POLICY NOTE

THE VALUATION (PROPOSALS PROCEDURE) (SCOTLAND) REGULATIONS 2022

SSI 2022/369

The above instrument was made in exercise of the powers conferred by powers conferred by section 3ZA(7) and section 3ZB(7)(a) of the Local Government (Scotland) Act 1975. The instrument is subject to negative procedure and comes into effect on 1 April 2023.

This instrument makes provision for the procedure to be followed by proprietors, tenants and occupiers of non-domestic properties when making proposals for alterations of entries in the valuation roll, including to whom the proposal must be made (the assessor), the information to be supplied as part of the proposal and the procedure around the issuance of a decision by the assessor.

Policy Objectives

The independent Barclay Review of Non-Domestic Rates recommended reforms to the appeals system to modernise the approach, reduce appeal volume and ensure greater transparency and fairness. It highlighted that 'many ratepayers, including those in the public sector […] tend to lodge appeals as a matter of course' and that while everyone should have a right of appeal, the current resulting volume of appeals 'inevitably clogs the system and measures should be taken to reduce the number of appeals.' It is important as Scotland moves to a three-yearly revaluation cycle with one-year tone dates to avoid this.

The Non-Domestic Rates (Scotland) Act 2020 ("the Act") provides for a new two-stage appeals which will come into force on 1 April 2023 under The Non-Domestic Rates (Scotland) Act 2020 (Commencement No. 2, Transitional and Saving Provisions) Regulations 2020, as amended by The Non-Domestic Rates (Scotland) Act 2020 (Commencement No. 2, Transitional and Saving Provisions) Amendment (No. 2) Regulations 2022.

Under the Act, proposals may only be made by each of the proprietor, owner and occupier of a non-domestic property or their appointed representative.

These regulations provide the detail of the procedure to be followed when making proposals for alterations of entries in the valuation roll.

Regulation 4 specifies that documents relating to the proposal may be sent by electronic communication to a party to the proposal where this party has explicitly agreed to this (in the case of the proposer) or publishing an address for the purposes of electronic communication (in the case of the assessor) or implicitly done so by using electronic communication in respect of the proposal.

Regulation 5 specifies to whom a proposal must be made (the assessor) and where the timescales for lodging a proposal can be accessed, as well as the information that must be provided when making a proposal including the name and contact details of the proposer, the date on which the proposal is made, a copy of the valuation notice if available (if not, the

address of the lands and heritages), the specific grounds on which the proposal is made, evidence to support the grounds of the proposal, a statement as to how the evidence supports the grounds of the proposal and a statement as to how the proposer wishes the assessor to alter the entry.

A proposal can only be made in respect of one entry in the valuation roll.

Regulation 6 specifies that the assessor may decide a proposal is incomplete if it does not contain all of the information required under regulation 5(1)(d), in which case they must send notice to the proposer setting out what is missing within 56 days of the date on which the proposal is presumed to have been received. The assessor must also specify that if the information is not provided within 28 days of it being presumed the proposer has received this notice, they will make a decision on the proposal, namely not to alter the entry in the valuation roll, unless the proposer has requested a review of the decision not to alter the entry. The assessor must send notice of the decision to the proposer within 7 days of having made the decision. The requirement that a decision be issued on the proposal, where it is incomplete, provides for access to an appeal to the First-tier Tribunal for Scotland. The proposer may request within 14 days of it being presumed they have received notice of an incomplete proposal that the decision by the assessor that the proposal is incomplete be reviewed. The review may uphold or overturn the assessor's decision that the proposal is incomplete. Within regulation 6, a notice is presumed to have been received by one party 48 hours after it was sent by the other.

Regulation 7 specifies that an assessor must acknowledge, in writing, receipt of a proposal within 56 days beginning with the day on which the proposal is presumed to have been received, unless they deem it incomplete. If a proposal is subsequently deemed complete however, the assessor must notify the proposer within 7 days of them making the decision that it is complete. Within regulation 7, a notice is presumed to have been received by one party 48 hours after it was sent by the other.

Regulation 8 states that the proposer may withdraw their proposal by writing to the assessor at any time before the assessor has made a decision on the proposal.

Regulation 9 specifies that, unless a proposal is withdrawn or, for instance, if the assessor amends the entry in accordance with the proposal, the assessor must issue to the proposer a Proposal Determination Date (PDD) in accordance with schedule 1 of The Valuation Timetable (Scotland) Order 2022 ("the 2022 Order"). In other words, the PDD cannot be later than the deadline which applies to the decision on the proposal as set out in schedule 1 of the 2022 Order. The issuance of a PDD is required in order to provide the proposer with a date by which they can expect a decision on the proposal from the assessor and to encourage early discussion, where relevant, between the proposer and the assessor in advance of that date. This is similar to the situation in place prior to 31 March 2023 where, under The Valuation Appeal Committee (Procedure in Appeals under the Valuation Acts) (Scotland) Regulations 1995, information-sharing requirements are triggered by the issuance, by the valuation appeal committee, of a hearing date for an appeal. The key difference under the two-stage appeals system relative to system in place until 31 March 2023 is that proposals will require to set out the grounds on which they are made (see regulation 5) and there are restrictions on what information the proposer can require the assessor to consider after the proposal is made (see regulation 12).

The proposer, if dissatisfied with the PDD, may request that a decision on the proposal be made sooner, but no less than 70 days after they make such a request (unless otherwise agreed with the assessor). If the assessor cannot comply with the proposer's request, they must explain why in writing.

Regulation 10 specifies that the assessor, except in prescribed circumstances such as where the assessor agrees to amend the value in accordance with the proposal, must send to the proposer a written statement in response to the proposal no later than 70 days before the PDD. The proposer may respond within 28 days beginning with the day on which the statement is presumed to have been received i.e. 48 hours after it was sent. The information that the proposer can provide at this point is subject to regulation 12.

Under regulation 11, the proposer may, when lodging a proposal on a property, request a list of all plant and machinery included in the valuation of the property or a statement to the effect there is no such plant and machinery. The assessor must provide this list in their decision and it must refer to the plant and machinery used in the valuation following their decision on the proposal (as this list may be different to the plant and machinery valued in the original entry).

Under regulation 12, after a proposal is made, the proposer may provide the assessor with further evidence, no later than 28 days before the PDD (unless otherwise agreed with the assessor):

- if it did not exist at the time the proposal was made; and
- if it was not provided to the assessor when the proposal was made, but did exist at the time it was made. The proposer and assessor must generally agree in writing if evidence that existed at the time the proposal was made is to be submitted after the proposal has been made. However, where the assessor does not respond to the request to submit such evidence, at least 42 days before the last date for issue of a notice of a decision on the proposal, agreement of the assessor is to be presumed. This caters for the situation where no notice of PDD is ever issued. In that event the proposer won't have a last date on or before which they may submit further evidence (this is tied to the PDD), but they will be able to submit the evidence on the basis that the assessor will be taken to have agreed to that. So they will not be prevented from submitting further evidence, that did exist at the time of making the proposal, on the basis of the lack of a PDD.

Under regulation 13, the assessor may, at any time, postpone the PDD but not so as to cause the decision on the proposal to be issued later than the last date on which a proposal can be disposed of under schedule 1 of the 2022 Order. The proposer may request that the PDD be brought forward, and if the assessor refuses, they must set out why in writing.

Under regulation 14, the assessor may extend the period within which the proposer is required to supply any information to the assessor, or take any other action.

Regulation 15 states that the assessor must send notice of the decision in respect of the proposal to the proposer, in writing, on or before the PDD, where a PDD has been set. They must provide reasons for their decision, except where they have amended the entry in accordance with the proposal (or an agreement with the proposer after the proposal was made).

Regulation 16 applies where the assessor does not issue a PDD before the deadline to issue a PDD, or does not issue a decision on the proposal on or before the PDD where one has been issued or on or before the deadline for making a decision where a PDD *has not* been issued. In these cases, the assessor is required to set out the reasons for failure to do so within 14 days of the deadline having passed.

Notwithstanding all of the above, the assessor may amend the entry in accordance with the proposal (or an agreement with the proposer after the proposal was made) without the need to issue a PDD. The assessor and the proposer may also agree in writing that the assessor may make a decision without a PDD being issued, even though neither of these conditions applies.

The functions of valuation appeal committees are scheduled to transfer to the Local Taxation Chamber (LTC) in the First-tier Tribunal of the Scottish Tribunals on 1 April 2023. Regulation 18 sets the deadline for making an appeal to the LTC in relation to a proposal. If the assessor has issued a decision on the proposal, the proposer may make an appeal within 28 days beginning with the day on which the notice of the decision is presumed to have been received i.e. 48 hours after it is sent. Where the assessor has issued a PDD but made no decision, an appeal can be made within the period of 28 days beginning with the PDD. Where a PDD is not issued within 70 days before the last date for the assessor to make a decision on the proposal in accordance with schedule 1 of the 2022 Order, an appeal can be made to the LTC no later than 42 days before that last date.

Consultation

A draft of these regulations was consulted on as part of the 'Consultation on reforming the non-domestic rates system: proposals, the draft valuation roll, content of valuation notices, etc.' which the Scottish Government launched on 22 September 2021.

The consultation closed on 15 December 2021 and received 37 responses all of which were from organisations.

The Scottish Government published an analysis of the consultation responses on 22 April 2022 which can be accessed at: https://www.gov.scot/publications/reforming-non-domestic-rates-system-consultation-analysis/pages/3/ A full list of those consulted and who agreed to the release of this information is available in Annex A of the analysis. The published responses can be accessed at: https://consult.gov.scot/local-government-and-communities/non-domestic-rates-processes/consultation/published_select_respondent

There was concern that the proposed new information-sharing requirements at the point of lodging a proposal were overly onerous, with a number of suggestions made to make this less so including retaining the current system. Concern was also voiced over the assessor having the right to refuse an incomplete proposal and it was suggested that the assessor should, if they deem a proposal to be incomplete, send the proposer a notice specifying what information is missing within certain timescales. Some responses called for the assessor to provide to the proposer the same level of information as the proposer would have to share at the point of lodging a proposal. Others suggested that the assessor's written statement in response to the proposal should be specifically 'in relation to the detailed grounds and evidence on which the proposal was made'. There was also calls for the assessor to be required to take into account information that was in existence at the time the proposal was made, but was not shared at that point. Certain respondents stated that once the proposal is

made and the assessor has provided their written statement in response, the proposer should have 28 days to respond to that, rather than the proposed 14. A small number of responses stated that the assessor should not be able to postpone the Proposal Determination Date. There were also calls for the assessor to have to provide written reasons to the proposer if they fail to make a decision by the PDD, and many thought that the assessor should statutorily be required to issue a decision on the proposal.

The Scottish Government published feedback to this consultation which can be accessed at: https://consult.gov.scot/local-government-and-communities/non-domestic-rates-processes/

As a result of the consultation, the assessor will be required, in a written statement which they must send no later than 70 days before the Proposal Determination Date, to send to the proposer comments in relation to the detailed grounds and evidence on which the proposal was made. The proposer will have 28 days to respond rather than the proposed 14.

The assessor, when deeming a proposal incomplete, should specify what information is missing within 56 days of receiving the proposal and the proposer will have 28 days to respond or to request a review of the request.

Acknowledging the concerns raised in the consultation responses about the assessor being able to refuse an incomplete proposal and it then being deemed withdrawn, therefore removing the right of appeal on that proposal, the regulations will now require that if an assessor continues to deem that there is insufficient information in the proposal, they will deem it complete with no change in the rateable value and this can then be appealed to the Scottish Tribunals.

Impact Assessments

A Business Regulatory Impact Assessment is published alongside these regulations. No other impact assessments are required.

Financial Effects

There is no fee to make a proposal and this does not require professional representation. A Business Regulatory Impact Assessment is published alongside these regulations.

Scottish Government
Local Government and Communities Directorate

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