

Local Government, Housing and Planning Committee

11th Meeting, 2023 (Session 6)

Tuesday, 18 April 2023

SSI cover note for: Non-Domestic Rates (Scotland) Act 2020 (Transitional Provision) Regulations 2023

SSI 2023/64

Title of Instrument: Non-Domestic Rates (Scotland) Act 2020 (Transitional Provision) Regulations 2023

Type of Instrument: Negative

Laid Date: 2 March 2023

Circulated to Members: 9 March 2023

Meeting Date: 18 April 2023

Minister to attend meeting: No

Motion for annulment lodged: No

Drawn to the Parliament's attention by the Delegated Powers and Law Reform Committee? No

Reporting deadline: 24 April 2023

Recommendation

1. The Committee is invited to consider any issues which it wishes to raise on this instrument.

2. An electronic copy of the instrument is available at:
<https://www.legislation.gov.uk/ssi/2023/64/contents/made>

3. Copies of the Scottish Government’s Explanatory and Policy Notes are included in **Annexe A**.

Purpose

4. The Policy Note states that the Regulations make transitional provision in relation to certain appeal rights under section 3 of the Local Government (Scotland) Act 1975 (“the 1975 Act”) which existed on 31 March 2023, immediately before the relevant provisions of section 3 were repealed, but had not been exercised by that date.

5. The Policy Note further explains that the functions of valuation appeal committees will transfer to the Local Taxation Chamber of the First-tier Tribunal for Scotland on 1 April 2023 when a new two-stage appeal system will also be introduced. Transitional provision is required for certain non-domestic rating appeal rights extant as at 31 March 2023, but not exercised by that date.

6. The Policy Note then states that it is necessary to make provision for the procedures and timescales to be followed if the appeal right holder chooses to exercise that right on or after 1 April 2023. The Regulations therefore make the necessary provision to enable this.

Delegated Powers and Law Reform Committee consideration

7. At its meeting on 15 March 2023¹ the DPLR Committee considered the instrument and agreed not to draw it to the attention of the relevant lead committee.

Procedure for Negative Instruments

8. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. 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). Under Rule 10.4, any member (whether 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. If the motion is agreed to, the Parliamentary Bureau must then lodge a motion to annul the instrument for consideration by the Parliament.

9. If that is also agreed to, Scottish Ministers must revoke the instrument. Each negative instrument appears on a committee agenda at the first opportunity after the

¹ <https://digitalpublications.parliament.scot/Committees/Report/DPLR/2023/3/15/e88d1e7f-d8e2-4a9c-a9b2-540e0b9dab2b#Annex-A>

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 correspondence to be entered into or a Minister or officials invited to give evidence. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendation on it.

**Clerks,
Local Government, Housing and Planning Committee**

Annexe A

Scottish Government Explanatory Note

These Regulations make transitional provision in relation to certain appeal rights under section 3 of the Local Government (Scotland) Act 1975 (“the 1975 Act”) which existed at 31 March 2023, immediately before the relevant provisions of section 3 were repealed, but had not been exercised by that date. The Regulations are made in exercise of the power in section 43(1) of the Non Domestic Rates (Scotland) Act 2020 to make transitional provision, given that it is section 10 of that Act which provides for the revocation of the relevant provisions of section 3, and replacement with the new system of challenge involving a proposal followed by a possible right of appeal.

Regulation 2(2) enables a proprietor, tenant or occupier who had an unexercised right of appeal in relation to (a) the content of a valuation notice (section 3(2) of the 1975 Act), (b) becoming a proprietor, tenant or occupier (section 3(2A) of the 1975 Act) or (c) a material change of circumstances (section 3(4) of the 1975 Act), to make instead a proposal to the assessor under section 3ZA of the 1975 Act for alteration of the relevant entry in the valuation roll. There are rights of appeal in relation to such a proposal in certain circumstances under section 3ZB of the 1975 Act.

Regulation 2(3) provides a cut-off date of 31 July 2023 for the making of any proposal in accordance with regulation 2(2). A proprietor, tenant or occupier with unexercised rights of appeal under section 3 of the 1975 Act will lose those unexercised rights on 1 April 2023 but will have a full four months thereafter to make a proposal where regulation 2(2) applies. This will be the case irrespective of any previous deadline for making an appeal.

Regulation 2(4) confirms that the timescales set out in schedule 1 of the Valuation Timetable (Scotland) Order 2022 do not apply to the making of a proposal made in accordance with regulation 2(2). Rather, any proposal made in respect of an entry in the valuation roll to which an unexercised right of appeal related must be made by 31 July 2023 in accordance with regulation 2(3).

Regulation 2(5) excludes from the scope of the right to make a proposal under paragraph (2) an unexercised right of appeal by a proprietor, tenant or occupier on the ground of an error in an entry in the valuation roll.

POLICY NOTE

THE NON-DOMESTIC RATES (SCOTLAND) ACT 2020 (TRANSITIONAL PROVISION) REGULATIONS 2023

SSI 2023/64

The above instrument is made in exercise of the power conferred by section 43(1) of the Non Domestic Rates (Scotland) Act 2020. The instrument is subject to the negative procedure and comes into effect on 1 April 2023.

These Regulations make transitional provision in relation to certain appeal rights under section 3 of the Local Government (Scotland) Act 1975 (“the 1975 Act”) which existed on 31 March 2023, immediately before the relevant provisions of section 3 were repealed, but had not been exercised by that date.

Policy Objectives

The functions of valuation appeal committees will transfer to the Local Taxation Chamber of the First-tier Tribunal for Scotland on 1 April 2023. A new two-stage appeal system will also be introduced. Transitional provision is required for certain non-domestic rating appeal rights extant as at 31 March 2023, but not exercised by that date.

It is necessary to make provision for the procedures and timescales to be followed if the appeal right holder chooses to exercise that right on or after 1 April 2023.

Regulation 2(2) therefore enables the owner or occupier of a non-domestic property who had an unexercised right of rating appeal in relation to the following on 31 March 2023, to make instead, from 1 April 2023, a proposal to the assessor under section 3ZA of the 1975 Act if they are aggrieved by the entry in the valuation roll:

- the content of a valuation notice (section 3(2) of the 1975 Act)
- becoming a proprietor, tenant or occupier (section 3(2A) of the 1975 Act)
- a material change of circumstances (section 3(4) of the 1975 Act).

Regulation 2(3) provides a cut-off date of 31 July 2023 for the making of any proposal in accordance with regulation 2(2). An owner or occupier with one of the above unexercised rights of appeal on 31 March 2023 will therefore lose those rights on 1 April 2023 but will have a full four months thereafter to make a proposal. This will be the case irrespective of any previous deadline for making an appeal. This was considered the fairest way to treat these rights of appeal, as to continue the countdown from when the appeal right arose may have left some people with little time to lodge a proposal from 1 April 2023, and to provide six months to lodge a proposal from 1 April 2023 would have provided more time than on rights of challenge arising after 1 April 2023, and would have provided some owners or occupiers with significantly longer than six months to lodge an appeal (prior to 1 April 2023) and then a proposal (from 1 April 2023). Further, in a three yearly revaluation

cycle, it is important that proposals be lodged timeously in order that they may be considered timeously.

Regulation 2(4) confirms that the timescales set out in schedule 1 of the Valuation Timetable (Scotland) Order 2022 for the making of a proposal do not apply to proposals made in accordance with regulation 2(2). The other timescales relating to the resolution of a proposal would apply.

Regulation 2(5) excludes from the right to make a proposal under regulation 2(2) an unexercised right of appeal by an owner or occupier on the ground of there being an error in an entry in the valuation roll. This is because an error can only be appealed during the time when the roll in which the alleged error is to be found. In other words, an error in the 2017 valuation roll can only be appealed up to 31 March 2023 under section 3(4A)(b) of the 1975 Act.

Under section 3ZB of the 1975 Act, an appeal can be lodged after the proposal stage in prescribed circumstances. The timescales for lodging an appeal are set out in regulation 18 of The Valuation (Proposals Procedure) (Scotland) Regulations 2022.

Consultation

The 'Consultation on reforming the non-domestic rates system: proposals, the draft valuation roll, content of valuation notices, etc.' informed the development of the two-stage nondomestic rates appeals system.

The Scottish Government published an analysis of the consultation responses on 22 April 2022 which can be accessed at: Annex A: Consultation Responses - Reforming the nondomestic rates system: consultation analysis - gov.scot (www.gov.scot)

Impact Assessments

A Business Regulatory Impact Assessment was published alongside The Valuation (Proposals Procedure) (Scotland) Regulations 2022 and can be accessed here: The Valuation (Proposals Procedure) (Scotland) Regulations 2022 (legislation.gov.uk)

Financial Effects

There is no fee to make a proposal and this does not require professional representation. A Business Regulatory Impact Assessment was published alongside The Valuation (Proposals Procedure) (Scotland) Regulations 2022.

Scottish Government
Local Government and Communities Directorate

March 2023