

2018 No. 77

RATING AND VALUATION

**The Non-Domestic Rating (Unoccupied Property) (Scotland)
Regulations 2018**

Made - - - - 23rd February 2018

Laid before the Scottish Parliament 23rd February 2018

Coming into force - - 1st April 2018

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, commencement and interpretation

1.—(1) These Regulations may be cited as the Non-Domestic Rating (Unoccupied Property) (Scotland) Regulations 2018 and come into force on 1st April 2018.

(2) In these Regulations—

“the 1966 Act” means the Local Government (Scotland) Act 1966;

“the 1975 Act” means the Local Government (Scotland) Act 1975(b);

“the 1986 Act” means the Insolvency Act 1986(c);

“the 1994 Regulations” means the Non-Domestic Rating (Unoccupied Property)(Scotland) Regulations 1994(d);

“the 1997 Act” means the Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997(e);

“the 2009 Order” means the Non-Domestic Rating (Petrol Filling Stations, Public Houses and Hotels) (Scotland) Order 2009(f);

“industrial lands and heritages” means lands and heritages (other than retail lands and heritages) comprising one or more buildings which is, or all of which are—

(a) constructed or adapted for use in the course of a trade or business; and

(b) constructed or adapted for use for one or more of the following purposes, or one or more such purposes and one or more purposes ancillary thereto:—

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

(b) 1975 c.30

(c) 1986 c.45.

(d) S.I. 1994/3200; amended by S.S.I. 2000/55, S.S.I. 2008/83, S.S.I. 2013/37, S.S.I. 2014/31, S.S.I. 2016/124 and S.S.I. 2017/43.

(e) 1997 c.9.

(f) S.S.I. 2009/69

- (i) the manufacture, repair or adaptation of goods or materials;
- (ii) the subjection of goods or materials to any process;
- (iii) storage (including the storage or handling of goods in the course of their distribution);
- (iv) the working or processing of minerals;
- (v) the generation of electricity;

“payday lending” means, in the course of a business involving lending, the making of, or advertising the availability of, loan agreements in relation to which the credit provided is to be repaid or substantially repaid over a period that does not exceed twelve months and being loan agreements with an annual percentage rate of interest equal to or exceeding 100%;

“public house or hotel” has the same meaning as it is given by article 2 of the 2009 Order;

“relevant lands and heritages” means any lands and heritages comprising one or more buildings or a part of a building;

“restaurant” means lands and heritages which are premises in which the sole or principal use is the sale of food or refreshments to members of the public for consumption on those premises and includes any café, coffee shop, bistro, fast food restaurant or snack bar that is so used;

“retail lands and heritages” means any lands and heritages where any building or part of a building comprised in them is constructed or adapted for the purpose of the retail provision of—

- (a) goods; or
- (b) services (other than storage for distribution services) on or from the lands and heritages;

“roll” means a valuation roll made up under section 1 of the 1975 Act^(a);

“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.

Rating of unoccupied lands and heritages

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, other than—
 - (i) industrial lands and heritages;
 - (ii) lands and heritages to which any of the conditions specified in Parts 1 or 3 of the schedule applies;
 - (iii) lands and heritages to which the conditions specified in Part 2 of the schedule apply; or
 - (iv) 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.
- (b) all relevant lands and heritages which—
 - (i) are industrial lands and heritages;

^(a) Section 1 was amended by section 34 and schedule 6 of the Abolition of Domestic Rates etc. (Scotland) Act 1987 (c.47), paragraph 1 of schedule 14 of the Local Government etc. (Scotland) Act 1994 and paragraph 1 of schedule 4 of the Local Government and Rating Act 1997 (c.29).

- (ii) have been unoccupied for a continuous period of more than 6 months; and
 - (iii) are not—
 - (aa) lands and heritages to which any of the conditions specified in Parts 1 or 3 of the schedule applies;
 - (bb) lands and heritages to which the conditions specified in Part 2 of the schedule apply; or
 - (cc) 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; and
 - (c) all lands and heritages that are by virtue of regulation 4(b) to be treated as unoccupied for the purposes of section 24 of the 1966 Act.
- (2) In determining the period during which lands and heritages have been continuously unoccupied for the purposes of paragraphs (1)(b)(ii) and (3)(a)—
- (a) they are to be regarded as having been occupied in any period during which—
 - (i) any of the conditions in Parts 1 or 3 of the schedule applied to them; or
 - (ii) the conditions in Part 2 of the schedule applied to them; and
 - (b) they are to be regarded as having been unoccupied during any period of occupation—
 - (i) that ends within 6 weeks of beginning; or
 - (ii) in which they were by virtue of regulation 4 of these Regulations or regulation 4 of the 1994 Regulations treated as unoccupied.
- (3) 90% is the percentage prescribed under section 24(3) of the 1966 Act in relation to lands and heritages—
- (a) within the class prescribed by paragraph (1)(a) which have been unoccupied for a continuous period of more than 3 months; and
 - (b) within the class prescribed by paragraph (1)(b).

Rating of lands and heritages partly unoccupied for a short time

3.—(1) The classes of lands and heritages prescribed under section 24A(4) of the 1966 Act are—

- (a) all relevant lands and heritages, other than—
 - (i) industrial lands and heritages; or
 - (ii) lands and heritages to which any of the conditions specified in Parts 1 or 4 of the schedule applies; and
- (b) all relevant lands and heritages—
 - (i) which are industrial lands and heritages;
 - (ii) part of which has been unoccupied for a continuous period of more than 6 months; and
 - (iii) which are not lands and heritages to which any of the conditions specified in Parts 1 or 4 of the schedule applies.

(2) Where the part of the lands and heritages prescribed by virtue of paragraph (1) which has been unoccupied becomes occupied on any day and becomes unoccupied again on the expiration of a period of less than 6 weeks beginning with that day, then for the purposes of paragraphs (1)(b)(ii) and (3)(a) that part shall be treated as having been unoccupied on that day and throughout that period.

(3) 90% is the percentage prescribed under section 24A(4)(b)(ii) of the 1966 Act in relation to lands and heritages—

- (a) within the class prescribed by paragraph (1)(a) which have been unoccupied for a continuous period of more than 3 months; and
- (b) within the class prescribed by paragraph (1)(b).

Lands and heritages to be treated as unoccupied

4. The classes of lands and heritages prescribed under section 24B(3) are—
- (a) all lands and heritages which have been continuously occupied since a date on or after 1 April 2018 in respect of which the following conditions are met—
 - (i) for a continuous period of 6 months immediately prior to being occupied the lands and heritages were unoccupied and 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;
 - (ii) the rateable value of the lands and heritages is no greater than £65000;
 - (iii) no longer than 12 months have elapsed since the lands and heritages became occupied;
 - (iv) the lands and heritages are not used for payday lending; and
 - (v) the person entitled to possession of the lands and heritages has submitted an application to the rating authority in whose 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 paragraph are met.
 - (b) all lands and heritages which have been continuously occupied since a date prior to 1 April 2018 in respect of which the following conditions are met—
 - (i) for a continuous period of 12 months immediately prior to being occupied the lands and heritages were unoccupied and 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;
 - (ii) either—
 - (aa) when last previously occupied, the lands and heritages were in use as office premises or in use as shop premises or were used as a restaurant, public house or hotel; or
 - (bb) where the lands and heritages have never previously been occupied, they are in use as office premises or in use as shop premises or are being used as a restaurant, public house or hotel;
 - (iii) the rateable value of the lands and heritages is no greater than £65000;
 - (iv) no other reduction is being made to the liability of the person entitled to possession of the lands and heritages to pay rates;
 - (v) no longer than 12 months have elapsed since the lands and heritages became occupied;
 - (vi) the lands and heritages are not used for payday lending; and
 - (vii) the person entitled to possession of the lands and heritages has submitted an application to the rating authority in whose 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 paragraph are met.

Revocation

5.—(1) The 1994 Regulations (**a**) are revoked.

(2) Despite their revocation the 1994 Regulations continue to have effect for the purpose of regulation 2(2)(b)(ii) and paragraph (d) of Part 2 of the schedule of these Regulations.

St Andrew's House,
Edinburgh
23rd February 2018

DEREK MACKAY
A member of the Scottish Government

(a) S.I. 1994/3200.

SCHEDULE

Regulations 2 and 3

CONDITIONS FOR THE PURPOSES OF REGULATIONS 2 AND 3

PART 1

The conditions specified in this Part are that—

- (a) the lands and heritages are—
 - (i) the subject of a building preservation notice within the meaning of section 3(1) of the 1997 Act;
 - (ii) included in a list compiled under section 1 of the 1997 Act^(a); or
 - (iii) included in the Schedule of Monuments compiled under section 1 of the Ancient Monuments and Archaeological Areas Act 1979^(b);
- (b) the rateable value of the lands and heritages is less than £1700;
- (c) the person entitled to possession of the lands and heritages is so entitled by virtue only of being—
 - (i) the trustee under a trust deed for creditors;
 - (ii) the trustee under an award of sequestration; or
 - (iii) the executor of the estate of a deceased person;
- (d) the person entitled to possession of the lands and heritages is so entitled in that person's capacity as liquidator by virtue of an order made under section 112 or section 145 of the 1986 Act;
- (e) the owner of the lands and heritages is a company or limited liability partnership which is subject to a winding-up order made under the 1986 Act or which is being wound up voluntarily under that Act;
- (f) the owner of the lands and heritages is a company or limited liability partnership, which on or after 1st April 2008—
 - (i) remains subject to an administration order made under Part II of the 1986 Act; or
 - (ii) is in administration within the meaning of paragraph 1 of schedule B1 of that Act.

PART 2

The conditions specified in this Part are that—

- (a) an entry is made in respect of relevant lands and heritages onto the roll on or after 1st April 2013, but no later than 31st March 2018, in pursuance of section 2(1)(b) of the 1975 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 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);

(a) Section 1 was amended by section 22(2) and paragraph 2 of schedule 3 of the Historic Environment Scotland Act 2014 (asp 19).

(b) 1979 c.46; section 1 was amended by paragraph 25 of schedule 4 of the National Heritage Act 1983 (c.47) and paragraph 2 of Part 2 of schedule 2 of the Historic Environment Scotland Act 2014.

- (c) the lands and heritages are unoccupied at the time the entry is made;
- (d) the person entitled to possession of the lands and heritages has submitted an application to the rating authority in whose roll the entry for the lands and heritages appears, 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) and (c) are met and an application under Part 1A of the schedule of the 1994 Regulations is deemed to be an application for the purpose of this paragraph;
- (e) the application for this Part to apply to the lands and heritages relates to a day in the financial years 2013/14 to 2019/2020; and
- (f) 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 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.

PART 3

The conditions specified in this Part are that—

- (a) the owner of the lands and heritages is prohibited by law from occupying them or allowing them to be occupied;
- (b) the lands and heritages are kept vacant by reason of action taken by or on behalf of the Crown or any local or public authority with a view to prohibiting the occupation of the lands and heritages or to acquiring them.

PART 4

The conditions specified in this Part are that—

- (a) the owner of the lands and heritages is prohibited by law from occupying the unoccupied part or allowing it to be occupied;
- (b) the unoccupied part of the lands and heritages is kept vacant by reason of action taken by or on behalf of the Crown or any local or public authority with a view to prohibiting the occupation of that part or to acquiring it.

EXPLANATORY NOTE

(This note is not part of the Regulations)

Sections 24 and 24A of the Local Government (Scotland) Act 1966 (as substituted and inserted respectively by sections 154 and 155 of the Local Government etc. (Scotland) Act 1994) provide as to the rating of unoccupied property and of property partially unoccupied for a short time. Where property is completely unoccupied, no rates are payable except in the case of property falling within a class prescribed by regulations. Where property is partially unoccupied for a short time and the relevant rating authority requests the assessor to apportion the rateable value between the occupied and unoccupied parts, rates are only payable in respect of the value apportioned to the occupied part except in the case of property falling within a class prescribed by regulations.

Regulations 2 and 3 prescribe classes of property for the foregoing purposes. The classes consist broadly of—

- a) industrial property which has been unoccupied for 6 months for which the rate payable will be 90% and
- b) other unoccupied property for which the rate payable will be 50% until it has been unoccupied for a continuous period of 3 months when the rate payable will be 90%.

Exceptions are made for property to which any of the conditions in Parts 1 and 3 of the schedule and for which all the conditions in Part 2 of the schedule are met. Part 2 of the schedule maintains the exemption (New Start relief) for certain new build property that is first entered on the roll between 1st April 2013 and 31st March 2018. To obtain the exemption an application must be made and the exemption can be claimed for up to 15 months, in total during the 2013/14 to 2019/2020 financial years.

Regulation 4 prescribes classes of properties which in terms of section 24B(3) of the 1966 Act (as inserted by section 155 of the Local Government etc. (Scotland) Act 1994) are to be treated as unoccupied for the purposes of section 24 of the 1966 Act.

Regulation 2(1)(c) ensures that in respect of the same categories of properties that were previously entitled to Fresh Start relief under the 1994 Regulations, and meet the requirements of regulation 4(b), the rate payable will be 50%.

Regulation 4(a) creates a new Fresh Start relief for all properties that were unoccupied for at least 6 months before becoming occupied on or after 1st April 2018 and that meet the other conditions of that regulation. No rates will be payable in respect of these properties as they are excluded from the classes prescribed by these Regulations.

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Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, the Queen's Printer for Scotland.

£6.00

S201802231010 03/2018 19585

<http://www.legislation.gov.uk/id/ssi/2018/77>

ISBN 978-0-11-103856-7



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