



# Non-Domestic Rates (Scotland) Act 2020

## 2020 asp 4

**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 5th February 2020 and received Royal Assent on 11th March 2020**

An Act of the Scottish Parliament to make provision about non-domestic rates.

### **PART 1**

#### OVERVIEW OF ACT AND INTERPRETATION OF REFERENCES TO OTHER ACTS

#### **1 Overview of Act and interpretation of references to other Acts**

(1) This Act is arranged as follows—

Part 2 amends the law about the administration and enforcement of non-domestic rates,

Part 3 makes provision 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.

(2) In this Act—

“the 1854 Act” means the Lands Valuation (Scotland) Act 1854,

“the 1956 Act” means the Valuation and Rating (Scotland) Act 1956,

“the 1962 Act” means the Local Government (Financial Provisions etc.) (Scotland) Act 1962,

“the 1963 Act” means the Local Government (Financial Provisions) (Scotland) Act 1963,

“the 1975 Act” means the Local Government (Scotland) Act 1975.

## PART 2

### ADMINISTRATION AND ENFORCEMENT OF NON-DOMESTIC RATES

#### *Valuation roll*

#### **2 Revaluation years**

In section 37(1) of the 1975 Act (general interpretation), in the definition of “year of revaluation”—

- (a) for “2017-18” substitute “2022-23”,
- (b) for “fifth” substitute “third”.

#### **3 New or improved properties: mark in valuation roll**

After section 2 of the 1975 Act insert—

##### **“2A Mark in valuation roll for new or improved properties**

- (1) Subsection (2) applies where an assessor—
  - (a) makes or alters an entry in the valuation roll, and
  - (b) the entry as made or altered relates to newly built lands and heritages or improved lands and heritages.
- (2) The assessor must include a mark in the entry to show that it relates to newly built lands and heritages or (as the case may be) improved lands and heritages.
- (3) An entry in the valuation roll relates to newly built lands and heritages if—
  - (a) the entry as made or (as the case may be) altered shows one or more buildings or parts of a building, and
  - (b) none of those buildings or parts of a building—
    - (i) were shown in any entry in the valuation roll or valuation list for the day immediately prior to the day on which the entry or (as the case may be) alteration takes effect, or
    - (ii) would have been shown in such an entry in the valuation roll but for an enactment providing for them not to be entered in the roll.
- (4) An entry in the valuation roll relates to improved lands and heritages if—
  - (a) the entry is altered to show a relevant increase in the rateable value of the lands and heritages to which the entry relates, and
  - (b) the entry as altered does not relate to newly built lands and heritages.
- (5) A “relevant increase” in the rateable value of lands and heritages is an increase—
  - (a) which is caused, in whole or in part, by the erection, construction, refurbishment or extension of one or more buildings or parts of a building which form part of the lands and heritages, and
  - (b) none of which is attributable to—
    - (i) the combination, division or reorganisation of lands and heritages which were shown, in whole or in part, in different

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- entries in the valuation roll for the day immediately prior to the day on which the alteration takes effect, or
- (ii) a change in the way the lands and heritages are being used.
- (6) A mark included in an entry in the valuation roll under subsection (2) must be removed from the entry on the next occasion when the entry is altered by an assessor.
- (7) The Scottish Ministers may by regulations—
- (a) make provision about things that are, or are not, to be treated as a “building” for the purposes of this section,
  - (b) modify the definition of “relevant increase” in subsection (5).
- (8) Before—
- (a) making regulations under subsection (7)(a), or
  - (b) laying a draft of a Scottish statutory instrument containing regulations under subsection (7)(b) before the Scottish Parliament,
- the Scottish Ministers must consult such persons as they consider appropriate.
- (9) Regulations under subsection (7)—
- (a) may make different provision for different purposes,
  - (b) may make incidental, supplementary, consequential, transitional, transitory or saving provision.
- (10) Regulations under—
- (a) subsection (7)(a) are subject to the negative procedure,
  - (b) subsection (7)(b) are subject to the affirmative procedure.
- (11) In subsection (3)(b)(ii), “enactment” includes an Act of the Scottish Parliament and an instrument made under such an Act.”.

#### **4 Power of Scottish Ministers to remove exempt status of lands and heritages**

After section 8C of the 1956 Act insert—

##### **“8D Power of Scottish Ministers to remove exempt status of lands and heritages**

- (1) The Scottish Ministers may by regulations make provision requiring lands and heritages falling within subsection (2) to be entered in the valuation roll.
- (2) Land and heritages fall within this subsection if they are not entered in the valuation roll by virtue of an enactment, other than Part 2 of the Local Government Finance Act 1992, providing for them not to be so entered.
- (3) Before—
- (a) laying a draft of a Scottish statutory instrument containing regulations under subsection (1) to which subsection (5) applies before the Scottish Parliament, or
  - (b) making regulations under subsection (1) to which subsection (6) applies,
- the Scottish Ministers must consult such persons as they consider appropriate.

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- (4) Regulations under subsection (1) may—
  - (a) make incidental, supplementary, consequential, transitional, transitory or saving provision,
  - (b) make different provision for different purposes,
  - (c) modify any enactment (including this Act).
- (5) Regulations under this section that add to, replace or omit any part of the text of an Act are subject to the affirmative procedure.
- (6) Otherwise, regulations under this section are subject to the negative procedure.
- (7) In this section, “enactment” includes an Act of the Scottish Parliament and an instrument made under such an Act.”.

## **5 Entering of parks in valuation roll**

- (1) Section 19 of the 1963 Act (certain parks not to be entered in the valuation roll) is amended as follows.
- (2) In subsection (1)—
  - (a) for “Subject to subsections (1A) and (1B) below,” substitute “This section applies to”,
  - (b) for “and any building” substitute “including in each case any building”,
  - (c) the words “, shall not be entered in the valuation roll” are repealed.
- (3) For subsections (1A) to (1C) substitute—
  - “(1ZA) An entry is to be made in the roll in respect of any part of the lands and heritages which falls within either subsection (1ZB) or (1ZC).
  - (1ZB) A part falls within this subsection if the part is occupied by a person or body other than the person or body mentioned in paragraph (a) or, as the case may be, (b) of subsection (1).
  - (1ZC) A part falls within this subsection if—
    - (a) the part is occupied by the person or body mentioned in paragraph (a) or, as the case may be, (b) of subsection (1), and
    - (b) persons may be required to pay for access to facilities on the part or for goods or services provided on it.
  - (1ZD) The remainder of the lands and heritages is not to be entered in the roll.”.

## **6 Discretion of local authority to determine whether lands and heritages are dwellings**

In section 72 of the Local Government Finance Act 1992 (dwellings chargeable to council tax), after subsection (4) insert—

- “(4A) Where regulations under subsection (4) prescribe a class, the regulations may confer discretion on a local authority to determine, in such circumstances as may be prescribed, whether particular lands and heritages fall within that class.”.

## 7 Agreement as to valuation

In section 1 of the 1975 Act (the valuation roll and revaluation), after subsection (3) insert—

“(3A) Subsection (3B) applies where the assessor and the proprietor, tenant or occupier of lands and heritages have reached an agreement in writing as to the details to be included in the entry in the valuation roll for the lands and heritages (whether that agreement was reached before or after the draft valuation roll was published under section 1B(1)).

(3B) The assessor must include those details in the entry for the lands and heritages, unless, since the agreement was reached, there has been an alteration in the value of the lands and heritages due to a material change of circumstances.”.

## 8 Draft valuation roll and draft valuation notices

After section 1A of the 1975 Act insert—

### “1B Draft valuation roll and draft valuation notices

- (1) Before making up a valuation roll under section 1(1), an assessor must—
  - (a) publish a draft of the roll, and
  - (b) send a draft valuation notice to each person who is a proprietor, tenant or occupier of lands and heritages entered in the draft valuation roll.
- (2) A draft valuation notice is a notice setting out—
  - (a) the details included in the entry for the lands and heritages in the draft valuation roll,
  - (b) the effect of subsections (3) and (4), and
  - (c) such other information as—
    - (i) the Scottish Ministers may specify in regulations, or
    - (ii) the assessor considers appropriate.
- (3) A person who receives a draft valuation notice may make representations to the assessor as to the details to be included in the entry for the lands and heritages in the valuation roll when it is made up under section 1(1).
- (4) When the assessor makes up the valuation roll under section 1(1), the assessor may include details in an entry for lands and heritages which are different to those included in the entry for the lands and heritages in the draft valuation roll, whether as a result of representations made under subsection (3) or otherwise (but see also section 1(3A) and (3B)).
- (5) Regulations under subsection (2)(c)(i)—
  - (a) may make different provision for different purposes,
  - (b) may make incidental, supplementary, consequential, transitional, transitory or saving provision.
- (6) Regulations under subsection (2)(c)(i) are subject to the negative procedure.”.

## 9 Valuation notices

In section 3 of the 1975 Act (provisions supplementary to sections 1 and 2)—

(a) after subsection (2) insert—

“(2ZA) A notice under subsection (2)—

- (a) must include such information in relation to the rateable value included in the entry to which the notice relates as the Scottish Ministers may specify in regulations,
- (b) may include such other information as the assessor considers appropriate.

(2ZB) The assessor may send a notice under subsection (2) by electronic means if—

- (a) the assessor and the recipient of the notice have, before the notice is sent, agreed in writing that the assessor may send such a notice to the recipient by transmission to an electronic address and in an electronic form specified by the recipient for that purpose, and
- (b) the notice is sent to that address in that form.”,

(b) after subsection (5) insert—

“(6) Regulations under subsection (2ZA)(a)—

- (a) may make different provision for different purposes,
- (b) may make incidental, supplementary, consequential, transitional, transitory or saving provision.

(7) Regulations under subsection (2ZA)(a) are subject to the negative procedure.”.

## 10 Proposals to alter, and appeals against, valuation roll

(1) The 1975 Act is amended as follows.

(2) In section 2 (alterations to valuation roll which is in force)—

(a) in subsection (1A), after “following” insert—

“(a) a proposal being made under section 3ZA(1), or  
 (b)”,

(b) in subsection (2)(cc), for “an appeal by virtue of section 3(2A) of this Act” substitute “a proposal made by virtue of section 3ZA(2)(b) or an appeal under section 3ZB(1) in relation to such a proposal”,

(c) after subsection (3) insert—

“(3A) Where an appeal has been made to the valuation appeal committee in relation to the entry, subsection (3) applies only if the appeal has been withdrawn.”.

(3) In section 3 (provisions supplementary to sections 1 and 2)—

- (a) in subsection (2), the words from “; and any such person” to the end are repealed,
- (b) subsections (2A), (2B), (4) and (4A) are repealed,
- (c) in subsection (5), after “pending” insert “proposal under section 3ZA(1)”.

(4) After section 3 insert—

**“3ZA Proposal to alter entry in valuation roll**

- (1) The proprietor, tenant or occupier of lands and heritages may make a proposal to the assessor who has the function of valuing the lands and heritages to alter the entry for those lands and heritages in the valuation roll in accordance with this section.
- (2) A proposal may be made in relation to an entry—
  - (a) where the proprietor, tenant or occupier receives a notice under section 3(2) in relation to the entry, other than a notice sent following an alteration to the valuation roll under—
    - (i) section 2(1A) as a result of a proposal or appeal made by the proprietor, tenant or (as the case may be) occupier, or
    - (ii) section 2(3) as a result of an agreement between the proprietor, tenant or (as the case may be) occupier and the assessor,
  - (b) where a person becomes the proprietor, tenant or occupier of the lands and heritages to which the entry relates,
  - (c) on the ground that, since the entry was made, there has been a material change of circumstances,
  - (d) on the ground that there is an error in the entry of the type referred to in section 2(1)(f).
- (3) A person may not make a proposal in pursuance of subsection (2)(a) where—
  - (a) the notice under section 3(2) relates to an entry included in the valuation roll when it was made up under section 1(1), and
  - (b) the details included in the entry are in accordance with an agreement in writing between that person and the assessor as to the details to be included in the entry.
- (4) A proposal may be made in pursuance of subsection (2)(b) whether or not any previous proprietor, tenant or occupier of the lands and heritages—
  - (a) reached an agreement with the assessor in relation to the entry,
  - (b) made a proposal to the assessor in relation to the entry,
  - (c) appealed to the valuation appeal committee in relation to the entry.
- (5) A proposal must—
  - (a) be made in writing,
  - (b) set out how the person making the proposal wants the assessor to alter the entry.
- (6) The assessor may decide—
  - (a) to alter the entry in accordance with—
    - (i) the proposal, or
    - (ii) an agreement in writing between the assessor and the person who made the proposal reached after the proposal was made,
  - (b) to alter the entry other than in accordance with the proposal or such an agreement (including by either increasing or decreasing the rateable value shown in the entry),

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- (c) not to alter the entry.
- (7) The Scottish Ministers may by regulations make provision for or about—
- (a) the period within which a proposal may be made,
  - (b) the form in which a proposal is to be made,
  - (c) information to be included in, and documents to be submitted with, a proposal,
  - (d) notices to be sent by an assessor to the person who made the proposal or any other person with an interest in the lands and heritages to which the proposal relates,
  - (e) fees payable in connection with a proposal (including provision about circumstances in which a fee may be repaid),
  - (f) the day from which an alteration made to an entry in the valuation roll following a decision under subsection (6)(a) or (b) is to have effect,
  - (g) such other matters in connection with the making of a proposal as the Scottish Ministers consider appropriate.
- (8) Before laying a draft of a Scottish statutory instrument containing regulations under subsection (7)(e) before the Scottish Parliament, the Scottish Ministers must consult—
- (a) such person or persons as appear to the Scottish Ministers to represent the interests of—
    - (i) local authorities,
    - (ii) assessors,
    - (iii) the business sector, and
    - (iv) other ratepayers,
 as the Scottish Ministers consider appropriate,
  - (b) such other persons as they consider appropriate.
- (9) Regulations under subsection (7)—
- (a) may make different provision for different purposes,
  - (b) may make incidental, supplementary, consequential, transitional, transitory or saving provision.
- (10) Regulations under subsection (7) are subject to—
- (a) the affirmative procedure, if they make provision under subsection (7)(e),
  - (b) otherwise, the negative procedure.
- (11) In this section and section 3ZB, “proposal” means a proposal made under subsection (1).

### **3ZB Appeal to valuation appeal committee**

- (1) A person who is the proprietor, tenant or occupier of lands and heritages may appeal to the valuation appeal committee—
- (a) against a decision of the assessor, in relation to a proposal made by the person, under section 3ZA(6)(b) or (c),
  - (b) if—
    - (i) the person has made a proposal in relation to the entry,



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- (ii) the period set out in regulations under subsection (7)(a) for an appeal to be made has begun, and
  - (iii) the assessor has not made a decision under section 3ZA(6).
- (2) An appeal under subsection (1)(b) is to be treated as if it were an appeal against a decision under section 3ZA(6)(c).
- (3) An appeal under subsection (1)—
  - (a) must be made within the period set out in regulations under subsection (7)(a) (and the valuation appeal committee may not allow it to be made after the end of that period),
  - (b) may be withdrawn only with the permission of the valuation appeal committee (whether or not the appellant and the assessor have reached an agreement as to the alteration of the entry to which the appeal relates).
- (4) On an appeal under subsection (1), the valuation appeal committee—
  - (a) is to decide what alterations (if any) the assessor is to make to the entry,
  - (b) may (in particular) decide that the rateable value shown in the entry is to be either increased or decreased.
- (5) Subsection (6) applies where—
  - (a) an appeal under subsection (1) relates to a proposal made in pursuance of section 3ZA(2)(c), and
  - (b) it is proved that there has been a change of circumstance which has materially reduced the extent to which beneficial occupation of the lands and heritages to which the appeal relates can be enjoyed.
- (6) The valuation appeal committee may decide that the entry is to be altered even if it is not proved that the change of circumstances has affected the value of the lands and heritages to any specific extent.
- (7) The Scottish Ministers may by regulations make provision for or about—
  - (a) the period within which an appeal under subsection (1) is to be made,
  - (b) information to be included in, and documents to be submitted with, such an appeal,
  - (c) circumstances in which such an appeal may be made only with the permission of the valuation appeal committee,
  - (d) fees payable in connection with such an appeal (including provision about circumstances in which a fee may be repaid),
  - (e) the procedure to be followed in such an appeal (including evidence which may be led),
  - (f) the period within which such an appeal is to be disposed of,
  - (g) such other matters in connection with such appeals as the Scottish Ministers consider appropriate.
- (8) Before laying a draft of a Scottish statutory instrument containing regulations under subsection (7)(d) before the Scottish Parliament, the Scottish Ministers must consult—
  - (a) such person or persons as appear to the Scottish Ministers to represent the interests of—

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- (i) local authorities,
  - (ii) assessors,
  - (iii) the business sector, and
  - (iv) other ratepayers,
- as the Scottish Ministers consider appropriate,
- (b) such other persons as they consider appropriate.

- (9) Regulations under subsection (7)—
- (a) may make different provision for different purposes,
  - (b) may make incidental, supplementary, consequential, transitional, transitory or saving provision.
- (10) Regulations under subsection (7) are subject to—
- (a) the affirmative procedure, if they make provision under subsection (7) (d),
  - (b) otherwise, the negative procedure.”.

## 11 Proposals and appeals: consequential modifications

- (1) In section 13 of the 1956 Act (times for giving notices etc.), after subsection (3) insert—
- “(3A) This section does not apply to any notice or thing required to be given or done in relation to—
- (a) a proposal under section 3ZA of the Local Government (Scotland) Act 1975,
  - (b) an appeal under section 3ZB of that Act.”.
- (2) In section 15(2) of the 1963 Act (proceedings in appeals), after “committees” where it second occurs insert “other than appeals under section 3ZB of the Local Government (Scotland) Act 1975”.

## 12 Restriction on making complaints

- In section 13 of the 1854 Act (complaints with regard to valuations)—
- (a) the existing text becomes subsection (1),
  - (b) after that subsection insert—
- “(2) A person may not make a complaint as mentioned in subsection (1) in respect of lands and heritages of which the person is the proprietor, tenant or occupier.”.

## 13 Meaning of “material change of circumstances”

- In section 37 (interpretation) of the 1975 Act, in the definition of “material change of circumstances”—
- (a) the words from “and, without prejudice to” to the end become paragraph (a), and
  - (b) after that paragraph insert—
- “(b) but does not include any change—

- (i) in the rent of the lands and heritages (or any other lands and heritages), or
- (ii) in the level of valuations generally or in the value of lands and heritages generally.”.

*Reform of reliefs etc.*

#### **14 New or improved properties: rates relief**

- (1) The Scottish Ministers may by regulations make provision for relief from the payment of non-domestic rates in respect of—
  - (a) newly built lands and heritages,
  - (b) improved lands and heritages.
- (2) Regulations under subsection (1) may (in particular) make provision for or about—
  - (a) rates of relief (including by reference to thresholds),
  - (b) periods for which relief is available,
  - (c) eligibility for relief (including eligibility based on use or occupation of, or changes to, the lands and heritages).
- (3) Regulations under subsection (1)—
  - (a) may make different provision for different purposes,
  - (b) may make incidental, supplementary, consequential, transitional, transitory or saving provision.
- (4) Regulations under subsection (1) are subject to the negative procedure.
- (5) Before making regulations under subsection (1), the Scottish Ministers must consult such persons as they consider appropriate.
- (6) In this section—
  - “improved lands and heritages” means lands and heritages for which an entry in the valuation roll is altered as described in section 2A(4) of the 1975 Act,
  - “newly built lands and heritages” means lands and heritages for which an entry in the valuation roll is made or altered as described in section 2A(3) of the 1975 Act.

#### **15 Contribution to net-zero emissions target: rates relief**

- (1) Section 153 of the Local Government etc. (Scotland) Act 1994 (power to prescribe amount of non-domestic rate) is amended as follows.
- (2) After subsection (3)(b) insert—
  - “(c) which—
    - (i) contribute to the net-zero emissions target (for example, by virtue of forming part of a district heating network) and those which do not so contribute,
    - (ii) contribute as mentioned in sub-paragraph (i) and whose contributions fall into different categories prescribed for the purpose of this sub-paragraph in rules under subsection (1).”.
- (3) In subsection (3A) after “subsection (3)(b)” insert “or (c)(ii)”.

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(4) After subsection (6) insert—

“(7) In subsection (3)(c), “net-zero emissions target” has the meaning given by section A1(1) of the Climate Change (Scotland) Act 2009.”.

## **16 Specialist music provision in public schools: rates relief**

(1) The Scottish Ministers may by regulations make provision for relief from the payment of non-domestic rates in respect of any part of lands and heritages which falls within subsection (2).

(2) A part of lands and heritages falls within this subsection if—

- (a) the lands and heritages are wholly or mainly used as a public school, some or all of the pupils of which—
  - (i) are selected for attendance at the school on the basis of musical ability or potential, and
  - (ii) follow a curriculum which includes tuition aimed at developing musical excellence, and
- (b) the part is wholly or mainly used to provide such tuition to pupils who follow that curriculum.

(3) Regulations under subsection (1) may (in particular) make provision as to how a part of lands and heritages falling within subsection (2) is to be identified and may provide—

- (a) for there to be separate entries in the valuation roll in respect of any part of lands and heritages falling within subsection (2) and the remainder of the lands and heritages,
- (b) for the rateable value included in those entries to be determined in accordance with the regulations.

(4) Regulations under subsection (1) may make further provision for or about eligibility for relief.

(5) Regulations under subsection (1)—

- (a) may make different provision for different purposes,
- (b) may make incidental, supplementary, consequential, transitional, transitory or saving provision.

(6) Regulations under subsection (1) are subject to the negative procedure.

(7) In this section, “public school” has the meaning given by section 135(1) of the Education (Scotland) Act 1980.

## **17 Charitable relief: independent schools**

(1) Section 4 of the 1962 Act (reduction and remission of rates payable by charitable and other organisations) is amended as follows.

(2) In subsection (9) (which provides for certain lands and heritages to be ineligible for reduction or remission of rates), after “1956,” insert “to lands and heritages which are wholly or mainly used for the purpose of carrying on an independent school other than a school falling within subsection (9A),”.

(3) After that subsection insert—

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“(9A) The schools falling within this subsection are—

- (a) any independent school all the pupils of which—
  - (i) are selected on the basis of musical ability or potential, and
  - (ii) follow a curriculum which includes classes aimed at developing musical excellence,
- (b) any independent school which is a special school.”.

(4) In subsection (10)—

- (a) after paragraph (a) insert—
  - “(aa) “independent school” has the meaning given by section 135(1) of the Education (Scotland) Act 1980,”,
- (b) after paragraph (c) insert “,
  - (d) “special school” means a school falling within paragraph (a) of the definition of “special school” in section 29(1) of the Education (Additional Support for Learning) (Scotland) Act 2004.”.

(5) After subsection (13) insert—

“(14) Any reduction or remission of rates in respect of lands and heritages which are wholly or mainly used for the purpose of carrying on an independent school, other than a school falling within subsection (9A), granted under subsection (5) before the day on which section 17 of the Non-Domestic Rates (Scotland) Act 2020 comes into force ceases to have effect on that day.”.

## **18 Power to reduce or remit rates for certain organisations: guidance**

In section 4 of the 1962 Act (reduction and remission of rates payable by charitable and other organisations), after subsection (7) insert—

“(7A) The Scottish Ministers may issue guidance to rating authorities about the exercise of the powers conferred by subsections (5) to (7) in relation to lands and heritages of the type mentioned in subsection (5)(c).

(7B) A rating authority must have regard to such guidance.

(7C) Guidance under subsection (7A) may be—

- (a) general or for particular purposes,
- (b) different in relation to different persons or otherwise for different purposes.

(7D) Before issuing guidance under subsection (7A), the Scottish Ministers must—

- (a) lay a draft of the proposed guidance before the Scottish Parliament,
- (b) consult—
  - (i) such person or persons as appear to the Scottish Ministers to represent the interests of local authorities, and
  - (ii) such other persons as they consider appropriate.

(7E) The Scottish Ministers must not issue guidance under subsection (7A) until after a period of 40 days beginning with the day on which the draft guidance was laid before the Parliament under subsection (7D)(a).

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- (7F) If, within that period, the Parliament resolves that the guidance proposed should not be issued, Ministers must not issue it.
- (7G) In calculating any period of 40 days for the purposes of subsection (7E) or (7F) above, no account is to be taken of any time during which the Parliament is dissolved or is in recess for more than 4 days.
- (7H) Subsection (7D) is complied with even if the consultation took place, or began, before section 18 of the Non-Domestic Rates (Scotland) Act 2020 comes into force.
- (7I) The Scottish Ministers must publish, in such manner as they consider appropriate, any guidance issued under subsection (7A).
- (7J) The power to issue guidance under subsection (7A) includes power to revise that guidance (and the references to guidance in subsections (7B) to (7I) include references to such revised guidance)."

## 19 Unoccupied properties

- (1) The Local Government (Scotland) Act 1966 is amended as follows.
- (2) Section 24 (unoccupied lands and heritages) is repealed.
- (3) In section 24A (lands and heritages partly unoccupied for a short time)—
  - (a) in subsection (2), the words “, subject to subsection (4),” are repealed,
  - (b) subsection (4) is repealed,
  - (c) in subsection (5), for “, (3)(a), (c) and (d) and (4)” substitute “and (3)(a), (c) and (d)”,
  - (d) subsection (6) is repealed.
- (4) In section 24B (certain lands and heritages to be treated as unoccupied)—
  - (a) in subsection (1)—
    - (i) for “section 24” substitute “section 24A”,
    - (ii) for “lands and heritages” where it first occurs substitute “a part of lands and heritages”,
    - (iii) for “they” where it first occurs substitute “the part”,
    - (iv) for “lands and heritages” where it second occurs substitute “part”,
    - (v) in paragraph (a), for “lands and heritages when they were” substitute “part of the lands and heritages when it was”,
    - (vi) in paragraph (b), for “lands and heritages” substitute “part”,
  - (b) subsections (2) to (4) are repealed.
- (5) In section 25(1) (provisions supplementary to section 24), for “section 24 of this Act” substitute “any scheme under section 3A of the Local Government (Financial Provisions etc.) (Scotland) Act 1962 which provides for the rates leviable in respect of lands and heritages to be reduced or remitted by virtue of the lands and heritages being unoccupied”.
- (6) The section title of section 25 becomes “**Newly erected, altered etc. buildings: completion notices**”.
- (7) In schedule 3 (rating of unoccupied property), in paragraph 2—

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- (a) for “section 24 of this Act” substitute “any scheme under section 3A of the Local Government (Financial Provisions etc.) (Scotland) Act 1962 which provides for the rates leviable in respect of lands and heritages to be reduced or remitted by virtue of the lands and heritages being unoccupied”,
- (b) in paragraph 5, the words “under section 24 of this Act” are repealed.

## **20 Non-use or underuse of lands and heritages: notification**

- (1) This section applies where the non-domestic rates payable in respect of any lands and heritages are being reduced or remitted for any reason (other than the operation of sections 24A and 24B (rating of unoccupied property) of the Local Government (Scotland) Act 1966).
- (2) The local authority to which the rates are or would, but for the reduction or remission, be payable may give a notice to the person who is liable to pay the rates in respect of the lands and heritages (the “ratepayer”) stating that the authority considers that one of the conditions mentioned in subsections (3) and (4) may be satisfied in relation to the lands and heritages.
- (3) The condition is that the lands and heritages are not being used.
- (4) The condition is that—
  - (a) the lands and heritages are being used but there is a significant difference between—
    - (i) the extent to which the lands and heritages are being used, and
    - (ii) the extent to which they could reasonably be used,
  - (b) the amount of rates payable in respect of the lands and heritages (after reduction or remission as mentioned in subsection (1)), is less than the amount that would be so payable if the lands and heritages were unoccupied, and
  - (c) the main reason for the lands and heritages being used to the extent mentioned in paragraph (a)(i), rather than not being used, is to obtain that reduction or remission.
- (5) A notice under subsection (2) must—
  - (a) set out the local authority’s reasons for considering that the condition mentioned in subsection (3) or (as the case may be) (4) may be satisfied in relation to the lands and heritages,
  - (b) invite the ratepayer to provide to the local authority, within the period of 28 days beginning with the date on which the notice is given, an explanation of the extent of the use being made of the lands and heritages and of the reasons for that,
  - (c) explain the action that the local authority may take in relation to the reduction or remission if the local authority concludes that the condition mentioned in subsection (3) or (as the case may be) (4) is satisfied in relation to the lands and heritages.
- (6) Following the expiry of the period mentioned in subsection (5)(b), or on receipt of an explanation from the ratepayer (if sooner), the local authority must—
  - (a) consider any explanation received from the ratepayer,
  - (b) decide whether either of the conditions mentioned in subsections (3) and (4) is satisfied in relation to the lands and heritages, and

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- (c) unless no explanation has been received from the ratepayer, give the ratepayer a further notice stating the conclusion reached under paragraph (b).
- (7) Where the local authority concludes that one of the conditions mentioned in subsections (3) and (4) is satisfied in relation to the lands and heritages, the notice given under subsection (6)(c) must also—
- (a) explain the reasons for that conclusion, and
  - (b) explain what action the local authority is taking, or intends to take, in relation to the reduction or remission.

### *Failure to pay instalments*

## **21 Failure to pay instalments**

- (1) The 1975 Act is amended in accordance with subsections (2) and (3).
- (2) After section 8 insert—

### **“8A Failure to pay instalments**

- (1) This section applies where—
  - (a) a person (the “ratepayer”) is liable to pay the rates chargeable for a year, or part of a year, in respect of lands and heritages,
  - (b) the rates are payable by instalments under section 8(1), and
  - (c) the ratepayer fails to pay an instalment (the “missed instalment”) in accordance with that section.
- (2) The rating authority must give the ratepayer a notice (a “reminder notice”) setting out—
  - (a) details of the missed instalment,
  - (b) the effect of subsections (3) and (4), and
  - (c) where the notice is the second reminder notice given to the ratepayer in respect of the rates due for the year, the effect of subsection (5).
- (3) The ratepayer must, within the period of 7 days beginning with the day on which the reminder notice is given to the ratepayer by the rating authority, pay the missed instalment and any other instalment which is due to be paid within that period.
- (4) If the ratepayer fails to comply with subsection (3)—
  - (a) the rates are no longer payable by instalments, and
  - (b) the unpaid amount of the total rates due for the year (or part of the year) becomes payable at the end of the period of 7 days beginning with the day on which the period mentioned in subsection (3) ends.
- (5) Where the ratepayer has already been given two reminder notices in respect of the rates due for the year—
  - (a) subsections (2) to (4) do not apply,
  - (b) the rates are no longer payable by instalments, and
  - (c) the unpaid amount of the total rates due for the year (or part of the year) becomes payable on the day following the day on which the missed instalment was due to be paid.”.



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- (3) In section 8 (payment of rates by instalments)—
  - (a) in subsection (1), for “(9)” substitute “(7C)”,
  - (b) subsections (8) and (9) are repealed.
- (4) In the Local Government (Scotland) Act 1947, in section 247 (recovery of rates), in subsection (2)—
  - (a) after paragraph (a) insert—
    - “(aa) in a case to which section 8A of the Local Government (Scotland) Act 1975 applies, stating that—
      - (i) the authority has served a notice on each such person under section 8A(2) of that Act in respect of the rates,
      - (ii) the unpaid amount of the rates due for the year (or part of the year) to which the notice relates has become payable under section 8A(4)(b) or (5)(c) of that Act, and
      - (iii) a period of 14 days beginning with the day on which that amount became payable has expired;”,
  - (b) in paragraph (b), at the beginning insert “in any other case;”,
  - (c) in paragraph (c), leave out from “said period” to the end and insert “period of 14 days mentioned in paragraph (aa)(iii) or (as the case may be) (b) has expired without payment of the amount mentioned in that paragraph;”.

### *Electronic communications*

## **22 Electronic communication of information**

- (1) The Scottish Ministers may by regulations make provision allowing or requiring a notice falling within subsection (2) to be given by electronic means.
- (2) A notice falls within this subsection if it—
  - (a) is to be given to a person in accordance with an enactment, and
  - (b) relates to—
    - (i) the valuation of lands and heritages under the Valuation Acts,
    - (ii) the valuation roll,
    - (iii) the charging and collection of non-domestic rates (including relief from payment of rates or reduction or remission of rates),
    - (iv) any other matter connected with the assessment of liability to or levying of non-domestic rates.
- (3) Regulations under subsection (1) may include provision for or about—
  - (a) the manner in which a notice may be given, including circumstances in which information to be given in a notice to a particular person may be so given by being made available to that person and to others (for example, by publication on a website),
  - (b) information to be provided to facilitate the giving or receipt of a notice by electronic means (for example, an electronic address),
  - (c) circumstances in which a notice may be given by electronic means only with the consent of the intended recipient,

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- (d) exceptions to a provision allowing or requiring a notice to be given by electronic means,
  - (e) the calculation of the date on which a notice given by electronic means is to be treated as having been given,
  - (f) such other matters in connection with the giving of a notice by electronic means as the Scottish Ministers consider appropriate.
- (4) Regulations under subsection (1) may—
- (a) modify any enactment (including this Act),
  - (b) make different provision for different purposes,
  - (c) make incidental, supplementary, consequential, transitional, transitory or saving provision.
- (5) In this section—
- “notice” includes any information given to another person,
  - “the Valuation Acts” means the 1854 Act, the Acts amending that Act, and any other enactment relating to valuation.

## **23 Procedure for regulations under section 22**

- (1) Regulations under section 22 are subject to the affirmative procedure.
- (2) Before laying a draft of a Scottish statutory instrument containing regulations under section 22 before the Scottish Parliament, the Scottish Ministers must consult—
- (a) such person or persons as appear to the Scottish Ministers to represent the interests of—
    - (i) local authorities, or
    - (ii) assessors,
 as the Scottish Ministers consider appropriate,
  - (b) such person or persons as appear to the Scottish Ministers to represent the interests of ratepayers or potential ratepayers, and
  - (c) such other persons as the Scottish Ministers consider appropriate.
- (3) The Scottish Ministers must, as soon as reasonably practicable after consultation under subsection (2) begins, notify the Scottish Parliament about the consultation.
- (4) The Scottish Ministers must have regard to any representations about the regulations proposed to be made under section 22 as a result of the consultation.

*Report on number of assessors and availability of resources*

## **24 Duty to report on number of assessors and availability of resources**

- (1) Subsection (2) applies to—
- (a) a joint valuation board established by an order under section 27(7) of the Local Government etc. (Scotland) Act 1994,
  - (b) a valuation authority from whom functions have not been delegated to such a board by virtue of section 27(8) of that Act.
- (2) The board or authority must, in each reporting year, prepare a report on—

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- (a) the number of assessors and depute assessors appointed by the board or authority holding office on 1 April in that year,
  - (b) whether that number is sufficient for the proper exercise of the functions of those assessors and depute assessors in relation to non-domestic rates,
  - (c) whether the board or authority has sufficient resources for the proper exercise of its functions in relation to non-domestic rates,
  - (d) such other matters relating to non-domestic rates as the board or authority considers appropriate.
- (3) A report under subsection (2) must be laid before the Scottish Parliament by 31 May in the reporting year.
- (4) In this section, “reporting year” means 2025 and each third year thereafter.

#### *Valuation appeal panels and committees*

### **25 Status of secretary of valuation appeal panel**

In schedule 2 of the Tribunals (Scotland) Act 2014 (transfer-in of members), in paragraph 1, after sub-paragraph (3) insert—

- “(4) In relation to a valuation appeal committee constituted under section 29(1) (a) of the Local Government etc. (Scotland) Act 1994, a person who is a secretary or assistant secretary of a valuation appeal panel constituted under that section is also a transferable person.”.

## **PART 3**

### **INFORMATION NOTICES AND NOTIFICATIONS OF CHANGES OF CIRCUMSTANCES**

### **26 Assessor information notices**

- (1) An assessor may give an assessor information notice to—
- (a) any person who the assessor thinks is a proprietor, tenant or occupier of the lands and heritages referred to in the notice,
  - (b) any other person who the assessor thinks has information which is reasonably required for the purpose mentioned in subsection (2).
- (2) In this Part, an “assessor information notice” is a notice in writing requiring the person to provide the assessor with such information as the assessor may reasonably require for the purpose of exercising the assessor’s functions relating to non-domestic rates in relation to the lands and heritages referred to in the notice.
- (3) A person to whom an assessor information notice is given must comply with the notice within the period of 28 days beginning with the day on which the notice is given.
- (4) Nothing in this section requires a person to provide anything in respect of which a claim to confidentiality of communications could be maintained in legal proceedings.
- (5) Section 7 of the 1854 Act is repealed.

## **27 Local authority information notices**

- (1) An authorised officer of a local authority may give to any person who the officer thinks is the proprietor, tenant or occupier of lands and heritages a notice in writing (in this Part, a “local authority information notice”) requiring the person to provide the local authority with such information as it may reasonably require for the purpose of issuing any demand or other document relating to non-domestic rates in respect of those lands and heritages.
- (2) A person to whom a local authority information notice is given must comply with the notice within the period of 21 days beginning with the day on which the notice is given.
- (3) If the person fails to comply (in whole or in part) with the notice within that period, the authorised officer may give the person a further local authority information notice in respect of the information required by the notice given under subsection (1).
- (4) Subsections (2) and (3) apply in relation to a further notice given under subsection (3) as they apply in relation to a notice given under subsection (1).
- (5) In this section and sections 33 and 34, an “authorised officer”, in relation to a local authority, means a person authorised in writing by the local authority for the purposes of this section and section 33.

## **28 Duty to notify changes of circumstances**

- (1) Subsection (2) applies to a person who—
  - (a) is liable to pay non-domestic rates in respect of any lands and heritages, or
  - (b) would be liable to pay non-domestic rates in respect of any lands and heritages if they were payable.
- (2) The person must notify the local authority to which the rates are, or would be, payable of any relevant change in circumstances.
- (3) A “relevant change in circumstances” means a change in the circumstances of the person, or of the lands and heritages, which the person knows, or might reasonably be expected to know, would affect—
  - (a) whether or not non-domestic rates are chargeable in respect of the lands and heritages,
  - (b) the amount of non-domestic rates payable in respect of them.
- (4) A notification must be made within the period of 42 days beginning with the day on which the relevant change in circumstances occurs.

## **29 Offences in relation to information notices and notifications under section 28**

- (1) A person commits an offence if the person knowingly provides false or misleading information in purported compliance with—
  - (a) an assessor information notice, or
  - (b) a local authority information notice.
- (2) A person commits an offence if the person knowingly provides false or misleading information in a notification under section 28(2).
- (3) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **30 Civil penalties for failure to comply with assessor information notices**

- (1) If a person fails to comply with an assessor information notice within the period mentioned in section 26(3), the person is liable to pay a penalty.
- (2) Where a person becomes liable to a penalty, the assessor must give a notice to the person (a “penalty notice”) stating—
  - (a) that the person has failed to comply with the assessor information notice,
  - (b) that the person is liable to a penalty determined in accordance with subsection (3),
  - (c) the effect of subsections (4) and (5), and
  - (d) that the person has a right of appeal under section 31(1).
- (3) For the purposes of subsection (2)(b)—
  - (a) where the lands and heritages concerned are entered in the valuation roll, the penalty is the greater of—
    - (i) £200, and
    - (ii) 1% of the rateable value of the lands and heritages concerned for the day on which the penalty notice is given,
  - (b) where the lands and heritages concerned are not so entered, the penalty is £1,000.
- (4) If the person fails to comply with the assessor information notice within the period of 42 days beginning with the day on which the penalty notice is given, the person is liable—
  - (a) where the lands and heritages concerned are entered in the valuation roll, to a further penalty of the greater of—
    - (i) £1,000, and
    - (ii) 20% of the rateable value of the lands and heritages concerned for the day on which the penalty notice is given,
  - (b) where the lands and heritages concerned are not so entered, to a further penalty of £10,000.
- (5) If the person fails to comply with the assessor information notice within the period of 56 days beginning with the day on which the penalty notice is given, the person is liable—
  - (a) where the lands and heritages concerned are entered in the valuation roll, to a further penalty of the greater of—
    - (i) £1,000, and
    - (ii) 50% of the rateable value of the lands and heritages concerned for the day on which the penalty notice is given,
  - (b) where the lands and heritages are not so entered, to a further penalty of £50,000.
- (6) For the purposes of subsections (3), (4) and (5)—
  - (a) the lands and heritages concerned are the lands and heritages in respect of which the assessor information notice was given, and
  - (b) in a case where subsection (3)(a), (4)(a) or (5)(a) applies, the valuation roll is to be used to find the rateable value of the lands and heritages for the day.
- (7) An assessor may mitigate or remit any penalty under this section.

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- (8) The Scottish Ministers may by regulations modify the penalties to which a person may become liable under this section, including by increasing or decreasing any sum or percentage for the time being set out in subsections (3), (4) or (5) or by otherwise modifying the way in which any penalty is determined.
- (9) Regulations under subsection (8) may make transitional, transitory or saving provision.
- (10) Regulations under subsection (8) are subject to the affirmative procedure.
- (11) Before laying a draft of a Scottish statutory instrument containing regulations under subsection (8) before the Scottish Parliament, the Scottish Ministers must consult such persons as they consider appropriate.
- (12) The Scottish Ministers may by regulations make further provision about penalty notices under this section, including in particular—
  - (a) the form of penalty notices,
  - (b) how penalty notices may be given (for example, enabling a notice to be given to a person either by name or by such description as may be set out in the regulations).
- (13) Regulations under subsection (12)—
  - (a) may make different provision for different purposes,
  - (b) may make incidental, supplementary, consequential, transitional, transitory or saving provision.
- (14) Regulations under subsection (12) are subject to the negative procedure.

### **31 Penalties under section 30: appeals and enforcement**

- (1) A person who is given a penalty notice under section 30 may appeal to a valuation appeal committee against the imposition of the penalty.
- (2) An appeal must be made before the end of the period of 28 days beginning with the day on which the penalty notice is given.
- (3) The making of an appeal under subsection (1) against the imposition of a penalty—
  - (a) is to be treated as an appeal against the imposition of that penalty and any further penalty to which the appellant may be liable under section 30(4) or (5),
  - (b) does not prevent liability for any such further penalty arising.
- (4) On an appeal the valuation appeal committee may mitigate or remit any penalty under section 30 if it is satisfied on either or both of the grounds specified in subsection (5).
- (5) Those grounds are—
  - (a) that the person appealing had a reasonable excuse for not complying with the assessor information notice, or
  - (b) that the information required by the notice is not in the person's possession or control.
- (6) A penalty is recoverable as a civil debt due to the assessor.
- (7) The Scottish Ministers may by regulations make further provision about appeals under this section, including in particular—

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- (a) information to be included in, and documents to be submitted with, such an appeal,
  - (b) whether the penalty to which such an appeal relates, and any further penalty under section 30(4) or (5), is payable while the appeal is outstanding,
  - (c) the procedure to be followed in such an appeal,
  - (d) the period within which such an appeal is to be disposed of.
- (8) Regulations under subsection (7)—
- (a) may make different provision for different purposes,
  - (b) may make incidental, supplementary, consequential, transitional, transitory or saving provision.
- (9) Regulations under subsection (7) are subject to the negative procedure.
- (10) Before making regulations under subsection (7), the Scottish Ministers must consult such persons as they consider appropriate.

### **32 Payment of penalties into the Scottish Consolidated Fund**

- (1) An assessor must pay any money recovered under or by virtue of section 30 into the Scottish Consolidated Fund.
- (2) But an assessor may do so after deduction of reasonable expenses incurred in relation to the giving of penalty notices under section 30 and the collection of penalties.
- (3) The Scottish Ministers may by regulations make provision about the expenses that may be deducted under subsection (2).
- (4) Regulations under subsection (3) are subject to the negative procedure.

### **33 Civil penalties for failure to comply with local authority information notices and for failure to notify changes in circumstances**

- (1) A person is liable to pay a penalty if the person—
  - (a) fails to comply with a local authority information notice within the period mentioned in section 27(2),
  - (b) fails to comply with section 28(2) within the period mentioned in section 28(4).
- (2) Where a person becomes liable to a penalty under subsection (1)(a), the authorised officer must give a notice to the person (a “penalty notice”) stating—
  - (a) that the person has failed to comply with the local authority information notice,
  - (b) that the person is liable to a penalty of—
    - (i) £95, where the penalty relates to a notice given under section 27(1),
    - (ii) £370, where the penalty relates to a notice given under section 27(3),and
  - (c) that the person has a right of appeal under section 34(1).
- (3) Where a person becomes liable to a penalty under subsection (1)(b), the authorised officer must give a notice to the person (a “penalty notice”) stating—
  - (a) that the person has failed to comply with section 28(2),
  - (b) that the person is liable to pay a penalty of £370, and

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- (c) that the person has a right of appeal under section 34(1).
- (4) An authorised officer may mitigate or remit any penalty under this section.
- (5) The Scottish Ministers may by regulations make provision increasing or decreasing any sum for the time being set out in subsections (2)(b)(i) and (ii) and (3)(b).
- (6) Before laying a draft of a Scottish statutory instrument containing regulations under subsection (5) before the Scottish Parliament, the Scottish Ministers must consult such persons as they consider appropriate.
- (7) Regulations under subsection (5) may make transitional, transitory or saving provision.
- (8) Regulations under subsection (5) are subject to the affirmative procedure.
- (9) The Scottish Ministers may by regulations make further provision about penalty notices under this section, including in particular—
  - (a) the form of penalty notices,
  - (b) how penalty notices may be given (for example, enabling a notice to be given to a person either by name or by such description as may be set out in the regulations).
- (10) Regulations under subsection (9)—
  - (a) may make different provision for different purposes,
  - (b) may make incidental, supplementary, consequential, transitional, transitory or saving provision.
- (11) Regulations under subsection (9) are subject to the negative procedure.

### **34 Penalties under section 33: appeals**

- (1) A person who is given a penalty notice under section 33 may appeal to a valuation appeal committee against the amount of penalty imposed.
- (2) An appeal must be made before the end of the period of 28 days beginning with the day on which the penalty notice is given.
- (3) The making of an appeal under subsection (1) against the amount of penalty imposed by a penalty notice given under section 33(2)—
  - (a) is to be treated as an appeal against the amount of that penalty and any other penalty imposed on the appellant under section 33 in relation to the information to which the penalty notice relates,
  - (b) does not prevent an authorised officer giving the appellant a further local authority information notice under section 27(3) or penalty notice under section 33 in relation to that information.
- (4) On an appeal the valuation appeal committee may mitigate or remit any penalty under section 33 if it is satisfied that the penalty is excessive.
- (5) The Scottish Ministers may by regulations make further provision about appeals under this section, including in particular—
  - (a) information to be included in, and documents to be submitted with, such an appeal,
  - (b) the procedure to be followed in such an appeal,



- (c) the period within which such an appeal is to be disposed of.
- (6) Regulations under subsection (5)—
  - (a) may make different provision for different purposes,
  - (b) may make incidental, supplementary, consequential, transitional, transitory or saving provision.
- (7) Regulations under subsection (5) are subject to the negative procedure.
- (8) Before making regulations under subsection (5), the Scottish Ministers must consult such persons as they consider appropriate.

### **35 Penalties under section 33: enforcement**

- (1) A penalty under section 33 is recoverable as a civil debt due to the local authority.
- (2) The Scottish Ministers may by regulations make further provision about the collection of penalties imposed under section 33.
- (3) Regulations under subsection (2) may in particular—
  - (a) provide for penalties to be included in a demand note or an adjustment to a demand note under section 8 of the 1975 Act (payment of rates by instalments) as if they were a liability to rates,
  - (b) provide that, where an appeal is made against the imposition of a penalty, the penalty is not payable while the appeal is outstanding,
  - (c) make provision for cases where the penalty is mitigated or remitted, and may in particular provide for the reimbursement of a penalty by way of deduction from a sum due.
- (4) Regulations under subsection (2)—
  - (a) may modify any enactment (including this Act),
  - (b) may make different provision for different purposes,
  - (c) may make incidental, supplementary, consequential, transitional, transitory or saving provision.
- (5) Regulations under subsection (2) are subject to—
  - (a) the affirmative procedure, if they add to, replace or omit any part of the text of an Act,
  - (b) otherwise, the negative procedure.

### **36 Sections 31 and 34: consequential modifications**

- (1) In section 13 of the 1956 Act (times for giving notices etc.), after subsection (3A) (inserted by section 11(1)) insert—
  - “(3B) This section does not apply to any notice or thing required to be given or done in relation to an appeal under section 31 or 34 of the Non-Domestic Rates (Scotland) Act 2020.”.
- (2) In section 15(2) of the 1963 Act (proceedings in appeals), after “1975” (inserted by section 11(2)) insert “or appeals under section 31 or 34 of the Non-Domestic Rates (Scotland) Act 2020”.

## PART 4

### ANTI-AVOIDANCE REGULATIONS

#### 37 Anti-avoidance regulations

- (1) The Scottish Ministers may by regulations (“anti-avoidance regulations”) make such provision as they consider appropriate with a view to preventing or minimising advantages (see section 38) arising from non-domestic rates avoidance arrangements that are artificial (see sections 39 and 40).
- (2) The Scottish Ministers may not make anti-avoidance regulations unless they consider that it is appropriate to do so.
- (3) Anti-avoidance regulations—
  - (a) may modify any enactment (but not this Part),
  - (b) may make different provision for different purposes,
  - (c) may make incidental, supplementary, consequential, transitional, transitory or saving provision.

#### 38 Meaning of “advantage”

- (1) An “advantage”, in relation to non-domestic rates, includes in particular—
  - (a) avoidance of a possible assessment,
  - (b) remission,
  - (c) relief (or increased relief),
  - (d) repayment (or increased repayment),
  - (e) deferral of a payment or advancement of a repayment.
- (2) In determining whether a non-domestic rates avoidance arrangement has resulted in an advantage, regard may be had to the amount of non-domestic rates that would have been payable in the absence of the arrangement.

#### 39 Non-domestic rates avoidance arrangements

- (1) An arrangement (or series of arrangements) is a non-domestic rates avoidance arrangement if, having regard to all the circumstances, it would be reasonable to conclude that obtaining an advantage is the main purpose, or one of the main purposes, of the arrangement.
- (2) An “arrangement” includes any agreement, transaction, undertaking, action or event (whether legally enforceable or not).

#### 40 Meaning of “artificial”

- (1) A non-domestic rates avoidance arrangement is artificial if Condition A or B is met.
- (2) Condition A is met if the entering into or carrying out of the arrangement is not a reasonable course of action in relation to the non-domestic rates provisions in question having regard to all the circumstances, including—
  - (a) whether the substantive results of the arrangement are consistent with—

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*Status: This is the original version (as it was originally enacted).*

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- (i) any principles on which those provisions are based (whether express or implied), and
    - (ii) the policy objectives of those provisions,
  - (b) whether the arrangement is intended to exploit any shortcomings in those provisions.
- (3) Condition B is met if the arrangement lacks economic or commercial substance.
- (4) Each of the following is an example of something which might indicate that a non-domestic rates avoidance arrangement lacks economic or commercial substance—
- (a) the arrangement is carried out in a manner which would not normally be employed in reasonable business conduct,
  - (b) the legal characterisation of the steps in the arrangement is inconsistent with the legal substance of the arrangements as a whole,
  - (c) the arrangement includes elements which have the effect of offsetting or cancelling each other,
  - (d) transactions are circular in nature,
  - (e) the arrangement results in an advantage that is not reflected in the business risks undertaken.
- (5) The examples given in subsection (4) are not exhaustive.
- (6) Where a non-domestic rates avoidance arrangement forms part of any other arrangements, regard must also be had to those other arrangements.

#### **41 Procedure for anti-avoidance regulations**

- (1) Anti-avoidance regulations are subject to the affirmative procedure.
- (2) Before laying a draft of a Scottish statutory instrument containing anti-avoidance regulations before the Scottish Parliament, the Scottish Ministers—
- (a) must consult such person or persons as appear to the Scottish Ministers to represent the interests of—
    - (i) local authorities, or
    - (ii) assessors,as the Scottish Ministers consider appropriate, and
  - (b) may consult—
    - (i) such ratepayers or potential ratepayers, and
    - (ii) such other persons,as the Scottish Ministers consider appropriate.
- (3) Consultation under subsection (2) must include a copy of the proposed anti-avoidance regulations.
- (4) The Scottish Ministers must, as soon as reasonably practicable after consultation under subsection (2) begins, notify the Scottish Parliament about the consultation.
- (5) The Scottish Ministers must have regard to any representations about the draft anti-avoidance regulations received as a result of the consultation.
- (6) When laying a draft of a Scottish statutory instrument containing anti-avoidance regulations, the Scottish Ministers must also lay before the Scottish Parliament a document which—

- (a) explains why the Scottish Ministers consider that it is appropriate to make the anti-avoidance regulations, and
- (b) gives details of—
  - (i) the consultation,
  - (ii) any representations received as a result of the consultation, and
  - (iii) the changes (if any) made to the draft anti-avoidance regulations as a result of those representations.

## PART 5

### FINAL PROVISIONS

#### 42 Interpretation

In this Act—

“lands and heritages” is to be construed in accordance with section 42 of the 1854 Act,

“non-domestic rates” means non-domestic rates levied under section 7B of the 1975 Act,

“valuation roll” means a valuation roll made up under section 1 of that Act.

#### 43 Ancillary provision

- (1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with or for giving full effect to this Act.
- (2) Regulations under this section may—
  - (a) make different provision for different purposes,
  - (b) modify any enactment (including this Act).
- (3) Regulations under this section that add to, replace or omit any part of the text of an Act are subject to the affirmative procedure.
- (4) Otherwise, regulations under this section are subject to the negative procedure.

#### 44 Commencement

- (1) The following provisions come into force on the day after Royal Assent—
  - (a) section 1,
  - (b) section 26(1) to (4),
  - (c) section 29(1)(a),
  - (d) section 29(3), insofar as it relates to section 29(1)(a),
  - (e) section 30(1) to (7) and (12) to (14),
  - (f) section 31,
  - (g) section 42,
  - (h) section 43,
  - (i) this section,
  - (j) section 45.

- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.
- (3) Regulations under subsection (2) may appoint different days for different purposes.
- (4) Regulations under subsection (2) may—
  - (a) include transitional, transitory or saving provision,
  - (b) make different provision for different purposes.

**45 Short title**

The short title of this Act is the Non-Domestic Rates (Scotland) Act 2020.