Non-Domestic Rates (Coronavirus)(Scotland) Bill

Partial Business and Regulatory Impact Assessment

January 2022

Scottish Government
Riaghaltas na h-Alba
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Partial Business and Regulatory Impact Assessment

Title of Proposal

Non-Domestic Rates (Coronavirus)(Scotland) Bill

Purpose and intended effect

- **Background**

Non-domestic rates, sometimes referred to as business rates, are a property tax based on the rateable value (RV) of a property. Rateable values are derived from net annual values (NAVs), which are based on the annual rental value that a property would attract in an open market. Rating valuations are carried out by independent Scottish assessors and rateable values are periodically updated at revaluations taking into account changes to general market conditions. The most recent valuation was on 1 April 2017 based on rental values as at 1 April 2015.

Appeals against a property's rateable value on the grounds that there has been a "material change of circumstances" (MCC) since the entry was made may be submitted at any time, and up to 6 months after the valuation roll ceases to be in force. The Local Government (Scotland) Act 1975 includes a definition of MCC which was amended with effect from 2 April 2020, by the Non-Domestic Rates (Scotland) Act 2020, to exclude changes in general economic circumstances.

Scottish Government analysis of data provided to the Scottish Government by Scottish assessors shows that, approximately 49,400 unique properties with a total RV of £3,929 million have lodged an appeal since the outbreak of the coronavirus pandemic. It is likely given the timing of these appeals and the atypical spike in appeals at this point in the valuation cycle, that the majority of these appeals were lodged as a result of the coronavirus pandemic. Successful appeals equate to reductions in RV and therefore most likely in non-domestic rates liabilities as well (though if a property is in receipt of 100% relief for instance, the rates bill would already be nil).

On 25 March 2021 the UK Government committed to ruling out COVID-19 appeals on non-domestic properties in England. It introduced the Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill to implement this commitment with retrospective effect, and following a request from the Welsh Government and amendments tabled in the House of Commons, this was extended to Wales as well as England. The Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Act 2021 received Royal Assent on 15 December 2021.

In Northern Ireland, to similarly prevent matters attributable to coronavirus being taken into account, the Non-Domestic Rates Valuations (Coronavirus) Bill was introduced on 15 November 2021.

The Scottish Government announced on 23 June 2021 that it intended to take similar measures to rule out COVID-19 appeals in Scotland on the basis that changes to general market conditions should only be taken into account at revaluations.

The Valuation and Rating (Coronavirus) (Scotland) Order 2021 (S.S.I. 2021/445) was approved by the Scottish Parliament on 24 November 2021 and came into force on 1 December 2021. The Order clarifies that, in calculating the RV of properties in the 2017 valuation roll, no account can be taken of any matter arising on or after 1 April 2021 that is directly or indirectly attributable to coronavirus. Physical changes are excluded.

- **Objective**

Primary legislation is required to extend prior to 1 April 2021 the period during which the effects of coronavirus cannot be included in the matters that can be taken into account when determining NAVs and/or RVs; as well as to cover NAVs in addition to RVs. The Non-Domestic Rates (Coronavirus)(Scotland) Bill clarifies that, in calculating the NAV or RV of properties in the 2017 valuation roll, no account can be taken of any matter arising on or after 2 April 2020 that is directly or indirectly attributable to coronavirus, this date corresponding to the date the Scottish Government amended the definition of MCC under the Non-Domestic Rates (Scotland) Act 2020.

- **Rationale for Government intervention**

The Bill aims to deliver fairness to all ratepayers. The Scottish Government supports the principle that market-wide economic changes, including any potentially caused by COVID-19, should only be considered at revaluation.

The Scottish Government's National Performance Framework sets out a clear purpose for Scotland – to focus on creating a more successful country with opportunities for all of Scotland to flourish through increased wellbeing, and sustainable and inclusive economic growth. Non-domestic rates have a key role to play in delivering sustainable economic growth and this Bill will help contribute to this overarching purpose, as well as the national outcome to have a globally competitive, entrepreneurial, inclusive and sustainable economy.

In the absence of case law, it is not known whether any impact of COVID-19 could be deemed a MCC. It is therefore assumed that these appeals could potentially impact on the level of RVs across a wide range of properties and sectors. The Bill will provide certainty for ratepayers, assessors and rating agents, and contributes to mitigating the risk to limited public resources should such appeals be successful.

Consultation

- **Within Government**

The following government agencies and departments have been consulted:

Directorate for Legal Services
Directorate for Local Government and Communities
DG Scottish Exchequer
Cabinet, Parliament and Government Division

Officials within the Scottish Government's Non-Domestic Rates Team are in regular contact with their counterparts in the UK Government and other devolved administrations.

- **Public Consultation**

The Scottish Government announced on 23 June 2021, in response to a parliamentary question, that it intended to take measures to rule these appeals out in Scotland, stating that, "market-wide economic changes to rateable values, such as from COVID-19, should be only considered at revaluation to ensure fairness to all ratepayers; and that it is not appropriate to use the material change of circumstances provisions in the non-domestic rates legislation in relation to COVID-19, or COVID-19 restrictions." [1]

The Programme for Government 2021-22[2] further stated the intention to introduce a Bill to implement this policy. The Bill builds on subordinate legislation – The Valuation and Rating (Coronavirus) (Scotland) Order 2021 (S.S.I. 2021/445) – and as part of its scrutiny of the instrument, the Scottish Parliament Local Government, Housing and Planning Committee received written and oral evidence from stakeholders from both the private and public sectors which included commentary on the policy as a whole.

The Scottish Government has frequently consulted with relevant public bodies including COSLA, local authorities and assessors throughout its response to the COVID-19 pandemic. This includes the government's position on MCC appeals.

Scottish Government officials have and will continue to engage with key stakeholders where relevant, including the Institute of Revenue Rating and Valuation, Valuation Appeal Committee Secretaries, the Scottish Ratepayers and Rating Surveyors Forums, and Barclay Implementation Advisory Group members (which includes the Royal Institute of Chartered Surveyors and business representative bodies).

- **Business**

In summer 2021, after the Scottish Government announced its intention to rule out COVID-19 appeals, 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 conducted 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 appeals, they presented a comprehensive and constructive opportunity to discuss the Scottish Government's approach to supporting businesses during the COVID-19 pandemic and the priorities in terms of the next stages of re-opening and recovery.

[1] Written question and answer: S6W-00997 | Scottish Parliament Website
[2] A Fairer, Greener Scotland: Programme for Government 2021-22 - gov.scot (www.gov.scot)

The policy for this Bill is broadly similar to The Valuation and Rating (Coronavirus) (Scotland) Order 2021 (S.S.I. 2021/445) and the views of business organisations have been articulated at least in part at the Scottish Parliament Local Government, Housing and Planning Committee's oral evidence sessions and in written evidence submissions in the context of the draft Order. These organisations included:

Federation of Small Businesses Scotland
Scottish Property Federation
Scottish Wholesalers Association
Scottish Chambers of Commerce
UK Hospitality Association
Scottish Property Federation
Scottish Tourism Alliance
Scottish Beer and Pub Association
Scottish Licensed Trade Association

Evidence was also taken from Institute of Revenues Rating, Scottish Assessors Association, Royal Institute of Chartered Surveyors, and COSLA.

Options

The Scottish Government gave consideration to the following options:

1. Do nothing.

2. Lay secondary legislation to rule out COVID-19 appeals from 1 April 2021, but do nothing further.

This is the status quo at the time the Bill is introduced. The Valuation and Rating (Coronavirus) (Scotland) Order 2021 (S.S.I. 2021/445) which came into effect on 1 December 2021 rules out COVID-19 appeals from 1 April 2021.

3. **Introduce primary legislation to rule out COVID-19 appeals prior to 1 April 2021: to 2 April 2020 or further back.**

Sectors and groups affected

The parties to an appeal will potentially be affected by the Bill insofar as this affects treatment of appeals (appellants, assessors, Valuation Appeal Committees; Lands Tribunal for Scotland, Lands Valuation Appeal Court potentially). Local responsibility for the day-to-day administration of the NDR system, including the billing and collection of non-domestic rates due, rests with each of Scotland's 32 local authorities.

Benefits

Option 1 – do nothing

Under the Non-Domestic Rates (Scotland) Act 2020, the definition of MCC was amended with effect from 2 April 2020 to exclude changes in general economic circumstances.

In the absence of case law however it is not known to what extent the impact of COVID-19 could still be deemed to be a MCC. While it cannot be assumed that the outcome of these appeals would be successful or fair, a 'successful' appeal would equate to a reduction in RV which may reduce the NDR liability for the ratepayer. This could potentially occur across a wide range of properties and sectors.

Option 2 – lay secondary legislation

This option clarifies the Scottish Government's intention that changes to general economic circumstances should only be taken into consideration at revaluation as supported by the amendment of the definition of MCC on 2 April 2020.

This option reduces the volatility risk to public revenue due to the uncertainty over the outcome of COVID-19 appeals.

Option 3 – introduce primary legislation

Ruling out COVID-19 appeals with effect from 2 April 2020 is consistent with the Scottish Government's change to the definition of MCC under the Non-Domestic Rates (Scotland) Act 2020 and provides clarity to stakeholders. Applying a different period further back than April 2020 is similar but would mean that the policy is not limited in time. Option 3 reduces the volatility risk to public revenue due to the uncertainty over the outcome of COVID-19 appeals.

Costs

Option 1 – do nothing

Appeals are complex and lengthy, and the outcome of any appeal is uncertain. In the absence of case law, it is not known to what extent the impact of COVID-19 could still be deemed to be a MCC and to what extent this could have an impact on the level of RVs and NDR income.

This could put significant pressure on Scottish public revenues. NDR income is pooled at a Scottish Government level and redistributed back to local authorities to help fund local services, including those benefiting non-domestic properties. The Scottish Government guarantees the sum NDR income for each local authority which protects local authorities from volatility in NDR income. While reductions in RV due to appeals are anticipated based on historical precedent in the NDR income forecast COVID-19 was unprecedented and any loss in RV as a result of these appeals being successful is not currently factored into NDR income forecasts. As such, any reduction in NDR income from these COVID-19 appeals could place significant pressure on public finances given the Scottish Government's guarantee to local authorities on NDR income.

Table 1 shows the total rateable value of premises for which an appeal was lodged after the outbreak of the pandemic. In respect of 2019-20 and 2020-21 these appeals represented premises with a total rateable value of £3,929 million which corresponds to an estimated net NDR income of £1,117 million.

Table 1: Number of premises, rateable value and net NDR income under appeal in 2019-20 and 2020-21

	2019-20	2020-21	2019-20 and 2020-21 *
Number of NDR Premises on Valuation Roll at April 2021	40,900	37,000	49,400
Total rateable value as at April 2021	£3,492m	£2,902m	£3,929m
Estimated net NDR income 2020-21**	£961m	£926m	£1,117m

** Properties appealed in both years counted as one*
*** Scottish Government estimates based on an analysis of data provided by the Scottish Assessors Association on appeals lodged since the pandemic in relation to 2019-20 and 2020-21, data relating to NDR reliefs awarded in 2020-21 (the 2020 Billing System) and the valuation roll. It should be noted that 'net NDR income' is net of any NDR reliefs including Retail, Hospitality, Leisure and Aviation Relief.*

Table 2 shows the estimated effect of different percentage reductions in total RV under appeal in the dataset provided in Table 1, to illustrate the effect this would have on NDR income. This illustration assumes a single percentage reduction for the aggregate RV under appeal for each percentage scenario and quantifies <u>only</u> the financial year 2020-21. This does not cover previous or subsequent years, nor does it make any projection on further appeal rights and potential successful appeals should a relevant decision be reached in relation to these appeals.

Table 2: Illustrative NDR income reductions in 2020-21 under different percentage reductions in total RV under appeal

Percentage reduction in total RV	Illustrative NDR income reductions in 2020-21 (£ millions)
50%	558
40%	447
30%	335
20%	223
10%	112
5%	56
0%	0

Another cost to consider is the cost of appeals. While at a first-tier level, appeals to the Valuation Appeal Committee are free to lodge and it is not necessary to be professionally represented, there is a fee to lodge an appeal to the Lands Tribunal for Scotland (see Table 3) and most if not all appellants would tend to be professionally represented at this level. If not professionally represented, an appellant would incur costs in respect of time spent preparing for and attending an appeal.

Table 3: Lands Tribunal for Scotland Fees

Rating appeal:	Fee
where the net annual value does not exceed £10,000	£100
where the net annual value exceeds £10,000 but not £50,000	£150
where the net annual value exceeds £50,000 but not £100,000	£300
where the net annual value exceeds £100,000	£500
Appeal on non-referral of valuation appeal or complaint	£78

Appeals also incur administrative costs for Valuation Appeal Committees and assessors in the form of Valuation Appeal Committee expenses, the resourcing of negotiations and hearings as well as referrals to the Lands Tribunal for Scotland and any second-tier appeals to the Lands Valuation Appeal Court.

Costs - Option 2 – lay secondary legislation only

This option creates an inconsistency with a cut-off date of 1 April 2021 applied to the period for which such matters cannot be considered in calculating the RV of properties in the 2017 valuation roll, whereas the definition of MCC was amended on 2 April 2020. This inconsistency would likely add to the complexity of appeals for ratepayers, assessors and rating agents.

While the costs referred to in Option 1 are also relevant under Option 2, this approach could place additional burden on the administration and consideration of appeals. Successful appeals could impact on the level of rateable values across a wide range of properties and sectors ahead of the next revaluation in 2023. This would also have cost implications for Scottish public revenues should any appeals be successful and reduce NDR income.

Costs - Option 3 – introduce primary legislation

Introducing primary legislation with effect from 2 April 2020 will not prevent appeals being submitted or considered but will ensure that in considering NAV/RV of a property, no account can be taken of matters arising from the direct or indirect impact of COVID-19, with effect from 2 April 2020. The costs associated with appeals are explained under Options 1 and 2. It is possible that when such legislation is enacted, the incentive to pursue appeals on the grounds of the impact of coronavirus is likely to be reduced.

For ratepayers there is a lost opportunity cost should, under option 1 or 2, a successful appeal have resulted in revaluation and reduced NDR bills. However, as noted above appeals are complex and it is not possible to speculate the outcome. Any assumptions on potential outcomes of appeals and associated costs would be prejudicial to the independence of those public bodies which are responsible for carrying out valuations (Scottish assessors) and for hearing appeals.

To introduce primary legislation with effect from before 2 April 2020 is similar but would not correspond with the date the Scottish Government amended the definition of MCC to exclude changes in economic circumstances through the Non-Domestic Rates (Scotland) Act 2020.

Scottish Firms Impact Test

As at 1 June 2021, 259,010 properties were listed on the valuation roll. Of these, 6,586 were zero rated (and will not therefore pay non-domestic rates).

Since the start of the pandemic, the Scottish Government has provided more than £4.4 billion in business support to help mitigate the economic impact of COVID-19. A summary of this support is available at Coronavirus (COVID-19): summary of Scottish business support funding - gov.scot (www.gov.scot).

The Scottish Government offers a generous non-domestic rates relief package, including a 1.6% universal relief in 2020-21 to reverse the annual poundage increase and 100% relief for retail, hospitality, leisure and aviation for 2020-21 and 2021-22.

The Scottish Budget 2022-23 was published on 9 December 2021 and announced a 50% relief for properties in the retail, hospitality and leisure sectors for the first three months of 2022-23, capped at £27,500 per ratepayer.

Of the properties on the valuation roll at June 2020 which were not zero rated, 70% (174,725) were in receipt of 100% relief as a result of which they do not pay non-domestic rates. See tables 4a and 4b below.

Table 4a Properties on the Valuation Roll as at 1 July 2020

	All properties	Private sector only	Public sector only
Properties on the Valuation Roll receiving no relief [1] [2]	64,347	51,011	13,336
Properties on the Valuation Roll which are zero rated	6,526	5,376	1,150
Properties on the Valuation Roll receiving one or more reliefs [1] [2]	186,601	178,905	7,696
of which Properties receiving 100% relief	174,725	168,098	6,627
Total properties on Valuation Roll	**257,474**	**235,292**	**22,182**

[1] Excluding the 1.6% universal relief which was awarded to all properties in 2020-21
[2] Excluding zero-rated properties

Source: Non-Domestic Rates Relief Statistics 2020

Table 4b Properties on the Valuation Roll as at 1 June 2021

	All properties	Private sector only	Public sector only
Properties on the Valuation Roll receiving no relief [1]	80,146	66,780	13,366
Properties on the Valuation Roll which are zero rated	6,574	5,431	1,143
Properties on the Valuation Roll receiving one or more reliefs [1]	172,285	164,925	7,360
of which Properties receiving 100% relief	158,785	152,574	6,211
Total properties on Valuation Roll	**259,006**	**237,137**	**21,869**

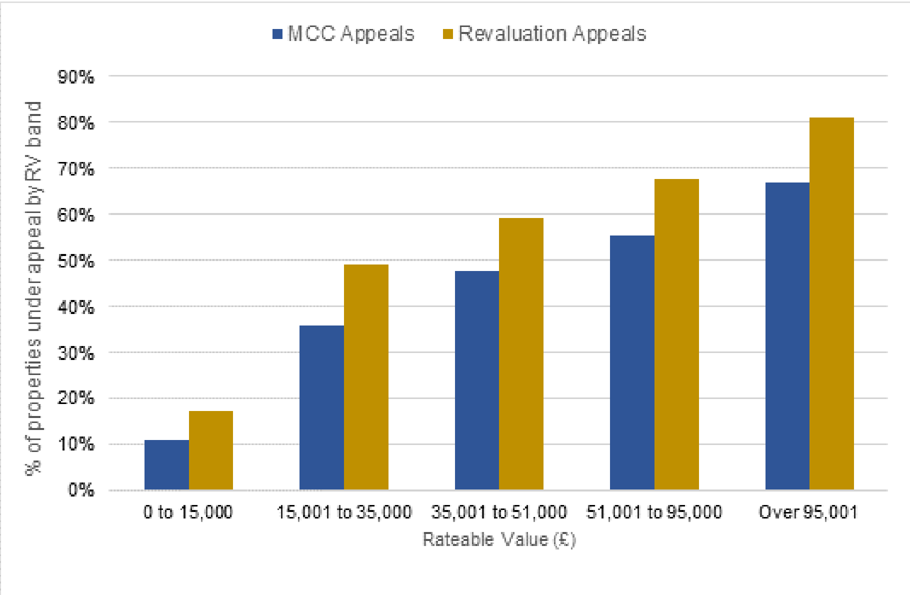
[1] Excluding zero-rated properties

Source: Non-Domestic Rates Reliefs Statistics 2021

As noted above, appeals have been submitted for 49,400 properties over 2019-20 and 2020-21. This represents less than 20% of all properties listed on the valuation roll.

Evidence also points to a correlation between RV and the likelihood of a COVID-19 appeal, with properties with higher RVs submitting relatively more COVID-19 appeals than properties with smaller RVs (see Figure 1 below). Under 20% of premises with an RV below £15,000 submitted a 2017 revaluation (17%) appeal, or a MCC (COVID-19) appeal (11%) (data is not held for other running roll appeals).[3] In contrast, more than two thirds of premises with an RV over £95,000 submitted a revaluation appeal (81%), or a MCC (COVID-19) appeal (67%).

Figure 1: Rateable Value of Properties under appeal



[3] This is the upper RV threshold for individual properties to qualify for 100% relief subject to a cumulative RV cap.

The Scottish Government announced its intention to rule out appeals based on the impact of COVID-19 in June 2021, and laid secondary legislation to help deliver this in September 2021. Scottish Ministers have carried out extensive consultation and engagement with all the major business representative bodies on COVID-19 matters, and continue to engage regularly. The vast majority of businesses did not identify the Government's stance on MCC as a significant issue.

Specifically on the proposal that the impact of coronavirus not be taken into account when considering MCC appeals, during the Local Government, Housing and Planning Committee's scrutiny of the Valuation and Rating (Coronavirus) (Scotland) Order 2021 (S.S.I. 2021/445), the following views were expressed by business representative organisations:

- it is at odds with the principle of certainty and fairness, and could burden those businesses concerned with rates changes they would not otherwise have to bear (Scottish Chambers of Commerce)

- few firms would take this route and few would be successful. The reliefs that it introduced have been far more important to … members (FSB)

- the decision to restrict the basis for MCCs in the 2020 Act was wrong. Cases should be considered on their merits…MCCs should be allowed to proceed and allow the Courts to make a determination (Scottish Property Federation)

- concerned at the loss of the rights of appeal (Scottish Chambers of Commerce, Scottish Wholesalers Association)

- anticipate that the majority will prefer to receive continued relief as opposed to challenging some of the appeals that are in play at the moment (Scottish Tourism Alliance)

- removing the right to appeal seems to go against the idea of fair and transparent taxation system, but key concern for members or majority of hospitality businesses which will be focused on what happens after April 2022 and the revaluation date in April 2023 (UK Hospitality)

The views expressed all referred to the difficulties which businesses have faced during pandemic. All recognised and welcomed the reliefs which had been provided to businesses during the pandemic, and the need for future support, and consensus on the importance of early clarity on this.

Official reports and papers from these meetings can be found at Scottish Parliament Local Government, Housing and Planning Committee Official Reports: LGHP Committee 26 October 2021 and LGHP Committee 9 November 2021; and Papers LGHP/S6/21/8/1 and LGHP/S6/21/10/3.

Competition Assessment

The Bill will rule out potential reductions in NAVs and RVs due to the effects of COVID-19. This provides fairness and a level playing field for all non-domestic ratepayers. Any impact on rental values arising from COVID-19 or COVID-19 restrictions form part of general market conditions and therefore should be considered at revaluation. The next revaluation is in April 2023.

- Will the measure directly or indirectly limit the number or range of suppliers?

No – this will not impact the number or range of suppliers.

- Will the measure limit the ability of suppliers to compete?

No – this will not influence sales or suppliers.

It is not known to what extent the impact of COVID-19 could still be deemed to be material change of circumstances and while appeals on the grounds of COVID-19 could potentially impact the level of RVs the Bill does not affect the poundage used to calculate NDR bills. The Bill will support the Scottish Government view that MCC appeals should only be used to address issues of a discrete geographic, sectoral or temporal nature and any market-wide economic changes attributable to COVID-19 should be reflected in RVs at revaluation.

- Will the measure limit suppliers' incentives to compete vigorously?

No – there is no impact on incentives to compete.

- Will the measure limit the choices and information available to consumers?

The Bill does not prevent a ratepayer from submitting an appeal but rather provides clarification that for NAV or RV on the current valuation roll no account can be taken of matters arising directly or indirectly from COVID-19. Any impact on rateable values occurring from COVID-19 or COVID-19 restrictions should form part of general market conditions and therefore should be reflected in RVs at revaluation.

Consumer Assessment

- Does the policy affect the quality, availability or price of any goods or services in a market?

There will be no effect on the quality, availability or price of goods or services.

- Does the policy affect the essential services market, such as energy or water?

There will be no effect on essential services.

- Does the policy involve storage or increased use of consumer data?

It does not involve any change in processes or operations.

- Does the policy increase opportunities for unscrupulous suppliers to target consumers?

No

- Does the policy impact the information available to consumers on either goods or services, or their rights in relation to these?

No – the Bill will not impact on any information available.

- Does the policy affect routes for consumers to seek advice or raise complaints on consumer issues?

No – the Bill does not prevent a ratepayer from submitting an appeal on grounds of material changes of circumstances but rather provides clarification around account not being taken of matters arising directly or indirectly from COVID-19 on NAV or RV.

Test run of business forms

No new forms will be introduced as a result of this Bill.

Digital Impact Test

No digital impact test is required. The Bill provisions will not change current practices and procedures in respect of digital technologies and markets related to the measures and therefore do not give rise to any immediate or direct impact on technology or technological advances.

Legal Aid Impact Test

The Bill will have no or a minimal impact on the legal aid fund.

Enforcement, sanctions and monitoring

Rating valuations are carried out by independent Scottish assessors and the independence of the Assessor is necessary to ensure that decisions are made on considerations of value. This Bill provides clarification on the definition of MCCs in relation to the impact of coronavirus.

Most appeals are settled amicably between the Assessor and the Ratepayer, Council Tax payer or appointed agent. However, if a settlement cannot be achieved the appeal is heard by an independent Valuation Appeal Committee.

There are no sanctions associated with this Bill.

Implementation and delivery plan

The Bill will come into force the day after Royal Assent and thereafter will be taken into account by Scottish assessors.

This policy and associated legislation will be kept under review as part of wider non-domestics rates policy.

Summary and recommendation

The Scottish Government considers that the proposed approach sets a clear framework, consistent with previous NDR policy on the definition of MCC. It provides fairness to all ratepayers by ensuring that in calculating RVs or NAVs, no consideration be given to matters arising on or after 2 April 2020 that is directly or indirectly attributable to COVID-19.

Declaration and publication

- Sign-off for Partial BRIAs:

I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed

Date: 21 December 2021

Ministers name: Tom Arthur
Minister's title: Minister for Public Finance, Planning and Community Wealth

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