

**2021 No. 145**

**RATING AND VALUATION**

**The Non-Domestic Rates (Restriction of Relief) (Scotland)  
Regulations 2021**

*Made - - - - at 11.00 a.m. on 16th March 2021*

*Laid before the Scottish Parliament at 3.00 p.m. on 16th March 2021*

*Coming into force - - - - 1st April 2021*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 153 of the Local Government etc. (Scotland) Act 1994(a) and all other powers enabling them to do so.

**Citation, commencement and application**

1.—(1) These Regulations may be cited as the Non-Domestic Rates (Restriction of Relief) (Scotland) Regulations 2021 and come into force on 1 April 2021.

(2) These Regulations apply to the financial year beginning with 1 April 2021 and each subsequent financial year.

**Interpretation**

2. In these Regulations—

“the 2020 Regulations” means the Non-Domestic Rates (Restriction of Relief and Consequential Amendments) (Scotland) Regulations 2020(b),

“fiscal year” has the same meaning as in the Trade and Cooperation Agreement,

“special drawing right” means that unit of account as defined by the International Monetary Fund, and for the purpose of determining the equivalent in sterling on any day one special drawing right is to be treated as such amount in sterling as the International Monetary Fund has fixed as its equivalent for that day or, if no amount has been so fixed for that day, for the last day before that day for which an amount was so fixed, and

“the Trade and Cooperation Agreement” has the meaning given by section 37(1) of the European Union (Future Relationship) Act 2020(c).

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(a) 1994 c.39. Section 153 was amended by section 67 of the Climate Change (Scotland) Act 2009 (asp 12), section 15 of the Non-Domestic Rates (Scotland) Act 2020 (asp 4) and paragraph 7 of schedule 4 of the Coronavirus (Scotland) (No. 2) Act 2020 (asp 10). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(b) S.S.I. 2020/391.

(c) 2020 c.29.

### **Restriction on granting of non-domestic rates relief**

**3.**—(1) The restriction in paragraph (4) applies to relief that is available under the Regulations specified in paragraph (2) to a person who is liable to pay non-domestic rates levied under section 7B of the Local Government (Scotland) Act 1975(a).

(2) The Regulations are—

- (a) the Non-Domestic Rates (Renewable Energy Generation Relief) (Scotland) Regulations 2010(b),
- (b) the Non-Domestic Rates (Enterprise Areas) (Scotland) Regulations 2012(c),
- (c) the Non-Domestic Rates (Telecommunication Installations) (Scotland) Regulations 2016(d),
- (d) the Non-Domestic Rates (Rural Areas) (Scotland) Regulations 2017(e),
- (e) the Non-Domestic Rates (District Heating Relief) (Scotland) Regulations 2017(f),
- (f) the Non-Domestic Rates (Transitional Relief) (Scotland) Regulations 2017(g),
- (g) the Non-Domestic Rates (Day Nursery Relief) (Scotland) Regulations 2018(h).

(3) The limit for relief and assistance is 325,000 special drawing rights, calculated as described in regulation 4.

(4) To the extent any relief that would otherwise be granted by the Regulations specified in paragraph (2) would exceed the limit in paragraph (3), that relief is not to be granted.

### **Calculation of relief and assistance**

**4.**—(1) For the purposes of the calculation required by regulation 3(3), relief and assistance received by a person is any relief or assistance described in paragraph (2) which is received by that person in the fiscal year in which that calculation is undertaken and the two preceding fiscal years.

(2) The relief and assistance is any relief or assistance that falls within one or more of the following descriptions—

- (a) relief granted under the Regulations listed in regulation 3(2),
- (b) relief or assistance given prior to 1 January 2021 that, at the time it was given, was de minimis aid within the meaning of—
  - (i) Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid(i), or
  - (ii) Commission Regulation (EU) No 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest(j), or

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(a) 1975 c.30. Section 7B was inserted by section 110(2) of the Local Government Finance Act 1992 (c.14) and amended by paragraph 100(4) of schedule 13 of the Local Government etc. (Scotland) Act 1994.

(b) S.S.I. 2010/44, which was amended by S.S.I. 2010/440, S.S.I. 2016/121, S.S.I. 2017/60, S.S.I. 2018/64, S.S.I. 2020/391 and S.S.I. 2021/64.

(c) S.S.I. 2012/48, which was amended by S.S.I. 2013/78 and S.S.I. 2020/391.

(d) S.S.I. 2016/122, which was amended by S.S.I. 2018/63, S.S.I. 2019/41, S.S.I. 2020/41 and S.S.I. 2021/65.

(e) S.S.I. 2017/22.

(f) S.S.I. 2017/61, which was amended by S.S.I. 2020/391 and S.S.I. 2021/64.

(g) S.S.I. 2017/85, which was amended by S.S.I. 2018/76, S.S.I. 2019/44, S.S.I. 2020/42, S.S.I. 2020/101, S.S.I. 2020/230, S.S.I. 2020/391 and S.S.I. 2021/65.

(h) S.S.I. 2018/65, which was amended by S.S.I. 2018/74, S.S.I. 2020/391 and S.S.I. 2021/65.

(i) OJ L 352, 24.12.2013, p.1.

(j) OJ L 114, 26.4.2012, p.8.

- (c) subsidies given on or after 1 January 2021 that fall under Articles 3.2.4 or 3.3.3 of Chapter 3 (subsidy control)(a) of Title XI of Heading One in Part Two of the Trade and Cooperation Agreement.

**Amendment of the 2020 Regulations**

5. In regulation 2(1) (restriction on granting of non-domestic rates relief) of the 2020 Regulations omit “, and each subsequent financial year”.

*KATE FORBES*

A member of the Scottish Government

St Andrew's House,  
Edinburgh  
At 11.00 a.m. on 16th March 2021

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(a) Article 3.2.4 sets the de minimis subsidy threshold for single economic actors. Article 3.3.3. sets that threshold for an economic actor providing tasks in the public interest.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations provide that relief that would otherwise be granted by specified rating Regulations is not granted, from 1 April 2021, to the extent that the relief when added to any other prescribed relief would exceed 325,000 Special Drawing Rights. This is the threshold set for *de minimis* relief by the Trade and Cooperation Agreement (defined by regulation 2), entered into on 30 December 2020 between the European Union, the European Atomic Energy Community and the United Kingdom.

Regulation 3(2) lists the Regulations to which the restriction on grant of relief is to apply.

Regulation 4 sets out which previous grants of relief and assistance are to be used to calculate whether relief would exceed the limit set by regulation 3(3). Regard is had to relief and assistance awarded over a period of three fiscal years. That looks at relief under the Regulations listed in regulation 3(2), at relief and assistance prior to 2021 that would have been taken into account for state aid purposes, and at “subsidies” as defined by the Trade and Co-operation Agreement.

Regulation 5 makes a consequential amendment, so that from 1 April 2021 the provision in these Regulations replaces a restriction in other Regulations that applies to grant of reliefs within the non-domestic rating system.

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