



Governance Committee

Guidance Note 1 Assessor Information Notices and Civil Penalty Procedures

1.0 Introduction

This Guidance Note applies to the issue of Assessor Information Notices (AINs) and to Civil Penalties (CPs) issued under sections 26 and 30 of the Non-Domestic Rates (Scotland) Act 2020 ('the Act'), respectively.

The Guidance Note also covers procedures to be adopted where appeals have been made under section 31 of the Act and The Valuation Appeal Committee (Procedure in Civil Penalty Appeals) (Scotland) Regulations 2020 ('The Regulations').

The SAA promotes a reasonable application of the powers conferred under the Act. However, no Guidance Note can cover every instance and assessors should show discretion where appropriate.

2.0 Information Gathering

2.1 General

Good record keeping is essential, and assessors are recommended to ensure that their systems for recording the issue and return of all information, including AINs and CPs, are fit for purpose.

2.2 Central/Bulk Information Gathering

Scottish Assessors are welcoming of, and encourage, the submission of relevant information, such as lease details, throughput and turnover, from persons with multiple interests. This can be arranged by contacting any of the following:-

- SAA Coordinator: assessor@dab-vjb.gov.uk
- The relevant SAA Category Committee Chairman (<https://www.saa.gov.uk/contactlists/>), or
- The local assessor (<https://www.saa.gov.uk/assessors-links/>).

The SAA is committed to the development of a facility for the collection of rental information via the SAA web portal (www.saa.gov.uk) in a data format to be defined by assessors in consultation with potential users.

Lease information is also ingathered through the Valuation Office Agency's 'Valuation Office Rating Contact' (VORC) scheme:
<https://www.gov.uk/government/collections/valuation-office-agency-request-for-rental-information-forms>.

Where information collected through the above processes is incomplete or not sufficient for the relevant purpose, assessors will have to consider the issue of an Assessor Information Notice, as below.

2.3 Pre-request checks

Prior to issuing an AIN, and certainly prior to issuing any CP, assessors should check to see if any central or bulk (national or local) return has been made which would mitigate the need for an AIN.

Notwithstanding any submission made as above, assessors reserve the right to issue AINs to persons where more detail is required or in other particular circumstances.

In any event, assessors should ensure that the information is reasonably required.

3.0 **Assessor Information Notices**

Any request for information which is made in writing and would assist in the assessor's statutory duties constitutes an AIN. Notwithstanding, it is recommended that any request which is likely to be followed through to the CP process should:-

- (a) be clearly marked as being an 'Assessor Information Notice',
- (b) include the 28 day return requirement, and
- (c) identify the potential penalties for failure to respond.

The narrative contained in requests should go beyond the above minimum requirement and should provide a brief explanation of why the information is being asked for and how it will be used.

Accuracy in naming and addressing of AINs (and later CPs) will be of importance. Similarly, the lands and heritages to which the request relates must be clearly identified.

Where a return via the portal is envisaged (e.g. rent returns) a letter containing the relevant url/on-line link would be sufficient to constitute an AIN, though the option of a paper form will be available on request. Where the AIN takes the form of a cover letter and form insert, both the letter and the form should contain a statutory reference and clearly identify the lands and heritages.

Generally, AINs will be served on the Proprietor, Tenant or Occupier (P/T/O) of the relevant lands and heritages as it is most likely that the P/T/O will have ownership and/or 'control' over the vast majority of the information to be requested.

AINs are 'given' at the date of issue and the timetable for making a return runs from that date.

4.0 **Information Returns**

Where the requested information is received in full, assessors should ensure that local systems are updated accordingly and that unnecessary reminders and escalation are avoided.

Where a bona fide but incomplete return is made, assessors should engage with the providers to try to obtain the complete information prior to escalating any formal follow-up action.

Similarly, where a person indicates that they do not hold/control the information requested, assessors should engage informally to ascertain the circumstances and the most likely person/body to hold the information. Where the claim appears to be overtly unreasonable, however, assessors will need to consider formal escalation.

Where multiple requests have been made for the same/similar information (e.g. both the tenant and landlord have been asked for the same information) and it is provided by one party, assessors will adopt a reasonable approach to escalation with the other party.

Where more than one AIN has been issued to a person (e.g. one for building costs and one for lease details), each AIN should be treated separately and a response to one will not re-set the clock (or otherwise affect any subsequent penalty) for the other

5.0 Non-Return of information

In the early stages of the new statutory framework and recognising the change of culture that will be required, it is recommended that the following approach should generally be taken to follow-up action where no return has been made.

If no return is received after 28 days a reminder should be issued, providing a further 28 days for the return to be made and a statement reiterating the potential for a civil penalty to be applied. The correspondence should include, or offer, a replacement form or provide the relevant on-line form link, as appropriate.

If no return is received after 56 days, a Civil Penalty Notice should be issued.

The above approach will remain under review with a more strict application of the legislation to be implemented if information is not being provided within the spirit of this approach.

6.0 Civil Penalties

A Civil Penalty Notice must contain:-

- (a) accurate naming and addressing information
- (b) confirmation that the person has failed to comply with an AIN
- (c) information on the amount of the penalty and potential escalation of penalties
- (d) the person's rights to appeal the application of the CP.

A CPN need only be issued at the first penalty stage and that CPN sets the legislative timetable for any subsequent penalty. Notwithstanding, notification should be issued when stage 2 and stage 3 penalties apply.

Each subsequent penalty is a separate one which, if unpaid, will require its own recovery procedures to apply. Payment of a stage 1 penalty does not 're-set the clock'. The timetables for stage 2 and 3 penalties are set by the initial CPN.

A (running roll, or other) change to the Rateable Value after the CPN is issued does not change the extent of the CP. Rather, the amount of the penalty is set at the date when the CPN is given.

7.0 Appeals against Civil Penalties

Appeals against Civil Penalties must be made within 28 days of the Civil Penalty Notice being served. The procedure for considering and disposing of such appeals is provided for in The Valuation Appeal Committee (Procedure in Civil Penalty Appeals) (Scotland) Regulations 2020 – see:

<https://www.legislation.gov.uk/ssi/2020/382/made>

Until any appeal is determined, the appellant is not obliged to pay any penalty being appealed or any subsequent penalty to which they become liable. Any recovery action in respect of such a penalty must therefore be halted on receipt of any appeal until such times as the appeal has been determined.

8.0 Review

This Guidance Note will be subject to review at 1 April 2021 and continually thereafter.