

# Non-Domestic Rates (Scotland) Bill

## [As Amended at Stage 2]

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### Supplementary Delegated Powers Memorandum

#### Introduction

1. This memorandum has been prepared by the Scottish Government in accordance with Rule 9.7 of the Parliament's Standing Orders, in relation to the Non-Domestic Rates (Scotland) Bill. It describes provisions in the Bill conferring power to make subordinate legislation which were either introduced to the Bill or substantially altered at Stage 2.
2. The contents of the Memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Parliament. This supplementary memorandum should be read in conjunction with the Delegated Powers Memorandum published to accompany the Bill on introduction.
3. Amendments at Stage 2 proposed by the Scottish Government removed from the Bill:
  - section 19(7)(d) – the power by regulations to make further provision as regards other matters in connection with appeals about civil penalties for failure to comply with assessor information notices;
  - section 21(6)(d) - the power by regulations to make further provision as regards other matters in connection with appeals about civil penalties for failure to comply with local authority information notices or for failure to notify a change in circumstances;
  - section 29(1) – the power to make ancillary provision for the purposes of, in connection with or for giving full effect to any provision made under the Act (though retaining the power to make ancillary provision in relation to the Act itself); and

- section 29(2)(a) – the power for regulations making ancillary provision to make incidental, supplementary, consequential, transitional, transitory or saving provision.

In proposing these amendments the Scottish Government had regard to views expressed by the Delegated Powers and Law Reform Committee and the Local Government and Communities Committee in their Stage 1 reports.

## Delegated Powers

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

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Revised or new power: new

Parliamentary procedure: affirmative procedure if textually amending primary legislation; otherwise negative

## Provision

4. This provision provides Scottish Ministers with a power by regulations to provide that lands and heritages that are currently exempt or excluded from entry on the valuation roll (and therefore not liable to pay rates) are instead to be entered in that roll.

## Reason for Taking Power

5. The proposer of this provision suggested that bringing properties onto the valuation roll would improve transparency. Either rates would be levied in the usual way or a relief would be provided; any such relief would be visible. Providing Ministers with a power to remove exemptions would avoid the need for primary legislation to further that improvement.

## Choice of Procedure

6. Regulations under this section are subject to the affirmative procedure if they textually amend primary legislation otherwise they are subject to the negative procedure. This follows a standard procedural approach.

## Section 5b– Draft Valuation Roll and Valuation Notices

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Revised or new power: new

Parliamentary procedure: negative procedure

### Provision

7. Section 5B places a requirement on the assessor to publish a draft of the valuation roll and to send a draft valuation notice to each proprietor, tenant and occupier of a property entered in the draft valuation roll. It includes a power for Ministers to specify in regulations information to be included in draft valuation notices, in addition to matters specified in the section itself. Such regulations may make different provision for different purposes, and may make incidental, supplementary, consequential, transitional, transitory or saving provision.

### Reason for Taking Power

8. As these notices are a new process, it may prove beneficial for Ministers to be able to specify, by regulations, additional information to be included in them.

### Choice of Procedure

9. As this is essentially an administrative matter, negative procedure is considered to be appropriate. Although there are ancillary powers to make provision that, for example, supplements the specified types of provision that can be made, this is in this context a relatively limited power and does not, for example, include the power to amend primary legislation. It therefore cannot be used to remove any of the information that the Bill requires such notices to include.

**Section 7 – Proposals to Alter Entries in the Valuation Roll  
Power Conferred On: The Scottish Ministers  
Power Exercisable By: Regulations Made by Scottish  
Statutory Instrument  
Revised or New Power: Revised  
Parliamentary Procedure: Affirmative Procedure if Making  
Provision About Fees; Otherwise Negative**

**Provision**

10. The power to set fees in relation to proposals, including provision about the circumstances in which a fee may be repaid, has been introduced into the power for Scottish Ministers to make regulations – see section 7(4), at inserted section 3ZA(6)(da).

**Reason for Taking Power**

11. Ministers wish the ability to introduce fees for making proposals to alter entries in the valuation roll. As there is a power to make provision by regulations about other matters relating to proposals, such as when they can be made and information they are to include, extending this power to include provision for fees, and when they are repayable, is consistent with the approach of the Bill.

**Choice of Procedure**

12. Regulations under this section are subject to the affirmative procedure if they are in connection with fees payable in connection with a proposal, including provision about circumstances in which a fee may be repaid, otherwise they remain subject to negative procedure. It is considered appropriate that any regulations setting fees receive a higher amount of Parliamentary scrutiny. This is the same procedural approach as is adopted for fees in relation to appeals.

**Section 7 – Appeals to Valuation Appeal Committee**  
**Power Conferred On: The Scottish Ministers**  
**Power Exercisable By: Regulations Made by Scottish Statutory Instrument**  
**Revised or New Power: Revised**  
**Parliamentary Procedure: Affirmative Procedure**

**Provision**

13. The power to make regulations is revised to place a requirement in new section 3ZB(6A) on Scottish Ministers to consult with local authorities, assessors, business sector representatives and such other persons as they consider appropriate before making regulations to set fees in connection with appeals.

**Reason for Taking Power**

14. This extension to the power is seen as an opportunity to gather evidence on the impact appeal fees might have on organisations, individuals, the business sector and others.

**Choice of Procedure**

15. The Bill provides for regulations making provision for fees to be subject to the affirmative procedure, to ensure the higher level of Parliamentary scrutiny applies, which seems appropriate given the significance of appeal fees. There is no change to the procedure, only an additional requirement for consultation.

## **Section 8c – Levying of Rates**

### **Power Conferred On: The Scottish Ministers**

#### **Power Exercisable By:**

**(1) Regulations Made By Scottish Statutory Instrument (New Section 7za(1))**

**(2) Order Made By Scottish Statutory Instrument (New Section 7za(3))**

#### **Revised or New Power: New**

#### **Parliamentary Procedure:**

**(1) Affirmative Procedure**

**(2) No Parliamentary Procedure**

## **Provision**

16. Section 8C inserts a new section 7ZA into the Local Government (Scotland) Act 1975. Section 8C was introduced with the intention of devolving responsibility for setting the non-domestic rate to local authorities. It places a duty on Scottish Ministers to make regulations to effect that devolution.

17. Section 8C also empowers Scottish Ministers to prescribe a non-domestic rate to be levied throughout Scotland if a local authority does not exercise its rate-setting power. The power to do so is exercisable by order (see the definition of “prescribed” in section 37(1) of the 1975 Act), and by Scottish Statutory Instrument, with the power to make such incidental, consequential and supplementary provisions as appear to the Scottish Ministers to be necessary or proper for bringing the order into operation and giving full effect to it (see section 35 of that Act). Since new subsection 7ZA(3) is silent about Parliamentary procedure, such an order would be subject to no procedure.

## **Reason for Taking Power**

18. The member who moved the amendment did not consider that the change it proposed could be introduced immediately. The scale of change would require work, including adjustment of the formula used for the local government settlement. He envisaged that discussion would be needed with CoSLA to examine the “knock-on implications of the provision”. A power therefore gives the flexibility needed to plan for implementation of the change that is proposed by section 8C.

## **Choice of Procedure**

19. Regulations under subsection (1) of new section 7ZA are subject to the affirmative procedure. That will require the higher level of Parliamentary scrutiny for any exercise of the power. Given the significance of the change the power enables, it seems appropriate that such scrutiny is required.

20. Orders under subsection (3) of new section 7ZA are subject to no Parliamentary procedure. That differs from the way in which non-domestic rates are currently set by the Scottish Ministers, which involves a negative procedure order (see section 7B of the 1975 Act). The member may have considered that as the power is only to be used where a rating authority do not choose to discharge their own powers to set a rate, there might not be time for Parliamentary procedure.

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

**Power Conferred On: The Scottish Ministers**

**Power Exercisable By: Regulations Made by Scottish  
Statutory Instrument**

**Revised or New Power: New**

**Parliamentary Procedure: Negative Procedure at Present**

## **Provision**

21. This provision extends the power in section 153 of the Local Government etc. (Scotland) Act 1994 given to Ministers to prescribe amounts to be payable as non-domestic rate. The power would expressly enable different provision in relation to lands and heritages whose contribution to the net-zero emissions target including from district heating systems falls into prescribed categories.

## **Reason for Taking Power**

22. Any scheme to provide the relief that is envisaged would require to make detailed provision about what qualifies for relief and in what circumstances. That is better suited to secondary legislation than to primary legislation, so a power is appropriate. Adding the express provision into an existing power in section 153 of the 1994 Act removes any doubt that the power can be exercised this way.

## **Choice of Procedure**

23. Regulations under section 153 of the 1994 Act are currently subject to the negative procedure, but as set out in paragraphs 31 to 33 of this Memorandum that would become affirmative procedure as part of a wider change. There seems no reason for the extension to the power made by section 9A of the Bill to adopt a different procedure from any other use of the power.

### **Section 11 – Power to Reduce or Remit Rates for Certain Organisations: Guidance**

**Power Conferred On: The Scottish Ministers**

**Power Exercisable By: Guidance Issued by Scottish Ministers**

**Revised or New Power: Revised**

**Parliamentary Procedure: None**

## **Provision**

24. This provision relates to the issuing of guidance to rating authorities regarding the discretion they have to grant relief to clubs, societies or other organisations not established or conducted for profit, where using lands and heritages for recreation. As introduced, the Bill required Scottish Ministers, before issuing guidance, to consult such persons as appear to them to represent the interests of local authorities, and such other persons as they consider appropriate. The amended provision will require Scottish Ministers additionally to lay a draft of the proposed guidance before the Scottish Parliament and prohibit them from issuing the guidance until after a period 40 days beginning with the day on which the draft guidance was laid before the Parliament (and ignoring recess periods). The amended provision also allows Parliament to resolve that the guidance should not be given.

## **Reason for Taking Power**

25. Guidance is intended to promote good practice and consistency of approach between authorities, while leaving the discretion to be exercised by them. The revision to the procedure has regard to comments made by the Delegated Powers and Law Reform Committee in its report at Stage 1



of the Bill and is intended to improve accountability and transparency in the issue of guidance.

## **Choice of Procedure**

26. Not applicable.

**Section 13a – Electronic Communication of Information and  
Section 13b Procedure For Regulations Under Section 13a  
Power Conferred On: The Scottish Ministers  
Power Exercisable By: Regulations Made by Scottish  
Statutory Instrument  
Revised or New Power: New  
Parliamentary Procedure: Affirmative Procedure**

## **Provision**

27. Section 13A provides Scottish Ministers with the power to make regulations specifying that certain notices may or must be sent by electronic means. These notices are those for which there is a statutory requirement that they be given to a person and that relate to the valuation of lands and heritages under Acts that relates to valuation, the valuation roll, the charging and collection of non-domestic rates, and other matters relating to assessment of liability or levying of non-domestic rates.

28. Such regulations may modify enactments, make different provision for different purposes, and make incidental, supplementary, consequential, transitional, transitory or saving provision. Amongst other thing, these regulations may make provision for the manner in which a notice may be given, the information to be provided to facilitate the giving or receipt of a notice by electronic means and the circumstances in which a notice may be given electronically only with the consent of the intended recipient.

## **Reason for Taking Power**

29. Provision for electronic communication is likely to need to set out a considerable amount of detail, as it needs to cover what notices may or must be given electronically, when they may be given that way, to whom they are given and exceptions to the general approach. This is the type of detail that is best suited to secondary legislation, particularly as it is

provision that may need to be refined in the light of experience of operating it. Since Parliament has approved the general principle of Ministers being able to facilitate electronic communication, it is appropriate to use regulations to set out how that principle is to operate in practice.

## **Choice of Procedure**

30. Section 13B specifies that regulations under section 13A are subject to the affirmative procedure and requires that Scottish Ministers consult interested persons and organisations before laying draft regulations. The consultation is to be with local authorities or assessors, as Ministers deem appropriate, as well as with such persons as appear to Ministers to represent the interests of ratepayers or potential ratepayers, and with any other person that Ministers consider appropriate. Parliament has to be notified when consultation begins, so that it can decide to look at proposed use of the powers ahead of the laying of a draft instrument. Affirmative procedure for that instrument will ensure the higher level of Parliamentary scrutiny for those regulations, which seems appropriate given the breadth of matters that regulations can make provision for.

## **Section 13c – Procedure for Power to Prescribe Amount of Non-Domestic Rates**

**Power Conferred On: The Scottish Ministers**

**Power Exercisable By: Regulations Made by Scottish Statutory Instrument**

**Revised or New Power: Revised**

**Parliamentary Procedure: Affirmative Procedure**

## **Provision**

31. Section 13C amends the Parliamentary procedure for exercise of power of Scottish Ministers to prescribe the amount of non-domestic rates payable in respect of lands and heritages. That power is at section 153 of the Local Government etc. (Scotland) Act 1994; the procedure is changed from negative to affirmative.

## **Reason for Taking Power**

32. The power is used to prescribe rules for calculating non-domestic rate liabilities, and in particular the reliefs that are available, some large such as

reliefs for small businesses, some smaller such as relief for telecommunication installations. This is the sort of detailed provision that is commonly provided for by secondary legislation, because it changes frequently.

## **Choice of Procedure**

33. Regulations under section 153 of the 1994 Act are to be subject to affirmative procedure. The member moving the amendment indicated that he considered the financial expenditure involved through the use of the power justified that procedure, rather than the current negative procedure, though he indicated he was open to revising it at Stage 3 to include a financial threshold to establish which procedure was to apply.

## **Section 18 – Civil Penalties for Failure to Comply with Assessor Information Notices**

**Power Conferred On: The Scottish Ministers**

**Power Exercisable By: Regulations Made by Scottish Statutory Instrument**

**Revised or New Power: Revised**

**Parliamentary Procedure: Affirmative Procedure**

## **Provision**

34. Section 18(7) of the Bill as introduced allowed Scottish Ministers by regulations to modify the penalties to which a person may become liable for a civil penalty under section 18. These are penalties for failure to comply with an assessor information notice. The Bill was amended at Stage 2 to alter the way in which some penalties are calculated, including providing for them to be linked to the rateable value of the lands and heritages. The Bill was therefore amended to reflect the new material, and the new means of calculation of some penalties

## **Reason for Taking Power**

35. The level of penalties which are set out as fixed amounts (in pounds) in the Bill will need to be updated periodically to reflect inflation. Experience of operating penalties may suggest that changes are needed either to amounts or to the way penalties are calculated. A power to make those

changes avoids the need to return to Parliament with a further Bill to make changes.

## **Choice of Procedure**

36. Regulations under this section continue to be subject to the affirmative procedure as the regulations would amend primary legislation, and the penalties for non-compliance with notices are a matter which Scottish Ministers would expect the Parliament to wish to scrutinise closely.

## **Section 19a – Payment of Penalties into the Scottish Consolidated Fund**

**Power Conferred On: The Scottish Ministers**

**Power Exercisable By: Regulations Made by Scottish Statutory Instrument**

**Revised or New Power: New**

**Parliamentary Procedure: Negative Procedure**

## **Provision**

37. Section 19A provides that an assessor must pay into the Scottish Consolidated Fund any money received from civil penalties for non-compliance with assessor information notices. This is provided for because an assessor should have no need to retain penalties. However, it is reasonable that assessors should be able to use the penalty income to defray their costs in issuing notices and collecting penalties. Subsection (3) therefore allows Scottish Ministers to make provision about expenses that may be deducted.

## **Reason for Taking Power**

38. Civil penalties are a new system, and until the system is operational it is unpredictable what use assessors will make of it or what the costs of that use will be. Flexibility is needed to determine to what extent, and for what expenses, it is appropriate for assessors to retain penalty income. Allowing what is essentially administrative detail to be set out in regulations will give that flexibility, while also ensuring that Parliament can scrutinise what is being prescribed.

## **Choice of Procedure**

39. Regulations will provide administrative detail and will not relate to what penalties people require to pay, being solely about when assessors can deduct expenses from them. The negative procedure seems to Scottish Ministers to give sufficient scrutiny for that.

**Section 21a – Penalties Under Section 20: Enforcement Power Conferred On: The Scottish Ministers  
Power Exercisable By: Regulations Made by Scottish Statutory Instrument  
Revised or New Power: New  
Parliamentary Procedure: Affirmative Procedure if Textually Amending Primary Legislation; Otherwise Negative.**

## **Provision**

40. Section 21A makes provision for collection of penalties for failure to comply with a local authority information notice or failure to notify a change in circumstances. These will be collected by local authorities, and the regulation-making power includes making provision for penalties to be collected through a demand notice for payment of non-domestic rates. It also allows provision for situations where a penalty is to be mitigated, remitted or reimbursed, or collection suspended pending an appeal. Regulations may modify enactments, make different provision for different purposes, and may make incidental, supplementary, consequential, transitional, transitory or saving provision.

## **Reason for Taking Power**

41. The collection of non-domestic rates follows procedures set out in regulations, and is of an administrative nature. It is a level of detail that would not normally be included in primary legislation, not least because it needs to be kept under review in the light of experience and updated periodically.

## **Choice of Procedure**

42. Regulations under this section are subject to the negative procedure, unless they amend the text of an Act in which case they are subject to

affirmative procedure. This reflects normal practice, that a higher level of scrutiny should be involved if primary legislation is being amended, but otherwise for administrative provision of the type enabled the negative procedure brings a sufficient level of scrutiny.

**Section 27 – Procedure for Anti-Avoidance Regulations**  
**Power Conferred On: The Scottish Ministers**  
**Power Exercisable By: Regulations Made by Scottish Statutory Instrument**  
**Revised or New Power: Revised**  
**Parliamentary Procedure: Affirmative Procedure**

**Provision**

43. Section 27 sets out the procedure for anti-avoidance regulations, and was amended at Stage 2 to provide that as soon as reasonably practicable after commencing a consultation that the section requires, Scottish Ministers must notify the Parliament about the consultation.

**Reason for Taking Power**

44. This provision addresses a recommendation by the Delegated Powers and Law Reform Committee in its Stage 1 report, to make clearer when Scottish Ministers should notify the Scottish Parliament about the consultation.

**Choice of Procedure**

45. Regulations under this provision remain subject to the affirmative procedure.



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

# Non-Domestic Rates (Scotland) Bill

## Supplementary Delegated Powers Memorandum

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