

POLICY NOTE

THE NON-DOMESTIC RATES (RESTRICTION OF RELIEF) (SCOTLAND) REGULATIONS 2023

SSI 2023/28

The above instrument was made in exercise of the powers conferred by section conferred by section 153 of the Local Government etc. (Scotland) Act 1994 and all other powers enabling them to do so. The instrument is subject to negative procedure.

These Regulations require that from 1 April 2023, the granting of prescribed mandatory non-domestic rates reliefs must be compatible with the Subsidy Control Act 2022, in particular the subsidy control requirements set out in that Act.

Policy Objectives

These regulations ensure that the awarding of certain prescribed mandatory reliefs from non-domestic rates is compatible with the requirements set out in the Subsidy Control Act 2022 (“the 2022 Act”). They come into force on 1 April 2023.

The prescribed reliefs are listed in regulation 3(2). These are Renewables relief (including Hydro relief), Enterprise Areas relief, Telecommunication Mobile Masts relief, mandatory Rural relief, District Heating relief, transitional relief in respect of the 2017 revaluation, Day Nursery relief, Retail, Hospitality and Leisure relief awarded in 2022-23 and transitional relief for parks or parts of parks previously exempt from rating and becoming rateable on 1 April 2023.

Regulation 3(3) specifies that the following requirements must be met if these reliefs are awarded as Minimal Financial Assistance¹ (“MFA”):

- the total amount of minimal or SPEI financial assistance² must not exceed the amount set out in section 36(1) of the 2022 Act (currently £315,000 over the current and preceding two financial years);
- the procedural requirements in section 37 of the 2022 Act must be followed; and
- where the relief exceeds the amount specified in section 36(4) of the 2022 Act (currently £100,000), certain requirements as to transparency (i.e. making an entry in the subsidy database) must be followed.

Regulation 3(4) specifies that, if not awarded as MFA, these reliefs can only be awarded if this is compatible with the subsidy control requirements in the 2022 Act, and if they are granted in accordance with those requirements.

Regulation 3 amends the Non-Domestic Rates (Restriction of Relief) (Scotland) Regulations 2021 to specify that those Regulations only apply in the financial years 2021-22 and 2022-23.

Background

¹ ‘Minimal Financial Assistance’ is defined in section 36(3) of the 2022 Act.

² ‘Minimal or SPEI financial assistance’ is defined in section 42(8) of the 2022 Act

The 2022 Act provides a new framework for the provision of subsidies within the United Kingdom which build on the provisions in the subsidy control chapters of the UK-EU Trade and Co-operation Agreement. It came into force on the 4 January 2023.

The 2022 Act imposes various requirements (the subsidy control requirements) that apply to the giving of certain forms of financial assistance that are considered subsidies under that Act). The 2022 Act provides that the subsidy control requirements do not apply to MFA given to an enterprise where the total amount of minimal or SPEI (services of public economic interest) financial assistance given to the enterprise over the applicable period does not exceed the specified threshold.

The existing reliefs described in regulation 3(2) of the Regulations, as restricted by the provisions of the Non-Domestic Rates (Restriction of Relief) (Scotland) Regulations 2021, are treated as “legacy schemes” under the regime provided for in the 2022 Act and will remain in force up to 31 March 2023.

Consultation

There is no statutory obligation to consult on these Regulations.

Impact Assessments

No Business and Regulatory Impact Assessment is required because the Regulations will not impose new regulatory burdens on businesses, charities or the voluntary sector.

Financial Effects

The award of the reliefs prescribed in these regulations has to date been subject to some form of cap for *de minimis* state aid. The MFA threshold under the 2022 Act is set at a similar, although not identical level. It is anticipated that the prescribed reliefs will not exceed this threshold. On that basis, it is anticipated that the Scottish Fiscal Commission's forecast of non-domestic rates income, which is in part based on historical data from previous years' returns, remains accurate as regards the cost of the specified reliefs in future years.

Scottish Government
Local Government and Housing Directorate
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