

2013 No. 37

RATING AND VALUATION

**The Non-Domestic Rating (Unoccupied Property) (Scotland)
Amendment Regulations 2013**

Made - - - - *6th February 2013*

Laid before the Scottish Parliament *7th February 2013*

Coming into force - - *1st April 2013*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 24(2) and (3), 24A(4) and 24B(3) of the Local Government (Scotland) Act 1966(a) and all other powers enabling them to do so.

Citation and commencement

1. These Regulations may be cited as the Non-Domestic Rating (Unoccupied Property) (Scotland) Amendment Regulations 2013 and come into force on 1st April 2013.

Amendment of the Non-Domestic Rating (Unoccupied Property) (Scotland) Regulations 1994

2. The Non-Domestic Rating (Unoccupied Property) (Scotland) Regulations 1994(b) are amended as follows.

3. In regulation 1(2) (interpretation) after the definition of “retail lands and heritages” insert—

““use as office premises” means that the sole or principal use of the lands and heritages takes place there in a building or part of a building that is used wholly or mainly for the purposes of administration, clerical work or handling money, and for these purposes “clerical work” includes writing, book-keeping, sorting papers, filing, data processing, drawing and the editorial preparation of material for publication; and

“use as shop premises” means that the sole or principal use of the lands and heritages takes place there in a building or part of a building that is used wholly or mainly for the retail sale of goods to members of the public who visit the building to buy goods for consumption or use elsewhere, whether or not by the buyer, for purposes unconnected with a trade or business.”.

(a) 1966 c.51. Section 24 was substituted, and sections 24A and 24B inserted, by the Local Government etc. (Scotland) Act 1994 (c.39), sections 154 and 155. All three sections are amended by section 1 of the Local Government Finance (Unoccupied Properties etc.) Act 2012 (asp 11). The functions of the Secretary of State under sections 24(2) and (3) and 24A(4) were transferred to the Scottish Ministers by section 53 of the Scotland Act 1998 (c.46).

(b) S.I. 1994/3200, amended by S.I. 1995/518 and S.S.I. 2000/55 and 2008/83.

4. For regulation 2 (rating of unoccupied lands and heritages) substitute—

“Rating of lands and heritages that are unoccupied, or treated as unoccupied

2.—(1) The following are prescribed as classes of lands and heritages under section 24(2) of the 1966 Act—

- (a) all relevant lands and heritages which have been unoccupied for a continuous period of more than three months, other than lands and heritages to which any of the conditions specified in Parts 1, 1A and 2 of the Schedule applies; or
- (b) all lands and heritages that are, by virtue of regulation 4, to be treated as unoccupied for the purposes of section 24 of the 1966 Act.

(2) For the purposes of paragraph (1)(a), in determining the period during which relevant lands and heritages have been continuously unoccupied, they are to be regarded as having been occupied in any period during which any of the conditions in Parts 1, 1A and 2 of the Schedule applied to them, and they are to be regarded as having been unoccupied during any period of occupation—

- (a) that ends within 6 weeks of beginning; or
- (b) in which the lands and heritages were, by virtue of regulation 4, treated as unoccupied.

(3) 90% is the percentage prescribed under section 24(3) of the 1966 Act in relation to the class prescribed by paragraph (1)(a).”.

5. After regulation 3(2) (rating of partly unoccupied lands and heritages) insert—

“(3) The percentage prescribed under section 24A(4)(b)(ii) of the 1966 Act is 90%.”.

6. After regulation 3 insert—

“Lands and heritages to be treated as unoccupied

4.—(1) The class of lands and heritages prescribed under section 24B(3) of the 1966 Act is all lands and heritages in respect of which the following conditions are met—

- (a) for a continuous period of 12 months immediately prior to being occupied the person or persons entitled to possession of the lands and heritages during that period were in receipt of relief under section 24 of the 1966 Act;
- (b) either—
 - (i) when last previously occupied, the lands and heritages were in use as office premises or in use as shop premises, or
 - (ii) where the lands and heritages have never previously been occupied, they are in use as office premises or in use as shop premises;
- (c) the rateable value of the lands and heritages is no greater than £45,000;
- (d) no other reduction is being made to the liability of the person entitled to possession of the lands and heritages to pay rates;
- (e) no longer than 12 months have elapsed since the lands and heritages became occupied; and
- (f) the person entitled to possession of the lands and heritages has submitted an application to the rating authority in whose valuation roll the entry for the lands and heritages appear, requesting that they are treated as unoccupied, along with such information as is necessary for that authority to establish that the conditions in this regulation are met.

(2) Rate relief may be granted in consequence of paragraph (1) only to the extent that such relief is compatible with article 107(1) of the Consolidated Version of the Treaty on the Functioning of the European Union^(a).

(3) No rate relief may be granted in consequence of paragraph (1) in respect of any liability that relates to a day falling on or after 1st April 2016.”.

7. After Part 1 of the Schedule insert—

“PART 1A

The conditions specified in this Part are that—

- (a) an entry is made in respect of relevant lands and heritages onto the valuation roll made up under section 1 of the Local Government (Scotland) Act 1975^(b) on or after 1st April 2013, but no later than 31st March 2016, in pursuance of section 2(1)(b) of that Act (entries as a result of lands and heritages having come into existence or occupancy);
- (b) the entry is not made as a result of—
 - (i) the combination or division of lands and heritages which are already entered on that valuation roll, in whole or in part; or
 - (ii) the refurbishment or change of use of an existing building (and for these purposes a building includes domestic property and a building on relevant lands and heritages which are exempt from a requirement to pay rates);
- (c) the lands and heritages are unoccupied at the time the entry is made;
- (d) any rate relief granted in consequence of this Part would not be incompatible with article 107(1) of the Consolidated Version of the Treaty on the Functioning of the European Union;
- (e) the person entitled to possession of the lands and heritages has submitted an application to the rating authority in whose valuation roll the entry for the lands and heritages appear, requesting that this Part apply to the lands and heritages, along with such information as is necessary for that authority to establish that the conditions in paragraphs (b) to (d) are met;
- (f) the application for this Part to apply to the lands and heritages relates to a day in the financial years 2013/14 to 2017/18;
- (g) where the authority referred to in paragraph (e) has requested further information to establish that the condition in paragraph (d) continues to be met, the person entitled to possession of the lands and heritages has supplied that information to the satisfaction of that authority; and

(a) OJ C 115, 9.5.2008, p.47.

(b) 1975 c.30. Section 1 was repealed in part by the Local Government etc. (Scotland) Act 1994, Schedule 14 and the Local Government and Rating Act 1997 (c.29), Schedule 4.

- (h) where an application has been granted to apply this Part to the lands and heritages, no longer than 15 months have elapsed since they were entered onto the valuation roll as referred to in paragraph (a), or where the lands and heritages have been occupied for some or all of that 15 month period, no longer than a period of 15 months plus the period or periods of occupation have so elapsed.”.

DEREK MACKAY

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
6th February 2013

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Non-Domestic Rating (Unoccupied Property) (Scotland) Regulations 1994 (“the principal Regulations”) as regards premises that, under those Regulations, attract a reduced non-domestic rate liability.

Certain unoccupied properties, under the principal Regulations, attract a liability to pay 50% of the non-domestic rates that would be payable were they fully occupied. Regulation 4 provides that, instead, the liability is 90% of those rates. It also provides for a further class of property that, by virtue of regulation 6, is deemed to be unoccupied. For that property, the Local Government (Scotland) Act 1966 (“the 1966 Act”) provides that the rate payable will be 50% of the rate that would be payable were the property not deemed unoccupied.

Regulation 5 makes provision for a 90% rate to apply where there is a reduced liability, as a result of premises being partly unoccupied for a short period of time.

Regulation 6 adds a new relief for property that has been unoccupied for at least a year before becoming occupied in the circumstances described. Such property is deemed to be unoccupied, notwithstanding the actual occupation, for a period of up to one year. Regulation 3 inserts related definitions into regulation 1 of the principal Regulations.

Paragraph (2) of regulation 4 of the principal Regulations (as inserted by regulation 6) prevents the new relief being granted if to do so would breach state aids limits, and paragraph (3) provides that any relief granted will cease to be available after 31st March 2016.

Regulation 7 adds a new exemption from rates for new build property that is first entered in the valuation roll in the 2013/14 to 2015/16 financial years. If unoccupied, an application can be made to exempt such property from the class of property prescribed for the purposes of section 24(3) of the 1966 Act (which pays a 90% rate after three months of non-occupation), meaning that no rates will be payable in respect of the exempted property. Such an exemption can be claimed for up to 15 months, in total, during the 2013/14 to 2017/18 financial years.

A further application for the exemption can be made in those years if a property is occupied for a period, but becomes unoccupied. After the 15 month period has been exhausted, an unoccupied property would fall into the class prescribed by regulation 2 of the principal Regulations (as substituted by regulation 4 of these Regulations) and after three months liability to pay rates would apply. Exemption cannot be granted if to do so would breach state aids limits. Where there would be such a breach, the property is treated as relevant lands and heritages for the purposes of the principal Regulations, with the liabilities to pay rates that they provide.

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