
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision to prevent or minimise advantages arising from artificial avoidance arrangements in relation to non-domestic rates. Artificial avoidance arrangements in relation to non-domestic rates are defined in sections 38, 39 and 40 of the Non-Domestic Rates (Scotland) Act 2020.

These Regulations prescribe the circumstances in which the owners of lands and heritages, rather than the occupiers, are to be treated as liable to pay non-domestic rates and the circumstances in which any relief (reduction or remittal) in relation to non-domestic rates for those lands and heritages is to cease to be available (Part 2). They also prescribe the circumstances in which changes to lands and heritages causing a reduction in rateable value are to be disregarded (Part 3).

Part 2 provides that, where a tenancy or other arrangement is in place in respect of lands and heritages, such that the occupier would ordinarily be liable to pay non-domestic rates in respect of them, a local authority must treat the owner as liable where it is satisfied, in all the circumstances, that the tenancy or other arrangement has as one of its main purposes the gaining of an advantage and is an artificial non-domestic rates avoidance arrangement. The provisions only apply in respect of a tenancy or other arrangement entered into on or after 1 April 2023.

The circumstances in which a local authority may be satisfied that a tenancy or other arrangement is an artificial non-domestic rates avoidance arrangement include that the lands and heritages are not occupied on a commercial basis, that the body liable to pay non-domestic rates has been, or is being, wound up voluntarily yet the property is still occupied, and that the occupier of the lands and heritages names as the person liable for payment of the rates someone falling within certain prescribed categories. Regulation 5 sets out the process for notification of the owner where a local authority intends to treat them as liable to pay non-domestic rates, which includes an opportunity for the owner to make representations to the local authority.

Regulation 6 makes provision regarding the date from which any treatment of an owner as liable for payment of non-domestic rates is to have effect, which can be an earlier date than it would otherwise be if the owner has received a similar notice in the past. Regulation 7 makes provision for the removal of non-domestic rates relief (reduction or remittal) where the owner of lands and heritages is treated as liable to pay non-domestic rates under regulation 4. Regulation 7 also requires the owner or tenant to demonstrate, to the satisfaction of the local authority, that the making of any subsequent application for relief is not part of an artificial non-domestic rates avoidance arrangement.

Part 3 requires certain changes to lands and heritages, made on or after 1 April 2023, and which have been assessed as reducing their rateable value, to be disregarded where the local authority is satisfied that the making of the change has as its sole or main purpose the gaining of an advantage and is an artificial non-domestic rates avoidance arrangement. In order to disregard such a change, it must appear to the local authority that the change has been made for no reason other than to reduce the rateable value of the lands and heritages, or that there is no clear link between the change that caused the reduction in rateable value and an intention to make the lands and heritages the subject of economic activity. Regulation 9 sets out the process for notification of the person or body liable to pay the non-domestic rates that the local authority intends to disregard such a change, which includes an opportunity for the person or body to make representations to the local authority. If representations are received, the local authority must issue a final notice advising of its decision.