This document relates to the Local Government Finance (Unoccupied Properties etc.) (Scotland) Bill as amended at Stage 2 (SP Bill 12A)

LOCAL GOVERNMENT FINANCE (UNOCCUPIED PROPERTIES ETC.) (SCOTLAND) BILL

REVISED EXPLANATORY NOTES

CONTENTS

1. As required under Rule 9.7.8A of the Parliament’s Standing Orders, these revised Explanatory Notes are published to accompany the Local Government Finance (Unoccupied Properties etc.) (Scotland) Bill (introduced in the Scottish Parliament on 26 March 2012) 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 indicted by sidelined in the right margin.

INTRODUCTION

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 schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE BILL

4. The Bill will amend the law regarding non-domestic rates and council tax in respect of unoccupied properties. For non-domestic rates, it allows the Scottish Ministers greater flexibility to vary the relief that applies in relation to the rates payable in respect of unoccupied properties and formerly unoccupied properties. For council tax, the Bill enables variation (including an increase) of the tax payable where a property is unoccupied and amends powers in respect of the ability of councils to require provision of information. The Bill also repeals provisions that allow grants to be made to local authorities in order to allow them to balance their housing revenue account.

COMMENTARY ON SECTIONS

Section 1 – Rating of unoccupied lands and heritages

5. This section relates to non-domestic (business) rates relief in respect of unoccupied premises.
6. **Subsections (2) and (3)** will respectively amend sections 24 and 24A of the Local Government (Scotland) Act 1966 to allow the Scottish Ministers, by regulations (subject to the negative procedure), to vary the amount of rate relief in relation to unoccupied premises (or unoccupied parts of premises where there has been an apportionment under section 24A of the 1966 Act).

7. Currently, section 24 of the 1966 Act provides that no rates are payable in respect of wholly unoccupied premises (meaning there is 100% rates relief). However, it also allows the Scottish Ministers to provide, in regulations, that in respect of prescribed classes of premises a 50% relief applies. Section 24A of the 1966 Act provides a similar system of relief in respect of premises that are partly unoccupied for a short time. It permits the temporary apportionment of the rateable value of the premises between the occupied and unoccupied parts. The default position is that a nil value is attributed to the unoccupied part (which means, in effect, 100% rates relief is given in relation to that part). Like section 24, section 24A allows the Scottish Ministers to provide in regulations that a 50% relief applies to the unoccupied part in respect of prescribed classes of premises.

8. Thus sections 24 and 24A of the 1966 Act allow regulations to vary the level of relief in respect of prescribed classes of unoccupied premises from the default 100% to 50%. The Bill will amend those sections to permit regulations made under them to vary the percentage of relief that applies to the classes of premises prescribed. The power to vary the percentage of relief will however be subject to the limitation that the level of relief cannot be reduced to less than 10% (i.e. unoccupied premises, or unoccupied parts of premises, cannot be charged more than 90% of the rates that would be payable were the premises, or the part, occupied).

9. **Section 1(4) of the Bill** will amend section 24B of the 1966 Act to enable the Scottish Ministers, by regulations (subject to the negative procedure), to provide for classes of properties which were previously unoccupied to continue to be treated as unoccupied and so continue to receive unoccupied property relief for a prescribed period after they become occupied.

**Section 2 – Council tax: variation for unoccupied dwellings**

10. Existing provision in section 33 of the Local Government in Scotland Act 2003 gives the Scottish Ministers the power, by regulations, to provide for a council tax discount in respect of unoccupied dwellings. It also allows the Scottish Ministers to make regulations that confer a power on local authorities to vary the level of council tax discount provided for such dwellings in their areas. These powers were used to make the Council Tax (Discount for Unoccupied Dwellings) (Scotland) Regulations 2005 (“the 2005 Regulations”; S.S.I. 2005/51) which allowed for discounts of between 10% and 50% for unoccupied properties.

11. **Section 2 of the Bill** will amend section 33 of the 2003 Act so that the Scottish Ministers may, by regulations, vary the amount payable, or allow local authorities to vary the amount payable, in relation to such unoccupied properties as are specified in the regulations. This power will include the ability to provide for an increased charge either by removing the discount or imposing an increase. The power to set, by regulations, a limit to the maximum discount local authorities can allow is retained. By virtue of the amendment, future regulations will also be able to set a limit on the maximum increase local authorities can impose, as well as placing other
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restrictions on any powers the regulations confer. Any increase in council tax liability imposed by virtue of regulations under section 33 as amended (whether imposed directly by the regulations or by local authority variation of the regulations) will not be able to increase the amount of council tax payable so that it is more than double the standard rate of council tax that applies to the property. As enacted, the powers conferred by section 33 of the 2003 Act are exercisable subject to the affirmative procedure (as defined by section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010) and the Bill will not change that.

12. As section 33(2)(b)(ii) of the 2003 Act, as amended, envisages local authorities having the power to modify regulations so as to turn a council tax discount into an increase (or vice-versa), it follows that the power that may be conferred under section 33(2)(b)(ii) would also allow local authorities to modify regulations so as to disapply a discount or an increase provided for in the regulations without going so far as to turn an increase into a discount or a discount into an increase (in other words local authorities could use the power described in section 33(2)(b)(ii) to provide that the standard rate of council tax applies rather than any discount or increase prescribed in the regulations). That being the case, section 33(2)(b)(i), which describes a specific power for local authorities to disapply regulations, is no longer required and will therefore be repealed by the Bill.

13. Section 2 of the Bill will also repeal section 33(1)(a) of the 2003 Act, on account of that provision being spent, the provision which it enabled having been used to make the 2005 Regulations. A power to amend section 33, which is contained in subsection (1)(b) of that section, is revoked, it being unnecessary as a result of the changes made by the 2005 Regulations.

Section 3 – Amendment of the Local Government Finance Act 1992

14. This section amends paragraph 4(2) of Schedule 2 to the Local Government Finance Act 1992 (“the 1992 Act”) to permit the Scottish Ministers, by regulations, to require local authorities to take reasonable steps to ascertain whether the amount of council tax to be charged is subject to any variation (section 2 of the Bill having replaced references to “discounts” with “variations” in the Local Government in Scotland Act 2003 where the references relate to unoccupied dwellings). It also amends paragraph 4(3) of Schedule 2 to the 1992 Act to ensure that the provisions in the regulations for assumptions that a local authority can make in calculating a chargeable amount can include an increased council tax charge as well as any circumstances where the dwelling is believed to be eligible for a discount. There is a consequential change to section 71 of the 1992 Act.

15. The section inserts a new paragraph 4(5A) into Schedule 2 to the 1992 Act, which allows the Scottish Ministers, by regulations, to impose a duty on owners to notify their local authority where their dwelling is unoccupied in cases where they are not paying sufficient council tax due to the local authority being unaware of the fact that the dwelling is unoccupied. The local authority may impose a penalty, not exceeding £500, on any person who fails to notify it within the period prescribed in regulations (this is provided for by section 3(5)(c) of the Bill).

16. The section also inserts paragraph 4(5B) into Schedule 2 to the 1992 Act in order to impose a requirement on residents, owners or their managing agents to provide information to a
local authority on request in relation to ascertaining whether or not a dwelling is, has been or will be unoccupied, for the purpose of determining whether there should be any variation of the chargeable amount. New paragraph 2(1A) of Schedule 3 to the 1992 Act is inserted by section 3(5)(a) of the Bill to enable the local authority to impose a penalty not exceeding £500 on any person who fails to comply with a request. Section 3(5)(d) provides a consequential change to paragraph 2(3) of Schedule 3 to the 1992 Act in order to enable a local authority to impose a further penalty of £500 on a person if the local authority makes a further request for information to that person under the new paragraph 4(5B) of Schedule 2 to the 1992 Act and that person again fails to supply the information requested or knowingly supplies inaccurate information.

17. Section 3 of the Bill modifies the powers conferred by section 4 of the 1992 Act. Those powers, as enacted, are exercisable subject to the negative procedure (as defined by section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010) and the Bill will not change that.

Section 4 – Abolition of housing support grants

18. This section removes the requirements in the Housing (Scotland) Act 1987 on the Scottish Ministers to pay housing support grants to local authorities. These grants are payable by the Scottish Ministers to assist local authorities to meet reasonable housing needs in their areas. Section 4 will remove the legislative requirement to pay such grants from 1 April 2013. Two consequential changes to other legislation are also made.

Section 5 – Commencement

19. This section provides that the Act the Bill will become, if passed, will come into force on the day of Royal Assent. Section 4 is excepted and will come into force on 1 April 2013.