds arise, do you intend to afford local authorities a little more discretion and flexibility to look at their local situation and ensure that businesses get the help that they need?

Tom Arthur: Mr Coffey raises an important point. He will appreciate that it has not been possible to support every business and organisation that we would like to have supported, due to a combination of the ability to administer and the ultimate limitation on the resources that are available to be deployed.

Throughout the pandemic, over the past 20 months, we have listened, reflected and learned, which has informed how iterations of support have been provided. As I said, dialogue is on-going and we will reflect on such matters.

The Convener: I will pick up on that theme. What are your views on devolving power to local authorities to set and collect non-domestic rates and to offer reliefs, not only in relation to coronavirus but in general?

Tom Arthur: The Community Empowerment (Scotland) Act 2015 allows local authorities to set local reliefs, and responsibility for empty property relief will be devolved from 1 April 2023. We have taken action in recent years to give local

authorities greater flexibility over NDR, but we must be cognisant of one of the key asks of business, which is for stability in the system. We have had a period of significant change with the implementation of the Barclay review, and that implementation needs to be fully completed. Local authorities have existing flexibilities over reliefs under the 2015 act.

The Convener: There are no more questions. I thank the minister for giving evidence.

Agenda item 3 is consideration of motion S6M-01401.

Motion moved,

That the Local Government, Housing and Planning Committee recommends that the Valuation and Rating (Coronavirus) (Scotland) Order 2021 [draft] be approved.—
[Tom Arthur]

Motion agreed to.

The Convener: The committee will note its decision in a report that confirms the outcome of our debate.

We will pause briefly to bring in other people to give evidence.

10:33

Meeting suspended.

10:44

On resuming—

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

The Convener: The fourth item on our agenda is an evidence session on the draft Relevant Adjustments to Common Parts (Disabled Persons) (Scotland) Amendment Regulations 2021. I welcome Shona Robison, who is the Cabinet Secretary for Social Justice, Housing and Local Government, and, from the Scottish Government, Craig McGuffie, who is a lawyer, and Naeem Bhatti, who is the head of the fuel poverty and housing standards unit.

Before we move to the formal debate, I invite the cabinet secretary to make a short opening statement on the regulations.

The Cabinet Secretary for Social Justice, Housing and Local Government (Shona Robison): Thank you for inviting me to present the draft Relevant Adjustments to Common Parts (Disabled Persons) (Scotland) Amendment Regulations 2021 for your consideration.

If they are approved, the amended regulations will enable disabled people who live in housing

with common areas, such as communal access or gardens, to make relevant adjustments to those areas with the agreement of the majority of owners and within clearly defined timescales for each part of the process. The legislation is the first of its kind in the UK.

On 21 February 2020, legislation came into effect that enabled disabled people to make adaptations to the common areas in a property with the consent of a majority of the owners, rather than the consent of all owners. Since the regulations came into force last year, feedback from stakeholders prompted us to revisit the regulations and amend them to include more structure around timescales for each stage of the process.

The amendment regulations that are presented today have specific timescales for each stage of the process, providing clarity for the owners and the disabled person. It is of primary importance that the regulations provide disabled people with a clear and workable method of securing the agreement of other owners to reasonable adjustments that are being made in common areas. Amending the principal regulations ensures that the legislation is aligned to our original policy intent that the disabled person can carry out adjustments to the common parts of a property in which they have an interest, provided that they make an application to all owners of the common parts and obtain the consent of a majority of those owners.

I am happy to answer questions on the instrument.

Miles Briggs: Good morning. I have a specific question. Has advocacy for individuals been considered, especially given that those individuals might need support from advocacy to make the changes?

Naeem Bhatti (Scottish Government): A number of organisations, such as Care and Repair Scotland, provide support for disabled people, as do local authorities under their schemes of assistance. An assessment is normally done before disabled people are able to take forward adjustments, so that is already part of the process.

Shona Robison: It is worth putting on the record that, although—obviously—the person can choose to pay for the adaptation themselves, they can also apply for grant funding from the scheme of assistance, which local authorities provide, as long as it is assessed by a suitably qualified professional, such as an occupational therapist. Although it is not advocacy per se, that guidance around funding opportunities is provided through the local authority.

Miles Briggs: Thank you. From the scoping around that, do you know how many applications

local authorities are likely to receive and how much additional work that might present to them?

Shona Robison: Naeem, has there been any assessment of that?

Naeem Bhatti: We do not hold that information centrally, because the individuals apply to the integration joint boards and local authorities, which assess the applications and provide assistance to the individuals.

Miles Briggs: Okay. Thank you.

The Convener: Thank you for that evidence.

Given that there are no more questions, we move to the fifth item on our agenda, which is consideration of motion S6M-01817.

I invite the Cabinet Secretary for Social Justice, Housing and Local Government to move the motion.

Motion moved,

That the Local Government, Housing and Planning Committee recommends that the Relevant Adjustments to Common Parts (Disabled Persons) (Scotland) Amendment Regulations 2021 [draft] be approved.—[*Shona Robison*]

Motion agreed to.

The Convener: The committee's report will confirm the outcome of the debate. I thank the cabinet secretary and her officials for joining us.

Shona Robison: Thank you for your time.

10:50

Meeting continued in private until 12:01.

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