

## **Explanatory Memorandum to the Valuation for Rating (Wales) (Coronavirus) Regulations 2021**

This Explanatory Memorandum has been prepared by the Local Government Finance Reform Division and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

### **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Valuation for Rating (Wales) (Coronavirus) Regulations 2021. I am satisfied that the benefits justify the likely costs.

**Rebecca Evans MS**  
**Minister for Finance and Local Government**  
**01 November 2021**

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## **PART 1: EXPLANATORY MEMORANDUM**

### **Description**

1. Non-domestic rates (NDR) are a local tax which raise revenue on properties that are used for non-domestic purposes, for example public buildings, shops, factories, offices, leisure facilities, schools and hospitals. In 2021-22, it is estimated that NDR in Wales will generate over £1.1 billion (net). All the revenue is distributed to local government to help fund local services in Wales.
2. Throughout the pandemic the Valuation Office Agency (VOA) has been dealing with an increased number of NDR appeals in England and Wales. The majority of these appeals have been made under the heading of Material Change of Circumstances (MCC) and submitted by ratepayers with a view to reducing their NDR liability on the basis that government measures and restrictions imposed in response to the COVID-19 pandemic have negatively affected the rateable values of their properties.
3. The *Valuation for Rating (Wales) (Coronavirus) Regulations 2021* (the Regulations) clarify the assumptions that are to be made when determining the rateable value of a hereditament in line with paragraph 2 of Schedule 6 to the Local Government Finance Act 1988 (the 1988 Act).
4. This statutory instrument sets out that certain measures should not be considered in determining rateable value when they are viewed as:
  - a. The Welsh Government's, the UK Government's or both Governments' response to coronavirus;
  - b. Requirements of advice or guidance from a public authority in the United Kingdom or from the Welsh Government, the Scottish Government, the Northern Ireland Executive, the UK Government or a government outside of the United Kingdom; or
  - c. Measures taken to ensure compliance with health and safety legislation.

### **Matters of special interest to the Legislation, Justice and Constitution Committee**

5. In accordance with section 11A(4) of the Statutory Instruments Act 1946, the Llywydd has been informed that the Regulations do not adhere to the 21 day convention. This is necessary given the immediate risk to public finances. This statutory instrument came into force on the day on which it was laid.
6. It is recognised that, following the expected passage of the Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill (the Bill), relevant appeals will be addressed both retrospectively and prospectively and the Regulations will no longer be required. If the Bill receives Royal Assent, these Regulations will need to be revoked.

## **Legislative background**

7. Section 43 of the 1988 Act sets out how a ratepayer's liability for NDR on an occupied property is to be calculated. The basic NDR liability for a property is calculated by multiplying the rateable value of a property by the multiplier.
8. Section 56 of the 1988 Act introduces Schedule 6 of that Act. The Schedule sets out the provisions to be applied in determining the rateable value of non-domestic hereditaments.
9. Paragraph 2(8) of Schedule 6 to the 1988 Act, contains the function of the Secretary of State to make regulations prescribing assumptions that are to be applied to a prescribed class of hereditament, in determining its rateable value. Regulations setting out conditions for appeal of a hereditament's rateable value fall within this power.
10. The powers of the Secretary of State in paragraph 2(8) of Schedule 6 to the 1988 Act were transferred, in relation to Wales, to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999. The 1988 Act is an enactment referred to in Schedule 1 of, and transferred by Article 2 of, that Order. The functions of the National Assembly for Wales were subsequently transferred to the Welsh Ministers under section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006.
11. The Regulations follow the negative procedure.

## **Purpose and intended effect of the legislation**

### Primary purpose of the legislation

12. The primary purpose of this statutory instrument is to prevent further appeals, citing an MCC relating to COVID-19, from being lodged in order to protect public finances. For 2020-21, it was estimated that appeals lodged citing MCC related to COVID-19 measures presented a risk to NDR revenue in Wales of between £70m and £100m.

### The appeals process

13. The VOA is an executive agency of HM Revenue and Customs and is responsible for determining the rateable value of all non-domestic properties for the purpose of calculating their rates liability. Ratepayers may make an appeal to the VOA if they believe their rateable value is incorrect.
14. One such basis for appeal is on the ground of an MCC. Historically, MCC appeals have been linked to one-off events, such as flooding or road works, rather than changes in market-wide conditions. Wider market conditions are taken into account as part of the statutory revaluations of non-domestic properties. The next revaluation takes effect on 1 April 2023 on the basis of values assessed as at 1 April 2021.

15. During the course of the pandemic there has been a substantial rise in the number of MCC appeals, citing COVID-19 restrictions as constituting an MCC. As well as presenting a risk to public finances and the funding available for local services, the level of appeals presents administrative challenges to the VOA and the Valuation Tribunal for Wales (VTW) and introduces uncertainty for ratepayers.

### Coronavirus support

16. Throughout the pandemic, ratepayers have been provided with support with their NDR liability through an extensive package of relief schemes. Where support has not been available through NDR reliefs, the Welsh Government has sought to reduce economic hardship through the Economic Resilience Fund. Both the NDR relief schemes and Economic Resilience Fund have been designed to target support in a manner which benefits those most acutely impacted by the economic impacts of the pandemic.

### The Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill

17. To address all Covid-19 related MCC appeals made since the beginning of the pandemic, the UK Government introduced the Bill. This will make changes to the law retrospectively, and will have the effect of preventing all MCC appeals which seek to rely on matters relating to COVID-19.

18. The Bill was introduced into the House of Commons on 12 May and is awaiting committee stage in the House of Lords on 11 November. A Legislative Consent Memorandum in relation to the Bill was laid on 21 September. The Economy, Trade and Rural Affairs Committee and the Legislation, Justice and Constitution Committee are due to report by 18 November. A plenary debate on the Legislative Consent Motion is currently scheduled for 23 November.

19. The Regulations have been made to prevent further relevant appeals whilst the Bill progresses through Parliament.

20. It is recognised that if the Bill is enacted, certain provisions in the Act would supersede the Regulations. In this event, the Welsh Government intends to make further regulations to revoke these Regulations. If the Bill falls, the Regulations would remain in place.

### **Consultation**

21. A public consultation sought views on technical aspects of a draft of the Regulations. The six-week technical consultation was launched on 16 August 2021 and closed on 27 September 2021. A summary of responses was published on 21 October 2021 and is available [here](#).

22. The consultation was published on the Welsh Government's website and was also sent to the following organisations:

- All local authorities in Wales

- Welsh Local Government Association
- VTW
- VOA
- Institute of Revenues, Rating and Valuation
- Members of the Welsh Ratepayers Forum

23. The consultation received six responses, with respondents comprising individuals, local government representatives, groups representing ratepayers, individual businesses, and professional bodies.

24. No issues with the technical aspects of the draft Regulations were identified as part of the consultation process.

## **PART 2: REGULATORY IMPACT ASSESSMENT**

### **Options**

#### ***Option 1 – Do Nothing***

No legislative changes would be made.

This would enable ratepayers to continue lodging appeals on the grounds of MCC relating to COVID-19.

#### ***Option 2 – Prevent further appeals that cite an MCC relating to COVID-19***

Regulations would clarify the circumstances under which an MCC appeal could be made and would disregard matters relating to COVID-19.

This approach would prevent further MCC appeals relating to COVID-19 from being lodged.

### **Costs and benefits**

#### ***Option 1 – Do Nothing***

##### Costs

There would be ongoing costs arising from the administration of the increased appeals. The scale of further appeals is unknown due to changing trading conditions, COVID-19 related restrictions, and wider economic circumstances. As such, it is not possible to estimate the scale of the risk, however if appeals continue to be allowed the risk to public finances would remain. It is estimated that for 2020-21, this risk equated to between £70m and £100m across over 15,000 appeals.

In doing nothing, there would be continued financial risk going forward. The scale of this risk is unknown but successful COVID-19 related MCC appeals would have a negative impact on Welsh public finances.

NDR provides a crucial revenue stream for the Welsh Government and, in turn, local government in Wales. If the Regulations are not in place, there is an ongoing risk that public funding will be significantly reduced as a result of COVID-19 related NDR appeals.

There is also potential long-term budgetary uncertainty due to the lengthy process of settling appeals.

## Benefits

The option for ratepayers to submit COVID-19 related MCC appeals would remain unchanged. The appeals process is an integral part of the NDR system and helps to maintain public confidence in the system.

### ***Option 2 – Prevent further appeals that cite an MCC relating to COVID-19***

## Costs

There are no direct costs associated with this option. There is a potential opportunity cost for ratepayers who might have been considering submitting a COVID-19 related MCC appeal, time may have been invested in gathering evidence to support an appeal as well as potential fees paid to a representative agent. These type of appeals will be prevented by the Regulations.

## Benefits

The Regulations prevent the risk of future revenue loss due to COVID-19 related MCC appeals. This maintains the funding available for public services in Wales and provides greater certainty for both Welsh Government and local government budget management.

Preventing future COVID-19 related MCC appeals would also enable the VOA and VTW to process existing appeals in a timelier manner, whilst reducing administrative costs of processing future COVID-19 related MCC appeals. It would also enable the VOA to focus on delivering the 2023 NDR Revaluation. The revaluation will take account of the wider impact of COVID-19 on the rateable values of non-domestic properties.

## **Option selection**

The benefits of Option 2, particularly in protecting future public finances, are considered to outweigh the benefits of Option 1. Option 2 is the Welsh Government's preferred option.

## **Analysis of other effects and impacts**

### Promoting Economic Opportunity for All (Tackling Poverty)

Ensuring wider economic impacts are factored into the revaluation process helps to ensure that rates liability is distributed equitably between ratepayers. Limiting the potential impact of future appeals ensures that revenue for local government services is maintained. Many local services help to tackle poverty and the effects of poverty in our communities.

## UNCRC

No particular impact on the rights of children has been identified.



### Welsh language

No effect on the opportunities to use the Welsh language or the equal treatment of the language has been identified.

### Equalities

No specific impacts, positive or negative, on persons who share a protected characteristic (as determined by the Equality Act 2010) have been identified.

### Well-being of Future Generations (Wales) Act 2015

Maintaining the non-domestic tax base contributes towards the wellbeing goals of a prosperous Wales and a more equal Wales and also to long-term, integrated economic growth.

### Impact on the voluntary sector

No specific impacts on the voluntary sector have been identified.

### Competition assessment

In drafting this Statutory Instrument, we have applied the competition filter test.

The purpose of the appeals system is to address valuation errors that may affect a ratepayer's liability for non-domestic rates. Market wide conditions, such as the COVID-19 measures, are considered to fall outside the scope of MCC appeals.

The Regulations will affect ratepayers across different sectors in a consistent way, and no competition impacts have been identified.

### Post-implementation review

The Welsh Government will continue to monitor the impact of the pandemic on ratepayers and will consider ongoing support as necessary.