

LOCAL GOVERNMENT FINANCE (UNOCCUPIED PROPERTIES ETC) (SCOTLAND) ACT 2012

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Act¹ and to help inform debate on it. They do not form part of the Act and have not been endorsed by the Parliament.
2. The Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE ACT

3. The Act will amend the law regarding non-domestic rates and council tax in respect of unoccupied properties. For non-domestic rates, it allows the Scottish Ministers greater flexibility to vary the relief that applies in relation to the rates payable in respect of unoccupied properties and formerly unoccupied properties. For council tax, the Act enables variation (including an increase) of the tax payable where a property is unoccupied and amends powers in respect of the ability of councils to require provision of information. The Act also repeals provisions that allow grants to be made to local authorities in order to allow them to balance their housing revenue account.

COMMENTARY OF SECTIONS

Section 1 – Rating of unoccupied lands and heritages

4. This section relates to non-domestic (business) rates relief in respect of unoccupied premises.
5. Subsections (2) and (3) respectively amend sections 24 and 24A of the Local Government (Scotland) Act 1966² to allow the Scottish Ministers, by regulations (subject to the negative procedure), to vary the amount of rate relief in relation to unoccupied premises (or unoccupied parts of premises where there has been an apportionment under section 24A of the 1966 Act).
6. Before being amended by the Act, Section 24 of the 1966 Act provided that no rates were payable in respect of wholly unoccupied premises (meaning there is 100% rates relief). However, it also allowed the Scottish Ministers to provide, in regulations, that in respect of prescribed classes of premises a 50% relief applied. Section 24A of the

¹ [http://www.scottish.parliament.uk/S4_Bills/Local%20Government%20Finance%20Unoccupied%20Properties/b12bs4-
aspassed.pdf](http://www.scottish.parliament.uk/S4_Bills/Local%20Government%20Finance%20Unoccupied%20Properties/b12bs4-
aspassed.pdf)

² <http://www.legislation.gov.uk/ukpga/1966/51/contents>

1966 Act provided a similar system of relief in respect of premises that were partly unoccupied for a short time. It permitted the temporary apportionment of the rateable value of the premises between the occupied and unoccupied parts. The default position was that a nil value was attributed to the unoccupied part (which means, in effect, 100% rates relief was given in relation to that part). Like section 24, section 24A allowed the Scottish Ministers to provide in regulations that a 50% relief applied to the unoccupied part in respect of prescribed classes of premises.

7. Thus, before section 1 of the Act came into force, sections 24 and 24A of the 1966 Act allowed regulations to vary the level of relief in respect of prescribed classes of unoccupied premises from the default 100% to 50%. Section 1 amends those sections to permit regulations made under them to vary the percentage of relief that applies to the classes of premises prescribed. The power to vary the percentage of relief is however subject to the limitation that the level of relief cannot be reduced to less than 10% (i.e. unoccupied premises, or unoccupied parts of premises, cannot be charged more than 90% of the rates that would be payable were the premises, or the part, occupied).
8. Section 1(4) of the Act amends section 24B of the 1966 Act to enable the Scottish Ministers, by regulations (subject to the negative procedure), to provide for classes of properties which were previously unoccupied to continue to be treated as unoccupied and so continue to receive unoccupied property relief for a prescribed period after they become occupied.

Section 2 – Council tax: variation for unoccupied dwellings

9. Provision in section 33 of the Local Government in Scotland Act 2003³ gives the Scottish Ministers the power, by regulations, to provide for a council tax discount in respect of unoccupied dwellings. It also allows the Scottish Ministers to make regulations that confer a power on local authorities to vary the level of council tax discount provided for such dwellings in their areas. These powers were used to make the Council Tax (Discount for Unoccupied Dwellings) (Scotland) Regulations 2005 (“the 2005 Regulations”; [S.S.I. 2005/51](http://www.legislation.gov.uk/ssi/2005/51))⁴ which allowed for discounts of between 10% and 50% for unoccupied properties.
10. **Section 2** of the Act amends section 33 of the 2003 Act so that the Scottish Ministers may, by regulations, vary the amount payable, or allow local authorities to vary the amount payable, in relation to such unoccupied properties as are specified in the regulations. This power includes the ability to provide for an increased charge either by removing the discount or imposing an increase. The power to set, by regulations, a limit to the maximum discount local authorities can allow is retained. By virtue of the amendment, regulations are also able to set a limit on the maximum increase local authorities can impose, as well as placing other restrictions on any powers the regulations confer. Any increase in council tax liability imposed by virtue of regulations under section 33 as amended (whether imposed directly by the regulations or by local authority variation of the regulations) is not able to increase the amount of council tax payable so that it is more than double the standard rate of council tax that applies to the property. As enacted, the powers conferred by section 33 of the 2003 Act are exercisable subject to the affirmative procedure (as defined by section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010)⁵ and the Act does not change that.
11. As section 33(2)(b)(ii) of the 2003 Act, as amended, gives local authorities the power to modify regulations so as to turn a council tax discount into an increase (or vice-versa), it follows that the power that is conferred under section 33(2)(b)(ii) also allows local authorities to modify regulations so as to disapply a discount or an increase provided for in the regulations without going so far as to turn an increase into a discount or a discount into an increase (in other words local authorities could use the power

³ <http://www.legislation.gov.uk/asp/2003/1/contents>

⁴ <http://www.legislation.gov.uk/ssi/2005/51/contents/made>

⁵ <http://www.legislation.gov.uk/asp/2010/10/contents>

These notes relate to the Local Government Finance (Unoccupied Properties etc) (Scotland) Act 2012 (asp 11) which received Royal Assent on 5 December 2012

described in section 33(2)(b)(ii) to provide that the standard rate of council tax applies rather than any discount or increase prescribed in the regulations). That being the case, section 33(2)(b)(i), which describes a specific power for local authorities to disapply regulations, is no longer required and therefore is repealed by the Act.

12. **Section 2** of the Act also repeals section 33(1)(a) of the 2003 Act, on account of that provision being spent, the provision which it enabled having been used to make the 2005 Regulations. A power to amend section 33, which is contained in subsection (1)(b) of that section, is revoked, it being unnecessary as a result of the changes made by the 2005 Regulations.
13. In addition, section 2(5) inserts a new subsection (2A) into section 33 of the 2003 Act which requires that regulations made under section 33 may not allow for unoccupied properties owned by a local authority or a registered social landlord to be treated more favourably than other unoccupied dwellings solely due to the fact they are owned by a social landlord.

Section 3 – Amendment of the Local Government Finance Act 1992

14. This section amends paragraph 4(2) of Schedule 2 to the Local Government Finance Act 1992 (“the 1992 Act”)⁶ to permit the Scottish Ministers, by regulations, to require local authorities to take reasonable steps to ascertain whether the amount of council tax to be charged is subject to any variation (section 2 of the Act having replaced references to “discounts” with “variations” in the Local Government in Scotland Act 2003 where the references relate to unoccupied dwellings). It also amends paragraph 4(3) of Schedule 2 to the 1992 Act to ensure that the provisions in the regulations for assumptions that a local authority can make in calculating a chargeable amount can include an increased council tax charge as well as any circumstances where the dwelling is believed to be eligible for a discount. There is a consequential change to section 71 of the 1992 Act.
15. The section inserts a new paragraph 4(5A) into Schedule 2 to the 1992 Act, which allows the Scottish Ministers, by regulations, to impose a duty on owners to notify their local authority where their dwelling is unoccupied in cases where they are not paying sufficient council tax due to the local authority being unaware of the fact that the dwelling is unoccupied. The local authority may impose a penalty, not exceeding £500, on any person who fails to notify it within the period prescribed in regulations (this is provided for by section 3(5)(c) of the Act).
16. The section also inserts paragraph 4(5B) into Schedule 2 to the 1992 Act in order to impose a requirement on residents, owners or their managing agents to provide information to a local authority on request in relation to ascertaining whether or not a dwelling is, has been or will be unoccupied, for the purpose of determining whether there should be any variation of the chargeable amount. New paragraph 2(1A) of Schedule 3 to the 1992 Act is inserted by section 3(5)(a) of the Act to enable the local authority to impose a penalty not exceeding £500 on any person who fails to comply with a request. Section 3(5)(d) provides a consequential change to paragraph 2(3) of Schedule 3 to the 1992 Act in order to enable a local authority to impose a further penalty of £500 on a person if the local authority makes a further request for information to that person under the new paragraph 4(5B) of Schedule 2 to the 1992 Act and that person again fails to supply the information requested or knowingly supplies inaccurate information.
17. **Section 3** of the Act modifies the powers conferred by section 4 of the 1992 Act. Those powers, as enacted, are exercisable subject to the negative procedure (as defined by section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010) and the Act will not change that.

⁶ <http://www.legislation.gov.uk/ukpga/1992/14/contents>

Section 4 – Abolition of housing support grants

18. This section removes the requirements in the Housing (Scotland) Act 1987⁷ on the Scottish Ministers to pay housing support grants to local authorities. These grants are payable by the Scottish Ministers to assist local authorities to meet reasonable housing needs in their areas. Section 4 removes the legislative requirement to pay such grants from 1 April 2013. Two consequential changes to other legislation are also made.

Section 5 – Commencement

19. The Act comes into force on the day of Royal Assent. Section 4, abolition of housing support grants, is excepted and comes into force on 1 April 2013.

PARLIAMENTARY HISTORY

20. The following table sets out, for each Stage of the proceedings in the Scottish Parliament on the Bill for this Act, the dates on which the proceedings at that Stage took place, and the references to the official report of those proceedings. It also shows the dates on which Committee Reports and other papers relating to the Act were published, and references to those reports and other papers.

| <i>Proceedings and Reports</i> | <i>References</i> |
|---|---|
| Introduction | |
| Bill as Introduced – 26 March 2012 | SP Bill 12 – Session 4 (2012) |
| Stage 1 | |
| (a) Local Government and Regeneration Committee | |
| 12 th meeting, 16 May 2012 | column 962 - 994 |
| 13 th meeting, 23 May 2012 | column 1003 - 1024 |
| 14 th meeting, 30 May 2012 | column 1058 - 1086 |
| 9 th Report, 2012 (Session 4) – Local Government Finance (Unoccupied Properties etc.) (Scotland) Bill | Report |
| | |
| (b) Finance Committee | |
| 12 th meeting, 25 April 2012 | column 985 - 1012 |
| 13 th meeting, 2 May 2012 | column 1019 - 1070 |
| Report on the Financial Memorandum of the Local Government Finance (Unoccupied Properties etc.) (Scotland) Bill | Report |
| (c) Subordinate Legislation Committee | |
| 12 th meeting, 8 May 2012 | column 394 |
| 13 th meeting, 15 May 2012 | column 404 - 412 |
| 28 th Report, 2012 (Session 4) - Local Government Finance (Unoccupied Properties etc.) (Scotland) Bill | Report |

⁷ <http://www.legislation.gov.uk/ukpga/1987/26/contents>

These notes relate to the Local Government Finance (Unoccupied Properties etc) (Scotland) Act 2012 (asp 11) which received Royal Assent on 5 December 2012

| <i>Proceedings and Reports</i> | <i>References</i> |
|---|--|
| (d) Consideration by the Parliament | |
| Stage 1 Debate – 6 September 2012 | column 11120 - 11174 |
| | |
| Stage 2 | |
| (a) Local Government and Regeneration Committee | |
| 20 th meeting 2012, 26 September 2012 | column 1179 - 1214 |
| Bill as amended at Stage 2 – 26 September 2012 | SP Bill 12A Session 4 (2012) |
| (b) Subordinate Legislation Committee | |
| 22 nd meeting 2012, 23 October 2012 | column 560 |
| 45 th Report, 2012 (Session 4) – Local Government Finance (Unoccupied Properties etc.) (Scotland) Bill | Report |
| | |
| Stage 3 | |
| Consideration by the Parliament | |
| Stage 3 Debate - 31 October 2012 | column 12807 - 12889 |
| Bill as Passed – 31 October 2012 | SP Bill 12B Session 4 (2012) |
| Royal Assent | |
| 5 December 2012 | Local Government Finance (Unoccupied Properties etc.) (Scotland) Act |