

## POLICY NOTE

### THE NON-DOMESTIC RATES (SCOTLAND) ACT 2020 (COMMENCEMENT NO. 2, TRANSITIONAL AND SAVING PROVISIONS) REGULATIONS 2020

#### SSI 2020/327 (C. 28)

The above instrument is made in exercise of the powers conferred by section 44(2), (3) and (4)(a) of the Non-Domestic Rates (Scotland) Act 2020 (“the Act”). This instrument is not subject to any Parliamentary procedure.

These regulations bring sections of the Act into force insofar as those sections are not already in force, with the exception of sections 2(a) and section 19.

#### Policy Objectives

These regulations commence sections of the Act and feature four different dates for coming into force:

- 5 November 2020
- 1 April 2021
- 1 April 2022
- 1 April 2023

#### Provisions coming into force on 5 November 2020

These provisions all relate to powers to lay regulations provided in the Act and therefore have no direct impact, except section 7 which makes agreements over the valuation of a non-domestic property between the assessor and the property proprietor, tenant or occupier, legally binding; and section 32 which requires that assessors pay revenue from any monies collected in relation to civil penalties served for failure to comply with an assessor information notice to the Scottish Consolidated Fund.

The provisions coming into force on 5 November 2020 are:

- Section 2(b) amending the definition of “year of revaluation” in section 37(1) of the Local Government (Scotland) Act 1975 so that revaluations will be carried out every three years, rather than every five years. The Scottish Government announced in the Programme for Government 2020-21 that it would seek parliamentary approval to amend the next revaluation date from 2022-23 to 2023-24, section 2(a) is moot and will not be commenced.
- Section 3, but only insofar as it allows Scottish Ministers to lay regulations following consultation on regulations made under this section. Section 3 is related to the Business Growth Accelerator relief recommended by the Barclay Review which was introduced on 1 April 2018, offering 100% relief for twelve months on new buildings until after they are first occupied; and no rates increases for 12 months when an existing building is improved or expanded. In the consultation on the Implementation of the Barclay Review,<sup>1</sup> a number of consultation responses called for clarity over the definition of eligible properties for this relief. Section 3 addresses this by requiring

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<sup>1</sup> The independent analysis of the responses can be accessed at: <https://www.gov.scot/publications/analysis-responses-barclay-implementation-consultation-non-domestic-rates-reform/>

that assessors flag new or improved properties on the valuation roll. The part of this section requiring that assessors do this will commence on 1 April 2021, but section 3 also allows Scottish Ministers to specify by regulations what is to be treated as a building for the purposes of this section. Commencing part of section 3 in advance of 1 April 2021 potentially allows for consultation on and the laying of regulations amending the definition of the properties that will be flagged on the roll in advance of the requirement for assessors to do so coming into force.

- Section 6 making provision to enable regulations to give a local authority discretion to determine whether particular lands and heritages are dwellings, in specific circumstances prescribed in regulations. This power is related to the Barclay Review's Recommendation 22 (*To counter a known avoidance tactic for second homes, owners or occupiers of self-catering properties must prove an intention let for 140 days in the year and evidence of actual letting for 70 days*). In the consultation on the Implementation of the Barclay Review, a number of responses called for local authorities to be able to vary the number of required days in exceptional and unforeseen circumstances. The 70-day rule and prescribed circumstances in which councils may exercise discretion will be introduced from 2021-22 through subordinate legislation.
- Section 7 relating to the making of the valuation roll and providing that where agreement has been reached between the proprietor, tenant or occupier of lands and heritages as to what the entry should be and the assessor, the latter must enter the agreed details in the valuation roll - unless there has been an alteration in the valuation of the lands and heritages since the agreement was made. This is intended to strengthen the validity of a pre-agreed rateable value with the assessor before it is entered on the valuation roll - this being not currently binding, and open to appeal. This is part of a broad reform package aimed at affecting the appeals system - in relation to Recommendation 19 of the Barclay Review (*Reform of the appeals system is needed to modernise the approach, reduce appeal volume and ensure greater transparency and fairness*).
- Section 8 requiring that the assessor publish a draft roll and issue draft valuation notices. It also provides Scottish Ministers with the power to prescribe the information to be included in these notices. This will provide ratepayers with advance notice of their properties' revaluation rateable values and is intended to ensure greater transparency on valuations and fairness for ratepayers; and to encourage the resolution of any disagreement before the valuation roll comes into force, thereby reducing the need to appeal. This is part of a broad reform package aimed at affecting the appeals system - in relation to Recommendation 19 of the Barclay Review (*Reform of the appeals system is needed to modernise the approach, reduce appeal volume and ensure greater transparency and fairness*).
- Section 9 creating regulation-making powers for Scottish Ministers to specify what information must be provided by the assessor in valuation notices and is also intended to ensure greater transparency on valuations and fairness for ratepayers. This is part of a broad reform package aimed at affecting the appeals system - in relation to Recommendation 19 of the Barclay Review (*Reform of the appeals system is needed to modernise the approach, reduce appeal volume and ensure greater transparency and fairness*).
- Section 10 for purposes relating to the making of regulations (and on 1 April 2022 for all other purposes). Sections 10 and 11 provide for a two-stage appeals system and commencing this part of section 10 in advance will allow for regulations to be consulted on and laid in time for this reform to take place on 1 April 2022.

- Section 14 which enables the Scottish Ministers to make regulations providing for relief from the payment of non-domestic rates in relation to new or improved properties. This is related to the Business Growth Accelerator relief. Section 14 was introduced alongside section 3 requiring that assessors put a mark on the valuation roll for new or improved properties in order that this may assist local authorities in identifying eligible properties for this relief. There is a requirement to consult on these regulations.
- Section 15 creating a power to set a rate supplement and reliefs specifically for properties that contribute to the net-zero emissions target, this being defined under section A1(1) of the Climate Change (Scotland) Act 2009.
- Section 16 introducing the power for Scottish Ministers to implement relief for music centres in musical public schools and to determine what is counted as a music centre.
- Section 18 allows Scottish Ministers to issue statutory guidance to councils about the exercise of their discretion to grant discretionary sports relief provided under the Local Government (Financial Provisions etc.) (Scotland) Act 1962, section 4, subsections (5) to (7) - in relation to the property types specified in section 4, subsection (5)(c) of that Act – “lands and heritages occupied for the purposes of a club, society or other organisation not established or conducted for profit, and which are wholly or mainly used for purposes of recreation”. Councils must have regard to this guidance. This provision creates the powers to implement Barclay Review Recommendation 27 (*Sports club relief should be reviewed to ensure it supports affordable community-based facilities, rather than members clubs with significant assets which do not require relief*). There is a requirement to lay a draft of the proposed guidance before the Scottish Parliament and to consult before issuing guidance. The Scottish Government set up a Working Group in 2020 made up of private and public stakeholders to consider the design of this guidance.
- Section 22 and 23 are intended to future-proof the ways in which assessors and local authorities can give notices by allowing ministers to specify by regulations the form in which these notices can be given. This is intended to ensure that improvements to the administration can be made where these are called for in future. There is a requirement to consult on these regulations.
- Section 24 creates a requirement that valuation authorities (councils or valuation joint boards) report on the number of assessors and availability of resources, and lay this report before the Scottish Parliament by 31 May 2025, and every three years thereafter. Section 25 will make secretaries and assistant secretaries of valuation appeal panels transferrable persons to the Scottish Tribunals. The functions of Valuation Appeal Committees are due to transfer to the Scottish Tribunals on 1 April 2022. This section is intended to help ensure that a sufficient number of persons transfer-in to the Scottish Tribunals, recognising the role played by secretaries and assistant secretaries.
- Section 30 (8) to (11) allowing Scottish Ministers to vary by regulations the civil penalty amounts for failure to provide information to the assessor requested under section 26 of the Act. There is a requirement to consult on these regulations. Section 30 introduces a new civil penalty regime in relation to Barclay Review Recommendation 13 (*The current criminal penalty for non-provision of information to Assessors should become a civil penalty and Assessors should be able to collect information from a wider range of bodies*).
- Section 32 requires that assessors pay revenue from any monies collected in relation to civil penalties served under section 30 of the Act for failure to comply with an assessor information notice served under section 26, net of expenses, to the Scottish

Consolidated Fund. In other words, assessors will not retain any of the amounts collected.

- Section 34(5) to (8) allows Scottish Ministers to make provision by regulations specifying procedures and timings around appeals on civil penalties served under section 33 for failure to comply with local authority notices served under section 27 of the Act and the duty to notify a change in circumstances under section 28. While sections 27 and 28 will only come into force on 1 April 2021, commencing section 24(5) to (8) earlier allows for consultation on and the laying of regulations to this effect in advance of the reform to come into effect on 1 April 2021. There is a requirement to consult on these regulations.
- Sections 37 to 41 enable Scottish Ministers to make “anti-avoidance regulations”. These are regulations making provision with a view to preventing or minimising advantages arising from non-domestic rates avoidance arrangements that are artificial. Sections 38, 39 and 40 explain what is meant by an “advantage”, “non-domestic rates avoidance arrangements” and “artificial”. These provisions introduce powers that will be used to address Barclay Review Recommendation 20 (*A General Anti-Avoidance Rule should be created to reduce avoidance and make it harder for loopholes to be exploited in future*). There is a requirement to consult on these regulations.

#### Provisions coming into force on 1 April 2021

The provisions coming into force on 1 April 2021 are:

- Section 17 which removes charitable rates relief from mainstream independent schools, but maintains it for special schools and independent schools where all pupils are selected on the basis of musical ability, or potential, and follow a curriculum which includes classes aimed at developing musical excellence. The removal of this relief was originally announced as 1 September 2020, but was delayed to 1 April 2021 to avoid placing an extra financial pressure on independent schools. This implements a recommendation of the Barclay Review made under Recommendation 24 (*Charity relief should be reformed/restricted for a small number of recipients*).
- Section 20 allowing councils to request further information if they believe a property is being under-used, and strengthens the councils’ power to refuse the awarding of relief in those instances. This provides councils with powers to implement Barclay Review Recommendation 25 (*To focus relief on economically active properties, only properties in active occupation should be entitled*). The Scottish Government under this recommendation also restricted the Small Business Bonus Scheme to properties that are occupied from 1 April 2020.
- Section 21 creating a power for councils to recover debt more quickly from ratepayers in relation to non-domestic rates, bringing it more in line with Council Tax. This will only apply to a failure to pay on or after 1 April 2021. This implements Barclay Review Recommendation 18 (*Councils should be able to initiate debt recovery at an earlier stage*).
- Section 26(5) of The Act, which provides that section 7 of the Lands Valuation (Scotland) Act 1854 is repealed – this provided for a criminal penalty for non-provision of information to assessors. The repeal has no effect in relation to calls made upon a person prior to 1 April 2021. Commencing on 1 April 2021 will allow for a transition period between the new civil penalty regime introduced under section 30 of the Act which will replace the criminal penalty regime. This implements the first part of Barclay Review Recommendation 13 (*The current criminal penalty for*

*non-provision of information to Assessors should become a civil penalty and Assessors should be able to collect information from a wider range of bodies).*

- Section 27 allowing councils to request from the proprietor, tenant or occupier of a property, such information as they may reasonably require for the purpose of issuing any demand or other document relating to non-domestic rates in respect of that property.
- Section 28 requiring that a ratepayer must notify the local authority of any change in circumstances relevant for billing (e.g. a change in tenant). This duty will only arise where the change occurs on or after 1 April 2021.
- Section 29 (insofar as not already in force) creates a civil offence in respect of providing false or misleading information to local authorities – the provision also creates a civil offence in respect of providing false or misleading information to assessors, this having been commenced the day after the Act received Royal Assent.
- Section 33 makes provision for a person to be liable to a civil penalty for failure to comply with local authority information notices and for failure to notify changes in circumstances. It provides Scottish Ministers may make regulations to allow the increasing or decreasing of any penalty sum associated with the failure to comply with a local authority information notice, or failure to notify a change in circumstances. There is a requirement to consult on these regulations.
- Section 34(1) to (4) makes provision for a person who is given a penalty notice under section 33 to appeal to a valuation appeal committee against the amount of penalty imposed. On appeal the valuation appeal committee may mitigate or remit any penalty if it is satisfied that the penalty is excessive.
- Section 35 makes provision for the enforcement of penalties imposed under section 33. It provides that such a penalty is recoverable as a civil debt and is due to the local authority. Further, it provides that Scottish Ministers may make regulations containing additional provision about the collection of penalties under section 33.
- Section 36 modifies existing enabling powers to avoid an overlap between the existing powers and the new ones in relation to the new appeals process.

#### Provisions coming into force on 1 April 2022

The provisions coming into force on 1 April 2022 are:

- Section 4 allowing Scottish Ministers to make regulations to remove the exempt status of lands and heritages set out in primary and subordinate legislation.
- Section 10 (insofar as not already commenced on 5 November 2020) and 11 introducing a two-stage appeals system based on the requirement to lodge a proposal before lodging an appeal. Where the proprietor, tenant or occupier receives a valuation notice from the assessor, the proprietor, tenant or occupier of the property can make a proposal to the assessor to alter the entry in the valuation roll for those lands and heritages. If the assessor decides to alter the entry, other than as suggested by or agreed with the person who made the proposal, the person who made the proposal can appeal to the valuation appeal committee. It also creates a power to set, by Regulations, fees to lodge a proposal and/or an appeal. These provisions implement Recommendation 19 of the Barclay Review (*Reform of the appeals system is needed to modernise the approach, reduce appeal volume and ensure greater transparency and fairness*).
- Section 12 which specifies that complaints can only be made by someone who is not the proprietor, tenant or occupier of a property in order to ensure that the two-stage

appeals system cannot be circumvented by complaining against one's own value. This will only apply to complaints made on or after 1 April 2022.

### Provisions coming into force on 1 April 2023

The only provision coming into force on 1 April 2023 is section 5 which relates to the entering of parks on the valuation roll, requiring that where parks (or parts of parks) are not occupied by the local authority or other public body in which they are vested, these are to be entered on the roll by the assessor (including charitable activity as this creates a level playing field with charitable premises outside of parks). This provision is related to Barclay Review Recommendation 30 (*Commercial activity on current exempt parks and Local Authority (council) land vested in recreation should pay the same level of rates as similar activity elsewhere so as to ensure fairness*). The commencement date is based on the revaluation date proposed by the Scottish Government in the Programme for Government and set out in the Draft Scottish Statutory Instrument The Valuation (Postponement of Revaluation) (Coronavirus) (Scotland) Order 2020 which was laid on 15 October 2020 and is subject to affirmative procedure.

### **Consultation**

There is no statutory obligation to consult on these Regulations.

### **Impact Assessments**

No Business and Regulatory Impact Assessment is required.

### **Financial Effects**

This instrument has no direct financial implications.

Scottish Government  
*Local Government and Communities Directorate*  
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