

# LOCAL GOVERNMENT FINANCE (UNOCCUPIED PROPERTIES ETC) (SCOTLAND) ACT 2012

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## EXPLANATORY NOTES

### COMMENTARY OF SECTIONS

#### *Section 2 – Council tax: variation for unoccupied dwellings*

9. Provision in section 33 of the Local Government in Scotland Act 2003<sup>1</sup> gives the Scottish Ministers the power, by regulations, to provide for a council tax discount in respect of unoccupied dwellings. It also allows the Scottish Ministers to make regulations that confer a power on local authorities to vary the level of council tax discount provided for such dwellings in their areas. These powers were used to make the Council Tax (Discount for Unoccupied Dwellings) (Scotland) Regulations 2005 (“the 2005 Regulations”; [S.S.I. 2005/51](http://www.legislation.gov.uk/ssi/2005/51))<sup>2</sup> which allowed for discounts of between 10% and 50% for unoccupied properties.
10. [Section 2](#) of the Act amends section 33 of the 2003 Act so that the Scottish Ministers may, by regulations, vary the amount payable, or allow local authorities to vary the amount payable, in relation to such unoccupied properties as are specified in the regulations. This power includes the ability to provide for an increased charge either by removing the discount or imposing an increase. The power to set, by regulations, a limit to the maximum discount local authorities can allow is retained. By virtue of the amendment, regulations are also able to set a limit on the maximum increase local authorities can impose, as well as placing other restrictions on any powers the regulations confer. Any increase in council tax liability imposed by virtue of regulations under section 33 as amended (whether imposed directly by the regulations or by local authority variation of the regulations) is not able to increase the amount of council tax payable so that it is more than double the standard rate of council tax that applies to the property. As enacted, the powers conferred by section 33 of the 2003 Act are exercisable subject to the affirmative procedure (as defined by section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010)<sup>3</sup> and the Act does not change that.
11. As section 33(2)(b)(ii) of the 2003 Act, as amended, gives local authorities the power to modify regulations so as to turn a council tax discount into an increase (or vice-versa), it follows that the power that is conferred under section 33(2)(b)(ii) also allows local authorities to modify regulations so as to disapply a discount or an increase provided for in the regulations without going so far as to turn an increase into a discount or a discount into an increase (in other words local authorities could use the power described in section 33(2)(b)(ii) to provide that the standard rate of council tax applies rather than any discount or increase prescribed in the regulations). That being the case,

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<sup>1</sup> <http://www.legislation.gov.uk/asp/2003/1/contents>

<sup>2</sup> <http://www.legislation.gov.uk/ssi/2005/51/contents/made>

<sup>3</sup> <http://www.legislation.gov.uk/asp/2010/10/contents>

*These notes relate to the Local Government Finance (Unoccupied Properties etc) (Scotland) Act 2012 (asp 11) which received Royal Assent on 5 December 2012*

section 33(2)(b)(i), which describes a specific power for local authorities to disapply regulations, is no longer required and therefore is repealed by the Act.

12. [Section 2](#) of the Act also repeals section 33(1)(a) of the 2003 Act, on account of that provision being spent, the provision which it enabled having been used to make the 2005 Regulations. A power to amend section 33, which is contained in subsection (1) (b) of that section, is revoked, it being unnecessary as a result of the changes made by the 2005 Regulations.
13. In addition, section 2(5) inserts a new subsection (2A) into section 33 of the 2003 Act which requires that regulations made under section 33 may not allow for unoccupied properties owned by a local authority or a registered social landlord to be treated more favourably than other unoccupied dwellings solely due to the fact they are owned by a social landlord.