



EXPLANATORY NOTES

Non-Domestic Rates (Scotland) Act 2020 (asp 4)

£6.90

NON-DOMESTIC RATES (SCOTLAND) ACT 2020

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INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Non-Domestic Rates (Scotland) Act 2020 (“the Act”). They do not form part of the Act and have not been endorsed by the Parliament.

2. These Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section, or a part of a section, does not seem to require any explanation or comment, none is given. The time of publication of these Notes, as referred to in the text, is late 2022.

THE ACT

Part 1 – Overview of Act and interpretation of references to other Acts

3. The Act deals with non-domestic rates, which are a property-based tax paid on non-domestic properties. Rates are paid to local authorities and used to fund local authority services. The rates payable in respect of a particular property are based on the rateable value of the property as entered in the valuation roll.

Section 1 – Overview of Act and interpretation of references to other Acts

4. The Act is divided into 5 Parts. Section 1(1) sets out how the Parts are arranged and summarises what each Part does as follows:

- Part 2 amends the law about the administration and enforcement of non-domestic rates,
- Part 3 makes provision about information-gathering powers for assessors and local authorities,
- Part 4 makes provision about power for the Scottish Ministers to make regulations to tackle avoidance of non-domestic rates,
- Part 5 contains general and final provisions.

5. Parts 3 and 4 make new freestanding provision, as do sections 14, 16, 20, 22, 23 and 24 within Part 2. The remaining provisions within Part 2 amend existing Acts. Statutory provision about non-domestic rates is spread across a large number of Acts and statutory instruments. Section 1(2) provides definitions of a number of Acts that are amended by or referred to in more than one section of the Act as follows:

- the “1854 Act” is the Lands Valuation (Scotland) Act 1854 – non-domestic rates are payable in respect of “lands and heritages”, which is defined in section 42 of the 1854 Act.¹ This definition is fundamental to non-domestic rating legislation, and is adopted for the purposes of the Act by section 42. The 1854 Act is also amended by sections 12 and 26 of the Act.
- the “1956 Act” is the Valuation and Rating (Scotland) Act 1956 – it is amended by sections 4, 11 and 36 of the Act.
- the “1962 Act” is the Local Government (Financial Provisions etc.) (Scotland) Act 1962 – section 4 of the 1962 Act provides for mandatory and discretionary relief from payment of non-domestic rates for charities and certain other organisations, and is amended by sections 17 and 18 of the Act.
- the “1963 Act” is the Local Government (Financial Provisions) (Scotland) Act 1963 – it is amended by sections 5, 11 and 36 of the Act.
- the “1975 Act” is the Local Government (Scotland) Act 1975 – the 1975 Act contains provision about the valuation roll and revaluation. It is amended by sections 2, 3, 7, 8, 9, 10, 13 and 21 of the Act.

6. These definitions are also used throughout these Explanatory Notes.

7. A number of other Acts are amended by the Act, but are not defined in section 1 (due to only being amended by one section).

8. Section 1 only provides definitions for Acts. Definitions of the terms “lands and heritages”, “non-domestic rates” and “valuation roll” are provided in section 42. Again, these definitions are used throughout these Explanatory Notes.

Part 2 – Administration and enforcement of non-domestic rates

Section 2 – Revaluation years

9. Section 2 amends the definition of “year of revaluation” in section 37(1) of the 1975 Act so that revaluations will be carried out every three years, rather than every five years.

10. Non-domestic rates are calculated using the rateable value of a property included in the valuation roll. For most properties, the rateable value is generally based upon its estimated open market value on the “tone date”² were it to be vacant and to let. The rateable value requires to be reviewed periodically to reflect changes in the property market.

¹ The core of the definition is as follows: “the expression “lands and heritages” shall extend to and include all lands, houses, shootings, and deer forests, fishings, woods, copse, and underwood from which revenue is actually derived, ferries, piers, harbours, quays, wharfs, docks, canals, railways, mines, minerals, quarries, coalworks, waterworks, limeworks, brickworks, ironworks, gasworks, factories, and all buildings and pertinents thereof, and such class or classes of plant or machinery in or on any lands and heritages as may be prescribed by the Scottish Ministers by regulations”. (But note that the reference to “houses” in this definition does not mean that “dwellings”, as defined in Part 2 of the Local Government Finance Act 1992, are subject to non-domestic rates – by virtue of that Part of that Act, “dwellings” are subject to council tax rather than rates.)

² At the time the Bill for the Act was introduced into the Scottish Parliament, the “tone date” was 1 April two years before the date of the revaluation. The Act does not change that date. However, since enactment, the tone date has been changed (by the Valuation (Postponement of Revaluation) (Coronavirus) (Scotland) Order 2020

11. Section 1(1) of the 1975 Act requires assessors to make up a valuation roll for each year of revaluation. “Year of revaluation” is defined in section 37(1) of the 1975 Act. At the time the Bill for the Act was introduced into the Scottish Parliament, that section defined “year of revaluation” as the year 2017-18 and every fifth year thereafter. At that time, therefore, the next year of revaluation was due to be the year 2022-23. Paragraph (a) of section 2 was intended to preserve 2022-23 as a year of revaluation, while paragraph (b) provides for subsequent years of revaluation to be every third year after the previous revaluation.³

Section 3 – New or improved properties: mark in valuation roll

12. Section 3 inserts a new section 2A into the 1975 Act, in relation to entries in the valuation roll for newly built or improved properties. New section 2A will facilitate the identification of properties which may be eligible for rates relief for such properties (see section 14 of the Act).

13. Sections 1 and 2 of the 1975 Act require the assessor for each valuation area to make up a valuation roll for each year of revaluation. Following a revaluation, rateable values will generally remain unchanged until the next revaluation, unless property is altered or other changes take place. Each entry in the valuation roll relates to a different property (described in the legislation as “lands and heritages”).

14. New section 2A(1) and (2) requires an assessor to identify an entry in the valuation roll which is made or altered in relation to one or more new buildings, or as a result of the refurbishment or extension of one or more existing buildings. The assessor must do this by including a mark in the entry to show that it relates to newly built lands and heritages, or to improved lands and heritages.

15. Entries in the valuation roll are shared with the local authority when they are made or altered, under section 3(1) of the 1975 Act. The local authority will therefore be able to use this mark to identify properties which may be eligible for relief under regulations made under section 14(1) of the Act.

16. Section 2A(3) explains what is meant by an entry in the valuation roll which relates to newly built lands and heritages. This is an entry for property which includes buildings (or parts of buildings) none of which were previously included in any entry in the valuation roll or the valuation list (for council tax). Entries in respect of properties which previously existed but which did not require to be entered in the valuation roll by virtue of an enactment⁴ are also excluded from the definition of newly built lands and heritages. For example, agricultural lands and heritages do not require to be entered in the valuation roll by virtue of section 7(3) of the

(S.S.I. 2020/418)). At the time of publication of these Notes, the tone date is 1 April one year before the date of revaluation.

³ The intention for the next year of revaluation to be 2022-23 has been subsequently revised, however: the Valuation (Postponement of Revaluation) (Coronavirus) (Scotland) Order 2020 (S.S.I. 2020/418) substituted, for the previous reference in the definition of “year of revaluation” to 2017-18, a reference to 2023-24, superseding the change made by section 2(a). At the time of publication of these Notes, therefore, the next revaluation is scheduled to be in 2023-24 (with the tone date being 1 April 2022), with the next revaluation after that being scheduled for 2026-27.

⁴ New section 2A(11) provides that “enactment” includes an Act of the Scottish Parliament (and instruments made under such Acts) – but for this subsection, these particular types of enactment would be excluded by virtue of the definition of “enactment” in schedule 1 of the Interpretation Act 1978.

1956 Act. Lands and heritages converted from agricultural use to some other non-residential use may require to be entered in the valuation roll as a result of their conversion but would not count as newly built lands and heritages for the purposes of this section.

17. This means that any buildings or parts of a building in the entry must be newly built. The entry might be a new one in the valuation roll, or it might be one which is adjusted, and which previously related to land which had no buildings on it.

18. Section 2A(4) and (5) explains what is meant by an entry in the valuation roll which relates to improved lands and heritages. This is relevant where land in the valuation roll already has buildings on it. If the rateable value of the property is increased as a result of the construction or erection of other buildings, or parts of a building, or the refurbishment or extension of the existing buildings, the entry will be altered and become an entry which relates to improved property. Subsection (5)(b) provides that this does not apply where there is an increase in the rateable value which is attributable to existing properties in the valuation roll being combined, divided or reorganised, or to a change in the way in which the property is being used.⁵

19. Subsection (6) requires an assessor to remove a mark which has been included in an entry under subsection (2) the next time the entry is adjusted.

20. Subsection (7)(a) enables the Scottish Ministers to make provision in regulations about things that are or are not to be treated as a building for the purposes of section 2A. This power could be used where there is doubt as to whether certain structures would ordinarily be considered to be buildings.

21. Subsection (7)(b) enables the Scottish Ministers to modify the definition of “relevant increase” in subsection (5), i.e. to change the description of the increases in rateable value which result in a property being considered to be improved. This power might be used to keep pace with the application of the rates relief in regulations under section 14 of the Act, as the mark for improved lands and heritages will assist local authorities in identifying properties which might be eligible for that relief.⁶

22. Subsection (8) requires the Scottish Ministers to consult such persons as they think appropriate before exercising either of the powers conferred by subsection (7).

23. Subsection (9) allows the regulations to make different provision for different purposes (for example, to make different provision about things that are to be treated as buildings in different circumstances), and to make ancillary provision. Subsection (10) makes provision about the parliamentary procedure which applies to the regulations.

⁵ Although subsection (5)(b)(ii) has subsequently been repealed by the Non-Domestic Rates (Valuation Roll) (Modification) (Scotland) Regulations 2022 (S.S.I. 2022/126) – so an increase in rateable value is not excluded from being a “relevant increase” for the purposes of subsection (4) if it is partly attributable to a change in use of the lands and heritages. These regulations also amended subsection (5)(a), so that a “relevant increase” in rateable value can also arise from installations of solar cells, solar panels or certain other plant and machinery.

⁶ See, for example, the changes mentioned in footnote 5 above.

Section 4 – Power of Scottish Ministers to remove exempt status of lands and heritages

24. This section inserts a new section 8D into the 1956 Act.

25. Not all lands and heritages require to be entered in the valuation roll. Non-domestic rates are not payable in respect of lands and heritages which are not entered in the valuation roll. Some of the exemptions from the requirement for lands and heritages to be entered in the valuation roll are set out in subordinate legislation⁷ (with the result that the exemptions could be removed if the subordinate legislation was revoked – leading to a requirement for the lands and heritages to be entered in the valuation roll). Other exemptions are set out in primary legislation.⁸ Prior to the coming into force of this section, such exemptions could only be removed by further primary legislation.

26. New section 8D allows the Scottish Ministers, following consultation with such persons as they consider appropriate, to make regulations requiring lands and heritages which are, by virtue of an enactment,⁹ exempt from entry in the valuation roll to be entered in the valuation roll. This includes where the exemption is set out in primary legislation. Any such regulations are subject to the affirmative procedure if they modify any enactment and to negative procedure in any other case. The power does not extend to entering in the valuation roll lands and heritages which are not so entered by virtue of Part 2 of the Local Government Finance Act 1992 (that is, lands and heritages which are dwellings).

27. Non-domestic rates may or may not become payable in respect of any lands and heritages that cease to be exempt from entry in the valuation roll by virtue of regulations under section 8D – this will also depend on other factors, such as whether any reductions or remissions in the non-domestic rates payable apply in relation to the lands and heritages.

Section 5 – Entering of parks in valuation roll

28. Section 19 of the 1963 Act makes provision about the entry in the valuation roll of lands and heritages which consist of certain types of park (including buildings in the park used for purposes ancillary to those of the park). At the time of publication of these Notes, subsection (1) of that section sets out a basic rule that such lands and heritages are not to be entered in the valuation roll, with subsections (1A) and (1B) of section 19 of the 1963 Act then specifying exceptions to this rule. As noted above, non-domestic rates are not payable in respect of lands and heritages which are not entered in the valuation roll.

29. Under subsection (1A) of section 19 of the 1963 Act, a park vested in or under the control of a local authority requires to be entered in the valuation roll only if the local authority derives a net profit from the park. A park vested in or under the control of a Minister of the Crown or Government department (or other persons or bodies exercising functions on behalf of the Crown) requires to be entered in the valuation roll only if the park is not available for free and unrestricted use by members of the public (subsection (1B) of section 19 of the 1963 Act).

⁷ See, for example, the Valuation and Rating (Exempted Classes) (Scotland) Order 2002 (S.S.I. 2002/262), which deals with oil and gas pipelines.

⁸ See, for example, sections 7, 7A and 8C of the 1956 Act, which exempt agricultural lands and heritages, fish farms and rural automatic telling machines respectively.

⁹ New section 8D(7) provides that “enactment” includes an Act of the Scottish Parliament (and instruments made under such Acts) – again, but for this subsection, these particular types of enactment would be excluded by virtue of the definition of “enactment” in schedule 1 of the Interpretation Act 1978.

30. Section 5(3) amends section 19 of the 1963 Act by replacing subsections (1A) to (1C) with four new subsections. New subsection (1ZA) sets out a new basic rule that parts of parks which have certain characteristics are to be entered in the valuation roll (and, as a consequence, section 5(2) amends subsection (1) of section 19 of the 1963 Act to remove the previous statement of the basic rule). The characteristics that will lead to a part of a park (of one of the two types of park mentioned in both the old and the new version of subsection (1)) being entered in the valuation roll are set out in subsections (1ZB) and (1ZC).

31. The first case (subsection (1ZB)) is where the part of the park is occupied by a person other than the local authority or, as the case may be, the Minister or Government department (or other person exercising functions on behalf of the Crown). In this case, the part of the park which is occupied by the other person must be entered in the valuation roll. This requires, for example, a food outlet which is located within a local authority park (and used for purposes ancillary to those of the park¹⁰) but which is run by another person to be entered in the valuation roll. The rates payable would depend on the rateable value determined for the food outlet and whether the occupier was in receipt of any relief.

32. The second case is where, despite being occupied by a local authority or, as the case may be, a Minister or Government department (or other person exercising functions on behalf of the Crown), at least some members of the public are required to pay in order to access facilities in a particular part of the park or for goods and services provided in the part. If, for example, a local authority park contains tennis courts, which can only be used on payment of a charge by some or all users, then that part of the park requires to be entered in the valuation roll. The fact that some categories of people may be able to access the courts at a concessionary rate (or even free of charge) does not change this. Again, the rates payable as a result of the entry will depend on the rateable value and any reliefs being received.

33. Parts of parks (of the two types set out in subsection (1) of section 19 of the 1963 Act) which do not fall into either subsection (1ZB) or (1ZC)) will continue not to be entered in the valuation roll (subsection (1ZD)).

Section 6 – Discretion of local authority to determine whether lands and heritages are dwellings

34. Section 72(4) of the Local Government Finance Act 1992 enables the Scottish Ministers to make regulations about lands and heritages, or classes of lands and heritages, which are included in, or excluded from, the definition of “dwelling” in section 72(2). If the lands and heritages are a dwelling, they are subject to council tax under section 72(1). Otherwise, they are subject to being entered in the valuation roll and, if so entered, subject to non-domestic rates.

35. Section 6 of the Act makes provision to enable regulations under section 72(4) of the 1992 Act to give a local authority discretion to determine, in circumstances set out in the regulations, whether particular lands and heritages fall within a class of lands and heritages prescribed in the regulations.

¹⁰ Buildings within a park which are used for purposes other than purposes ancillary to those of the park are not covered by the provisions of section 19 of the 1963 Act and so are subject to entry in the valuation roll (depending on the purposes for which they are used) and, if so entered, to non-domestic rates (depending on the occupier’s eligibility for any reliefs).

36. This power will allow the regulations to make provision about circumstances in which local authorities can exercise discretion in particular cases, where it appears to them that lands and heritages should stay in the non-domestic rates system, where the application of the tests in the regulations would otherwise result in them falling into the council tax system. For example, where lands and heritages fall within a particular class if they are used in a certain way, the regulations may allow the local authority to determine that the lands and heritages fall within that class even if they are not used in that way, if there is a good reason for that.¹¹

Section 7 – Agreement as to valuation

37. Section 1 of the 1975 Act requires assessors to make up a new valuation roll in each year of revaluation. An assessor will, on occasion, enter into an agreement with the proprietor, tenant or occupier of lands and heritages as to what the entry for those lands and heritages in the valuation roll will be.

38. Section 7 inserts new subsections (3A) and (3B) into section 1 to provide that, where such an agreement exists, the entry in the new valuation roll¹² must reflect that agreement unless there has been an alteration in the valuation of the lands and heritages as a result of a material change of circumstances since the agreement was entered into. “Material change of circumstances” is defined in section 37(1) of the 1975 Act (as amended by section 13 of the Act).

Section 8 – Draft valuation roll and draft valuation notices

39. Section 8 inserts a new section 1B into the 1975 Act. Section 1B(1)(a) requires an assessor to make up and publish a draft valuation roll before making up the new valuation roll in a revaluation year. It is intended that the Scottish Ministers will use existing powers to specify when the draft valuation roll is to be published.

40. Section 1B(1)(b) requires an assessor to send a draft valuation notice to each person who is the proprietor, tenant or occupier of lands and heritages entered in the draft valuation roll. Subsection (2)(a) requires the draft valuation notice to set out the details included in the entry for the lands and heritage in the draft roll (including the rating valuation). Subsection (2)(b) also requires the notice to state that the recipient of the draft notice can make representations to the assessor about the details to be included for the lands and heritages in the final valuation roll to be made up under section 1(1) of the 1975 Act (see subsection (3)), and the fact that the entry for the lands and heritages in the final valuation roll may differ from the entry in the draft valuation roll (see subsection (4)). Subsection (2)(c) provides that the draft notice may also include such other information as the Scottish Ministers may specify in regulations or as the assessor considers appropriate.

41. Subsections (5) and (6) provides that regulations specifying information to be included in a draft valuation notice may make different provision for different purposes, may make ancillary provision and are subject to the negative procedure.

¹¹ See the insertion by the Council Tax (Dwellings and Part Residential Subjects) (Scotland) Amendment Regulations 2021 (S.S.I. 2021/489) of regulation 5B of the Council Tax (Dwellings and Part Residential Subjects) (Scotland) Regulations 1992 (S.I. 1992/2955).

¹² That is, the valuation roll made up for the year of revaluation under section 1(1) of the 1975 Act. The duty imposed on the assessor by new subsection (3B) applies only when a new valuation roll is made up under that section and not at any other time.

Section 9 – Valuation notices

42. Section 9 adjusts section 3 of the 1975 Act in relation to the information that assessors must give ratepayers in a valuation notice under section 3(2), and also in relation to how those notices may be provided.

43. Section 3(2) of the 1975 Act requires assessors to send ratepayers valuation notices in relation to entries made or adjusted in the valuation roll. A valuation notice will tell the ratepayer what the rateable value of the property is. New subsection (2ZA) requires the assessor to include such information in relation to the rateable value as the Scottish Ministers may specify in regulations. For example, this information may relate to how that value was calculated. New section 3(7) (inserted by paragraph (b) of section 9) provides that the regulations are subject to the negative procedure.

44. Paragraph (b) of new subsection (2ZA) allows the assessor to include other information in a valuation notice, if the assessor considers that to be appropriate.

45. Section 9 also inserts a new subsection (2ZB) into section 3 of the 1975 Act. This allows assessors to send valuation notices electronically, with the agreement of the ratepayer. Prior to this new subsection coming into force, all notices were sent by post.

Section 10 – Proposals to alter, and appeals against, valuation roll

46. Section 10 amends the 1975 Act to introduce a new mechanism for ratepayers to challenge entries in the valuation roll, before making an appeal to the valuation appeal committee.¹³

47. At the time of publication of these Notes, section 3 of the 1975 Act gives proprietors, tenants and occupiers of lands and heritages the right to appeal to the valuation appeal committee against an entry in the valuation roll in various circumstances. Subsection (2) allows an appeal to be made where the proprietor, tenant or occupier receives a valuation notice from the assessor, where the assessor makes or alters an entry. Subsections (2A) and (2B) allow a new proprietor, tenant or occupier of lands and heritages to appeal against the entry in the valuation roll for the lands and heritages within 6 months of becoming the proprietor, tenant or occupier of them. Subsections (4) and (4A) allow a proprietor, tenant or occupier to appeal against the entry if there is a material change in circumstances, or on the grounds that there is an error in the entry.

48. Section 10(3)(a) and (b) of the Act repeals the provisions about appeals in section 3 of the 1975 Act, and subsection (4) replaces them with new sections 3ZA and 3ZB, providing for a new stage for ratepayers to propose changes to the valuation roll, and for appeals following the making of a proposal.

49. New section 3ZA(1) allows each of the proprietor, tenant and occupier of lands and heritages to separately make a proposal to the assessor to alter the entry in the valuation roll for those lands and heritages. Subsection (2) sets out the circumstances in which a proposal can be made. They are essentially the same as the circumstances in which an appeal can be

¹³ The functions of the valuation appeal committee are due to transfer to the Local Taxation Chamber of the First-tier Tribunal for Scotland, with effect from 1 April 2023.

made under section 3 at the time of publication of these Notes (see paragraph 47), although the time limits for making a proposal will be set out in regulations under subsection (7) rather than in section 3ZA itself.

50. New section 3ZA(3) prevents a person from making a proposal in relation to an entry in the valuation roll as made up in a revaluation year if the entry reflects the terms of an agreement between that person and the assessor.

51. Section 3ZA(4) essentially replicates section 3(2B) of the 1975 Act, and provides that a new proprietor, tenant or occupier can make a proposal regardless of whether a previous proprietor, tenant or occupier reached an agreement with the assessor about the entry in the valuation roll for the lands and heritages, or challenged it through a proposal or an appeal.

52. Section 3ZA(5) requires a proposal to be made in writing, and to set out the changes that the person making it wants the assessor to make to the entry. For example, if the proposal is concerned with the rateable value shown in the entry, the proposal must set out the amount that the person making the proposal thinks is the value that should be shown in the entry.

53. Under subsection (6), the assessor can decide to alter the entry as suggested in the proposal or as subsequently agreed in writing with the person making the proposal, decide to alter the entry other than as suggested by or agreed with that person (and may either increase or decrease the value included in the entry), or decide not to alter the entry at all. If the assessor decides to alter the entry other than as suggested by or agreed with the person who made the proposal, the person who made the proposal can appeal to the valuation appeal committee under section 3ZB(1)(a). The person can also appeal under that section if the assessor decides not to alter the entry in the valuation roll at all.

54. Subsection (7) enables the Scottish Ministers to make provision in regulations about various matters in connection with proposals under section 3ZA. These include time limits for making a proposal, the form in which it is to be made, the information and documentation that must be supplied with the proposal, notices that the assessor is to give to the proposer and other persons with an interest in the lands and heritages in question (for example, another person who is the proprietor, tenant or occupier of the lands and heritages), fees that may be payable for making a proposal, and when a decision by the assessor to alter an entry in the valuation roll is to take effect.

55. By virtue of section 3ZA(10), regulations under subsection (7) are subject to the negative procedure unless they make provision about fees, in which case they are subject to the affirmative procedure. Regulations making provision about fees also require to be consulted upon under subsection (8).

56. New section 3ZB makes provision about the making of appeals to the valuation appeal committee following the making of a proposal. There is no right to appeal under section 3ZB unless the appellant has first made a proposal.

57. Section 3ZB(1)(a) allows an appeal to be made to the valuation appeal committee against an assessor's decision under section 3ZA(6)(b) to alter an entry in the valuation roll in a way different to that proposed or agreed with the person who made the proposal or under section 3ZA(6)(c) not to alter the entry at all. There is no right of appeal if the alteration to the entry in the valuation roll is made under section 3ZA(6)(a) (that is, where the assessor decides to alter the entry as proposed, or in line with a subsequent agreement in writing between the assessor and the person who made the proposal).

58. Section 3ZB(1)(b) allows an appeal to be made to the valuation appeal committee if the assessor does not determine the proposal within a particular period (to be set out in regulations under section 3ZB(7)(a)). Subsection (2) provides that in this case the appeal is to be treated as if it were an appeal against a decision of the assessor not to alter an entry in the valuation roll following the making of the proposal. This means that the issue under consideration in the appeal is whether the entry in the valuation roll should be changed (and not, for example, whether the assessor's failure to make a decision in the allotted time was justifiable).

59. The period within which an appeal is to be made in either of these situations will be set out in regulations under section 3ZB(7)(a). An appeal cannot be brought after the end of the period, and the valuation appeal committee does not have discretion to extend the period (section 3ZB(3)(a)).

60. Section 3ZB(3)(b) requires the appellant to obtain the permission of the valuation appeal committee in order to withdraw an appeal after it is made. This is the case even where the assessor and the appellant have reached an agreement about how the entry in the valuation roll should be altered after the appeal is made.

61. Section 3ZB(4) sets out what the committee is to do on an appeal. The committee is to decide what alterations the assessor is to make to the entry, if any. Any alterations may be the same as those contained in the proposal, or the committee may decide that different alterations should be made.¹⁴ The committee may in particular decide that the rateable value of the property is to be increased or decreased.¹⁵

62. Section 3ZB(5) and (6) replicates the effect of parts of section 3(4) of the 1975 Act (which is repealed by section 10(3)(b) of the Act). It provides that, if a proposal has been made on the grounds of a material change in circumstances (i.e. a change affecting the rateable value of the property) and there is a subsequent appeal to the valuation appeal committee, the committee may decide that the entry is to be altered if it is established that the change in circumstances has materially reduced the extent to which the property can be beneficially enjoyed, even if the specific extent of the reduction in the property's value cannot be proved.

63. Section 3ZB(7) enables the Scottish Ministers to make regulations in relation to the making of appeals under section 3ZB(1). The regulations may deal with matters such as the time limits for bringing and disposing of appeals, information to be included and documents to be submitted with appeals (for example, documentation in relation to the proposal under section 3ZA), circumstances in which the appeal may be brought only with the permission of the valuation appeal committee (for example, permission might be needed if the appellant does not have all of the relevant documentation), fees payable in connection with an appeal¹⁶ and the procedures to be followed in an appeal (including the evidence that may be led).

¹⁴ Including, in a case where the entry has been altered under section 3ZA(6)(b), reverting to the entry in its original form.

¹⁵ The practice under the appeal system in operation at the time of publication of these Notes (described in paragraph 47) is for the rateable value not to be increased on appeal.

¹⁶ Under the appeal system in operation of the time of publication of these Notes (described in paragraph 47), fees do not require to be paid in relation to an appeal to the valuation appeal committee.

64. Regulations under section 3ZB(7) are subject to the affirmative procedure if they make provision about fees, and otherwise are subject to the negative procedure (section 3ZB(10)). Regulations making provision about fees also require to be consulted upon under section 3ZB(8).

65. Subsections (2) and (3)(c) of section 10 of the Act adjust sections 2 and 3 of the 1975 Act in consequence of new sections 3ZA and 3ZB.

66. Section 10(2)(a) adjusts section 2(1A) of the 1975 Act to provide for the assessor to alter the valuation roll to reflect any decision of the assessor in relation to an entry in the valuation roll following the making of a proposal under new section 3ZA (while retaining the existing requirement to alter the valuation roll to reflect the outcome of an appeal, now under section 3ZB).

67. Section 10(2)(b) adjusts section 2(2)(cc) to ensure that the position in relation to alterations to entries in the valuation roll following a new person becoming the proprietor, tenant or occupier of lands and heritages is maintained – any such alterations following the making of a proposal by such a person (or an appeal in relation to such a proposal) will only apply from the date the person became the proprietor, tenant or occupier.

68. Section 2(3) of the 1975 Act permits the assessor to alter an entry in the valuation roll if, pending an appeal being dealt with, an agreement is reached about the entry. New subsection (3A) (inserted into the 1975 Act by section 10(2)(c)) limits this power, with the effect that an agreement reached between the assessor and the person who made a proposal in relation to an entry in the valuation roll after an appeal is made under section 3ZB will only result in the entry being changed if the appeal is also withdrawn.

69. Section 10(3)(c) adjusts section 3(5) of the 1975 Act. That section (as in force at the time of publication of these Notes) includes a requirement for the assessor to let an interested person know whether there is an appeal pending in relation to an entry in the valuation roll, if the person requests that information. That requirement is adjusted so that it will, following introduction of the new system explained above, apply both where a proposal under section 3ZA is pending and where an appeal under section 3ZB is pending.

Section 11 – Proposals and appeals: consequential modifications

70. Section 11 modifies enabling powers contained in section 13 of the 1956 Act, and section 15(2) of the 1963 Act as a consequence of the enabling powers in new sections 3ZA and 3ZB of the 1975 Act (inserted by section 10). This is to avoid an overlap between the existing powers and the new ones.

71. Section 13 of the 1956 Act enables the Scottish Ministers to make provision in an order about when notices are to be given, or other things done, under the Valuation Acts (i.e. legislation relating to valuation). Section 15(2) of the 1963 Act enables the Scottish Ministers to make provision in regulations about the procedure to be followed in appeals to the valuation appeal committee.

Section 12 – Restriction on making complaints

72. Section 13 of the 1854 Act concerns complaints made to a valuation appeal committee about the value of lands and heritages as entered in the valuation roll. Any person can make such a complaint. Section 12 of the Act amends section 13 of the 1854 Act to provide that such a complaint cannot be made by the proprietor, tenant or occupier of the lands and heritages to which the complaint relates. Such a person has an alternative route to challenge the valuation through the making of a proposal to the assessor under new section 3ZA of the 1975 Act and an appeal to the valuation appeal committee under new section 3ZB of that Act (see section 10 of the Act).

Section 13 – Meaning of “material change of circumstances”

73. At the time of publication of these Notes, a proprietor, tenant or occupier of lands and heritages can appeal against the entry in the valuation roll relating to the lands and heritages if there was a material change of circumstances (section 3(4) of the 1975 Act¹⁷). Under section 1(6)(c) of the 1975 Act assessors may, and under section 2(1)(d) of that Act they must, alter an entry in respect of lands and heritages in the valuation roll to reflect any alteration in the value of the lands and heritages which is due to a “material change of circumstances”.

74. Section 37(1) of the 1975 Act defines “material change of circumstances” for these purposes. Broadly speaking, this means a change of circumstances affecting the value of the lands and heritages. Prior to section 13 of the Act coming into force, this definition did not exclude general economic factors (e.g. a general increase or decrease in rents), with the result that such factors could form the basis of an appeal against an entry in the valuation roll.

75. Section 13 amends the definition of “material change of circumstances” in the 1975 Act to exclude changes in general economic circumstances (specifically, changes in the rent of particular lands and heritages or any other lands and heritages, or in the level of valuations generally or in the value of lands and heritages generally). Following section 13 coming into force, proprietors, tenants and occupiers are therefore no longer able to request the alteration of an entry in the valuation roll on the basis of such changes.

Section 14 – New or improved properties: rates relief

76. Section 14 enables the Scottish Ministers to make regulations providing for relief from the payment of non-domestic rates in relation to new or improved properties.¹⁸

77. Subsection (1) of section 14 allows the Scottish Ministers to make regulations providing for rates relief for newly built, and for improved, lands and heritages. These are defined in subsection (6) by reference to section 2A of the 1975 Act (inserted by section 3 of the Act), which requires entries for such properties to be marked in the valuation roll. Essentially, these are entries which include new buildings where previously the entry had no buildings, or buildings which have been refurbished or extended.

¹⁷This provision will be repealed by section 10(3)(b) of the Act when it comes into force, but new section 3ZA(2)(c), inserted by section 10(4) of the Act, instead allows a proposal to change the entry to be made on the ground that there has been a material change in circumstances.

¹⁸ See the Non-Domestic Rates (Relief for New and Improved Properties) (Scotland) Regulations 2022 (S.S.I. 2022/49) for the first regulations made under this section.

78. Subsection (2) expands on subsection (1) by explaining some of the things that the regulations might do. They may set the rates of relief (including thresholds for rates of relief), provide for the periods for which relief is available, and make provision about eligibility for relief. Eligibility rules may be based on the use or occupation of the building, or whether further changes are made to the building.

79. Subsection (3) provides for the regulations to be able to make different provision for different purposes and ancillary provision, and subsection (4) provides for them to be subject to the negative procedure. Subsection (5) requires the Scottish Ministers to consult such persons as they consider appropriate before making the regulations.

Section 15 – Contribution to net-zero emissions target: rates relief

80. Section 153(1) of the Local Government etc. (Scotland) Act 1994 gives the Scottish Ministers power (by regulations, subject to negative procedure) to prescribe that the amount payable as non-domestic rates in respect of any lands and heritages is to be such amount as may be determined in accordance with prescribed rules. This allows Ministers to specify reliefs and supplements that apply to the non-domestic rates payable in respect of particular types of lands and heritages. Subsection (3) of section 153 provides additional detail in relation to this power, stating, for example, that different provision may be made in relation to different areas or different classes of lands and heritages.

81. Subsection (2) of section 15 of the Act amends section 153(3) to give an additional example of how the power conferred by section 153(1) may be used. Specifically, it provides that regulations may make different provision in relation to lands and heritages which contribute to the net-zero emissions target¹⁹ (for example, because they form part of a district heating network²⁰) and those which do not. Different provision may also be made in respect of different categories of lands and heritages which do contribute to the net-zero emissions target, if such categories are prescribed under section 153(1). Subsection (3) of section 15 makes a minor consequential amendment, providing that regulations under section 153(1) can include provision about how lands and heritages are to be determined to fall within a category prescribed in rules for the purpose of new subsection (3)(c)(ii).

Section 16 – Specialist music provision in public schools: rates relief

82. Section 16 enables the Scottish Ministers to make regulations providing for relief from the payment of non-domestic rates in relation to lands and heritages which form part of a public school²¹ whose pupils include specialist music pupils and which are used wholly or mainly for the provision of specialist music tuition to those pupils. The regulations may also provide for how the parts of the school which are wholly or mainly used for that specialist music tuition (and therefore eligible for any relief provided for under subsection (1)) are to be identified, and for separate entries to be made in the valuation roll in respect of the parts of the school used

¹⁹ Defined by reference to section A1(1) of the Climate Change (Scotland) Act 2009.

²⁰ Section 15 does not define “district heating network”, which therefore takes an ordinary meaning. But see, for example, the definition in the Non-Domestic Rates (District Heating Relief) (Scotland) Regulations 2017 (S.S.I. 2017/61).

²¹ Within the meaning of section 135(1) of the Education (Scotland) Act 1980 (that is, a school managed by an education authority).

for that purpose and the other parts of the school. The regulations may also provide for how the rateable values for the lands and heritages covered by any such separate entries are to be determined, and make further provision for or about eligibility for the relief.

83. Subsection (5) provides for the regulations to be able to make different provision for different purposes and ancillary provision, and subsection (6) provides for them to be subject to the negative procedure.

Section 17 – Charitable relief: independent schools

84. Section 4 of the 1962 Act provides for relief in respect of payment of non-domestic rates in certain circumstances:

- under subsection (2), relief of 80% is (provided written notice is given to the rating authority) automatically granted in respect of eligible lands and heritages. Eligible lands and heritages include lands and heritages occupied by (or by trustees for) a charity and used wholly or mainly for charitable purposes,
- under subsection (5), a rating authority has discretion to grant relief to certain lands and heritages, including power to grant further relief to lands and heritages falling within subsection (2) (so a rating authority could grant relief from the remaining 20% of the rates payable in respect of lands and heritages occupied by charities).

85. Subsection (9) of section 4 of the 1962 Act provides that the reliefs under subsections (2) and (5) are not available in certain cases.

86. Section 17 of the Act amends section 4 of the 1962 Act in relation to the eligibility of mainstream independent schools which are charities for relief under subsections (2) and (5). Such schools are, by virtue of the amendment of section 4(9) of the 1962 Act made by section 17(2) of the Act, excluded from such eligibility. Schools which are no longer eligible for relief therefore lost their previous mandatory 80% relief under subsection (2) of section 4 of the 1962 Act when section 17 came into force.²² Rating authorities will also lose their ability to grant discretionary relief to such schools under subsection (5) of that section. Any existing discretionary relief which was due to continue in effect beyond the date on which section 17 of the Act came into force instead ceased with effect from that date (new subsection (14) of section 4 of the 1962 Act, inserted by section 17(5) of the Act).

87. Certain types of independent school which are charities will continue to be eligible for relief under subsections (2) and (5) of section 4 of the 1962 Act (see new subsection (9A) of that section, inserted by section 17(3) of the Act). Those schools are independent special schools and specialist independent music schools.

Section 18 – Power to reduce or remit rates for certain organisations: guidance

88. As explained in paragraph 84, section 4(5) of the 1962 Act allows rating authorities to grant relief in respect of certain lands and heritages – including, under paragraph (c) of that section, lands and heritages occupied for the purposes of a club, society or other organisation not established or conducted for profit and used wholly or mainly for the purposes of recreation.

²² Which was on 1 April 2022 (see the Non-Domestic Rates (Scotland) Act 2020 (Commencement No.2, Transitional and Saving Provisions) Amendment Regulations 2021 (S.S.I. 2021/120)).

89. Section 18 of the Act inserts a number of new subsections into section 4 of the 1962 Act, as follows. New subsection (7A) gives the Scottish Ministers power to issue guidance to rating authorities about the exercise of their discretion to grant relief under section 4(5)(c) of the 1962 Act. The power also covers subsections (6) to (7) of section 4, which deal with the period for which relief under subsection (5) may be granted. So, for example, guidance could recommend that certain types of organisation falling within subsection (5)(c) be granted relief only for periods recommended in the guidance. Subsection (7B) requires rating authorities to have regard to any guidance issued under subsection (7A).

90. Subsections (7C) to (7J) make supplementary provision in relation to guidance under subsection (7A), covering matters such as publication and revision of the guidance and Parliamentary approval of the guidance. In particular, subsection (7D)(b) requires the Scottish Ministers to consult on guidance under subsection (7A) before it is issued, and subsection (7D)(a) requires a draft of the guidance to be laid before the Scottish Parliament. Subsection (7E) provides that the guidance may not be issued until a period of 40 days, starting with the laying of the guidance, has expired. Subsection (7F) prohibits the Scottish Ministers from issuing the guidance if the Scottish Parliament decides, within that period, that it should not be issued. To enable guidance to be issued as soon as possible after section 18 of the Act comes into force, new subsection (7H) allows any consultation undertaken prior to that date to satisfy subsection (7D)(b).

Section 19 – Unoccupied properties

91. Section 24 of the Local Government (Scotland) Act 1966 (“the 1966 Act”) provides a default rule that non-domestic rates are not payable in respect of unoccupied lands and heritages (although it also provides that the Scottish Ministers may by regulations prescribe classes of unoccupied lands and heritages in respect of which a specified proportion (of between 50% and 90%) of the rates that would be due if the lands and heritages were occupied is payable).

92. Section 24A of the 1966 Act makes provision in relation to how lands and heritages that are partly unoccupied for a short time are treated for rating purposes. In summary, a rating authority can request the assessor to apportion the rateable value between the occupied part of the lands and heritages and the unoccupied part (subsection (1)). The rates payable are then calculated with reference to the rateable value of the occupied part only, reducing the rates payable (subsection (2)). But the Scottish Ministers can again prescribe classes of lands and heritages in respect of which this default rule does not apply (with a specified proportion of between 50% and 90% of the rateable value of the unoccupied part continuing to be taken account of in determining the rates payable).

93. Section 24B of the 1966 Act provides for certain lands and heritages to be treated as unoccupied for the purposes of sections 24 and 24A, while section 25 and schedule 3 make provision as to the treatment of newly erected and altered buildings which are not yet occupied for the purposes of section 24.

94. Subsection (2) of section 19 repeals section 24 of the 1966 Act. The default position following commencement of section 19²³ will therefore be that non-domestic rates are payable in respect of unoccupied lands and heritages. Local authorities have power to offer non-

²³ Scheduled at the time of publication of these Notes for 1 April 2023 – see the Non-Domestic Rates (Scotland) Act 2020 (Commencement No. 2, Transitional and Saving Provisions (Amendment) and Commencement No. 3) and Saving Provision) Regulations 2022 (S.S.I. 2022/23).

domestic rates relief in respect of unoccupied lands and heritages under section 3A of the 1962 Act (schemes for reduction and remission of rates), should any authority wish to do so. The Scottish Ministers could also, if they wished, provide for relief for unoccupied lands and heritages under section 153 of the Local Government etc. (Scotland) Act 1994.²⁴

95. Subsection (3) repeals subsection (4) of section 24A of the 1966 Act (and makes other changes to the section which are consequential on this). This removes the power for Scottish Ministers to specify that a proportion of the rateable value of classes of lands and heritages which are unoccupied for a short time should continue to be taken into account in determining the amount of rates payable. The rules set out in subsections (1) and (2) of section 24A continue to apply.

96. Subsection (4) to (7) make minor changes to sections 24B and 25 and schedule 3 of the 1966 Act which are consequential on the repeal of section 24.

Section 20 – Non-use or underuse of lands and heritages: notification

97. Section 24A of the Local Government (Scotland) Act 1966 makes provision under which the rates payable in respect of lands and heritages which are partly unoccupied for a short time can be reduced. Provision for relief in respect of unoccupied properties may also be made under section 3A of 1962 Act or section 153 of the Local Government etc. (Scotland) Act 1994.²⁵ But other reliefs (for example, charitable relief) may be more advantageous to the ratepayer.

98. Section 20(2) of the Act allows a local authority to serve a notice on a ratepayer who is in receipt of a relief (other than unoccupied property relief under section 24A of the 1966 Act) if the local authority considers that one of two conditions may be met. The first condition is that the lands and heritages are not being used (suggesting that any unoccupied property relief that is available in respect of the lands and heritages ought to apply instead of whatever relief is being received). The second condition is that the lands and heritages are being used only minimally, the amount of relief being received is greater than would be received if any available unoccupied property relief applied, and the ratepayer's main reason for not leaving the lands and heritages empty is to obtain that greater amount of relief.

99. The notice under section 20(2) must give the local authority's reasons for considering that one of these two conditions may be satisfied. Ratepayers will have 28 days from the date the notice is given to respond. If no response is received within that period, the local authority must proceed to decide whether one of the conditions is in fact satisfied (and may take further action in light of its conclusion).

100. Where a response is received in the time allowed, the local authority must consider, in the light of the information provided, whether one of the conditions is in fact satisfied. If the local authority concludes that neither of the conditions are satisfied, it must advise the ratepayer of that conclusion. Where the conclusion is that a condition is satisfied, the local authority must advise the ratepayer of the reasons for its decision and of what further action it intends to take.

²⁴ It is also possible that new or improved properties which are unoccupied might be eligible for relief by virtue of regulations made under section 14.

²⁵ It is also possible that new or improved properties which are unoccupied might be eligible for relief by virtue of regulations made under section 14.

101. The further action to be taken where the local authority decides that a condition is satisfied may depend on what relief the ratepayer is in receipt of, but could, for example, involve the ratepayer being issued with a revised demand for rates based on unoccupied property relief rather than any other relief.

Section 21 – Failure to pay instalments

102. Section 21 makes changes to the way in which local authorities can recover unpaid non-domestic rates.

103. Section 8(1) and (2) of the 1975 Act provides for non-domestic rates to be payable in ten monthly instalments, beginning in May and ending in February. This does not apply where the ratepayer agrees with the local authority to a different payment schedule (see section 8(7) of the 1975 Act). Prior to commencement of section 21, section 8(8) and (9) of the 1975 Act made provision for enforcement where rates are to be paid in monthly instalments in accordance with section 8(1). The position was that, if the ratepayer was in arrears by two or more instalments on or after 30 September, the balance of the rates became payable in full.

104. This meant that local authorities were unable to take steps to recover unpaid instalments before the end of September. To enable local authorities to initiate debt recovery at an earlier stage (bringing the process for recovery of unpaid non-domestic rates into line with the process for recovery of unpaid council tax), section 21 of the Act repeals section 8(8) and (9) of the 1975 Act and replaces them with a new section 8A.

105. Section 8A applies where rates are payable in instalments in accordance with section 8(1) and (2), and the ratepayer has missed an instalment. Section 8A(2) requires the local authority to send the ratepayer a reminder notice after the first missed instalment. The ratepayer has seven days in which to pay the missed instalment, and any further instalment which is due to be paid during that seven day period (section 8A(3)). If the ratepayer fails to pay the missed instalment (and any other instalment due as mentioned above), the total amount of unpaid rates for the year becomes payable at the end of the next seven-day period (section 8A(4)).

106. If a ratepayer misses an instalment, and has already been given two reminder notices in the year, section 8A(5) provides that the total amount of unpaid rates for the year becomes payable on the day following the day on which the missed instalment was due to be paid.

107. Paragraph (b) of section 21(3) of the Act repeals section 8(8) and (9) of the 1975 Act, whilst paragraph (a) makes a consequential adjustment to section 8(1) of that Act.

108. Section 21(4) of the Act amends section 247 of the Local Government (Scotland) Act 1947 in consequence of new section 8A. Section 247(1) provides that unpaid non-domestic rates are recoverable by diligence authorised by summary warrant or in pursuance of a decree granted in an action for payment. Section 247(2) makes provision about what a certificate accompanying an application to the sheriff for a summary warrant must say.

109. Section 21(4) amends section 247(2) so that, where reminder notices have been issued under section 8A, the certificate must state that the local authority has served a reminder notice on the ratepayer under section 8A(2), that the total amount of unpaid rates for the year has become payable under section 8A(4)(b) or (5)(c) and that a period of 14 days has passed since that amount became payable without the whole amount having been paid. This means that, when rates become payable in full, the ratepayer has a further period of 14 days within which to pay them before the local authority can apply for a summary warrant for their recovery.

110. Where section 8A does not apply to late payment of rates (because they were not payable in instalments under section 8(1)), the requirements of section 247(2) are unaltered.

Section 22 – Electronic communication of information

111. Section 22(1) gives the Scottish Ministers the power by regulations to make provision allowing or requiring notices in relation to non-domestic rates (most of which are otherwise required to be given by post) to be given by electronic means. The regulations may be permissive or mandatory.

112. Subsection (2) sets out the types of notice which can be the subject of regulations under subsection (1). These are notices which are required to be given by statute, and which relate to non-domestic rates.²⁶

113. Subsection (3) sets out particular things that the regulations may do. This includes allowing information which would otherwise be required to be given by notice to a particular person to instead be given to that person and to others (for example, by publication of the information on a website – this approach might be suitable for use to convey information which is relevant to all proprietors, tenants and occupiers, such as a change of date in a particular year on which something is to happen). Subsection (3)(c) allows the regulations to require a person's consent to receive a notice electronically, although it is also possible that the regulations will not require such consent to be given.

114. Subsection (4)(a) allows regulations under subsection (1) to modify any enactment (including the Act). As the regulations relate to notices which are required to be given by statute, it may be necessary to amend the legislation including that requirement in order to give effect to the regulations.

Section 23 – Procedure for regulations under section 22

115. Section 23 sets out the procedure and consultation requirements for regulations under section 22.

116. Subsection (1) provides that the regulations are subject to the affirmative procedure. Subsection (2) requires the Scottish Ministers to consult persons appearing to them to represent the interests of either local authorities or of assessors (or both), as they consider appropriate, a person or persons appearing to them to represent the interests of ratepayers or potential ratepayers, and such other persons as they consider appropriate, before laying a draft of the regulations before the Scottish Parliament.

117. Subsection (3) requires the Scottish Ministers to notify the Scottish Parliament about the consultation as soon as reasonably practicable after it begins, and subsection (4) requires them to have regard to any representations made as a result of the consultation.

²⁶ For example, the Non-Domestic Rates (Valuation Notices) (Scotland) Regulations 2022 (S.S.I. 2022/205) permit draft valuation notices under new section 1B of the 1975 Act to be sent electronically in certain circumstances.

Section 24 – Duty to report on number of assessors and availability of resources

118. Section 24 provides for reports providing information about certain matters relating to the exercise of non-domestic rates functions to be laid before the Scottish Parliament every three years. The reports are to be prepared and laid before the Parliament by each joint valuation board established under section 27(7) of the Local Government etc. (Scotland) Act 1994 or, where an area is not covered by such a board, the valuation authority.²⁷ The matters to be covered in a report are set out in subsection (2). A report must include information on the number of assessors and depute assessors holding office in the area of the joint board or valuation authority on 1 April in the year of the report and assessments of whether that number is sufficient for the proper exercise of the non-domestic rating functions of the board or authority and whether the board or authority has sufficient resources more generally for the exercise of those functions. Other matters relating to non-domestic rates may also be covered. The first set of reports under this section must be laid before the Scottish Parliament by 31 May 2025.

Section 25 – Status of secretary of valuation appeal panel

119. The Tribunals (Scotland) Act 2014 (“the 2014 Act”) created a new structure for tribunals dealing with devolved matters, including valuation appeal committees as constituted under section 29 of the Local Government etc. (Scotland) Act 1994.²⁸ The members of valuation appeal committees are drawn from valuation appeal panels. Paragraph 1 of schedule 2 of the 2014 Act empowers the Scottish Ministers to provide by regulations that members of affected tribunals (or of panels from which the members of affected tribunals are drawn, as is the case in relation to valuation appeal committees) may be transferred to be holders of positions within the new Scottish tribunals.

120. Each valuation appeals panel has a secretary (and may have one or more assistant secretaries).²⁹ Such secretaries and assistant secretaries are not members of the panel. The 2014 Act did not originally include any provision under which those secretaries and assistant secretaries could be transferred to be holders of positions in the new tribunal structure. Section 25 inserts a new sub-paragraph (4) into paragraph 1 of schedule 2 of the 2014 Act, which permits regulations under sub-paragraph (1) of that paragraph to provide for secretaries and assistant secretaries of valuation appeals panels to also be transferred to be holders of positions in the new tribunal structure.

Part 3 – Information notices and notifications of changes of circumstances

121. Part 3 sets out powers for assessors and local authorities to send notices requiring certain persons to provide certain types of information about particular lands and heritages. It also contains a duty on certain persons to notify a local authority of changes in circumstances that might affect their non-domestic rates liability. There are associated offences and civil penalties for failure to comply with the requirements.

²⁷ The Valuation Joint Boards (Scotland) Order 1995 (S.I. 1995/2589) created 10 valuation joint boards, covering 28 of Scotland’s 32 valuation authorities in total. The authorities not covered by a joint board are Fife, Glasgow City, Dumfries and Galloway and the Scottish Borders.

²⁸ The various tribunals affected are being gradually transferred into the new structure over time – valuation appeal committees have not been transferred as at the time of publication of these Notes but are due to transfer with effect from 1 April 2023.

²⁹ See regulation 7 of the Valuation Appeal Panels and Committees (Scotland) Regulations 1996 (S.I. 1996/137).

Section 26 – Assessor information notices

122. Section 26 gives power to assessors to give written notices to a range of persons requiring those persons to provide such information as the assessor may need for the purpose of carrying out the assessor's functions in relation to the lands and heritages referred to in a notice. The principal function of assessors is valuing lands and heritages.³⁰ Examples of the types of information needed for assessors to carry out their functions might include, for example, information about the purposes for which the lands and heritages are used or information needed to establish the identity of the proprietor, tenant or occupier of the lands and heritages.

123. The persons to whom notices may be given are: (a) a person who the assessor thinks is a proprietor, tenant or occupier of the lands and heritages, and (b) any other person who the assessor thinks has information which is reasonably required for the exercise of the assessor's functions.

124. Subsection (4) of section 26 provides for legal professional privilege to apply if, for example, a person to whom a notice under subsection (1)(b) is sent is a lawyer.

125. An assessor information notice must be given in writing and the person who receives it has 28 days, starting with the day the notice is given, to comply. A person who knowingly provides false or misleading information in reply to an assessor information notice commits an offence – see section 29. Section 30 provides for civil penalties for failing to comply with a notice.

126. These provisions are a more modern, broader replacement for section 7 of the 1854 Act and that section is therefore repealed by section 26(5).

Section 27 – Local authority information notices

127. Section 27 gives power to local authorities to give written notices to proprietors, tenants or occupiers of lands and heritages requiring them to provide such information as the local authority may need for the purpose of issuing demands or other documents relating to non-domestic rates in respect of the lands and heritages.³¹

128. The power is exercised on behalf of a local authority by a person authorised in writing for the purpose of this section.

³⁰ Assessors are responsible for valuing lands and heritages in the area of their valuation authority or joint valuation board. But, in addition, some assessors have responsibility for valuing particular types of lands and heritages throughout Scotland. This means that, for example, the assessor for Lanarkshire may give an assessor information notice requiring information to be provided about lands and heritages used for electricity generation, even if the lands and heritages are outwith Lanarkshire (because that assessor is, at the time of publication of these Notes, responsible for valuing all such facilities across Scotland).

³¹ The power includes power to require the provision of information about lands and heritages outside the area of the local authority on behalf of which the notice is given – for example, where a person owns lands and heritages in one area, the local authority for that area might also need information about lands and heritages owned by the person in other local authority areas in order to assess entitlement to relief under the Small Business Bonus Scheme.

129. A local authority information notice must be given in writing and the person who receives it has 21 days, starting with the day the notice is given, to comply. A person who knowingly provides false or misleading information in reply to a local authority information notice commits an offence – see section 29. Section 33 provides for civil penalties for failing to comply with a notice.

Section 28 – Duty to notify changes of circumstances

130. Section 28 requires a ratepayer (or a person who would be liable to pay rates in respect of particular lands and heritages but for the fact that no rates are payable) to tell the local authority about certain types of changes in circumstances.

131. The changes in circumstances covered by section 28 are changes (whether in relation to the ratepayer's personal circumstances or in relation to the lands and heritages concerned) which the person either knows, or might reasonably be expected to know, would affect whether rates are or are not payable in relation to the lands and heritages or would affect the amount of rates that should be payable.

132. The ratepayer must tell the local authority within 42 days of the change in circumstances occurring. A person who knowingly provides false or misleading information in a notification commits an offence – see section 29. A person who fails to tell the local authority of the change within the time allowed is liable to a civil penalty – see section 33.

Section 29 – Offences in relation to information notices and notifications under section 28

133. Section 29 creates a number of criminal offences to enforce the duties in sections 26 to 28.

134. It is an offence (under subsection (1)) to knowingly provide false or misleading information in purporting to comply with an assessor information notice or local authority information notice.

135. It is also an offence (under subsection (2)) to knowingly provide false or misleading information in a notification under section 28.

136. A person who commits any of these offences is liable on summary conviction to a maximum fine of level 3 on the standard scale (£1,000 at the time of publication of these Notes).

Section 30 – Civil penalties for failure to comply with assessor information notices.

137. Section 30 gives an assessor power to give a person who fails to comply with an assessor information notice a penalty notice imposing a civil penalty. The penalty notice must, under subsection (2), set out the reasons for giving it, specify the amount of the penalty, explain a person's right to appeal and also warn the person that further, escalating penalties may be imposed if the person continues to fail to comply. Subsection (3) provides for how the amount of the penalty is to be determined – if the lands and heritages to which the assessor information notice relates are already entered in the valuation roll, the penalty is either £200 or (if greater)

1% of the rateable value of the lands and heritages (as stated in the valuation roll on the day on which the penalty notice is given).³² If the lands and heritages are not already entered in the valuation roll, the penalty is £1,000.

138. If the person continues to fail to comply after a further period of 42 days, the person may be given a further penalty under subsection (4). Subsection (4) also provides for how the amount of the further penalty is to be determined. Where the lands and heritages to which the assessor information notice relates are entered in the valuation roll, the penalty is either £1,000 or (if greater) 20% of the rateable value of the lands and heritages (again as stated in the valuation roll on the day on which the original penalty notice is given).³³ If the lands and heritages are not already entered in the valuation roll, the further penalty is £10,000.

139. Under subsection (5), the person becomes liable to a further penalty if, 56 days after the giving of the original penalty notice (and 14 days after becoming liable to the higher penalties set out in subsection (4)), the person has still not complied with the original assessor information notice. In this case, the amount of the penalty is, where the lands and heritages to which the assessor information notice relates are entered in the valuation roll, either £1,000 or (if greater) 50% of the rateable value of the lands and heritages (the rateable value being that stated in the valuation roll on the day the original penalty notice was given).³⁴ If the lands and heritages are not entered in the valuation roll, the further penalty at this point is £50,000.

140. Subsection (7) provides that an assessor may mitigate or remit any penalty given.

141. The Scottish Ministers may by regulations (under subsection (8)) modify the rules set out in subsections (3), (4) and (5) for determining the amount of penalties (including by amending the figures and percentages specified in those subsections). The regulations are subject to the affirmative procedure. Before laying a draft of such regulations before the Scottish Parliament, the Scottish Ministers must consult such persons as they consider appropriate.

142. The Scottish Ministers may make regulations (under subsection (12)) about the form of penalty notices and how they may be given (for example, they might allow notices to be given by name or by a description such as “the occupier”). The regulations are subject to the negative procedure.

³² In practice, this means that lands and heritages would need to have a rateable value of more than £20,000 in order for a penalty under subsection (3)(a) to exceed the £200 specified in sub-paragraph (i) of that subsection – although the £200 figure can be altered by regulations, as can the percentage specified in sub-paragraph (ii) (see subsections (8) to (11)).

³³ In this case, lands and heritages would need to have a rateable value of more than £5,000 in order for a penalty under subsection (4)(a) to exceed the £1,000 figure specified in sub-paragraph (i) of that subsection – again, though both the £1,000 figure and the percentage specified in sub-paragraph (ii) can be altered by regulations under subsection (8).

³⁴ Finally, in this case, lands and heritages would need to have a rateable value of more than £2,000 in order for a penalty under subsection (5)(a) to exceed the £1,000 figure specified in sub-paragraph (i) of that subsection. Once again, though, both that £1,000 figure and the percentage specified in sub-paragraph (ii) can be altered by regulations under subsection (8).

Section 31 – Penalties under section 30: appeals and enforcement

143. Section 31(1) provides that a person who gets a penalty notice relating to an assessor information notice may appeal to a valuation appeal committee. An appeal must be made within 28 days of the day on which the penalty notice is given.

144. Where an appeal is made and the appellant has incurred further penalties under section 30(4) or (5) for continued non-compliance with the assessor information notice, the appeal is, by virtue of subsection (3)(a), to be treated as including an appeal against the further penalties. Making an appeal does not prevent the appellant becoming liable to further penalties (subsection (3)(b)).

145. The valuation appeal committee may cancel the penalty or reduce its amount if they think that the person had a reasonable excuse for not complying with the notice or that the information that the notice asks for is not in the person's possession or control (subsections (4) and (5)).

146. Under subsection (7), the Scottish Ministers may make regulations to make further provision about appeals under this section, including things like the procedure for appeals and whether penalties have to be paid while an appeal is pending. The regulations are subject to the negative procedure. Before making such regulations, the Scottish Ministers must consult such persons as they consider appropriate.

Section 32 – Payment of penalties into the Scottish Consolidated Fund

147. Penalties imposed under section 30 (for failure to comply with an assessor information notice) are initially payable to the assessor. But the assessor does not retain the penalties – section 32 requires assessors to then pay the penalties into the Scottish Consolidated Fund. Subsection (2) allows assessors to deduct reasonable expenses before doing so. Subsection (3) enables the Scottish Ministers to make further provision in regulations (subject to the negative procedure) about the expenses that can be deducted.

Section 33 – Civil penalties for failure to comply with local authority information notices and for failure to notify changes in circumstances

148. Section 33 gives a local authority power to give persons who fail to comply with a local authority information notice a penalty notice imposing a civil penalty of £95 (subsections (1)(a) and (2)(b)(i)). If the person continues to fail to comply after being asked again for the same information (see section 27(3)), the person may be given a further penalty of £370 (subsections (1)(a) and (2)(b)(ii)).

149. A person who fails to comply with the section 28 (duty to notify a change of circumstances) may be given a penalty notice imposing a civil penalty of £370 (subsections (1)(b) and (3)(b)).

150. In each case, a penalty notice must set out the reasons for giving it and explain a person's right to appeal (subsections (2)(a) and (c) and (3)(a) and (c)).

151. Subsection (4) provides that an authorised officer may mitigate or remit any penalty given.

152. The Scottish Ministers may by regulations (under subsection (5)) increase or decrease the penalty amounts set out in subsections (2)(b)(i) and (ii) and (3)(b). Regulations are subject to the affirmative procedure. Before laying a draft of such regulations before the Scottish Parliament, the Scottish Ministers must consult such persons as they consider appropriate.

153. The Scottish Ministers may make regulations (under subsection (9)) about the form of penalty notices and how they may be given (for example, they might allow notices to be given by name or by a description such as “the occupier”). The regulations are subject to the negative procedure.

Section 34 – Penalties under section 33: appeals

154. Section 34(1) provides that a person who gets a penalty notice relating to failure to comply with a local authority information notice or to notify a change of circumstances may appeal to a valuation appeal committee. An appeal must be made within 28 days of the day on which the penalty notice is given.

155. Where an appeal is made and the appellant incurs further penalties for failing to comply with further requests for the same information, the appeal is, by virtue of subsection (3)(a), to be treated as including an appeal against the further penalties. The making of an appeal does not prevent the local authority making another request for the information or imposing further penalties (subsection (3)(b)).

156. The valuation appeal committee may cancel the penalty or reduce its amount if they think that the amount of the penalty is excessive (subsection (4)).

157. Under subsection (5), the Scottish Ministers may make regulations to make further provision about appeals under this section, including things like the procedure for appeals. The regulations are subject to the negative procedure. Before making such regulations, the Scottish Ministers must consult such persons as they consider appropriate.

Section 35 – Penalties under section 33: enforcement

158. Section 35 makes provision about the enforcement of penalties imposed under section 33. Subsection (1) provides that such a penalty is recoverable as a civil debt due to the local authority.

159. Under subsection (2), the Scottish Ministers may make regulations containing further provision about the collection of penalties under section 33. Subsection (3) gives examples of the provision that might be made: regulations could, for example, provide for the penalty to be added to the amount of rates due or make provision about repayment where a penalty is mitigated. Regulations could also provide for the penalty to be suspended while an appeal is made. The regulations are subject to the negative procedure, unless they change the text of an Act, in which case they are subject to the affirmative procedure.

Section 36 – Sections 31 and 34: consequential modifications

160. Section 36 modifies enabling powers contained in section 13 of the 1956 Act and section 15 of the 1963 Act as a consequence of the enabling powers in sections 31 and 34. This is to avoid an overlap between the existing powers and the new ones. These provisions will be added to the 1956 and 1963 Acts to follow those added by section 11 of the Act.

Part 4 – Anti-avoidance regulations

161. Part 4 gives the Scottish Ministers a power to make provision, by regulations, with a view to preventing or minimising the avoidance of non-domestic rates.

Section 37 – Anti-avoidance regulations (and section 41 – Procedure for anti-avoidance regulations)

162. Section 37(1) enables the Scottish Ministers to make “anti-avoidance regulations”. These are regulations making provision with a view to preventing or minimising advantages arising from non-domestic rates avoidance arrangements that are artificial. Sections 38, 39 and 40 explain what is meant by an “advantage”, “non-domestic rates avoidance arrangements” and “artificial” respectively.

163. Section 37(2) provides that the Scottish Ministers can make anti-avoidance regulations only if they consider it appropriate to do so. Ministers require to state in proposing regulations why they consider making them to be appropriate (see section 41(6)(a)).

164. Section 37(3) allows the regulations to modify enactments other than Part 4, to make different provision for different purposes and to make ancillary provision.

165. Section 41 makes provision about the procedure for the regulations, including consultation requirements, as follows.

166. Subsection (1) provides that the regulations are subject to the affirmative procedure.

167. Subsection (2) requires the Scottish Ministers to consult persons appearing to them to represent the interests of either local authorities or of assessors (or both), as they consider appropriate, before laying a draft of the regulations before the Scottish Parliament. They may also consult such payers (or potential payers) of non-domestic rates and other persons as they consider appropriate.

168. Subsection (3) requires that consultation to include a copy of the draft regulations, and subsection (4) requires the Scottish Ministers to notify the Scottish Parliament about the consultation (as soon as reasonably practicable after the consultation begins). The Scottish Ministers must have regard to any representations made about the draft regulations as a result of the consultation (subsection (5)).

169. Subsection (6) requires the Scottish Ministers to lay a document before the Scottish Parliament which explains why they consider it to be appropriate to make the regulations, and giving details of the consultation, representations received and any changes made to the proposed regulations by them as a result of the representations. The document is to be laid when the draft regulations are laid.

Section 38 – Meaning of “advantage”

170. Section 38 explains what is meant by an “advantage” in relation to non-domestic rates. This is essentially anything that reduces the amount of rates payable, delays payment of the rates or results in repayment of rates. Subsection (1) sets out a number of things that might, in particular, constitute an advantage. This includes avoiding a rates assessment, having rates remitted, obtaining or increasing a relief from rates, having rates repaid, or a repayment increased, and having a payment deferred or having a repayment advanced.

171. Subsection (2) provides that, when determining whether there is an advantage in relation to rates, the amount of rates that would have been payable in the absence of avoidance arrangements may be relevant.

Section 39 – Non-domestic rates avoidance arrangements

172. Section 39 explains what is meant by “non-domestic rates avoidance arrangements”. Arrangements includes agreements, transactions, undertakings, actions and events, and may include several different arrangements which form a series. The arrangements are “non-domestic rates avoidance arrangements” if it is reasonable to conclude their main purpose, or one of their main purposes, is obtaining an advantage (i.e. reducing or delaying payment of rates, or obtaining a repayment of them).

Section 40 – Meaning of “artificial”

173. Section 40 sets out two different cases in which non-domestic rates avoidance arrangements are “artificial”.

174. The first case (set out in subsection (2)) is where entering into, or carrying out, the arrangement is not a reasonable course of action in relation to the non-domestic rates provisions, in the circumstances. Factors to take into account include whether the substantive results of the arrangement are consistent with express or implied principles on which the provisions are based and the policy underpinning the provisions, and whether the arrangement is intended to exploit shortcomings (or loopholes) in them.

175. The second case (set out in subsection (3)) is that the arrangement lacks economic or commercial substance. Subsection (4) gives an indicative list of things that might indicate a lack of economic or commercial substance. These include where the arrangement is carried out in a manner which is not normal in reasonable business conduct, the legal characterisation of things done under the arrangement is inconsistent with the legal substance of the arrangements as a whole, the arrangements includes elements which offset or cancel each other, the arrangement includes circular transactions, or the advantage resulting from the arrangements is not reflected in the business risks associated with it.

176. Subsection (6) requires arrangements which include more than one transaction, event etc. to be looked at as a whole for the purpose of determining whether they are artificial.

Part 5 – Final provisions

177. Section 42 defines terms used throughout the Act (see also paragraphs 5 to 8).

178. Section 43 empowers the Scottish Ministers to make regulations containing incidental, supplementary, consequential, transitional, transitory or saving provision. Such regulations may modify enactments, in which case they will be subject to affirmative procedure; otherwise they will be subject to negative procedure.

179. Section 44 provides for Part 5 to come into force on the day after Royal Assent. Sections 1, 26(1) to (4), 29(1)(a) and 29(3) (insofar as it relates to 29(1)(a)), 30(1) to (7) and (12) to (14) and 31 also come into force on that day. The remaining sections of the Act come into force on a day or days appointed by the Scottish Ministers by regulations (which are not subject to any Parliamentary procedure).

180. Section 45 provides that the short title of the Act is the Non-Domestic Rates (Scotland) Act 2020.

PARLIAMENTARY HISTORY

181. The following is a list of the proceedings in the Scottish Parliament on the Bill for the Act and significant documents connected to the Bill published by the Parliament during the Bill's parliamentary passage.

Proceedings and reports	Reference
<i>Introduction</i>	
Bill as introduced (25 March 2019)	SP Bill 44 (Session 5 (2019))
Explanatory Notes (25 March 2019)	SP Bill 44–EN (Session 5 (2019))
Financial Memorandum (25 March 2019)	SP Bill 44–FM (Session 5 (2019))
Policy Memorandum (25 March 2019)	SP Bill 44–PM (Session 5 (2019))
Statements on legislative competence (25 March 2019)	SP Bill 44–LC (Session 5 (2019))
Delegated Powers Memorandum (25 March 2019)	SP Bill 44–DPM (Session 5 (2019))
SPICe briefing (14 May 2019)	SB 19–28
<i>Stage 1</i>	
<i>Local Government and Communities Committee (lead committee)</i>	
Consideration in private (3 April 2019)	Minutes of proceedings LGC/S5/19/11/M
Consideration in private (15 May 2019)	Minutes of proceedings LGC/S5/19/14/M
Evidence session (22 May 2019)	Official Report (cols. 2 to 25)
Evidence session (29 May 2019)	Official Report (cols. 5 to 34)
Consideration in private (5 June 2019)	Minutes of proceedings LGC/S5/19/17/M
Evidence session (19 June 2019)	Official Report (cols. 2 to 41)
Evidence session (26 June 2019)	Official Report (cols. 2 to 40)
Evidence session (11 September 2019)	Official Report (cols. 4 to 30)
Consideration in private (25 September 2019)	Minutes of proceedings LGC/S5/19/23/M
Consideration in private (2 October 2019)	Minutes of proceedings LGC/S5/19/24/M
Stage 1 Report (4 October 2019)	9th Report, 2019 (Session 5) (SP Paper 596)
<i>Delegated Powers and Law Reform Committee</i>	
Report on Bill at Stage 1 (26 June 2019)	36th Report, 2019 (Session 5) (SP Paper 566)

Proceedings and reports	Reference
<i>Finance and Constitution Committee</i>	
Evidence session (26 June 2019)	Official Report (cols. 33 to 36)
<i>Whole Parliament</i>	
Stage 1 debate (10 October 2019)	Official Report (cols. 109 to 141 and 144 to 146)
Stage 2	
<i>Local Government and Communities Committee</i>	
1st Marshalled List of amendments	SP Bill 44–ML1 (Session 5 (2019))
1st Groupings of amendments	SP Bill 44–G1 (Session 5 (2019))
Consideration of amendments (27 November 2019)	Official Report (cols. 2 to 61) Minutes of proceedings (LGC/S5/19/30/M)
2nd Marshalled List of amendments	SP Bill 44–ML2 (Session 5 (2019))
2nd Groupings of amendments	SP Bill 44–G2 (Session 5 (2019))
Consideration of amendments (4 December 2019)	Official Report (cols. 3 to 62) Minutes of proceedings (LGC/S5/19/31/M)
<i>Other documents</i>	
Bill as amended at Stage 2 (4 December 2019)	SP Bill 44A (Session 5 (2019))
Supplementary Financial Memorandum (18 December 2019)	SP Bill 44A–FM (Session 5 (2020))
Supplementary Delegated Powers Memorandum (18 December 2019)	SP Bill 44A–DPM (Session 5 (2020))
Revised Explanatory Notes (29 January 2020)	SP Bill 44A–EN (Session 5 (2020))
SPICe briefing (24 January 2020)	SB 20–09
After Stage 2	
<i>Delegated Powers and Law Reform Committee</i>	
Report on Bill as amended at Stage 2 (29 January 2020)	7th Report, 2020 (Session 5) (SP Paper 665)
Stage 3	
Marshalled List of amendments	SP Bill 44A–ML (Session 5 (2020))
Groupings of amendments	SP Bill 44A–G (Session 5 (2020))
Stage 3 consideration of amendments (whole Parliament, 4 February 2020)	Official Report (cols. 15 – 125) Minutes of proceedings

*These notes relate to the Non-Domestic Rates (Scotland) Act 2020 (asp 4)
which received Royal Assent on 11 March 2020*

Proceedings and reports	Reference
Stage 3 debate (whole Parliament, 5 February 2020)	Official Report (cols. 96 to 118 and 128 to 130)
Bill as passed (5 February 2020)	SP Bill 44B (Session 5 (2020))
<i>After passing</i>	
Royal Assent (11 March 2020)	Non-Domestic Rates (Scotland) Act 2020 (asp 4)

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