

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

REVISED DELEGATED POWERS MEMORANDUM

PURPOSE

1. This revised memorandum has been prepared by the Scottish Government in accordance with Rule 9.7.10 of the Parliament's Standing Orders, in relation to the Local Government Finance (Unoccupied Properties etc.) (Scotland) Bill as amended at Stage 2. It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. This memorandum supersedes the Delegated Powers Memorandum on the Bill as introduced.

OUTLINE OF BILL PROVISIONS

2. The Bill deals with two topics. The first is the treatment of empty property and formerly empty property, under non-domestic rating legislation and council tax legislation. For that, powers are taken to enable some different types of provision to be made from the provision that is currently enabled. The second topic relates to housing support grant. No powers are being taken in relation to the second topic.

Empty Property Relief

3. The provision made by the Bill will allow the Scottish Ministers, by regulations, to vary the percentage of non-domestic rate relief available for defined classes of unoccupied, non-domestic premises and allow for a defined class of formerly unoccupied premises to continue to be treated as unoccupied. The provisions are aimed at encouraging owners of unoccupied premises to bring them back into use.

Council tax treatment of unoccupied dwellings

4. As enacted, section 33 of the Local Government in Scotland Act 2003 gave the Scottish Ministers powers to provide council tax discount in relation to unoccupied dwellings. It also permitted the relevant regulations to allow local authorities to adjust the level of discount applying in their areas. The Bill will modify the powers conferred by section 33 so that the Scottish Ministers may, in addition to providing discounts in relation to unoccupied dwellings, make regulations increasing, to no more than twice the standard rate, the amount of council tax payable in respect of unoccupied dwellings. Further, the Bill will allow the regulations to give local authorities a more flexible power, so that they will be able not only to increase or decrease the amount of council tax discount that is available in respect of an unoccupied dwelling, but will also be able to turn a discount into an increase in the amount payable, or vice versa. Like the

Scottish Ministers, local authorities will be unable to increase the amount of council tax payable in respect of any given property by more than 100% of the standard rate payable in respect of that property (or such lower percentage as may be specified in the regulations).

5. The Bill also amends the existing powers in paragraph 4 of Schedule 2 to the Local Government Finance Act 1992, which enable the Scottish Ministers, through regulations, to make provision in relation to:

- the calculation of amounts persons are liable to pay in respect of council tax in respect of empty dwellings; and
- other aspects of administration as regards council tax and empty dwellings.

Housing Support Grant

6. The Bill removes the requirements in the Housing (Scotland) Act 1987 on the Scottish Ministers to pay housing support grants to local authorities where their Housing Revenue Account cannot be easily balanced from existing rent levels.

DELEGATED POWERS

7. The delegated powers provisions are listed below, together with a short explanation of:

- what each power allows;
- who the power is conferred on;
- the form in which the power is to be exercised;
- why it is considered appropriate to delegate the power; and
- the parliamentary procedure to which the exercise of the power is to be subject and why this procedure is considered appropriate.

8. The approach in the Bill to powers to make subordinate legislation is, generally, to augment existing powers, enabling variations to be made to the content of subordinate legislation to deliver the Government's policy.

Empty Property Relief

9. Section 1 of the Bill will allow the Scottish Ministers, by regulation, to modify the percentage of rate relief available on empty properties. It does this by amending sections 24 and 24A of the Local Government (Scotland) Act 1966 ("the 1966 Act").

10. Section 24 deals with lands and heritages which are wholly unoccupied. Currently, the default position is that no rates are payable in respect of such property. By regulations, however, the Scottish Ministers may prescribe classes of lands and heritages in respect of which a 50% rate is payable. Regulations have been made to provide that where lands and heritages have been unoccupied for a continuous period of more than three months then, subject to prescribed exceptions, they are liable to pay 50% of the non-domestic rates they would pay were they occupied for the same purpose as that for which they were last used.

11. Section 24A deals with lands and heritages that are partly unoccupied, for a short time. It provides for the temporary apportionment of the rateable value between the occupied and unoccupied parts. The default position is a nil value is attributed to the unoccupied part, the practical effect of which is that no rates are payable in respect of the unoccupied part. However, section 24A(4) allows regulations to provide, in respect of prescribed classes of property, that the rateable value of the property is to be treated as the sum of 100% of the occupied part and 50% of the unoccupied part. Regulations to that effect have been made.

12. Section 1 of the Bill will also amend section 24B of the 1966 Act to allow the Scottish Ministers, by regulations, to provide that properties within a defined class are to continue to be treated as unoccupied, and so continue to enjoy unoccupied property relief, for a specified period after becoming occupied.

Subordinate Legislation Powers – Detail

Section 1(2) and (3) - Power to vary the percentage discount for rates relief applicable to unoccupied lands and heritages; and

Section 1(4) and (5) – Power for certain lands and heritages to be treated as unoccupied

Powers conferred on: the Scottish Ministers
Powers exercisable by: regulations made by statutory instrument
Parliamentary procedure: negative procedure

Provision

13. The amendments to sections 24 and 24A of the 1966 Act will allow regulations to vary the amount of rate relief in relation to unoccupied lands and heritages (or unoccupied parts of lands and heritages where there has been an apportionment under section 24A). As explained above, the default position is for no rates to be payable in respect of such property. By regulations, however, the Scottish Ministers may prescribe classes of lands and heritages for which a 50% rate is payable. The Bill, if passed, will amend the regulation-making powers conferred by sections 24 and 24A so that the Scottish Ministers can provide that the proportion of rates payable can be any other proportion, not exceeding 90% (i.e. a 10% relief), for such lands and heritages as are prescribed.

14. The amendment to section 24B of the 1966 Act will allow regulations to define a class of lands and heritages that are to continue to be treated as unoccupied for the purposes of section 24, for a period after the premises are occupied. This will enable the Scottish Ministers to define the circumstances in which a property brought back into use will qualify for a relief, to set the period that the relief will apply for and (using the power in section 24(3)) to set the percentage relief that will apply.

Reason for taking power

15. The reason for taking the powers in sections 24 and 24A is that the rate relief structure must operate between pre-set limits. The classes of lands and heritages to which different percentages of relief apply may need to be periodically changed, or the on-going monitoring of the regime may indicate that change would be desirable. Once the Parliament has set the range of

possible discount by primary legislation, it would be disproportionate to require further primary legislation to set particular figures in relation to particular classes of property. Subordinate legislation affords the flexibility to deliver the level of rates that is thought appropriate from time to time and to do so swiftly when circumstances so require.

16. The reason for taking the power in section 24B is to enable the relief already provided for by section 24 to be used to incentivise businesses to bring long term unoccupied properties back into use. Use of subordinate legislation to specify classes of lands and heritages that qualify for such relief retains flexibility to adapt provision for changed economic circumstances, which may over time suggest that incentives should be increased or scaled back, or re-targeted. It also allows the relief scheme to be adjusted to take account of experience in offering such an incentive, without taking up Parliament's time with primary legislation to make what may be small refinements.

Choice of procedure

17. The amendments to sections 24 and 24A are modifications of existing powers that allow prescription of classes of lands and heritages that are to pay 50% of the non-domestic rates payable by occupied lands and heritages of that class. The existing powers, in sections 24 and 24A, are subject to the negative procedure, which therefore seems appropriate in relation to any regulations made in exercise of the amended powers. The powers deal with the straight-forward operational detail of the non-domestic rating system and the extended powers are simply an adjustment of an overly-rigid structure of reliefs. It is not a substantial innovation on the existing system, which operates with two reliefs (of 100% and 50%), to allow the relief to be reduced to 10% or set anywhere on the 100% to 10% scale. A higher level of parliamentary scrutiny does not appear to be appropriate.

18. The amendment to section 24B, giving Ministers a power to prescribe classes of lands and heritages that are to continue to enjoy unoccupied property relief for a period after being brought back into use, is a new power. It is inherently similar to the existing power in section 24. Both allow Ministers to define classes of lands and heritages for which the liability to pay rates is calculated subject to the relief in section 24. Prescription of classes of lands and heritages is often detailed and technical, and is commonly done using negative procedure. There seems no reason why the new power in section 24B should require a higher level of Parliamentary scrutiny.

Council Tax Treatment of Unoccupied Dwellings

19. Section 2 of the Bill will allow the Scottish Ministers, by regulation, to provide for council tax liability in respect of unoccupied dwellings to include the payment (within limits) of increased amounts of council tax. Such increases may be set by Ministers themselves or, where regulations so provide, may be determined by local authorities in respect of all or parts of their areas. This follows the style of the current system, which contains provision for local authorities to modify the application of a discount system within prescribed limits. The Bill does this by amending section 33 of the Local Government in Scotland Act 2003 ("the 2003 Act").

20. Section 3 of the Bill makes changes to Schedule 2 to the Local Government Finance Act 1992. These changes are made to reflect the move from a council tax system that only provides

discounts in respect of unoccupied properties to one that will allow the amount of council tax payable to be increased in respect of unoccupied properties. The amended Schedule 2 will allow regulations to impose a requirement for taxpayers to notify a local authority that an assumption it has made about a property being occupied is incorrect, and a power allowing local authorities to request information about whether a property is, was or will be occupied. The Bill amends Schedule 3 to the 1992 Act to provide penalties, in both cases, for failure to supply the requisite information.

Subordinate Legislation Powers – Detail

Section 2(2) and (3) - Power to provide for variation of council tax liability for unoccupied dwellings

Power conferred on: the Scottish Ministers
Power exercised by: regulations made by Scottish statutory instrument
Parliamentary procedure: affirmative procedure

Provision

21. Section 2 of the Bill amends section 33 of the 2003 Act to allow council tax liability, in respect of unoccupied properties, to be varied by regulations. At present, section 33 allows regulations to provide only discounts of that liability.

Reason for taking power

22. The reason for taking the power is to enable regulations to set out, in detail, how the scheme of discounts and increases in council tax liability will operate in relation to unoccupied dwellings. Setting the scheme out in regulations will mean that it can be periodically changed if the ongoing monitoring of the scheme indicates that refinement is needed. This will avoid recourse to primary legislation. Through the Bill, if passed, Parliament will have scrutinised and approved the principle of imposing council tax increases on unoccupied properties. It would not be a productive use of scarce parliamentary time to require that every modification of the scheme be made by primary legislation. Using regulations, subject to the affirmative procedure, will allow responsive implementation of any required changes, while still retaining an appropriately strong element of scrutiny by the Parliament.

23. Section 33(1) of the 2003 Act currently allows the Scottish Ministers, by regulations, to provide discounts for classes of chargeable dwelling that have no resident. It also enables the Scottish Ministers to confer powers on local authorities to disapply the discounts or modify them in their areas. However, the power of local authorities to modify can be limited by the Scottish Ministers by setting maximum and minimum amounts of discount in the regulations. All of these powers have been used. In particular, local authorities have been enabled to modify 50% discounts in liability to reduce the discount to a lesser percentage.

24. The Bill will amend the existing scheme so that the Scottish Ministers will be able to prescribe “variations” of liability, thereby enabling the prescription of increases up to a maximum of 100 per cent of the standard rate of council tax payable for a dwelling. This will extend the current power to provide discounts (but not increases) in council tax liability for unoccupied dwellings. The power to allow local authorities to modify discounts will be amended

accordingly, so that, for example, they can be enabled to provide for increases in liability (up to a maximum of 100 per cent of the standard rate of council tax payable for a dwelling) instead of discounts, or vice versa.

Choice of procedure

25. The Bill achieves its purpose in this regard by modifying the power conferred by section 33 of the 2003 Act, which is presently subject to the affirmative procedure. The council tax treatment of unoccupied dwellings is an important feature of the council tax system for a significant number of people and their communities, and it is appropriate that the Parliament should be able to scrutinise and comment on the detail of such provision. That includes the consideration of the classes of property made subject to variations of the tax liability that would otherwise apply and the limits that may be imposed on the powers of local authorities to modify such provision. The affirmative resolution procedure applies to any regulations under section 33 of the 2003 Act at present and it is appropriate to continue that level of scrutiny in relation to any regulations made in exercise of the power as it will be amended by the Bill (if passed). The Parliament is likely to wish to examine proposed regulations, and any amending regulations that might subsequently be made.

Repeal of delegated powers

26. As part of the introduction of the current unoccupied dwellings tax system, the Scottish Ministers were given powers to repeal section 79(2)(a) of the Local Government Finance Act 1992 (“the 1992 Act”), and to amend section 79 of that Act. The repeal was effected and the power to amend section 79 has not been required. The opportunity is now being taken to repeal the spent power to repeal section 79(2)(a) and to amend section 79 on the basis that that power is not required.

27. The Bill also repeals the power in section 33(2)(b)(i) of the 2003 Act that currently enables Scottish Ministers, by regulations, to confer powers on local authorities to disapply the regulations in their area or parts of their area. This provision is no longer required as the revisions made by section 2 of the Bill would, if passed by the Parliament, allow the regulations to give local authorities equivalent flexibility through modifying the application of the regulations in their area.

Section 3(3) - Power to make provision requiring supply of information relating to occupation of a dwelling

Power conferred on: the Scottish Ministers
Power exercised by: regulations made by Scottish statutory instrument
Parliamentary procedure: negative procedure

Provision

28. Section 3 of the Bill amends paragraph 4 of Schedule 2 to the 1992 Act. Paragraph 4 allows the Scottish Ministers to make regulations setting out how local authorities are to go about calculating the chargeable amount of council tax in relation to a dwelling and ascertaining whether any discount is available. The Bill will modify the power to refer to “variations” instead of “discounts” as a consequence of the amendments to section 33 of the 2003 Act discussed

above. The Bill will also amend the power, by inserting new sub-paragraphs (5A) and (5B) which will, respectively, enable regulations to:

- impose a duty on persons to notify a local authority that an assumption the authority has made, and informed the person that it has made, is based on a misapprehension as to there being no resident of the dwelling, leading to an underestimate of council tax liability; and
- allow a local authority to request information from a resident, owner or agent to ascertain whether a variation of council tax liability applies, based on occupancy.

29. Section 3 of the Bill also amends Schedule 3 to the 1992 Act so that a failure comply with the duty to notify, or failure to accurately respond to a request, will result in a penalty of up to £500 (at the local authority's discretion), and potential further penalties of £500 for repeated failure to comply.

Reason for taking power

30. These powers are necessary as a consequence of the potential move from a scheme under which unoccupied properties enjoy council tax discounts to a scheme under which they face council tax increases. The powers are not inherently unusual in the general scheme of the 1992 Act.

31. Paragraph 4(5) of Schedule 2 to the 1992 Act currently allows regulations to impose a requirement on a home-owner (or other person responsible for the property) to notify a local authority if the authority has informed the person that it has applied a council tax discount and the person knows that no discount, or a smaller discount, is actually warranted. The power that will be conferred by the new sub-paragraph (5A) will allow regulations to make equivalent provision in relation to council tax increases. That is, it will allow regulations to be made requiring the person to notify the local authority if it has made an inaccurate assumption about the property being occupied or unoccupied with the result that the authority has underestimated the council tax liability in respect of the property.

32. The power that will be conferred by the new paragraph 4(5B) of Schedule 2 to the 1992 Act will allow regulations to give local authorities the power to request information about whether a property is, was or will be occupied from the resident, owner or managing agent of a particular dwelling. At present, the fact that a property is unoccupied results in a reduced council tax liability. There is therefore a financial incentive for people to volunteer information that a property is unoccupied. In the future, where council tax liability is increased for unoccupied properties, such information may not be so readily volunteered. It is therefore necessary to give local authorities a power to request information about whether a property is occupied at a particular point in time, backed by a financial sanction for failing to supply the information (or failing to supply it correctly).

33. Using regulations to address these matters will mean that the requirements can be periodically changed if the ongoing monitoring of the scheme indicates that refinement is needed. That will avoid unnecessary recourse to primary legislation for what are technical elements of the operation of the council tax system, of a similar nature to the other matters about which regulations may currently be made under paragraph 4 of Schedule 2 to the 1992 Act.

Choice of procedure

34. The regulations regarding provision of information are expected to be technical in nature. The 1992 Act already provides a power at paragraph 4(5) of Schedule 2, to make regulations in connection with discount assumptions, which is very similar to that which the Bill will insert as paragraph 4(5A) of that Schedule. Regulations made under the power conferred by the existing paragraph 4(5) are subject to the negative procedure.

35. Regulations made under the new paragraph 4(5B) of Schedule 2 to the 1992 Act will give local authorities a more pro-active ability to make enquiries about whether a property is, was or will be unoccupied. It is very similar to an existing regulation making power conferred by paragraph 2 of Schedule 2 to the 1992 Act, which is subject to the negative procedure.

36. Given that this Bill merely modifies existing regulation-making powers in the 1992 Act, with no significant innovation, the Government proposes that regulations made under paragraph 4 of Schedule 2 continue to be subject to the negative procedure.

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

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