

SCHEDULE 5

HIGHER RATES RESIDENTIAL PROPERTY TRANSACTIONS

PART 6

INTERPRETATION

Dwellings outside Wales

- 35 (1) In the provisions of this Schedule specified in sub-paragraph (4), references to a “dwelling” include references to a dwelling situated outside Wales.
- (2) In relation to a dwelling situated in England, those provisions are to be construed in accordance with the provisions of the [Finance Act 2003 \(c. 14\)](#).
- (3) In the application of those provisions in relation to a dwelling situated in a country or territory outside England and Wales—
- (a) references to a “major interest” in the dwelling are to an equivalent interest in the dwelling under the law of that country or territory,
 - (b) references to persons being beneficially entitled as joint tenants, tenants in common or coparceners to an interest in the dwelling are to persons having an equivalent entitlement to the interest in the dwelling under the law of that country or territory,
 - (c) references to a “land transaction” in relation to the dwelling are to the acquisition of an interest in the dwelling under the law of that country or territory,
 - (d) references to the “effective date” of a land transaction in relation to the dwelling are to the date on which the interest in the dwelling is acquired under the law of that country or territory, and
 - (e) references to “inheritance” are to the acquisition of an interest from a deceased person’s estate in accordance with the laws of that country or territory concerning the inheritance of property.
- (4) The provisions of this Schedule referred to in sub-paragraphs (1), (2) and (3) are—
- (a) paragraph 5(1)(a),
 - (b) paragraph 8(2)(b), (c), (d) and (e) and (4)(b), (c) and (d),
 - (c) paragraph 9(4),
 - (d) paragraph 15(1)(b),
 - (e) paragraph 17(2)(b), (c), (d) and (e) and (4)(b), (c) and (d),
 - (f) paragraph 18(4),
 - (g) paragraph 26,
 - (h) paragraph 28,
 - (i) paragraph 32(2), and
 - (j) paragraph 34.
- (5) Where the child of a person (“P”) has an interest in a dwelling which is situated in a country or territory outside Wales—
- (a) P and any spouse or civil partner of P are to be treated for the purposes of this Schedule as having that interest, and

- (b) the child is not to be so treated.
- (6) Sub-paragraph (5)(a) does not apply in relation to a spouse or civil partner of P if the two of them are not living together (for the meaning of which, see paragraph 25(3)).
- (7) Sub-paragraph (5) does not apply where—
 - (a) a person (“D”) acquires, holds or disposes of, a major interest in a dwelling in a child’s name or on the child’s behalf,
 - (b) D does so in the exercise of powers conferred on D as the deputy of the child, and
 - (c) D holds or, in the case of a disposal, held, that interest on trust for the child.
- (8) In sub-paragraph (7), “deputy” means—
 - (a) a person appointed under section 16 of the [Mental Capacity Act 2005 \(c. 9\)](#), or
 - (b) a person appointed to an equivalent position under the law of a country or territory outside England and Wales (and accordingly the reference to an interest being held on trust by such a person is to its being held on an equivalent basis under that law).

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.

Status: This is the original version (as it was originally enacted).

- (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.

Major interest not to include certain leases

- 37 For the purposes of this Schedule, any term of years absolute or leasehold estate is not a “major interest” if its term does not exceed 7 years on the date of its grant.