



The Scottish Parliament
Pàrlamaid na h-Alba

LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

AGENDA

9th Meeting, 2020 (Session 5)

Wednesday 11 March 2020

The Committee will meet at 9.45 am in the James Clerk Maxwell Room (CR4).

1. **Decision on taking business in private:** The Committee will decide whether to take item 4 in private. They will also decide whether to hold the meeting on Wednesday 18 March in private.
2. **First Tier Housing Tribunal:** The Committee will take evidence from—
 - Martin McKenna, Director of Tribunals Operations, Scottish Courts and Tribunal Service;
 - Anne Hastie, Member of Administrative Justice Committee, Law Society of Scotland;
 - Gordon Maloney, Organiser, Living Rent;
 - Caroline Elgar, Policy Manager, Scottish Association of Landlords;
 - Gordon MacRae, Assistant Director (Communications and Policy), Shelter Scotland;
 - David Reid, Managing Director of James Gibb Residential Factors and President, Property Managers Association Scotland.
3. **Subordinate legislation:** The Committee will consider the following negative instruments—
 - Local Governance (Scotland) Act 2004 (Remuneration) Amendment Regulations 2020 (S5M-2020/26)
 - Non-Domestic Rates (Reverse Vending Machine Relief) (Scotland) Regulations 2020 (S5M-2020/36)
 - Non-Domestic Rates (Enterprise Areas) (Scotland) Amendment Regulations 2020 (S5M-2020/38)

Non-Domestic Rates (Relief for New and Improved Properties) (Scotland) Amendment Regulations 2020 (S5M-2020/40)
Non-Domestic Rates (Telecommunication Installations) (Scotland) Amendment Regulations 2020 (S5M-2020/41)
Non-Domestic Rates (Transitional Relief) (Scotland) Amendment Regulations 2020 (S5M-2020/42)
Non-Domestic Rating (Unoccupied Property) (Scotland) Amendment Regulations 2020 (S5M-2020/43)
Non-Domestic Rating (Valuation of Utilities) (Scotland) Amendment Order 2020 (S5M-2020/44)

4. **First Tier Housing Tribunal:** The Committee will consider the evidence heard earlier in the meeting.

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The papers for this meeting are as follows—

Agenda item 2

Note by the Clerk

LGC/S5/20/9/1

PRIVATE PAPER

LGC/S5/20/9/2 (P)

Agenda item 3

Note by the Clerk

LGC/S5/20/9/3

Local Government and Communities Committee
9th Meeting (Session 5), Wednesday 11 March 2020
The First Tier Tribunal (Housing and Property Chamber)

Note by the Clerk

Introduction

1. This paper sets out some background information on the Local Government and Communities Committee's scrutiny of [The First Tier Tribunal \(Housing and Property\) Chamber](#) ("the Tribunal).

Background

2. The Tribunal was formed to deal with issues relating to the private rented housing sector. All enquiries formerly dealt with by the Private Rented Housing Panel¹ (PRHP) and the Homeowner Housing Panel² (HOHP) were transferred to the Tribunal on 1 December 2016 under the [Tribunals \(Scotland\) Act 2014](#)
3. On 1 December 2017, the jurisdiction of the Tribunal expanded further to include applications in respect of private sector rented cases and Private Residential Tenancies³ (PRT). These cases were previously dealt with by the Sheriff Court. The Tribunal does not deal with social housing sector issues.
4. There are six main areas under which all applications to the Tribunal fall:
 - Private Rented Sector applications (including evictions and disputes in relation to tenancy terms)
 - Repairing Standard applications (to compel landlords to carry out repairs to ensure a property meets the statutory "repairing standard")
 - Landlords (right of entry) applications (to give landlords access to their property to carry out inspection and repairs)
 - Rent assessment applications (enabling landlords and tenants to appeal against rents registered by Rent Officers)
 - Homeowner (Property Factor) applications (disputes over failure of factors to carry out maintenance or adhere to the statutory code)
 - Letting agent applications (disputes over the failure of agents to adhere to the statutory code)

[More information on all of these](#) can be found on the Scottish Judiciary website.

5. Consequently, the Tribunal is dealing with a high volume of varied applications. Examples include:-

¹ The Private Rented Housing Panel carried out functions under the [Housing \(Scotland\) Act 2006](#) which allowed tenants to apply to have repair issues determined that were not being resolved by their private landlord. [The Private Rented Housing \(Scotland\) Act 2011](#) amended the 2006 Act. From 1 December 2015, landlords unable to gain access to their property to carry out works to ensure it met the repairing standard could also apply to the PRHP.

² The Homeowner Housing Panel was set up under the [Property Factors \(Scotland\) Act 2011](#), and determined applications from homeowners in relation to disputes between them and their property factor in relation to the statutory duties and compliance with the Property Factors' Code of Conduct.

³ [Private Housing \(Tenancies\) \(Scotland\) Act 2016](#) created a new Private Residential Tenancy (PRT) for the private rented sector. This replaced short assured and assured tenancies agreements for all new tenancies from 1 December 2017.

- Landlords applying to the Tribunal for eviction and repossession orders where they consider they have grounds;
 - Former tenants making applications where they consider their tenancy has been terminated unlawfully;
 - Tenants and landlords making an application where either consider the terms of a PRT are not being met or where there is a dispute over rent;
 - Tenants applying where a factor is not carrying out maintenance or where there is a failure by a letting agent to comply with the statutory code of practice.⁴
6. Between 1 April 2018 and 31 March 2019, 3781 applications were made. Of these, 85% related to the private rented housing sector with the largest percentage (43%) relating to evictions. The Tribunal has faced significant challenges since the introduction of the new PRT legislation. In its first year of operation, the Chamber received over three times the number of applications anticipated and this has had an impact on its resources. In response, it increased its staffing levels to address delays in processing PRT applications.
7. Given that housing falls within its remit, the Committee agreed to hold a one-off evidence session to explore amongst other issues:-
- What the Tribunal are doing well;
 - The challenges the Tribunal is facing;
 - What issues those using the service are experiencing and
 - What improvements can be made and how.

Evidence session

8. At its Committee meeting on 11 March 2020, the Committee will hear from—
- Martin McKenna, Director of Tribunals Operations, Scottish Courts and Tribunals Service;
 - Gordon Macrae, Assistant Director (Communications and Policy), Shelter Scotland;
 - Caroline Elgar, Policy Manager, Scottish Association of Landlords;
 - David Reid, Managing Director of James Gibb Residential Factors and President of Property Managers Association Scotland;
 - Anne Hastie, Member of the Administrative Justice Committee, The Law Society of Scotland and
 - Gordon Maloney, Organiser, Living Rent
9. Written submissions from;
- Living Rent **Annexe A**
 - Scottish Association of Landlords **Annexe B**

Next steps

10. Following the evidence session, the Committee will decide what, if any, further scrutiny work it wishes to take forward in this area.

⁴ As set out under the [Letting Agent Code of Practice \(Scotland\) Regulations 2016](#).

**Local Government and Communities Committee
First Tier Tribunal (Housing and Property Chamber)
Living Rent**

Living Rent is Scotland's tenants' union. We are a democratic organisation run by and for tenants. We want homes for people, not for profit; to redress the power imbalance between landlords and tenants; and ensure that everyone has decent and affordable housing.

As well as campaigning for better rights and legal protections for tenants, we represent our members when they are having problems with their landlords and letting agents, including by supporting members to make application to the First-tier Tribunal and by representing them in those cases. In the course of this work, we have identified a number of major causes for concern in relation to the Tribunal and private rented housing. We have outlined these below:

1. Accessibility

We are concerned that the processes around the First-tier Tribunal for Scotland Housing and Property Chamber remain too difficult and complex for the majority of tenants. Significant numbers of tenants are going unrepresented in both case management discussions and hearings, even in cases where they have initiated proceedings. It is clear that the support available to tenants in making applications and pursuing matters through the Tribunal is insufficient.

This is especially important in the context of the power-imbalance in the PRS. Letting Agents have experienced staff who can navigate the process, and even for smaller-scale landlords renting out their property is a lucratively-paying job. This means that tenants are at a significant disadvantage in relation to the Tribunal.

Recommendation: The Scottish Government should consider what support should be made available in order to better support tenants in making and successfully prosecuting - as well as defending themselves in - Tribunal applications. This should include funding for organisations representing tenants at the Tribunal.

2. Resourcing

It is our experience that applications through the Tribunal can be slow and cumbersome, and in our view this may be one of the key reasons so many tenants do not attend case management discussions or hearings. It is of course right that due diligence is taken over any case brought before the Tribunal, and we are certainly not advocating that cases be rushed.

However, it is our understanding that the Tribunal has had far more cases than was initially anticipated, and that this has put a significant strain on the capacity of the Tribunal to deal with cases in a timely manner.

Recommendation: If more resources are required for the Tribunal to function effectively, then these resources should be made available as a matter of priority.

3. Enforcement

While it is welcome that applications to the free, we are concerned tenants can be left in the situation where respondents refuse to comply with with payment orders issued by the Tribunal. In these circumstances, tenants are left on their own, and if forced to pursue the matter through the Sheriff Court then that process can incur significant costs.

In one such case, we represented a group of tenants in a case where their landlord had failed to protect their deposit in one of the government-approved tenancy deposit schemes. The Tribunal found in our favour and issued a payment order of £7500 - the maximum amount possible in this case. However, the landlord refused to pay and we were forced to pay to carry out an arrestment of his accounts in order for the tenants to receive the money the Tribunal had awarded them.

This process was costly and difficult. We are deeply concerned that had these tenants not had the support we were able to offer them, it would not have been viable, or possible, for them to pursue the matter. In cases where the award issued is smaller, it wouldn't even make sense to do so.

Recommendation: The accessibility of the Tribunal process is undermined by tenants being required to pursue other difficult and costly avenues in order to enforce orders issued by the Tribunal. The Tribunal should be able to instruct the execution of payment orders it makes, and where necessary do so.

4. Evictions

When the 2016 Act was introduced, it was meant to abolish no-fault evictions. In practice, it's not clear if this has happened completely. It remains far too easy for a landlord or letting agent to use one of the other grounds to evict a tenant, even wrongly, and far too hard for a tenant to challenge this. Until recently, it appears that nobody had successfully done so at all, and even then this was in relation to an assured tenancy - not a PRT.

One concern that was expressed during the passing of the 2016 Act was that the burden of proof for landlords to evict a tenant was too low. For instance, in relation to grounds *1. Landlord intends to sell the let property*, *3. Landlord intends to refurbish the let property*, and *4. Landlord intends to live in the let property*, it is unclear how a tenant could possibly disprove intent under any of those scenarios.

To be completely clear, it is hard to understand what is stopping a landlord simply claiming they intend to do, for example, sell the let property, in order to evict the tenant, and then re-letting it at a higher price. Indeed, we have reason to believe that this practice may be widespread.

If tenants are not able to easily challenge unlawful termination orders in the Tribunal, we risk undermining the security the 2016 Act was meant to grant tenants

Recommendation: An urgent review must be undertaken to understand why the existing processes for tenants to challenge unlawful termination are failing and what steps need to be taken in order to ensure that landlords are not fraudulently abusing the grounds for eviction in order to evict tenants, and for the existing grounds to be reviewed.

5. Compensation

As an organisation working on the frontline with tenants, one of the most common issues we come across relates to compensation. This can sometimes be for damage to property, but more often than not it is in relation to neglect of serious repair issues, some that seriously impact the health of tenants.

We have seen cases of severe mould and damp, tenants that have been forced to go months without heating, windows that don't shut, extensive leaks, and many other shocking examples in which the grounds for compensation are crystal clear. We have also seen examples where entire parts of properties have been wholly unusable.

However, the process for claiming compensation or an abatement of rent is labyrinthine and inaccessible - and even Shelter Scotland's official advice is to contact a solicitor. This, for many tenants, is simply not a realistic course of action.

Recommendation: A simple solution for this would be for the Tribunal to be empowered to issue compensation awards to tenants for applications under rule 48, "Application for determination of whether the landlord has failed to comply with the repairing standard."

6. "Difficulty" of eviction

In January of this year, letting agent Aberdeen Considine published a press release claiming that some landlords were facing a "ten-month legal headache" to evict their tenants through the Tribunal. This report claimed that the "average eviction" now takes over 300 days.

Firstly, it is vital to understand that the overwhelming majority of evictions do not go through the Tribunal at all, and the idea that the "average eviction" now takes 300 days - as their report claims - is a complete distortion of the truth. Almost no evictions are carried out through the Tribunal at all - the vast majority of notices to quit go uncontested.

Secondly, they note that 20% of applications for eviction were "rejected on technical grounds." However, it is absolutely right that applications for eviction be rejected where the applicant has failed to follow due legal process in relation to it.

Lastly, it is our view that being evicted is one of the most traumatic things that can happen to a family - and one of the leading causes of homelessness - so it is absolutely right that there exists due process around it. The idea that we should be making it easier for landlords to evict their tenants - as this report suggested - is deeply wrong.

7. Rent appeals

Tenants are able to appeal rents set by rent officers in the Tribunal. However, while the Tribunal is able to reduce the figure, it is also able to increase it - and, indeed, there are a number of examples where this has happened.

Given that landlords have plenty of opportunities to increase rents, it seems unnecessary for the Tribunal to do this. It does, however, have the effect of putting tenants off appealing their rents. Put simply, why would a tenant take the risk of having an even greater rent enforced upon them?

Recommendation: It would seem to be an extremely simple and sensible move to change the regulations for the Tribunal such that a rent appeal can be rejected if it is the view of the Tribunal that the rent is not unreasonably high, but that they cannot impose a higher sum.

8. Security

One final point we would make is that all the good work done by the Scottish Government in private rented housing, and all of the important changes introduced by the Tribunal, are being undermined by the ability for landlords and letting agents to increase rents at the rate they currently do.

Protections from eviction are undermined if tenants can be effectively 'priced-out'. If a landlord cannot use one of the grounds for eviction, there is little to stop them simply forcing the tenant to 'voluntarily' leave by increasing the rent beyond what is affordable for the tenant.

Additionally, we speak to tenants who are too scared to take action through the Tribunal, even where the grounds are crystal clear, out of a fear of retaliatory rent increases. There is currently very little to stop this, and as outlined above we do not believe that tenants have faith in the existing processes around appealing unfair rent levels.

Recommendation: If we want tenants to have faith in the Tribunal - or, indeed, the various other enforcement mechanisms that exist in the PRS - then it is our view that we need rent controls to ensure that people are able to pursue these avenues without fear.

**Local Government and Communities Committee
First Tier Tribunal (Housing and Property Chamber)
Scottish Association of Landlords**

The Scottish Association of Landlords (SAL) is the largest and only dedicated national organisation that represents landlords and letting agents throughout Scotland. We support and represent our members' interests through providing resources and assistance as well as delivering lobbying and campaigning work.

SAL welcomes the opportunity to provide feedback on the operation of the First-tier Tribunal for Scotland Housing and Property Chamber.

Positive aspects of the Housing & Property Chamber:

- Free and less legalistic proceedings remove previous barriers to justice and allow parties to more easily represent themselves if they wish to
- This is leading to better enforcement of landlord and tenant obligations, in particular deposit regulations where there has been a big upsurge in applications from tenants compared to volumes which were dealt with by the sheriff court
- The tribunal expedites matters by communicating with parties by email wherever possible
- Decisions are published providing transparency and a valuable resource for those wanting to better understand the tribunal process. This is particularly useful for those who are considering making an application themselves.
- The sift carried out on applications ensures cases which will not be successful are rejected at application stage
- There is no cap on the amount that an applicant can pursue in a payment order application

Negative aspects of the Housing & Property Chamber:

- We have huge concerns around the time it takes cases to progress, in particular for eviction applications where there are often particular time pressures. It takes at best two months from point of application to a case management discussion and very often this timeframe is more than three months.
- The appeal period is twice as long as in the sheriff court system at 30 days
- For rent arrears this means tenants will usually have owed rent for at least 8 months before landlords can evict them (an application can't be made until the tenant has owed rent for 4 months)
- The sift is not always picking up on fundamental errors with applications meaning that some cases which have no chance of being successful proceed through the system
- Equally the sift is sometimes raising queries & causing delays over matters which aren't fundamental to the case proceeding

Improvements we'd like to see

- A significant reduction in the timescale from point of application to the point a decision is made on the case. We consider that two weeks to carry out the sift and arrange a

date/venue for a case management discussion followed by two weeks' notice to the parties of the date/venue should be sufficient leading to a timeframe of one month from the point of application to most cases being decided on at the case management discussion.

- A reduction in the appeal period to 14 days
- An improvement in the speed and quality of the sift

Local Government and Communities Committee

9th Meeting, 2020 (Session 5), Wednesday 11 March 2020

Subordinate Legislation

Overview of instruments

1. The following instruments, subject to negative procedure, are being considered at today's meeting:
 - Local Governance (Scotland) Act 2004 (Remuneration) Amendment Regulations 2020
 - Non-Domestic Rates (Reverse Vending Machine Relief) (Scotland) Regulations 2020
 - Non-Domestic Rates (Enterprise Areas) (Scotland) Amendment Regulations 2020
 - Non-Domestic Rates (Relief for New and Improved Properties) (Scotland) Amendment Regulations 2020
 - Non-Domestic Rates (Telecommunication Installations) (Scotland) Amendment Regulations 2020
 - Non-Domestic Rates (Transitional Relief) (Scotland) Amendment Regulations 2020
 - Non-Domestic Rating (Unoccupied Property) (Scotland) Amendment Regulations 2020
 - Non-Domestic Rating (Valuation of Utilities) (Scotland) Amendment Order 2020
2. Further information on each instrument is provided below.

Procedure

7. Negative instruments are instruments that are "subject to annulment" by resolution of the Parliament for a period of 40 days after they are laid. This means they become law unless they are annulled by the Parliament. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds).
8. Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument.
9. If the motion is agreed to by the lead committee, the Parliamentary Bureau must then lodge a motion to annul the instrument to be considered by the Parliament as a whole. If that motion is also agreed to, the Scottish Ministers must revoke the instrument.
10. Each negative instrument appears on the Local Government and Communities Committee's agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or

concerns raised, consideration of the instrument can usually be continued to a later meeting to allow the Committee to gather more information or to invite a Minister to give evidence on the instrument. Members should however note that, for scheduling reasons, it is not always possible to continue an instrument to the following week. For this reason, if any Member has significant concerns about a negative instrument, they are encouraged to make this known to the clerks in advance of the meeting.

11. In many cases, the Committee may be content simply to note the instrument and agree to make no recommendations on it.

Local Governance (Scotland) Act 2004 (Remuneration) Amendment Regulations 2020

Background

3. These Regulations amend the Local Governance (Scotland) Act 2004 (Remuneration) Regulations 2007. They substitute increased annual amounts for different categories of local authority remuneration to their members. These changes are effective from 1 April 2020 for the purposes of increasing councillor's pay by 2.2 per cent. It also increases flexibility available to local authorities when granting councillors leave of absence. The policy note for the instrument is attached at **Annexe A**.

4. An electronic copy of the instrument is available at:

<http://www.legislation.gov.uk/ssi/2020/26/contents/made>

5. No motion to annul this instrument has been lodged.

Delegated Powers and Law Reform Committee consideration

6. The Delegated Powers and Law Reform Committee (DPLRC) considered the instrument at its meeting on [3 March 2020](#) and [determined](#) that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

Committee Consideration

7. The Committee is not required to report on negative instruments, but should it wish to do so, the deadline for reporting on SSI 2020/26 is 23 March 2020.

Non-Domestic Rates (Reverse Vending Machine Relief) (Scotland) Regulations 2020

Background

8. These Regulations provide 100% relief from business rates in respect of lands and heritages that are used wholly or mainly for the provision of a reverse vending machine, which is defined in regulation 2. Relief is available from 1

April 2020. An application must be made to obtain the relief. Regulation 3 sets out how the application is to be made. The policy note for the instrument is attached at **Annexe B**.

9. An electronic copy of the instrument is available at:

<https://www.legislation.gov.uk/ssi/2020/36/introduction/made>

10. No motion to annul this instrument has been lodged.

Delegated Powers and Law Reform Committee consideration

11. The DPLRC considered the instrument at its meeting on [3 March 2020](#) and [determined](#) that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

Committee Consideration

12. The Committee is not required to report on negative instruments, but should it wish to do so, the deadline for reporting on SSI 2020/36 is 30 March 2020.

Non-Domestic Rates (Enterprise Areas) (Scotland) Amendment Regulations 2020

Background

13. These Regulations amend the Non-Domestic Rates (Enterprise Areas) (Scotland) Regulations 2016, which provide relief from non-domestic rates in specified enterprise areas. They will extend the provision of relief until 31 March 2022. The policy note for the instrument is attached at **Annexe C**.

14. An electronic copy of the instrument is available at:

<https://www.legislation.gov.uk/ssi/2020/38/introduction/made>

15. No motion to annul this instrument has been lodged.

Delegated Powers and Law Reform Committee consideration

16. The DPLRC considered the instrument at its meeting on [3 March 2020](#) and [determined](#) that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

Committee Consideration

17. The Committee is not required to report on negative instruments, but should it wish to do so, the deadline for reporting on SSI 2020/38 is 30 March 2020.

Non-Domestic Rates (Relief for New and Improved Properties) (Scotland) Amendment Regulations 2020

Background

These Regulations amend the Non-Domestic Rates (Relief for New and Improved Properties) (Scotland) Regulations 2019. They provide the continuation of the following non-domestic rates relief for 2020-21:

- 100% relief on new properties for 12 months until after they are first occupied;
- 100% relief for 12 months on property improvements.

18. The policy note for the instrument is attached at **Annexe D**.

19. An electronic copy of the instrument is available at:

<https://www.legislation.gov.uk/ssi/2020/40/introduction/made>

20. No motion to annul this instrument has been lodged.

Delegated Powers and Law Reform Committee consideration

21. The DPLRC considered the instrument at its meeting on [3 March 2020](#) and [determined](#) that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

Committee Consideration

22. The Committee is not required to report on negative instruments, but should it wish to do so, the deadline for reporting on SSI 2020/40 is 30 March 2020.

Non-Domestic Rates (Telecommunication Installations) (Scotland) Amendment Regulations 2020

Background

23. The Non-Domestic Rates (Telecommunication Installations) (Scotland) Regulations 2016 provide relief for new mobile telecommunication masts in specified locations to incentivise mobile operators to build new masts. These regulations amend the 2016 regulations to reflect mast location changes to the previously published grid references, and incorporate grid references of additional eligible new mast locations.

24. The policy note for the instrument is attached at **Annexe E**.

25. An electronic copy of the instrument is available at:

<https://www.legislation.gov.uk/ssi/2020/41/introduction/made>

26. No motion to annul this instrument has been lodged.

Delegated Powers and Law Reform Committee consideration

27. The DPLRC considered the instrument at its meeting on [3 March 2020](#) and [determined](#) that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

Committee Consideration

28. The Committee is not required to report on negative instruments, but should it wish to do so, the deadline for reporting on SSI 2020/41 is 30 March 2020.

Non-Domestic Rates (Transitional Relief) (Scotland) Amendment Regulations 2020

Background

29. These Regulations amend the Non-Domestic Rates (Transitional Relief) (Scotland) Regulations 2017 to continue transitional relief for certain properties for 2020-21. A full list of qualifying properties is in the schedule of the principal Regulations, available at:

<https://www.legislation.gov.uk/ssi/2017/85/contents/made>

30. The policy note for the instrument is attached at **Annexe F**.

31. An electronic copy of the instrument is available at:

<https://www.legislation.gov.uk/ssi/2020/42/introduction/made>

32. No motion to annul this instrument has been lodged.

Delegated Powers and Law Reform Committee consideration

33. The DPLRC considered the instrument at its meeting on [3 March 2020](#) and [determined](#) that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

Committee Consideration

34. The Committee is not required to report on negative instruments, but should it wish to do so, the deadline for reporting on SSI 2020/42 is 30 March 2020.

Non-Domestic Rating (Unoccupied Property) (Scotland) Amendment Regulations 2020

Background

35. These Regulations amend the Non-Domestic Rating (Unoccupied Property) (Scotland) Regulations 2018 to extend the period for which lands and heritages have to be occupied before a period of non-occupation is ended and can start anew from 6 weeks to 6 months from 1 April 2020. The policy note for the instrument is attached at **Annexe G**.
36. An electronic copy of the instrument is available at:
<https://www.legislation.gov.uk/ssi/2020/43/introduction/made>
37. No motion to annul this instrument has been lodged.
38. **Delegated Powers and Law Reform Committee consideration**
39. The DPLRC considered the instrument at its meeting on [3 March 2020](#) and [determined](#) that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

Committee Consideration

40. The Committee is not required to report on negative instruments, but should it wish to do so, the deadline for reporting on SSI 2020/43 is 30 March 2020.

Non-Domestic Rating (Valuation of Utilities) (Scotland) Amendment Order 2020

Background

41. This Order amends the Non-Domestic Rating (Valuation of Utilities) (Scotland) Order 2005 to amend a list of fixed line telecommunications companies that are to be entered in a single valuation roll, rather than local rolls..
42. The policy note for the instrument is attached at **Annexe H**.
43. An electronic copy of the instrument is available at:
<https://www.legislation.gov.uk/ssi/2020/44/introduction/made>

No motion to annul this instrument has been lodged.

Delegated Powers and Law Reform Committee consideration

The DPLRC considered the instrument at its meeting on [3 March 2020](#) and [determined](#) that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

Committee Consideration

The Committee is not required to report on negative instruments, but should it wish to do so, the deadline for reporting on SSI 2020/44 is 30 March 2020.

POLICY NOTE**THE LOCAL GOVERNANCE (SCOTLAND) ACT 2004 (REMUNERATION)
AMENDMENT REGULATIONS 2020
SSI 2020/26**

The above instrument is made by the Scottish Ministers in exercise of the powers conferred by sections 11 and 16(2) of the Local Governance (Scotland) Act 2004 and all other powers enabling them to do so. It is subject to the negative procedure.

Purpose of the Instrument

These regulations will implement the arrangement introduced in 2017 by increasing councillors' pay by 2.2% with effect from 1 April 2020. It also increases the flexibility available to local authorities when granting councillors paid leave of absence.

Policy Objectives

This instrument makes provision in relation to the remuneration of local authority councillors. It amends the Local Governance (Scotland) Act 2004 (Remuneration) Regulations 2007 to increase the level of remuneration payable to local authority councillors by 2.2%. In addition, it increases the flexibility available to local authorities when granting councillors paid leave of absence. The effect will be that councils can continue to remunerate the councillor who has been granted leave, but also pay the same type of remuneration to another councillor for providing interim cover for the duties to which it relates, thereby ensuring equality for councillors in line with other professions. The increase and additional flexibility in granting councillors paid leave will take effect from 1 April 2020.

Consultation

There is no requirement for the Scottish Ministers to undertake a consultation before implementing an increase on councillors' salaries. Ministers are following the procedure established in 2017, to increase councillors' pay annually in line with the percentage increase in the median annual earnings of public sector workers in Scotland. This information is published by the Office of National Statistics in the *Annual Survey of Hours and Earnings*. COSLA Leaders have considered and supported the provision for local authorities to have increased flexibility when granting councillors paid leave of absence.

Impact Assessments

An equality impact assessment has not been undertaken as the increase in councillors' remuneration applies to all local authority members. The Scottish Ministers have decided that a Business Regulatory Impact Assessment is not required as there is no impact on business or the third sector and the impact on the public sector (council budgets) is not expected to cause a significant financial pressure.

Financial Effects

The salary increase would be met from existing council budgets: it is estimated that for 2020-21 the total cost would be around £590,825 across all 32 councils. Any additional costs arising from the increased flexibility when granting a councillor paid leave of absence will also be met from existing council budgets. These costs are anticipated to be minimal.

Local Government and Analytical Services Division
The Scottish Government
February 2020

POLICY NOTE

THE NON-DOMESTIC RATES (REVERSE VENDING MACHINE RELIEF) (SCOTLAND) REGULATIONS 2020 SSI 2020/36

The above instrument is made in exercise of the powers conferred by section 153 of the Local Government etc (Scotland) Act 1994 and all other powers enabling them to do so. The instrument is subject to the negative procedure.

Purpose

The purpose of these Regulations is to provide for a 100% non-domestic rates relief from 1 April 2020 for sites wholly or mainly used to provide Reverse Vending Machines (RVMs), defined as a device that is designed to receive, identify and process used relevant containers and provides a means for refund of the deposit paid on a used relevant container received by the device. Relevant containers are defined as sealed containers designed for a single use supply of a drink to a consumer, the supply of which includes a refundable deposit.

Policy Objectives

The Scottish Government is committed to creating a more circular economy where products and materials are kept in a high-value state of use for as long as possible – maximising resources to benefit the economy and the environment.

The Regulations will ensure that the use of lands and heritages wholly or mainly for provision of a reverse vending machine, with the main purpose of processing used single-use empty bottle containers, will not result in rates bills. The rates relief is 100%.

Consultation

There is no statutory obligation to formally consult on these Regulations.

Impact Assessments

No Business and Regulatory Impact Assessment is required because the present instrument will not impose new regulatory burdens on businesses, charities or the voluntary sector.

Financial Effects

No lands and heritages are currently eligible for this relief as none are entered on the valuation roll. The effect of this relief on non-domestic rates income is the future revenue foregone from lands and heritages that will be eligible for relief. The Scottish

Fiscal Commission¹ did not cost this policy as it estimated that the policy will have a very small fiscal effect that it does not consider to be material in cost.

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¹ <https://www.fiscalcommission.scot/wp-content/uploads/2020/02/Scotlands-Economic-and-Fiscal-Forecasts-February-2020.pdf>

POLICY NOTE**THE NON-DOMESTIC RATES (ENTERPRISE AREAS) (SCOTLAND)
AMENDMENT REGULATIONS 2020****SSI 2020/38**

The above instrument is made in exercise of the powers conferred by section 153 of the Local Government etc. (Scotland) Act 1994. The instrument is subject to the negative procedure.

These regulations amend The Non-Domestic Rates (Enterprise Areas) (Scotland)

Regulations 2016 to reflect that provision of rates relief will continue until 31 March 2022.

Policy Objectives

The Scottish Government is committed to supporting inclusive growth throughout the Scottish economy. Four themed Enterprise Areas, which span 16 different sites and complement wider support as a part of the Scottish Government's inclusive growth agenda, aim to support the development of key sectors (Life Sciences, Low Carbon Industries, Manufacturing and Food and Drink) and creation of high quality jobs.

These regulations will continue provision of non-domestic rates relief until 31 March 2022 in these Enterprise Areas to incentivise businesses operating in a number of key economic sectors to locate on strategic geographic sites thereby encouraging the growth of those sectors and of the Scottish economy as a whole. Without these regulations, the relief would end on 31 March 2020.

Further information may be found at: <https://economicactionplan.mygov.scot/>

Consultation

There is no statutory obligation to formally consult on these Regulations.

Impact Assessments

No Business and Regulatory Impact Assessment is required because the present instrument will not impose new regulatory burdens on businesses, charities or the voluntary sector.

Financial Effects

The decrease in the amount of non-domestic rates payable is in line with the policy objective as outlined above, and is subject to State aid *de minimis*.

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POLICY NOTE

THE NON-DOMESTIC RATES (RELIEF FOR NEW AND IMPROVED PROPERTIES) (SCOTLAND) AMENDMENT REGULATIONS 2020

SSI 2020/40

The above instrument is made in exercise of the powers conferred on the Scottish Ministers by section 153 of the Local Government etc. (Scotland) Act 1994 and all other enabling powers. The instrument is subject to negative procedure.

These Regulations provide the continuation of the following non-domestic rates relief for 2020-21:

- 100% relief on new properties for 12 months until after they are first occupied;
- 100% relief for 12 months on property improvements.

Policy objective

The independent Barclay Review of non-domestic rates recommended (Recommendation 1) the creation of a Business Growth Accelerator – “to boost business growth, a 12 month delay should be introduced before rates are increased when an existing property is expanded or improved and also before rates apply to a new build property.”² The Regulations (“the principal Regulations”) being amended by these Regulations deliver the intention of the Business Growth Accelerator by offering:

- 100% relief on new properties for 12 months until after they are first occupied;
- 100% relief for 12 months on property improvements.

The principal Regulations cover, amongst other types of new property, new property that was entered on the valuation roll after 1 April 2018 under section 2(1)(d) of the Local Government (Scotland) Act 1975; which is made up of “one or more buildings or parts of a building [that] are shown in that entry, none of which were shown in any entry in the roll for the day prior to the day that entry takes effect”. This is when an existing entry shown on the Roll is altered for a material change in circumstances, and the relief is available on the whole rateable value of the property if there is an increase in rateable value on the day the alteration on the roll takes effect. An example would be where an existing building is demolished and a new building replaces it, with a greater rateable value. From 1 April 2020, the conditions for eligibility for relief are amended so that, where the alteration to the roll took place within the previous 12 months, for the day immediately prior to the day on which the alteration took effect, the lands and heritages have to have been unoccupied and eligible for empty property relief (see regulation 2(3) of these Regulations).

Regulation 2(2) provides that relief is not available from 1 April 2020 for certain buildings that appear in the valuation roll for the first time, but are not newly built. Relief will no longer be available where a building existed on lands and heritages

² <https://www2.gov.scot/Resource/0052/00523643.pdf>

that were exempt from being entered in the roll, but cease to be exempt. An example would be a building on agricultural lands and heritages. Such lands and heritages might be entered in the roll as a result of a change of use. However, properties in this situation receiving relief in 2019-20 will continue to be eligible until such time as the relief runs out.

Under regulations 2(5) and (7)(b), the relief for improvement of lands and heritages is extended to include Class 4 of plant and machinery under The Valuation for Rating (Plant and Machinery) (Scotland) Regulations 2000, as amended. This includes items which are in the nature of a building, or which form an integral part or are in the nature of a building. For example this might include plant and machinery such as, turbines and generators, boilers, chimneys and flues, tanks, and silos.

The formulas used to calculate reliefs have been adjusted to reflect that 2020-21 is not a leap year. Other changes relate to the relief being for the 2020-21 year, or adjust for the poundage and supplementary rates figures, or take account of inflation.

An application must be made for these reliefs (see regulation 12 of the principal Regulations).

Consultation

There is no statutory requirement to consult on these Regulations.

Business and Regulatory Impact Assessment

No Business and Regulatory Impact Assessment is required because the present instrument will not impose new regulatory burdens on businesses, charities or the voluntary sector.

Financial Implications

The decrease in the amount of non-domestic rates payable is in line with the policy objective as outlined above.

This relief is not subject to State aid de minimis.

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POLICY NOTE**THE NON-DOMESTIC RATES (TELECOMMUNICATION INSTALLATIONS)
(SCOTLAND) AMENDMENT REGULATIONS 2020****SSI 2020/41**

The above instrument is made in exercise of the powers conferred by section 153 of the Local Government etc. (Scotland) Act 1994. The instrument is subject to the negative procedure.

These regulations amend The Non-Domestic Rates (Telecommunication Installations) (Scotland) Regulations 2016 to reflect mast location changes to the previously published grid references, and incorporate grid references of additional eligible new mast locations.

Policy Objectives

Relief for new mobile telecommunications masts in specified locations is aimed at incentivising mobile operators to build masts and/or improve the viability of mobile operators' business case to provide mobile services in those areas.

Achieving improved mobile coverage in Scotland is a key objective set out in the Scottish Government's *Mobile connectivity: action plan* (2016).³ It is referenced in the Scottish Government's Digital Strategy refresh: '*Realising Scotland's full potential in a digital world: a digital strategy for Scotland*' (2017)⁴ and the Scottish Government's '*A nation with ambition: the Government's Programme for Scotland 2017-2018*' (2017).⁵ The non-domestic rates relief is part of the Scottish Government's commitment to working in collaboration with the mobile industry to set the right conditions to incentivise infrastructure investment in non-commercial areas (so-called "notspots"). The Scottish Government's expectation is that new mobile masts built in the eligible areas will provide 4G mobile services to notspots in (and potentially around) the eligible areas.

Consultation

There is no statutory obligation to consult on these Regulations.

Impact Assessments

No Business and Regulatory Impact Assessment is required because the present instrument will not impose new regulatory burdens on businesses, charities or the voluntary sector.

Financial Effects

³ <https://www.gov.scot/policies/digital/broadband-and-mobile/>

⁴ <https://www.gov.scot/publications/realising-scotlands-full-potential-digital-world-digital-strategy-scotland/>

⁵ <https://www.gov.scot/publications/nation-ambition-governments-programme-scotland-2017-18/>

The decrease in the amount of non-domestic rates payable is in line with the policy objective as outlined above.

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POLICY NOTE

**THE NON-DOMESTIC RATES (TRANSITIONAL RELIEF) (SCOTLAND)
AMENDMENT REGULATIONS 2020**

SSI 2020/42

The above instrument is made in exercise of the powers conferred on the Scottish Ministers by section 153 of the Local Government etc. (Scotland) Act 1994 and all other enabling powers. The instrument is subject to negative procedure.

This instrument amends the Non-Domestic Rates (Transitional Relief) (Scotland) Regulations 2017. Those regulations reduce the amount payable as non-domestic rates for certain properties. This instrument adjusts provision for the relief in 2020-21 by adjusting it for inflation, changing the way calculations are undertaken to reflect that the 2020-21 financial year is not a leap year (unlike the previous financial year) and adjusting calculations to take account of changes in the rates poundage and supplements that will operate in 2020-21.

Policy Objectives

These regulations continue transitional relief for 2020-21, which has been in place since the 2017 revaluation.

The non-domestic properties eligible for this relief are those which are wholly or mainly used for specified purposes, that were so used on 31st March 2017 (or, if unoccupied on that date, were so used when last occupied), and that meet certain other conditions.

The full list of qualifying properties is in the schedule of the principal Regulations.

Any increase in the annual 'gross bill'⁶ in 2020-21 is to be no more than 12.5 per cent (real terms) (14.4% in cash terms)⁷ of the annual gross bill for 2019-20, subject to adjustment in respect of any changes in rateable value taking effect after the date of revaluation, i.e. 1st April 2017.

The table below shows the annual and cumulative impact of Transitional Relief on annual gross bill increase limits for qualifying premises.

	2017/2018	2018/2019	2019/2020	2020/2021
Real terms annual cap	12.50%	12.50%	12.50%	12.50%
Inflation measure	2.00%	3.00%	2.10%	1.70%

⁶ The gross bill for the purposes of this note is the rateable value on that day multiplied by the poundage factor; the poundage factor being the non-domestic poundage for that year plus, where applicable, the Large Business Supplement for that year.

⁷ Inflation is set at 1.7%, which is the percentage increase in the non-domestic poundage from 2019-20 (49.0p) to 2020-21 (49.8p).

Cash terms annual cap	14.75%	15.80%	14.80%	14.40%
Cumulated cash terms increase in rates liability from 2016/2017	14.75%	32.90%	52.70%	74.70%
Annual multiplier	1.1475	1.158	1.148	1.144
Cumulative multiplier	1.1475	1.329	1.527	1.747

Policy objective

The objective is to provide continued targeted support in light of the 2017 revaluation for 2020-21. The broader objective is to continue transitional relief until the 2022 revaluation with Regulations continuing to be laid annually.

Consultation

There is no statutory requirement to consult on these Regulations.

Business and Regulatory Impact Assessment

No Business and Regulatory Impact Assessment is required because the present instrument will not impose new regulatory burdens on businesses, charities or the voluntary sector.

Financial Implications

The decrease in the amount of non-domestic rates payable is in line with the policy objective as outlined above. The cost of this relief in foregone public revenue is forecast by the Scottish Fiscal Commission in Scotland's Economic and Fiscal Forecasts: December 2018.⁸

This relief is subject to State aid de minimis.

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⁸ <http://www.fiscalcommission.scot/media/1435/scotlands-economic-and-fiscal-forecasts-december-2018-full-report.pdf>

POLICY NOTE**NON DOMESTIC RATING (UNOCCUPIED PROPERTY) (SCOTLAND)
AMENDMENT REGULATIONS 2020****SSI 2020/43**

The above instrument is made in exercise of the powers conferred by sections 24(2) and (3), 24A(4) and 24B(3) of the Local Government (Scotland) Act 1966 and all other enabling powers. The instrument is subject to the negative procedure.

These regulations amend the Non Domestic Rating (Unoccupied Property) (Scotland) Regulations 2018 to change the reset period for empty property relief from 6 weeks to 6 months from 1 April 2020.

Policy Objectives

The independent Barclay Review of non-domestic rates recommended (Recommendation 21) that, “to counter a known avoidance tactic, the current 42 days reset period for empty property should be increased to 6 months in any financial year.”⁹ In its Implementation Plan in response to the Barclay Review,¹⁰ the Scottish Government accepted this recommendation and stated its intention to bring forward legislation to deliver this measure by 2020.

The Scottish Government is committed to a fair and sustainable non-domestic rates, in line with Scotland being the best place in the UK to do business. This instrument will increase the current 42-day reset period for empty property relief to 6 months, thereby increasing the length of time required for a renewed application of empty property relief from 1 April 2020.

Consultation

There is no statutory obligation to formally consult on these Regulations.

Impact Assessments

No Business and Regulatory Impact Assessment is required because the present instrument will not impose new regulatory burdens on businesses, charities or the voluntary sector.

Financial Effects

⁹ <https://www2.gov.scot/Resource/0052/00523643.pdf>

¹⁰ <https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2017/12/barclay-review-of-non-domestic-tax-rates-implementation-plan/documents/bf0f2ef4-bcbc-4c22-84fa-07735ee496f1/bf0f2ef4-bcbc-4c22-84fa-07735ee496f1/govscot:document/?inline=true/>

The decrease in the amount of non-domestic rates payable is in line with the policy objective as outlined above, and is subject to State aid *de minimis*.

The Scottish Fiscal Commission forecast¹¹ that this reform would increase non-domestic rates income by £3 million in 2020-21.

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¹¹ <https://www.fiscalcommission.scot/wp-content/uploads/2020/02/Scotlands-Economic-and-Fiscal-Forecasts-February-2020.pdf>

POLICY NOTE**THE NON-DOMESTIC RATING (VALUATION OF UTILITIES) (SCOTLAND)
AMENDMENT ORDER 2020****SSI 2020/44**

The above instrument is made in exercise of the powers conferred on the Scottish Ministers by sections 6A(1)(aa) and 6A(1B) of the Valuation and Rating (Scotland) Act 1956, by section 27(6A) and (6B) of the Local Government etc. (Scotland) Act 1994, and by all other enabling powers. The instrument is subject to negative procedure.

This Order updates The Non-Domestic Rating (Valuation of Utilities) (Scotland) Order 2005 (“the principal Order”) to amend a list of fixed line telecommunications companies that are to be entered in a single valuation roll, rather than local rolls. It also clarifies arrangements to be made for correction of entries that are not made in accordance with that Order.

Policy Objectives

The first purpose of this instrument is to amend the list of companies registered at article 7A(2) (fixed line telecommunications) of the principal Order. This includes the addition of nine companies:

- Axione UK Limited
- Cogent Communications UK Ltd
- Hypertropic Ltd
- Fibrenest Limited
- Daisy Group Holdings Limited
- EE Limited
- Interoute Communications Limited
- Interoute Communications Holdings Limited
- Zayo Group UK Limited.

The names of companies can change and these changes need to be shown in the 2005 Order to allow designated assessors to treat the lands and heritages held by relevant companies as a single entry on the valuation roll for a single, designated, area, despite being situated in areas covered by different rolls.

In addition, the instrument requires that the assessor, designated by the principal Order, arrange to rectify entries where they have not been made in accordance with the provisions of the principal Order. This provision is intended to clarify what should happen, specifically that an entry that has not been made in accordance with the requirements of the principal Order, and action taken based on that entry, is nonetheless valid. However, the assessor in whose roll the entry should appear as a single entry is to rectify it, with effect from the same date where an erroneous entry is removed and the required entry is made.

Consultation

There is a statutory requirement to consult on this Order. Scottish Assessors, representatives from the Institute of Revenues Rating and Valuation, and COSLA were consulted during the drafting of the Order and are content with the changes it makes to the 2005 Order.

Business and Regulatory Impact Assessment

No Business Regulatory Impact Assessment is required because this instrument will not impose new regulatory burdens on businesses, charities or the voluntary sector.

Financial Implications

There are no financial implications resulting from this instrument.

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