

Non-Domestic Rates (Liability for Unoccupied Properties) (Scotland) Bill

Delegated Powers Memorandum

Introduction

1. This Delegated Powers Memorandum has been prepared by the Scottish Government in accordance with Rule 9.3.3B of the Parliament's Standing Orders in relation to the Non-Domestic Rates (Liability for Unoccupied Properties) (Scotland) Bill ("the Bill"). It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers.
2. The following other accompanying documents are published separately:
 - Explanatory Notes (SP Bill 78–EN);
 - a Financial Memorandum (SP Bill 78–FM);
 - a Policy Memorandum (SP Bill 78–PM);
 - statements on legislative competence made by the Presiding Officer and the Scottish Government (SP Bill 78–LC).
3. This Memorandum has been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Parliament.

Outline of Bill provisions

4. The purpose of the Bill is to reverse a repeal made in error by the Non-Domestic Rates (Scotland) Act 2020 in relation to liability for the payment of non-domestic rates for unoccupied properties. The Bill establishes the position in law, with retroactive effect from 1 April 2023, whereby liability for rates in respect of unoccupied properties falls upon their owner, subject to any reliefs that local authorities or the Scottish Ministers may choose to put in place under existing discretionary powers.
5. Section 1 of the Bill amends the Local Government (Scotland) Act 1966 in order to insert new section 24ZA, which imposes liability for non-domestic rates, in respect of a property which has no occupier, on the owner of the property. This general rule is subject to any rates reduction or relief that a rating authority (i.e. a council) or the

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Scottish Ministers may put in place under other legislation. The amendment of the 1966 Act has retrospective effect so that it takes effect from 1 April 2023. This means that there will be continuity in the imposition of liability for rates in respect of unoccupied properties: up until 1 April 2023, section 24(3) of the 1966 Act provided for owner liability, and from that date, new section 24ZA of the 1966 Act provides for that liability.

6. Section 2 of the Bill gives the Scottish Ministers a freestanding regulation-making power to make any incidental, supplementary, consequential, transitional, transitory or saving provision that they consider appropriate for the purposes of, in connection with, or for giving full effect to, the Bill.

7. Subsection (2) of section 2 allows regulations under this section to make provision about the reimbursement of enforcement costs to any ratepayers who had to pay them during the period between 1 April 2023 and the Bill coming into force.

8. Subsection (3) of section 2 allows regulations to modify any legislation, including the Bill itself once it is enacted: if doing so, the regulations would be subject to the affirmative procedure. Otherwise they will be subject to the negative procedure.

9. Section 3 concerns commencement and provides that the Bill comes into force on the day after Royal Assent.

10. Section 4 provides for the short title of the Bill.

Rationale for subordinate legislation

10. The Bill contains only one delegated power which is explained in more detail below, with a short explanation of what the power allows, why the power has been taken in the Bill and why the selected form of parliamentary procedure has been considered appropriate.

11. In deciding whether provisions should be specified on the face of the Bill or left to subordinate legislation, the importance of the matter has been considered against:

- The need to ensure sufficient flexibility in the future to respond to changing circumstances and to make changes quickly without the need for primary legislation;
- The need to ensure proper use of parliamentary time;
- The possible frequency of amendment; and
- The need to anticipate the unexpected, which might otherwise impact on the purpose of the legislation.

12. For the decision on negative or affirmative procedure, the degree of Parliamentary scrutiny that is thought to be required for the instrument has been

carefully considered, balancing the need for the appropriate level of scrutiny with the need to avoid using up Parliamentary time unnecessarily. The balance reflects the views on the importance of the matters being delegated by the Parliament.

Delegated powers

Section 2: Ancillary provision

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative if making textual amendments to an Act, but otherwise negative

Provision

13. This section provides that the Scottish Ministers may make regulations to make any incidental, supplementary, consequential, transitional, transitory or saving provision that they consider appropriate for the purpose of, in connection with or for giving full effect to the Bill.

14. It further provides that the regulations may in particular make provision about the payment (or repayment) to a person of sums incurred in connection with enforcement of the person's liability to pay non-domestic rates.

15. It provides that regulations to modify any enactment, including the Bill itself once it is enacted, are subject to the affirmative procedure. Otherwise they will be subject to the negative procedure.

Reason for taking power

16. While the Scottish Government has given careful consideration to the provisions of the Bill, the Bill may give rise to a need for ancillary provision. The power to make such provision is common in Bills to provide flexibility to make any adjustments in light of experience in relation to the operation of the Act as timeously as possible. The Scottish Government considers that it is appropriate to take a power to deal with any ancillary matter that might emerge in the course of implementing the Bill, so that any unexpected issues which require ancillary provision to be made can be dealt with effectively and so that the purpose of the Bill is not inadvertently obstructed.

17. The Scottish Government further wishes to ensure that, where enforcement action has been taken by a local authority in relation to non-payment of rates during the period between 1 April 2023 and the Bill coming into force, any sums incurred in connection that enforcement can, if deemed necessary or appropriate, be repaid by local authorities. For this reason, the Scottish Government considers it appropriate for the Bill to clarify that the ancillary regulation-making power may, in particular, be used to make provision about the payment (or repayment) to a person of sums incurred in

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connection with enforcement of the person's liability to pay non-domestic rates. Without such a clarificatory provision there might be uncertainty as to whether ancillary regulations could be used for that purpose.

Choice of procedure

18. Regulations made under this section which contain a provision which adds to, replaces or omits any part of the text of an Act are subject to the affirmative procedure. Otherwise, regulations made under this section are subject to the negative procedure. This approach is typical for ancillary powers of this type and is considered to provide an appropriate level of Parliamentary scrutiny.

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