

SCHEDULE 5

HIGHER RATES RESIDENTIAL PROPERTY TRANSACTIONS

PART 6

INTERPRETATION

What counts as a dwelling

- 36 (1) This paragraph sets out rules for determining what counts as a dwelling for the purposes of this Schedule.
- (2) A building or part of a building counts as a dwelling if—
- (a) it is used or suitable for use as a dwelling, or
 - (b) it is in the process of being constructed or adapted for such use.
- (3) Land that is, or is to be, occupied or enjoyed with a dwelling as a garden or grounds (including any building or structure on that land) is taken to be part of that dwelling.
- (4) Land that subsists, or is to subsist, for the benefit of a dwelling is taken to be part of that dwelling.
- (5) The main subject-matter of a transaction is also taken to consist of or include an interest in a dwelling if—
- (a) substantial performance of a contract constitutes the effective date of that transaction by virtue of a relevant deeming provision,
 - (b) the main subject-matter of the transaction consists of or includes an interest in a building, or a part of a building, that is to be constructed or adapted under the contract for use as a dwelling, and
 - (c) construction or adaptation of the building, or part of a building, has not begun by the time the contract is substantially performed.
- (6) In sub-paragraph (5)—
- “contract” (“*contract*”) includes any agreement;
 - “relevant deeming provision” (“*darpariaeth dybio berthnasol*”) means any of sections 10 to 13 or paragraph 8(1) to (5) of Schedule 2 (pre-completion transactions) or paragraph 20 of Schedule 6 (agreement for lease);
 - “substantially performed” (“*cyflawni’n sylweddol*”) has the same meaning as in section 14.
- (7) A building or part of a building used for a purpose specified in section 72(4) or (5) is not used as a dwelling for the purposes of sub-paragraph (2) or (5).
- (8) Where a building or part of a building is used for a purpose mentioned in sub-paragraph (7), no account is to be taken for the purposes of sub-paragraph (2) of its suitability for any other use.