

Explanatory Memorandum to the Valuation for Rating (Wales) (Coronavirus) (Revocation) 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) (Revocation) Regulations 2021.

Rebecca Evans MS
Minister for Finance and Local Government
25 November 2021

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 Wales and England. 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 existing Regulations) were made to clarify the assumptions 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. It is anticipated that the existing Regulations will be superseded by provisions for Wales included within *The Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill* (the Bill) which is progressing through Parliament.
5. This statutory instrument revokes the existing Regulations, contingent on the passing of the Bill. The existing Regulations will no longer be required at the point at which the Bill receives Royal Assent, as provisions in the Bill will have the same effect. The existing Regulations will therefore need to be revoked to avoid duplication and lack of clarity in the statute book.
6. The Valuation for Rating (Wales) (Coronavirus) (Revocation) Regulations 2021 now need to be made.

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

7. In accordance with section 11A(4) of the Statutory Instruments Act 1946, the Llywydd has been informed that the Regulations risk not adhering to the 21-day convention. This statutory instrument is scheduled to come into force on the day on which the Bill is passed and there is a possibility this will fall within the 21-day period. Though this statutory instrument has been made as expeditiously as possible following the making of the existing Regulations, it will only be required to come into force should the Bill receive Royal Assent.

Legislative background

8. 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.
9. 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.
10. 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.
11. 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.
12. Section 14 of the Interpretation Act 1978 provides that where an Act confers power to make regulations, unless the contrary intention appears, there is an implied power to revoke any instrument made using that power. This statutory instrument is made using the power in paragraph 2(8) of Schedule 6 to the 1988 Act, being the power used to make the existing Regulations.
13. The Regulations follow the negative procedure.

Purpose and intended effect of the legislation

The appeals process

14. The VOA is an executive agency of HM Revenue and Customs and is responsible for determining the rateable value of all non-domestic properties in Wales for the purpose of calculating their rates liability. Ratepayers may make an appeal to the VOA if they believe their rateable value is incorrect.
15. 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.
16. 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

17. Throughout the pandemic, ratepayers have been provided with support with their NDR liabilities through an extensive package of relief and grant schemes. Where support has not been available through NDR reliefs or NDR-based grants, the Welsh Government has sought to reduce economic hardship through the Economic Resilience Fund. The NDR relief schemes, NDR-based grants 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

18. 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.

19. The Bill was introduced into the House of Commons on 12 May and is awaiting Report Stage in the House of Lords on 1 December. A Legislative Consent Memorandum in relation to the Bill was laid before Senedd Cymru on 21 September. The Economy, Trade and Rural Affairs Committee and the Legislation, Justice and Constitution Committee reported on 18 November. A plenary debate on the Legislative Consent Motion took place on 23 November within which the Senedd granted agreement for provisions applicable to Wales to be included in the Bill.

Primary purpose of the legislation

20. The primary purpose of this statutory instrument is to revoke the existing Regulations which prevent further appeals, citing an MCC relating to COVID-19, from being lodged in order to protect public finances.

21. Provisions for Wales are included within the Bill which will negate the requirement for the existing Regulations for Wales.

22. The *Valuation for Rating (Wales) (Coronavirus) (Revocation) Regulations 2021* are now being made.

Consultation

23. A formal public consultation did not take place in relation to this statutory instrument as it is essential legislation which needs to be made urgently in order to avoid duplication of provisions concerning the assumptions that are to

be made when applying the provisions of sub-paragraphs (1) to (7) of paragraph 2 of Schedule 6 to the Local Government Finance Act 1988.

Regulatory Impact Assessment (RIA)

24. An RIA has not been prepared for this instrument as it does not alter the impact of the policy in any significant way given the content of the Bill. This is in line with the policy set out in the Welsh Ministers code of practice for carrying out regulatory impact assessments for subordinate legislation.