

NON-DOMESTIC RATES (SCOTLAND) BILL

EXPLANATORY NOTES

INTRODUCTION

1. As required under Rule 9.3.2A of the Parliament's Standing Orders, these Explanatory Notes are published to accompany the Non-Domestic Rates (Scotland) Bill, introduced in the Scottish Parliament on 25 March 2019.
2. The following other accompanying documents are published separately:
 - a Financial Memorandum (SP Bill 44–FM);
 - a Policy Memorandum (SP Bill 44–PM);
 - statements on legislative competence made by the Presiding Officer and the Scottish Government (SP Bill 44–LC).
3. 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.
4. 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

5. 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

6. The Bill is divided into 5 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 3 makes provisions 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.

7. Parts 3 and 4 make new freestanding provision, as do sections 9 and 12 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.¹ 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 section 14 of the Bill.
- the “1956 Act” is the Valuation and Rating (Scotland) Act 1956 – it is amended by sections 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 and discretionary relief from payment of non-domestic rates for charities and certain other organisations, and is amended by sections 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, 6, 7 and 13 of the Bill.

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

9. 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).

10. 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.

¹ 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”.

Part 2 – Administration and enforcement of non-domestic rates

Section 2 – Revaluation years

11. 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.

12. 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”² 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.

13. 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 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

14. 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).

15. 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 roll relates to a different property (described in the legislation as “lands and heritages”).

16. New section 2A(1) and (2) requires an assessor to identify an entry in the 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.

17. 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.

18. Section 2A(3) explains what is meant by an entry on the 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). This means any buildings or parts of a building in the entry must be newly built. The

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

entry might be a new one on the 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 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 (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.

21. 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.

22. 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 4 – Entering of parks in valuation roll

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

24. 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 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).

25. Section 4(3) amends section 19 of the 1963 Act by replacing subsections (1A) and (1B) with a number of new subsections. New subsection (1ZA) sets out the basic rule that parks of these two types are not to be entered in the roll except in certain cases (and, as a consequence,

section 4(2) amends subsection (1) of section 19 of the 1963 Act to remove this statement of the basic rule). Subsection (1ZA)(a) and (1ZB) provide for a new exception to the basic rule: any part of either of these types of park that is occupied by another 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 roll. The rates payable would depend on the rateable value determined for the food outlet and whether the occupier was entitled to any relief.

26. The requirement for there to be free and unrestricted access to a park in order for it to be exempt from entry on the roll is extended so that it applies to both types of parks (subsections (1ZA)(b) and (1ZC)). So, for example, any local authority park that consists entirely of facilities that are charged for will require to be entered in the roll. The requirement for a park to be entered in the roll if a net profit is derived is retained and continues to apply only to local authority parks (subsections (1ZA)(b) and (1ZD)).

27. Where part of a park is entered in the roll by virtue of subsection (1ZB) (because it is occupied by a person other than the person or body in whom the park is vested or who controls the park), the rules in relation to free and unrestricted access and net profit apply only to the remainder of the park. Any income derived by a local authority from a part of the park which it does not occupy (for example, from a lease or licensing arrangement under which another person occupies part of the park) is disregarded in determining whether the remainder of the park produces a net profit.

Section 5 – Discretion of local authority to determine whether lands and heritages are dwellings

28. 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.

29. 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.

30. 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 6 – Valuation notices

31. 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.

32. 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.

33. 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.

34. 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

35. 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.

36. 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 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.

37. 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.

38. 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 36), although the time limits for making a proposal will be set out in regulations under subsection (6) rather than in section 3ZA itself.

39. 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 roll for the lands and heritages, or challenged it through a proposal or an appeal.

40. 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.

41. Under subsection (5), the assessor can decide to alter the entry as suggested in the proposal, reach an agreement with the person who made the proposal to make different alterations to those proposed, or refuse to alter the entry. If the assessor refuses to alter the entry, the person who made the proposal can appeal to the valuation appeal committee under section 3ZB(1)(a).

42. 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 and notices that the assessor is to give to the proposer.

43. By virtue of section 3ZA(8), regulations under subsection (6) are subject to the negative procedure.

44. 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.

45. Section 3ZB(1)(a) allows an appeal to be made to the valuation appeal committee against an assessor's decision not to alter an entry in the valuation roll as proposed by the appellant. 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.

46. 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)). The appeal must relate to matters to which the proposal related.

47. 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)).

48. 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 roll should be altered after the appeal is made.

49. 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.

50. 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.

51. 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.

52. 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)).

53. 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 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 roll, if the person requests that information.

Section 8 – Proposals and appeals: consequential modifications

54. 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.

55. 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 9 – New or improved properties: rates relief

56. 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”).³

57. 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.

58. 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.

59. 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 10 – Charitable relief: independent schools

60. 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).

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

62. 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

³ S.S.I. 2019/40

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).

63. 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

64. As explained in paragraph 60, 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.

65. 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).

66. Subsections (7C) to (7G) make supplementary provision in relation to guidance under subsection (7A), covering matters such as publication and revision of the guidance. In particular, subsection (7D) requires the Scottish Ministers to consult on guidance under subsection (7A) before it is 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 12 – Non-use or underuse of lands and heritages: notification

67. Sections 24 to 25 of the Local Government (Scotland) Act 1966 provide for reduction of the rates payable in respect of lands and heritages which are unoccupied. But other reliefs (for example, charitable relief or relief under the small business bonus scheme) may be more advantageous to the ratepayer.

68. 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 in two circumstances. The first is where the local authority considers that the lands and heritages are not being used (suggesting that unoccupied property relief 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 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.

69. 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).

70. 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.

71. 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

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

73. 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.

74. 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.

75. 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)).

76. 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.

77. 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.

78. 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.

79. 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.

80. 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.

Part 3 – Information notices and notifications of changes of circumstances

81. 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

82. 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.

83. 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.

84. 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.

85. An assessor information notice must be given in writing and the person who receives it has 56 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.

86. 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

87. 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.

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

89. 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

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

91. 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.

92. The ratepayer must tell the local authority within 21 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

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

94. 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.

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

96. 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.

97. 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 of £100. The penalty notice must, under subsection (2), set out the reasons for giving it, explain a person’s right to appeal and also warn the person that further penalties may be imposed if the person continues to fail to comply. If the person continues to fail to comply after a further period of 21 days, the person may be given a further penalty of £100 and then daily penalties of £20 (subsection (3)). That is subject to an overall cap on the penalties of £500 or the rateable value of the lands and heritages (whichever is the bigger amount) (see subsection (4)).

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

99. The Scottish Ministers may by regulations (under subsection (7)) increase or decrease any of the penalty amounts and caps set out in subsections (2) to (4). The regulations are subject to the affirmative procedure.

100. 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

101. 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.

102. Where an appeal is made and the appellant has incurred further penalties under section 18(3) 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)).

103. 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)).

104. 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 20 – Civil penalties for failure to comply with local authority information notices and for failure to notify changes in circumstances

105. 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)).

106. 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)).

107. 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)).

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

109. 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.

110. 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

111. 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.

112. 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)).

113. 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)).

114. 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 22 – Sections 19 and 21: consequential modifications

115. 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

116. 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

117. 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.

118. 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)).

119. 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.

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

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

122. 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.

123. 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. The Scottish Ministers must have regard to any representations made about the draft regulations as a result of the consultation (subsection (5)).

124. 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”

125. 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.

126. 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

127. 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”

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

129. 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.

130. 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.

131. 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

132. Section 28 defines terms used throughout the Bill (see also paragraphs 7 to 10).
133. 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.
134. 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 (SP Bill 44) as introduced in the Scottish Parliament on 25 March 2019

NON-DOMESTIC RATES (SCOTLAND) BILL

EXPLANATORY NOTES

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