

# Non-Domestic Rates (Scotland) Bill

[As Amended at Stage 2]

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## Revised Explanatory Notes

### Introduction

1. As required under Rule 9.7.8A of the Parliament's Standing Orders, these Revised Explanatory Notes are published to accompany the Non-Domestic Rates (Scotland) Bill (which was introduced in the Scottish Parliament on 25 March 2019) as amended at Stage 2. Text has been added or amended as necessary to reflect amendments made to the Bill at Stage 2 and these changes are indicated by sidelining in the right margin.

2. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section, or a part of a section, does not seem to require any explanation or comment, none is given.

### The Bill

#### Part 1 – Overview of Act And Interpretation Of References to Other Acts

4. The Bill deals with non-domestic rates, which are a property-based tax paid on non-domestic properties. Rates are paid to local authorities and used to fund local authority services. The rates payable in respect of a particular property are based on the rateable value of the property as entered in the valuation roll.

## Section 1 – Overview of Act And Interpretation Of References to Other Acts

5. The Bill is divided into 6 Parts. Section 1(1) sets out how the Parts are arranged and summarises what each Part does as follows:

- Part 2 amends the law about the administration and enforcement of non-domestic rates,
- Part 2A makes provision about the procedure for certain regulations relating to non-domestic rates,
- Part 3 makes provision about information-gathering powers for assessors and local authorities,
- Part 4 makes provision about power for the Scottish Ministers to make regulations to tackle avoidance of non-domestic rates,
- Part 5 contains general and final provisions.

6. Parts 3 and 4 make new freestanding provision, as do sections 9, 12, 13A and 13B within Part 2. The remaining provisions within Part 2 amend existing Acts. Statutory provision about non-domestic rates is spread across a large number of Acts and statutory instruments. Section 1(2) provides definitions of a number of Acts that are amended by or referred to in more than one section of the Bill as follows:

- the “1854 Act” is the Lands Valuation (Scotland) Act 1854 – non-domestic rates are payable in respect of “lands and heritages”, which is defined in section 42 of the 1854 Act.<sup>1</sup> This definition is fundamental to non-domestic rating legislation, and is adopted for the purposes of this Bill by section 28. This Act is also amended by sections 8A and 14 of the Bill.
- the “1956 Act” is the Valuation and Rating (Scotland) Act 1956 – it is amended by sections 3A, 4A, 8 and 22 of the Bill.
- the “1962 Act” is the Local Government (Financial Provisions etc.) (Scotland) Act 1962 – section 4 of this Act provides for mandatory

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<sup>1</sup> The core of the definition is as follows: “the expression “lands and heritages” shall extend to and include all lands, houses, shootings, and deer forests, fishings, woods, copse, and underwood from which revenue is actually derived, ferries, piers, harbours, quays, wharfs, docks, canals, railways, mines, minerals, quarries, coalworks, waterworks, limeworks, brickworks, ironworks, gasworks, factories, and all buildings and pertinents thereof, and such class or classes of plant or machinery in or on any lands and heritages as may be prescribed by the Scottish Ministers by regulations”.

and discretionary relief from payment of non-domestic rates for charities and certain other organisations, and is amended by sections 9B, 10 and 11 of the Bill.

- the “1963 Act” is the Local Government (Financial Provisions) (Scotland) Act 1963 – it is amended by sections 4, 8 and 22 of the Bill.
- the “1975 Act” is the Local Government (Scotland) Act 1975 – this Act contains provision about the valuation roll and revaluation. It is amended by sections 2, 3, 5A, 5B, 6, 7, 8B, 8C and 13 of the Bill.

7. These definitions are also used throughout these Explanatory Notes.

8. A number of other Acts are amended by the Bill, but are not defined in section 1 (due to only being amended by one section).

9. Section 1 only provides definitions for Acts. Definitions of the terms “lands and heritages”, “non-domestic rates” and “valuation roll” are provided in section 28. Again, these definitions are used throughout these Explanatory Notes.

## Part 2 – Administration and Enforcement Of Non-Domestic Rates

### Section 2 – Revaluation years

10. Section 2 amends the definition of “year of revaluation” in section 37(1) of the 1975 Act so that revaluations will be carried out every three years, rather than every five years.

11. Non-domestic rates are calculated using the rateable value of a property included in the valuation roll. For most properties, the rateable value is generally based upon its estimated open market value on the “tone date”<sup>2</sup> were it to be vacant and to let. The rateable value requires to be reviewed from time to time to reflect changes in the property market.

12. Section 1(1) of the 1975 Act requires assessors to make up a valuation roll for each year of revaluation. “Year of revaluation” is currently defined in section 37(1) of the 1975 Act as the year 2017-18 and every fifth year thereafter. The next year of revaluation is therefore due to be the year

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<sup>2</sup> The “tone date” is currently 1 April two years before the date of the revaluation.

2022-23. Paragraph (a) of section 2 preserves 2022-23 as a year of revaluation, but the effect of paragraph (b) is that the following year of revaluation will be three years later (that is, 2025-26).

### Section 3 – New or Improved Properties: Mark In Valuation Roll

13. Section 3 inserts a new section 2A into the 1975 Act, in relation to entries on the valuation roll for newly built or improved properties. New section 2A will facilitate the identification of properties which may be eligible for rates relief for such properties (see section 9 of the Bill).

14. Sections 1 and 2 of the 1975 Act require the assessor for each valuation area to make up a valuation roll for each year of revaluation. Following a revaluation, rateable values will generally remain unchanged until the next revaluation, unless property is altered or other changes take place. Each entry on the valuation roll relates to a different property (described in the legislation as “lands and heritages”).

15. New section 2A(1) and (2) requires an assessor to identify an entry in the valuation roll which is made or altered in relation to one or more new buildings, or as a result of the refurbishment or extension of one or more existing buildings. The assessor must do this by including a mark in the entry to show that it relates to newly built lands and heritages, or to improved lands and heritages.

16. Entries in the valuation roll are shared with the local authority when they are made or altered, under section 3(1) of the 1975 Act. The local authority will therefore be able to use this mark to identify properties which may be eligible for relief under regulations made under section 9(1) of the Bill.

17. Section 2A(3) explains what is meant by an entry on the valuation roll which relates to newly built lands and heritages. This is an entry for property which includes buildings (or parts of buildings) none of which were previously included in any entry on the valuation roll or the valuation list (for council tax), or would have been included in an entry in the roll if they had not been excluded by one of the provisions of the 1956 Act mentioned in section 2A(3)(b)(ii). Section 7(3) of the 1956 Act excludes agricultural lands and heritages, section 7A(3) excludes fish farms, and section 8C(1) excludes ATMs (automatic telling machines).

18. This means any buildings or parts of a building in the entry must be newly built. The entry might be a new one on the valuation roll, or it might be one which is adjusted, and which previously related to land which had no buildings on it.

19. Section 2A(4) and (5) explains what is meant by an entry on the valuation roll which relates to improved lands and heritages. This is relevant where land on the valuation roll already has buildings on it. If the rateable value of the property is increased as a result of the construction or erection of other buildings, or parts of a building, or the refurbishment or extension of the existing buildings, the entry will be altered and become an entry which relates to improved property. Subsection (5)(b) provides that this does not apply where there is an increase in the rateable value which is attributable to existing properties on the valuation roll being combined, divided or reorganised, or to a change in the way in which the property is being used.

20. Subsection (5A) requires an assessor to remove a mark which has been included in an entry under subsection (2) the next time the entry is adjusted.

21. Subsection (6)(a) enables the Scottish Ministers to make provision in regulations about things that are or are not to be treated as a building for the purposes of section 2A. This power could be used where there is doubt as to whether certain structures would ordinarily be considered to be buildings.

22. Subsection (6)(b) enables the Scottish Ministers to modify the definition of “relevant increase” in subsection (5), i.e. to change the description of the increases in rateable value which result in a property being considered to be improved. This power might be used to keep pace with the application of the rates relief in regulations under section 9 of the Bill, as the mark for improved lands and heritages will be used by local authorities to identify properties which might be eligible for that relief.

23. Subsection (7) allows the regulations to make different provision for different purposes (for example, to make different provision about things that are to be treated as buildings in different circumstances), and to make ancillary provision. Subsection (8) makes provision about the parliamentary procedure which applies to the regulations.

**Section 3A – Power of Scottish Ministers to remove exempt status of lands and heritages**

24. This section inserts a new section 8D into the 1956 Act.

25. Not all lands and heritages require to be entered in the valuation roll (maintained by assessors under the 1975 Act). The effect of lands and heritages not being entered in the valuation roll is that non-domestic rates are not payable in respect of the lands and heritages. Some of the exemptions from the requirement for lands and heritages to be entered in the valuation roll are set out in subordinate legislation<sup>3</sup> (with the result that the exemptions could be removed if the subordinate legislation was revoked – leading to a requirement for the lands and heritages to be entered in the valuation roll). Other exemptions are set out in primary legislation<sup>4</sup>. Such exemptions can currently only be removed by further primary legislation.

26. New section 8D allows the Scottish Ministers to make regulations requiring specified types of currently exempt lands and heritages to be entered in the valuation roll (including where the exemption is set out in primary legislation). Any such regulations are subject to the affirmative procedure if they modify any enactment and to negative procedure in any other case.

27. Non-domestic rates may or may not become payable in respect of any lands and heritages that cease to be exempt from entry in the valuation roll by virtue of regulations under section 8D – this will depend on any other factors, such as whether any reductions or remissions are applicable in respect of the lands and heritages.

**Section 4 – Entering of Parks In Valuation Roll**

28. Section 19(1) of the 1963 Act provides that lands and heritages which consist of certain types of park (including buildings in the park used for purposes ancillary to those of the park) are not to be entered in the valuation roll. Subsections (1A) and (1B) of section 19 of the 1963 Act

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<sup>3</sup> See, for example, the Valuation and Rating (Exempted Classes) (Scotland) Order 2002, which deals with oil and gas pipelines.

<sup>4</sup> See, for example, sections 7, 7A and 8C of the 1956 Act, which exempt agricultural lands and heritages, fish farms and rural ATMs respectively.

specify exceptions to this rule. Non-domestic rates are not payable in respect of lands and heritages which are not entered in the valuation roll.

29. Currently, a park vested in or under the control of a local authority requires to be entered in the valuation roll only if the local authority derives a net profit from the park (subsection (1A) of section 19 of the 1963 Act). A park vested in or under the control of a Minister of the Crown or Government department (or other persons or bodies exercising functions on behalf of the Crown) requires to be entered in the valuation roll only if the park is not available for free and unrestricted use by members of the public (subsection (1B) of section 19 of the 1963 Act).

30. Section 4(3) amends section 19 of the 1963 Act by replacing subsections (1A) to (1C) with four new subsections. New subsection (1ZA) sets out a new basic rule that parts of parks which have certain characteristics are to be entered in the valuation roll. (and, as a consequence, section 4(2) amends subsection (1) of section 19 of the 1963 Act to remove the previous statement of the basic rule). The characteristics that will lead to a part of a park (of one of the two types) being entered in the valuation roll are set out in subsections (1ZB) and (1ZC).

31. The first case (subsection (1ZB)) is where the part of the park is occupied by a person other than the local authority or, as the case may be, the Minister, Government department (or other person exercising functions on behalf of the Crown). In this case, the part of the park which is occupied by the other person must be entered on the valuation roll. This requires, for example, a food outlet which is located within a local authority park but run by another person to be entered on the valuation roll. The rates payable would depend on the rateable value determined for the food outlet and whether the occupier was entitled to any relief.

32. The second case is where, despite being occupied by a local authority or, as the case may be, a Minister, Government department (or other person exercising functions on behalf of the Crown), at least some members of the public are required to pay in order to access facilities in a particular part of the park or for goods and services provided in the part. If, for example, a local authority park contains tennis courts, which can only be used on payment of a charge, then that part of the park requires to be entered in the valuation roll. The fact that some categories of people may be able to access the courts at a concessionary rate (or even free of

charge) does not change this. Again, the rates payable as a result of the entry will depend on the rateable value and availability of reliefs.

33. Parts of parks (of the two types set out in subsection (1) of section 19 of the 1963 Act which do not fall into either subsection (1ZB) or (1ZC)) will continue not to be entered in the valuation roll (subsection (1ZD)).

## Section 4A – Entering of Certain Student Accommodation in Valuation Roll

34. Section 4A inserts a new section 7C into the 1956 Act. New section 7C makes provision in relation to the entering of certain student accommodation in the valuation roll.

35. Part 2 of the Local Government Finance Act 1992 makes provision about the treatment of dwellings for local tax purposes: lands and heritages which are dwellings, as defined in section 72(2) of that Act, are entered in the valuation list, which relates to council tax (rather than in the valuation roll, which relates to non-domestic rates). Section 72(4) of that Act gives the Scottish Ministers power to vary the definition of dwelling by including or excluding lands and heritages. Student halls<sup>5</sup> currently fall to be included in the valuation list by virtue of the Council Tax (Dwellings and Part Residential Subjects) (Scotland) Regulations 1992. Such properties are therefore not entered in the valuation roll (the most significant practical effect of this being that such properties are not liable for non-domestic rates).<sup>6</sup>

36. Subsection (1) of new section 7C purports to change this situation by providing that, for the purpose of the levying of rates, landlords of certain types of student accommodation are liable to be rated if the purpose of letting the property is to confer on the tenant the right to occupy the let property while the tenant is a student. By virtue of subsection (1)(b) and (2), this provision does not apply to certain landlords (broadly speaking, where the landlord is a provider of further or higher education). Subsection (2) does apply (with the effect that subsection (1) also applies) to any other landlord whose purpose in letting property is as mentioned above. Subsection (1) also applies (by virtue of subsection (1)(b) and (3)) to

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<sup>5</sup> Defined as lands and heritages (a) which are used predominantly as residential accommodation by students, and (b) in which there are facilities which are available for sharing by some or all of the students.

<sup>6</sup> In addition, although student halls are included in the valuation list, students who reside in such properties are not generally liable to pay council tax.



institutional providers of student accommodation where planning permission in respect of the development of a let property was granted on the basis that the property would be used predominantly for housing students. Subsection (4) defines “institutional provider of student accommodation” (broadly speaking, this means landlords who let at least 30 bedrooms in the same building to students).

37. Subsection (5) of new section 7C provides that, in determining whether subsection (1) applies (that is, if a landlord is liable to be rated), no account is to be taken of time when student accommodation is used otherwise than for accommodating students. However, if the time for which the accommodation is used for other purposes amounts to a substantial part of the year, then that time is to be taken account of in determining whether subsection (1) applies.

38. Subsection (6) of new section 7C defines “student” for the purposes of the section. Section 5 – Discretion of Local Authority To Determine Whether Lands And Heritages Are Dwellings

39. Section 72(4) of the Local Government Finance Act 1992 enables the Scottish Ministers to make regulations about lands and heritages, or classes of lands and heritages, which are included in, or excluded from, the definition of “dwelling” in section 72(2). If the lands and heritages are a dwelling, they are subject to council tax under section 72(1). Otherwise, they are subject to non-domestic rates.

40. Section 5 of the Bill makes provision to enable regulations under section 72(4) of the 1992 Act to give a local authority discretion to determine, in circumstances set out in the regulations, whether particular lands and heritages fall within a class of lands and heritages prescribed in the regulations.

41. This power will allow the regulations to make provision about circumstances in which local authorities can exercise discretion in particular cases, where it appears to them that lands and heritages should stay in the non-domestic rates system, where the application of the tests in the regulations would otherwise result in them falling into the council tax system. For example, where lands and heritages fall within a particular class if they are used in a certain way, the regulations may allow the local authority to determine that the lands and heritages fall within that class even if they are not used in that way, if there is a good reason for that.

## Section 5A – Agreement as To Valuation

42. Section 1 of the 1975 Act requires assessors to make up a new valuation roll in each year of revaluation. An assessor will, on occasion, enter into an agreement with the proprietor, tenant or occupier of lands and heritages as to what the entry for those lands and heritages in the valuation roll will be.

43. Section 5A inserts new subsections (3A) and (3B) into section 1 to provide that, where such an agreement exists, the entry in the new valuation roll must reflect that agreement unless there has been an alteration in the valuation of the lands and heritages as a result of a material change of circumstances since the agreement was entered into. “Material change of circumstances” is defined in section 37(1) of the 1975 Act (as amended by section 8B of the Bill).

## Section 5B – Draft Valuation Roll And Valuation Notices

44. Section 5B inserts a new section 1B into the 1975 Act. Section 1B(1)(a) requires an assessor to make up and publish a draft valuation roll before making up the new valuation roll in a revaluation year. It is intended that the Scottish Ministers will use existing powers to specify when the draft roll is to be published.

45. Section 1B(1)(b) requires an assessor to send a draft valuation notice to each person who is the proprietor, tenant or occupier of lands and heritages entered in the draft valuation roll. Subsection (2)(a) requires draft notice to set out the details included in the entry for the lands and heritage in the draft roll (including the valuation). Subsection (2)(b) and (c) also require the notice to state that the recipient of the draft notice can make representations to the assessor about the details to be included for the lands and heritages in the final roll to be made up under section 1(1) of the 1975 Act (see subsection (3)), and the fact that the entry for the lands and heritages in the final roll may differ from the entry in the draft roll (see subsection (4)). Subsection (2)(d) provides that the draft notice may include such other information as the Scottish Ministers may specify in regulations or as the assessor considers appropriate.

46. Subsections (5) and (6) provides that regulations specifying information to be included in a draft valuation notice may make different provision for different purposes, may make ancillary provision and are subject to the negative procedure.

## Section 6 – Valuation Notices

47. Section 6 adjusts section 3 of the 1975 Act in relation to the information that assessors must give ratepayers in a valuation notice under section 3(2), and also in relation to how those notices may be provided.

48. Section 3(2) of the 1975 Act requires assessors to send ratepayers valuation notices in relation to entries made or adjusted in the valuation roll. A valuation notice will tell the ratepayer what the rateable value of the property is. New subsection (2ZA) requires the assessor to include such information in relation to the rateable value as the Scottish Ministers may specify in regulations. For example, this information may relate to how that value was calculated. New section 3(7) (inserted by paragraph (b) of section 6) provides that the regulations are subject to the negative procedure.

49. Paragraph (b) of new subsection (2ZA) allows the assessor to include other information in a valuation notice, if the assessor considers that to be appropriate.

50. Section 6 also inserts a new subsection (2ZB) into section 3 of the 1975 Act. This allows assessors to send valuation notices electronically, with the agreement of the ratepayer. Currently all notices are sent by post.

## Section 7 – Proposals to Alter, And Appeals Against, Valuation Roll

51. Section 7 amends the 1975 Act to introduce a new mechanism for ratepayers to challenge entries in the valuation roll, before making an appeal to the valuation appeal committee.

52. At present, section 3 of the 1975 Act gives proprietors, tenants and occupiers of lands and heritages the right to appeal to the valuation appeal committee against an entry in the valuation roll in various circumstances. Subsection (2) allows an appeal to be made where the proprietor, tenant or occupier receives a valuation notice from the assessor, where the assessor makes or alters an entry. Subsections (2A) and (2B) allow a new proprietor, tenant or occupier of lands and heritages to appeal against the entry in the valuation roll for the lands and heritages within 6 months of becoming the proprietor, tenant or occupier of them. Subsections (4) and (4A) allow a proprietor, tenant or occupier to appeal against the entry if

there is a material change in circumstances, or on the grounds that there is an error in the entry.

53. Section 7(3)(a) and (b) of the Bill repeal the provisions about appeals in section 3 of the 1975 Act, and subsection (4) replaces them with new sections 3ZA and 3ZB, providing for a new stage for ratepayers to propose changes to the valuation roll, and for appeals following the making of a proposal.

54. New section 3ZA(1) allows the proprietor, tenant or occupier of lands and heritages to make a proposal to the assessor to alter the entry in the valuation roll for those lands and heritages. Subsection (2) sets out the circumstances in which a proposal can be made. They are the same as the circumstances in which an appeal can currently be made under section 3 (see paragraph 52), although the time limits for making a proposal will be set out in regulations under subsection (6) rather than in section 3ZA itself.

55. New section 3ZA(2A) prevents a person from making a proposal in relation to an entry in the valuation roll as made up in a revaluation year if the entry reflects the terms of an agreement between that person and the assessor.

56. Section 3ZA(3) replicates section 3(2B) of the 1975 Act, and provides that a new proprietor, tenant or occupier can make a proposal regardless of whether a previous proprietor, tenant or occupier reached an agreement with the assessor about the entry in the valuation roll for the lands and heritages, or challenged it through a proposal or an appeal.

57. Section 3ZA(4) requires a proposal to be made in writing, and to set out the changes that the person making it wants the assessor to make to the entry. For example, if the proposal is concerned with the rateable value shown in the entry, the proposal must set out the amount that the person making the proposal thinks is the value that should be shown in the entry.

58. Under subsection (5), the assessor can decide to alter the entry as suggested in the proposal or as agreed with the person making the proposal, decide to alter the entry other than as suggested by or agreed with that person (and may either increase or decrease the value included in the entry), or decide not to alter the entry at all. If the assessor decides to alter the entry other than as suggested by or agreed with the person who made the proposal, or not to alter the entry, the person who made the

proposal can appeal to the valuation appeal committee under section 3ZB(1)(a).

59. Subsection (6) enables the Scottish Ministers to make provision in regulations about various matters in connection with proposals under section 3ZA. These include time limits for making a proposal, the form in which it is to be made, the information and documentation that must be supplied with the proposal, notices that the assessor is to give to the proposer, and fees that may be payable for making a proposal.

60. By virtue of section 3ZA(8), regulations under subsection (6) are subject to the negative procedure unless they make provision about fees, in which case they are subject to the affirmative procedure.

61. New section 3ZB makes provision about the making of appeals to the valuation appeal committee following the making of a proposal. There is no right to appeal under section 3ZB unless the appellant has first made a proposal.

62. Section 3ZB(1)(a) allows an appeal to be made to the valuation appeal committee against an assessor's decision under section 3ZA(5) to alter an entry in the valuation roll otherwise than as proposed by or agreed with the appellant, or not to alter the entry at all. There is no right of appeal if the assessor agrees to alter the entry as proposed, or where an agreement is reached to alter the entry in a different way.

63. Section 3ZB(1)(b) allows an appeal to be made to the valuation appeal committee if the assessor does not determine the proposal within a particular period (to be set out in regulations under section 3ZB(6)(a)). Subsection (1A) provides that in this case the appeal must be made on the same basis as the proposal to which it relates (e.g. if the proposal was made by virtue of section 3ZA(2)(b) by a new proprietor, tenant or occupier, the appeal cannot be made on the basis of a material change of circumstances).

64. The period within which an appeal is to be made in either of these situations will be set out in regulations under section 3ZB(6)(a). An appeal cannot be brought after the end of the period, and the valuation appeal committee does not have discretion to extend the period (section 3ZB(2)(a)).

65. Section 3ZB(2)(b) requires the appellant to obtain the permission of the valuation appeal committee in order to withdraw an appeal after it is made. This is the case even where the assessor and the appellant have reached an agreement about how the entry in the valuation roll should be altered after the appeal is made.

66. Section 3ZB(3) sets out what the committee is to do on an appeal. The committee is to decide what alterations the assessor is to make to the entry, if any. Any alterations may be the same as those contained in the proposal, or the committee may decide that different alterations should be made. The committee may in particular decide that the rateable value of the property is to be increased or decreased. Current practice on appeals is not to increase the value.

67. Section 3ZB(4) and (5) replicate parts of the current section 3(4) of the 1975 Act. It provides that, if a proposal has been made on the grounds of a material change in circumstances (i.e. a change affecting the rateable value of the property) and there is a subsequent appeal to the valuation appeal committee, the committee may decide that the entry is to be altered if it is established that the change in circumstances has materially reduced the extent to which the property can be beneficially enjoyed, even if the specific extent of the reduction in the property's value cannot be proved.

68. Section 3ZB(6) enables the Scottish Ministers to make regulations in relation to the making of appeals under section 3ZB(1). The regulations may deal with matters such as the time limits for bringing and disposing of appeals, information to be included and documents to be submitted with them (for example, documentation in relation to the proposal under section 3ZA), circumstances in which the appeal may be brought only with the permission of the valuation appeal committee (for example, permission might be needed if the appellant does not have all of the relevant documentation), fees payable in connection with an appeal and the procedures to be followed in an appeal. There is currently no power to charge fees for appeals to the valuation appeal committee.

69. Section 3ZB(6A) requires the Scottish Ministers to consult local authorities, assessors, representatives of the business sector and such other persons as they consider appropriate before making regulations about fees for making appeals.

70. Regulations under section 3ZB(6) are subject to the affirmative procedure if they make provision about fees, and otherwise are subject to the negative procedure (section 3ZB(8)).

71. Subsections (2) and (3)(c) of section 7 of the Bill adjust sections 2 and 3 of the 1975 Act in consequence of new sections 3ZA and 3ZB. Section 2 is adjusted to provide for the assessor to alter the valuation roll where the assessor agrees to do so following the making of a proposal. If the ratepayer appeals to the valuation appeal committee before the agreement is reached, the valuation roll is to be adjusted only if the appeal is withdrawn. Section 3(5) is also adjusted to require the assessor to let an interested person know whether there is a proposal pending in relation to an entry on the valuation roll, if the person requests that information.

## **Section 8 – Proposals and Appeals: Consequential Modifications**

72. Section 8 modifies enabling powers contained in section 13 of the 1956 Act, and section 15(2) of the 1963 Act as a consequence of the enabling powers in new sections 3ZA and 3ZB of the 1975 Act (inserted by section 7). This is to avoid an overlap between the existing powers and the new ones.

73. Section 13 of the 1956 Act enables the Scottish Ministers to make provision in an order about when notices are to be given, or other things done, under the Valuation Acts (i.e. legislation relating to valuation). Section 15(2) of the 1963 Act enables the Scottish Ministers to make provision in regulations about the procedure to be followed in appeals to the valuation appeal committee.

## **Section 8A – Restriction on Making Complaints**

74. Section 13 of the 1854 Act concerns complaints made to a valuation appeal committee about the value of lands and heritages as entered in the valuation roll. Any person can make such a complaint. Section 8A of the Bill amends section 13 to provide that such a complaint cannot be made by the proprietor, tenant or occupier of the lands and heritages to which the complaint relates. Such a person has an alternative route to challenge the valuation through the making of a proposal to the assessor under new section 3ZA of the 1975 Act and an appeal to the valuation appeal committee under new section 3ZB of that Act (see section 7 of the Bill).

## Section 8B – Meaning Of “Material Change of Circumstances”

75. Currently, a proprietor, tenant or occupier of lands and heritages may appeal against the entry in the valuation roll relating to the lands and heritages if there is a material change of circumstances (section 3(4) of the 1975 Act<sup>7</sup>). Under section 1(6)(c) of the 1975 Act assessors may, and under section 2(1)(d) of that Act they must, alter an entry in respect of lands and heritages in the valuation roll to reflect any alteration in the value of the lands and heritages which is due to a “material change of circumstances”.

76. Section 37(1) of the 1975 Act defines “material change of circumstances” for these purposes. Broadly speaking, this means a change of circumstances affecting the value of the lands and heritages. Currently, this definition does not exclude general economic factors (e.g. a general increase or decrease in rents), with the result that such factors can form the basis of an appeal against an entry in the valuation roll.

77. Section 8B amends the definition of “material change of circumstances” in the 1975 Act to exclude changes in general economic circumstances (specifically, changes in the rent of particular lands and heritages or any other lands and heritages, or in the level of valuations generally or in the value of lands and heritages generally). Proprietors, tenants and occupiers will therefore no longer be able to request the alteration of an entry in the valuation roll on the basis of such changes.

## Section 8C – Levying of Rates

78. Section 8C inserts a new section 7ZA into the 1975 Act. In addition, it repeals section 110 of the Local Government Finance Act 1992 (the “1992 Act”) and section 153 of the Local Government etc. (Scotland) Act 1994 (the “1994 Act”).

79. New section 7ZA(1) requires the Scottish Ministers to make regulations (subject to affirmative procedure) making such provision as they consider appropriate with a view to giving full effect to section 7 of the 1975 Act, as amended by the Bill, by 2024. Subsection (3) of new section 7ZA states that if any single rating authority chooses not to discharge their

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<sup>7</sup>This provision is repealed by section 7(3)(b) of the Bill, though new section 3ZA(2)(c) will allow a proposal to change the entry to be made on the ground that there has been a material change in circumstances.



power under section 7 of the 1975 Act, the Scottish Ministers may prescribe a rate which will be the non-domestic rate to be levied throughout Scotland in a particular year. The underlying assumption is that section 7 of the 1975 Act gives rating authorities power to set the non-domestic rate for their areas. Section 7 of the 1975 Act does not currently confer such a power, and the Bill does not contain any proposed amendments of that section. Section 7 as it currently stands is fully in force.

80. Subsection (2) of section 8C repeals section 110 of the 1992 Act. Section 110 inserted new sections 7A (provisions as to setting of non-domestic rates) and 9A (interest on rates paid in error) into the 1975 Act. In addition, it provided for a new section 7B to subsequently replace section 7A.

81. Subsection (3) of section 8C repeals section 153 of the 1994 Act. That section gives the Scottish Ministers power (by regulations, currently subject to negative procedure) to prescribe that the amount payable as non-domestic rate in respect of any lands and heritages is to be such amount as may be determined in accordance with prescribed rules. This allows Ministers to specify reliefs and supplements that apply to the non-domestic rates payable in respect of particular types of lands and heritages.

## **Section 9 – New or Improved Properties: Rates Relief**

82. Section 9 enables the Scottish Ministers to make regulations providing for relief from the payment of non-domestic rates in relation to new or improved properties. Relief for new or improved properties is currently available through the Non-Domestic Rates (Relief for New and Improved Properties) (Scotland) Regulations 2019 (the “2019 Regulations”).<sup>8</sup>

83. Subsection (1) of section 9 allows the Scottish Ministers to make regulations providing for rates relief for newly built and for improved lands and heritages. These are defined in subsection (5) by reference to section 2A of the 1975 Act (inserted by section 3 of the Bill), which requires entries for such properties to be marked on the valuation roll. Essentially, these are entries which include new buildings where previously the entry had no buildings, or buildings which have been refurbished or extended.

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<sup>8</sup> S.S.I. 2019/40

84. Subsection (2) expands on subsection (1) by explaining some of the things that the regulations might do. They may set the rates of relief (including thresholds for rates of relief), provide for the periods for which relief is available, and make provision about eligibility for relief. Eligibility rules may be based on the use or occupation of the building, or whether further changes are made to the building. The 2019 Regulations provide for relief for newly built lands and heritages to continue for 12 months after the property is first occupied.

85. Subsection (3) provides for the regulations to be able to make different provision for different purposes and ancillary provision, and subsection (4) provides for them to be subject to the negative procedure.

## Section 9A – Contribution to Net-Zero Emissions Target: Rates Relief

86. Section 153(1) of the Local Government etc. (Scotland) Act 1994 gives the Scottish Ministers power (by regulations, currently subject to negative procedure) to prescribe that the amount payable as non-domestic rate in respect of any lands and heritages is to be such amount as may be determined in accordance with prescribed rules. This allows Ministers to specify reliefs and supplements that apply to the non-domestic rates payable in respect of particular types of lands and heritages. Subsection (3) of section 153 provides additional detail in relation to this power, stating, for example, that different provision may be made in relation to different areas or different classes of lands and heritages.

87. Subsection (2) of section 9A of the Bill amends section 153(3) to give an additional example of how the power conferred by section 153(1) may be used. Specifically, it provides that regulations may make different provision in relation to lands and heritages whose contribution to the net-zero emissions target<sup>9</sup> including through investment in district heating<sup>10</sup> falls into different categories prescribed in rules under section 153(1). Subsection (3) of section 9A makes a minor consequential amendment, providing that regulations under section 153(1) can include provision about

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<sup>9</sup> Section 9A does not define “net-zero emissions” target, although the term is defined (for other purposes) in section 1 of the Climate Change (Emissions Reduction Targets) (Scotland) Act 2019.

<sup>10</sup> Section 9A also does not define “district heating”, which therefore takes its ordinary meaning. But see, for example, the definition in the Non-Domestic Rates (District Heating Relief) (Scotland) Regulations 2017.

how lands and heritages are to be determined to fall within a category prescribed in rules for the purpose of the new provision.

## Section 9B – Eligibility of Certain Public Schools For Rates Relief

88. Section 4 of the 1962 Act provides for relief in respect of payment of non-domestic rates in certain circumstances:

- under subsection (2), relief of 80% is (provided written notice is given to the rating authority) granted in respect of eligible lands and heritages. Eligible lands and heritages include lands and heritages occupied by (or by trustees for) a charity and used wholly or mainly for charitable purposes,
- under subsection (5), a rating authority has discretion to grant relief to certain lands and heritages, including power to grant further relief to lands and heritages falling within subsection (2) (so it could grant relief from the remaining 20% of the rates payable in respect of lands and heritages occupied by charities).

89. Section 9B amends section 4 by adding a further category of lands and heritages to those currently listed in subsection (2) of section 4 of the 1962 Act. The new category of lands and heritages is lands and heritages occupied by a public school which selects pupils on the basis of musical ability or potential and which follows a curriculum which includes classes aimed at developing musical excellence. In addition, the lands and heritages have to be wholly or mainly used for the purpose of developing musical excellence. The effect of the amendments to section 4 of the 1962 Act made by subsection (2) and (3) of section 9B is that lands and heritages which meet these qualifying criteria will (subject only to the requirement to give written notice to the rating authority) receive 80% non-domestic rates relief. They will also be eligible to receive discretionary relief under subsection (5) of section 4 of the 1962 Act.

90. Subsection (4) of section 9B defines “public school” (with reference to the Education (Scotland) Act 1980). It means a school under the management of an education authority.

## Section 10 – Charitable Relief: Independent Schools

91. Section 4 of the 1962 Act provides for relief in respect of payment of non-domestic rates in certain circumstances:

- under subsection (2), relief of 80% is (provided written notice is given to the rating authority) automatically granted in respect of eligible lands and heritages. Eligible lands and heritages include lands and heritages occupied by (or by trustees for) a charity and used wholly or mainly for charitable purposes,
- under subsection (5), a rating authority has discretion to grant relief to certain lands and heritages, including power to grant further relief to lands and heritages falling within subsection (2) (so it could grant relief from the remaining 20% of the rates payable in respect of lands and heritages occupied by charities).

92. Subsection (9) of section 4 of the 1962 Act provides that the reliefs under subsections (2) and (5) are not available in certain cases.

93. Section 10 of the Bill amends section 4 of the 1962 Act in relation to the eligibility of mainstream independent schools which are charities for relief under subsections (2) and (5). Such schools are, by virtue of the amendment of section 4(9) of the 1962 Act made by section 10(2) of the Bill, excluded from such eligibility. Schools which are no longer eligible for relief will lose their mandatory 80% relief under subsection (2) of section 4 of the 1962 Act. Rating authorities will also lose their ability to grant discretionary relief to such schools under subsection (5) of that section. Any existing discretionary relief which is due to continue in effect beyond the date on which section 10 of the Bill comes into force will instead cease with effect from that date (new subsection (14) of section 4 of the 1962 Act, inserted by section 10(5) of the Bill).

94. Certain types of independent school which are charities will continue to be eligible for relief under subsections (2) and (5) of section 4 of the 1962 Act (see new subsection (9A) of that section, inserted by section 10(3) of the Bill). Those schools are independent special schools and specialist independent music schools.

## Section 11 – Power to Reduce Or Remit Rates For Certain Organisations: Guidance

95. As explained in paragraph 91, section 4(5) of the 1962 Act allows rating authorities to grant relief in respect of certain lands and heritages – including, under paragraph (c) of that section, lands and heritages occupied for the purposes of a club, society or other organisation not established or

conducted for profit and used wholly or mainly for the purposes of recreation.

96. Section 11 of the Bill inserts a number of new subsections into section 4 of the 1962 Act, as follows. New subsection (7A) gives the Scottish Ministers power to issue guidance to rating authorities about the exercise of their discretion to grant relief under section 4(5)(c) of the 1962 Act. The power also covers subsections (6) to (7) of section 4, which deal with the period for which relief under subsection (5) may be granted. So, for example, guidance could recommend that certain types of organisation falling within subsection (5)(c) be granted relief only for periods recommended in the guidance. Subsection (7B) requires rating authorities to have regard to any guidance issued under subsection (7A).

97. Subsections (7C) to (7G) make supplementary provision in relation to guidance under subsection (7A), covering matters such as publication and revision of the guidance and Parliamentary approval of the guidance. In particular, subsection (7D) requires the Scottish Ministers to consult on guidance under subsection (7A) before it is issued, and a draft of the guidance to be laid before the Scottish Parliament. Subsection (7DA) provides that the guidance may not be issued until a period of 40 days, starting with the laying of the guidance, has expired. Subsection (7DB) prohibits the Scottish Ministers from issuing the guidance if the Scottish Parliament decides, within that period, that it should not be issued. To enable guidance to be issued as soon as possible after section 11 of the Bill comes into force, new subsection (7E) allows any consultation undertaken prior to that date to satisfy subsection (7D).

## Section 11a – Unoccupied Properties

98. Section 24 of the Local Government (Scotland) Act 1966 (“the 1966 Act”) provides a default rule that non-domestic rates are not payable in respect of unoccupied lands and heritages (although it also provides that the Scottish Ministers may by regulations prescribe classes of unoccupied lands and heritages in respect of which a specified proportion (of between 50% and 90%) is payable of the rates that would be due if the lands and heritages were occupied).

99. Section 24A of the 1966 Act makes provision in relation to how lands and heritages that are partly unoccupied for a short time are treated for rating purposes. In summary, a rating authority can request the assessor to apportion the rateable value between the occupied part of the lands and

heritages and the unoccupied part (subsection (1)). The rates payable are then calculated with reference to the rateable value of the occupied part only, reducing the rates payable (subsection (2)). But the Scottish Ministers can again prescribe classes of lands and heritages in respect of which this default rule does not apply (with a specified proportion of between 50% and 90% of the rateable value of the unoccupied part continuing to be taken account of in determining the rates payable).

100. Section 24B of that Act provides for certain lands and heritages to be treated as unoccupied for the purposes of sections 24 and 24A, while section 25 and schedule 3 make provision as to the treatment of newly erected and altered buildings which are not yet occupied for the purposes of section 24.

101. Subsection (2) of section 11A repeals section 24 of the 1966 Act. The default position will therefore be that non-domestic rates are payable in respect of unoccupied lands and heritages. Local authorities have power to offer non-domestic rates relief in respect of unoccupied lands and heritages under section 3A of the 1962 Act (schemes for reduction and remission of rates), should any authority wish to do so. The Scottish Ministers could also, if they wished, provide for relief for unoccupied lands and heritages under section 153 of the Local Government etc. (Scotland) Act 1994.

102. Subsection (3) repeals subsection (4) of section 24A of the 1966 Act (and makes other changes to the section which are consequential on this). This removes the power for Scottish Ministers to specify that a proportion of the rateable value of classes of lands and heritages which are unoccupied for a short time should continue to be taken into account in determining the amount of rates payable. The rules set out in subsections (1) and (2) of section 24A continue to apply.

103. Subsection (4) to (7) make minor changes to sections 24B and 25 and schedule 3 of the 1966 Act which are consequential on the repeal of section 24.

## **Section 12 – Non-Use or Underuse Of Lands And Heritages: Notification**

104. Section 24A of the Local Government (Scotland) Act 1966 makes provision which reduces the rates payable in respect of lands and heritages which are partly unoccupied for a short time. Provision for relief in respect

of unoccupied properties may also be made under section 3A of 1962 Act or section 153 of the 1994 Act. But other reliefs (for example, charitable relief or relief under the small business bonus scheme) may be more advantageous to the ratepayer.

105. Section 12(2) of the Bill allows a local authority to serve a notice on a ratepayer who is in receipt of a relief (other than unoccupied property relief under section 24A of the 1966 Act) in two circumstances. The first is where the local authority considers that the lands and heritages are not being used (suggesting that any unoccupied property relief that is available in respect of the lands and heritages ought to apply instead of whatever relief is being received). The second is where the local authority considers that the lands and heritages are being used only minimally, and thus that the amount of relief being received is greater than would be received if any available unoccupied property relief applied; and the ratepayer's main reason for not leaving the lands and heritages empty is to obtain that greater amount of relief.

106. The notice under section 12(2) must give the local authority's reasons for considering that one of these two conditions is satisfied. Ratepayers will have 28 days from the date the notice is given to respond. If no response is received within that period, the local authority must immediately proceed to decide whether one of the conditions is in fact satisfied (and may take further action in light of its conclusion).

107. Where a response is received in the time allowed, the local authority must consider, in the light of the information provided, whether one of the conditions is in fact satisfied. If the local authority concludes that neither of the conditions are satisfied, it must advise the ratepayer of that conclusion. Where the conclusion is that a condition is satisfied, the local authority must advise the ratepayer of the reasons for its decision and of what further action it intends to take.

108. The further action to be taken where the local authority decides that a condition is satisfied may depend on what relief the ratepayer is in receipt of, but could, for example, involve the ratepayer being issued with a revised demand for rates based on unoccupied property relief rather than any other relief.

## Section 13 – Failure to Pay Instalments

109. Section 13 makes changes to the way in which local authorities can recover unpaid non-domestic rates.

110. Section 8(1) and (2) of the 1975 Act provides for non-domestic rates to be payable in ten monthly instalments, beginning in May and ending in February. This does not apply where the ratepayer agrees with the local authority to a different payment schedule (see section 8(7) of the 1975 Act). Section 8(8) and (9) of the 1975 Act makes provision for enforcement where rates are to be paid in monthly instalments in accordance with section 8(1). If the ratepayer is in arrears by two or more instalments on or after 30 September, the balance of the rates becomes payable in full.

111. This means that local authorities are unable to take steps to recover unpaid instalments before the end of September. To enable local authorities to initiate debt recovery at an earlier stage (bringing the process for recovery of unpaid non-domestic rates into line with the process for recovery of unpaid council tax), section 13 of the Bill repeals section 8(8) and (9) of the 1975 Act and replaces them with a new section 8A.

112. Section 8A applies where rates are payable in instalments in accordance with section 8(1) and (2), and the ratepayer has missed an instalment. Section 8A(2) requires the local authority to send the ratepayer a reminder notice after the first missed instalment. The ratepayer has seven days in which to pay the missed instalment, and any further instalment which is due to be paid during that period (section 8A(3)). If the ratepayer fails to pay the instalment, the total amount of unpaid rates for the year becomes payable within the next seven day period (section 8A(4)).

113. If a ratepayer misses an instalment, and has already been given two reminder notices in the year, section 8A(5) provides that the total amount of unpaid rates for the year becomes payable on the day following the day on which the missed instalment was due to be paid.

114. Paragraph (b) of section 13(3) of the Bill repeals section 8(8) and (9) of the 1975 Act, whilst paragraph (a) makes a consequential adjustment to section 8(1) of that Act.

115. Section 13(4) of the Bill amends section 247 of the Local Government (Scotland) Act 1947 in consequence of new section 8A. Section 247(1) provides that unpaid non-domestic rates are recoverable by diligence authorised by summary warrant or in pursuance of a decree granted in an



action for payment. Section 247(2) makes provision about what a certificate accompanying an application to the sheriff for a summary warrant must say.

116. Section 13(4) amends section 247(2) so that, where reminder notices have been issued under section 8A, the certificate must state that the local authority has served a reminder notice on the ratepayer under section 8A(2), that the total amount of unpaid rates for the year has become payable under section 8A(4)(b) or (5)(c) and that a period of 14 days has passed since that amount became payable without the whole amount having been paid. This means that, when rates become payable in full, the ratepayer has a further period of 14 days within which to pay them before the local authority can apply for a summary warrant for their recovery.

117. Where section 8A does not apply to late payment of rates (because they were not payable in instalments under section 8(1)), the requirements of section 247(2) are unaltered.

## Section 13A – Electronic Communication of Information

118. Section 13A(1) gives the Scottish Ministers the power by regulations to make provision allowing or requiring notices in relation to non-domestic rates to be given by electronic means. Most notices are currently given by post. The regulations may be permissive or mandatory.

119. Subsection (2) sets out the types of notice which can be the subject of regulations under subsection (1). These are notices which are required to be given by statute, and which relate to non-domestic rates.

120. Subsection (3) sets out particular things that the regulations may do. This includes allowing information which is currently required to be given by notice to a particular person instead to be given to that person by other means (for example, by publication of the information on a website). Subsection (3)(c) allows the regulations to require a person's consent to receive a notice electronically, although it is also possible that the regulations will not require such consent to be given.

121. Subsection (4)(a) allows regulations under subsection (1) to modify any enactment (including the Bill). As the regulations relate to notices which are required to be given by statute, it may be necessary to amend the legislation including that requirement in order to give effect to the regulations.

## Section 13B – Procedure for Regulations Under Section 13A

122. Section 13B sets out the procedure and consultation requirements for regulations under section 13A.

123. Subsection (1) provides that the regulations are subject to the affirmative procedure. Subsection (2) requires the Scottish Ministers to consult persons appearing to them to represent the interests of either local authorities or of assessors (or both), as they consider appropriate, a person or person appearing to them to represent the interests of ratepayers or potential ratepayers, and such other persons as they consider appropriate, before laying a draft of the regulations before the Scottish Parliament.

124. Subsection (3) requires the Scottish Ministers to notify the Scottish Parliament about the consultation as soon as reasonably practicable after it begins, and subsection (4) requires them to have regard to any representations made as a result of the consultation.

## Part 2A – Procedure for Power To Prescribe Amount Of Non-Domestic Rates

### Section 13C – Procedure for Power To Prescribe Amount Of Non-Domestic Rates

125. Section 153 of the Local Government etc. (Scotland) Act 1994 gives the Scottish Ministers power to make regulations prescribing that the amount of non-domestic rates payable in respect of any lands and heritages is to be determined in accordance with prescribed rules. This allows Ministers to specify reliefs and supplements that apply to the non-domestic rates payable in respect of particular types of lands and heritages. Subsection (6) of section 153 currently provides that such regulations are subject to the negative procedure. Section 13C amends section 153 to provide that such regulations are subject to the affirmative procedure.

## Part 3 – Information Notices and Notifications of Changes Of Circumstances

126. Part 3 sets out powers for assessors and local authorities to send notices requiring owners and occupiers of lands and heritages to provide certain types of information. It also contains a duty on certain persons to notify a local authority of changes in circumstances that might affect their

non-domestic rates liability. There are associated offences and civil penalties for failure to comply with the requirements.

## **Section 14 – Assessor Information Notices**

127. Section 14 gives power to assessors to give written notices to a range of persons requiring those persons to provide such information as the assessor may need for the purpose of valuing the lands and heritages.

128. The persons to whom notices may be given are: (a) a person who the assessor thinks is a proprietor, tenant or occupier of the lands and heritages, and (b) any other person who the assessor thinks has information which is reasonably required for the purpose of valuing the lands and heritages.

129. Subsection (4) of section 14 provides for legal professional privilege to apply if, for example, a person to whom a notice under subsection (1)(b) is sent is a lawyer.

130. An assessor information notice must be given in writing and the person who receives it has 28 days to comply. A person who knowingly provides false or misleading information in reply to an assessor information notice commits an offence – see section 17. Section 18 provides for civil penalties for failing to comply with a notice.

131. These provisions are a more modern, broader replacement for section 7 of the 1854 Act and that section is therefore repealed by section 14(5).

## **Section 15 – Local Authority Information Notices**

132. Section 15 gives power to local authorities to give written notices to proprietors, tenants or occupiers of lands and heritages requiring them to provide such information as the local authority may need for the purpose of issuing demands or other documents relating to non-domestic rates.

133. The power is exercised on behalf of a local authority by a person authorised in writing for the purpose of this section.

134. A local authority information notice must be given in writing and the person who receives it has 21 days to comply. A person who knowingly provides false or misleading information in reply to a local authority

information notice commits an offence – see section 17. Section 20 provides for civil penalties for failing to comply with a notice.

## **Section 16 – Duty to Notify Changes Of Circumstances**

135. Section 16 requires a ratepayer to tell the local authority about certain types of changes in circumstances.

136. The changes in circumstances covered by section 16 are changes (whether in relation to the ratepayer’s personal circumstances or in relation to the lands and heritages concerned) which the person either knows, or might reasonably be expected to know, would affect whether rates are or are not payable in relation to the lands and heritages or would affect the amount of rates that should be payable.

137. The ratepayer must tell the local authority within 42 days of the change in circumstances occurring. A person who knowingly provides false or misleading information in a notification commits an offence – see section 17. A person who fails to tell the local authority of the change within the time allowed is liable to a civil penalty – see section 20.

## **Section 17 – Offences in Relation To Information Notices And Notifications Under Section 16**

138. Section 17 creates a number of criminal offences to enforce the duties in sections 14 to 16.

139. It is an offence (under subsection (1)) to knowingly provide false or misleading information in purporting to comply with an assessor information notice or local authority information notice.

140. It is also an offence (under subsection (2)) to knowingly provide false or misleading information in a notification under section 16.

141. A person who commits any of these offences is liable on summary conviction to a maximum fine of level 3 on the standard scale (currently £1,000).

## **Section 18 – Civil Penalties for Failure To Comply With Assessor Information Notices.**

142. Section 18 gives an assessor power to give a person who fails to comply with an assessor information notice a penalty notice imposing a civil penalty. The penalty notice must, under subsection (2), set out the reasons for giving it, specify the amount of the penalty, explain a person's right to appeal and also warn the person that further, escalating penalties may be imposed if the person continues to fail to comply. Subsection (2A) provides for how the amount of the penalty is to be determined – if the lands and heritages to which the assessor information notice relates are already entered in the valuation roll, the penalty is either £200 or, if the rateable value of the lands and heritages (as stated in the valuation roll on the day on which the penalty notice is given) is more than £20,000, 1% of the rateable value. If the lands and heritages are not already entered in the valuation roll, the penalty is £1,000.

143. If the person continues to fail to comply after a further period of 28 days, the person may be given a further penalty under subsection (3). Subsection (3) also provides for how the amount of the further penalty is to be determined. Where the lands and heritages to which the assessor information notice relates are entered in the valuation roll, the penalty is either £1,000 or, if the rateable value of the lands and heritages is more than £5,000, 20% of the rateable value of the lands and heritages (again as stated in the valuation roll on the day on which the original penalty notice is given). If the lands and heritages are not already entered in the valuation roll, the further penalty is £10,000.

144. Under subsection (3), the person becomes liable to a further penalty if, 56 days after the giving of the original penalty notice, the person has still not complied with the original assessor information notice. In the case, the amount of the penalty is the full rateable value of the lands and heritages to which the assessor information notice relates (the rateable value being that stated in the valuation roll on the day the original penalty notice was given) or, if the lands and heritages are not entered in the valuation roll, £50,000.

145. Subsection (6) provides that an assessor may mitigate or remit any penalty given.

146. The Scottish Ministers may by regulations (under subsection (7)) modify the rules set out in subsections (2A), (3) and (3A) for determining the amount of penalties (including by amending the figures and percentages specified in those subsections). The regulations are subject to the affirmative procedure.

147. The Scottish Ministers may make regulations (under subsection (10)) about the form of penalty notices and how they may be given (for example, they might allow notices to be given by name or by a description such as “the occupier”). The regulations are subject to the negative procedure.

## Section 19 – Penalties Under Section 18: Appeals and Enforcement

148. Section 19(1) provides that a person who gets a penalty notice relating to an assessor information notice may appeal to a valuation appeal committee. An appeal must be made within 28 days of the day on which the penalty notice is given.

149. Where an appeal is made and the appellant has incurred further penalties under section 18(3) or (3A) for continued non-compliance with the information notice, the appeal is, by virtue of subsection (3)(a), to be treated as including an appeal against the further penalties. Making an appeal does not prevent the appellant becoming liable to further penalties (subsection (3)(b)).

150. The valuation appeal committee may cancel the penalty or reduce its amount if they think that the person had a reasonable excuse for not complying with the notice or that the information that the notice asks for is not in the person’s possession or control (subsections (4) and (5)).

151. Under subsection (7), the Scottish Ministers may make regulations to make further provision about appeals under this section, including things like the procedure for appeals. The regulations are subject to the negative procedure.

## Section 19A – Payment of Penalties Into The Scottish Consolidated Fund

152. Penalties imposed under section 18 (for failure to comply with an assessor information notice) are initially payable to the assessor. But the assessor does not retain the penalties – section 19A requires assessors to then pay the penalties into the Scottish Consolidated Fund. Subsection (2) allows assessors to deduct reasonable expenses before doing so. Subsection (3) enables the Scottish Ministers to make further provision in regulations about the expenses that can be deducted.

## Section 20 – Civil Penalties for Failure To Comply With Local Authority Information Notices And For Failure To Notify Changes In Circumstances

153. Section 20 gives a local authority power to give persons who fail to comply with a local authority information notice a penalty notice imposing a civil penalty of £95 (subsections (1)(a) and (2)(b)(i)). If the person continues to fail to comply after being asked again for the same information (see section 15(4)), the person may be given a further penalty of £370 (subsections (1)(a) and (2)(b)(ii)).

154. A person who fails to comply with the section 16 (duty to notify a change of circumstances) may be given a penalty notice imposing a civil penalty of £370 (subsections (1)(b) and (3)(b)).

155. In each case, a penalty notice must set out the reasons for giving it and explain a person's right to appeal (subsections (2)(a) and (c) and (3)(a) and (c)).

156. Subsection (4) provides that an authorised officer may mitigate or remit any penalty given.

157. The Scottish Ministers may by regulations (under subsection (5)) increase or decrease the penalty amounts set out in subsections (2)(b)(i) and (ii) and (3)(b). Regulations are subject to the affirmative procedure.

158. The Scottish Ministers may make regulations (under subsection (8)) about the form of penalty notices and how they may be given (for example, they might allow notices to be given by name or by a description such as "the occupier"). The regulations are subject to the negative procedure.

## Section 21 – Penalties Under Section 20: Appeals and Enforcement

159. Section 21(1) provides that a person who gets a penalty notice relating to failure to comply with a local authority information notice or to notify a change of circumstances may appeal to a valuation appeal committee. An appeal must be made within 28 days of the day on which the penalty notice is given.

160. Where an appeal is made and the appellant incurs further penalties for failing to comply with further requests for the same information, the appeal is, by virtue of subsection (3)(a), to be treated as including an appeal against the further penalties. The making of an appeal does not prevent the local authority making another request for the information or imposing further penalties (subsection (3)(b)).

161. The valuation appeal committee may cancel the penalty or reduce its amount if they think that the amount of the penalty is excessive (subsection (4)).

162. Under subsection (6), the Scottish Ministers may make regulations to make further provision about appeals under this section, including things like the procedure for appeals. The regulations are subject to the negative procedure.

## Section 21A – Penalties Under Section 20: Enforcement

163. Section 21A makes provision about the enforcement of penalties imposed under section 20. Subsection (1) provides that such a penalty is recoverable as a civil debt due to the local authority.

164. Under subsection (2), the Scottish Ministers may make regulations containing further provision about the collection of penalties under section 20. Subsection (3) gives examples of the provision that might be made: regulations could, for example, provide for the penalty to be added to the amount of rates due or make provision about repayment where a penalty is mitigated. Regulations could also provide for the penalty to be suspended while an appeal is made. Section 22 – Sections 19 And 21: Consequential Modifications

165. Section 22 modifies enabling powers contained in section 13 of the 1956 Act and section 15 of the 1963 Act as a consequence of the enabling powers in sections 19 and 21. This is to avoid an overlap between the existing powers and the new ones. These provisions will be added to the 1956 and 1963 Acts to follow those added by section 8 of the Bill.

## Part 4 – Anti-Avoidance Regulations

166. Part 4 gives the Scottish Ministers a power to make provision, by regulations, with a view to preventing or minimising the avoidance of non-domestic rates.



## Section 23 – Anti-Avoidance Regulations

### Section 27 – Procedure for Anti-Avoidance Regulations

167. Section 23(1) enables the Scottish Ministers to make “anti-avoidance regulations”. These are regulations making provision with a view to preventing or minimising advantages arising from non-domestic rates avoidance arrangements that are artificial. Sections 24, 25 and 26 explain what is meant by an “advantage”, “non-domestic rates avoidance arrangements” and “artificial” respectively.

168. Section 23(2) provides that the Scottish Ministers can make anti-avoidance regulations only if they consider it appropriate to do so. Ministers require to state in proposing regulations why they consider making them to be appropriate (see section 27(6)(a)).

169. Section 23(3) allows the regulations to modify enactments other than Part 4, to make different provision for different purposes and to make ancillary provision.

170. Section 27 makes provision about the procedure for the regulations, including consultation requirements, as follows.

171. Subsection (1) provides that the regulations are subject to the affirmative procedure.

172. Subsection (2) requires the Scottish Ministers to consult persons appearing to them to represent the interests of either local authorities or of assessors (or both), as they consider appropriate, before laying a draft of the regulations before the Scottish Parliament. They may also consult such payers (or potential payers) of non-domestic rates and other persons as they consider appropriate.

173. Subsection (3) requires that consultation to include a copy of the draft regulations, and subsection (4) requires the Scottish Ministers to notify the Scottish Parliament about the consultation (as soon as reasonably practicable after the consultation begins). The Scottish Ministers must have regard to any representations made about the draft regulations as a result of the consultation (subsection (5)).

174. Subsection (6) requires the Scottish Ministers to lay a document before the Scottish Parliament which explains why they consider it to be

appropriate to make the regulations, and giving details of the consultation, representations received and any changes made to the proposed regulations by them as a result of the representations. The document is to be laid when the draft regulations are laid.

## Section 24 – Meaning Of “Advantage”

175. Section 24 explains what is meant by an “advantage” in relation to non-domestic rates. This is essentially anything that reduces the amount of rates payable, delays payment of the rates or results in repayment of rates. Subsection (1) sets out a number of things that might, in particular, constitute an advantage. This includes avoiding a rates assessment, having rates remitted, obtaining or increasing a relief from rates, having rates repaid, or a repayment increased, and having a payment deferred or having a repayment advanced.

176. Subsection (2) provides that, when determining whether there is an advantage in relation to rates, the amount of rates that would have been payable in the absence of avoidance arrangements may be relevant.

## Section 25 – Non-Domestic Rates Avoidance Arrangements

177. Section 25 explains what is meant by “non-domestic rates avoidance arrangements”. Arrangements includes agreements, transactions, undertakings, actions and events, and may include several different arrangements which form a series. The arrangements are “non-domestic rates avoidance arrangements” if it is reasonable to conclude their main purpose, or one of their main purposes, is obtaining an advantage (i.e. reducing or delaying payment of rates, or obtaining a repayment of them).

## Section 26 – Meaning of “artificial”

178. Section 26 sets out two different cases in which non-domestic rates avoidance arrangements are “artificial”.

179. The first case (set out in subsection (2)) is where entering into, or carrying out, the arrangement is not a reasonable course of action in relation to the non-domestic rates provisions, in the circumstances. Factors to take into account include whether the substantive results of the arrangement are consistent with express or implied principles on which the provisions are based and the policy underpinning the provisions, and

whether the arrangement is intended to exploit shortcomings (or loopholes) in them.

180. The second case (set out in subsection (3)) is that the arrangement lacks economic or commercial substance. Subsection (4) gives an indicative list of things that might indicate a lack of economic or commercial substance. These include where the arrangement is carried out in a manner which is not normal in reasonable business conduct, the legal characterisation of things done under the arrangement is inconsistent with the legal substance of the arrangements as a whole, the arrangements includes elements which offset or cancel each other, the arrangement includes circular transactions, or the advantage resulting from the arrangements is not reflected in the business risks associated with it.

181. Subsection (6) requires arrangements which include more than one transaction, event etc. to be looked at as a whole for the purpose of determining whether they are artificial.

## Part 5 – Final Provisions

182. Section 28 defines terms used throughout the Bill (see also paragraphs 6 to 9).

183. Section 29 empowers the Scottish Ministers to make regulations containing incidental, supplementary, consequential, transitional, transitory or saving provision. Such regulations may modify enactments, in which case they will be subject to affirmative procedure; otherwise they will be subject to negative procedure.

184. Section 30 provides for Part 5 to come into force on the day after Royal Assent. Sections 1, 14(1) to (4), 17(1)(a) and 17(3) (insofar as it relates to 17(1)(a)), 18(1) to (6) and (10) to (12) and 19 also come into force on that day. The remaining sections of the Bill come into force on a day or days appointed by the Scottish Ministers by regulations (which are not subject to any Parliamentary procedure).

This document relates to the Non-Domestic Rates (Scotland) Bill as amended at Stage 2 (SP Bill 44A)

# Non-Domestic Rates (Scotland) Bill

[As Amended at Stage 2]

## Revised Explanatory Notes

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