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SCOTTISH STATUTORY INSTRUMENTS

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**2023 No. 92**

**The Non-Domestic Rates (Miscellaneous Anti-Avoidance Measures) (Scotland) Regulations 2023**

**PART 3**

Disregarding of changes leading to reduction in rateable value

**Circumstances in which changes causing a reduction in rateable value are to be disregarded**

8.—(1) This regulation applies where—

- (a) a change has been made to lands and heritages,
- (b) the change was made on or after 1 April 2023,
- (c) prior to the change, either—
  - (i) no non-domestic rates were payable in respect of the lands and heritages, or
  - (ii) the rates payable in respect of the lands and heritages were being reduced by virtue of section 24(3) or 24A(1) of the Local Government (Scotland) Act 1966<sup>(1)</sup> (unoccupied, or partly unoccupied, lands and heritages), and
- (d) by virtue of the change, an assessor has determined that, for the purposes of any entry in the valuation roll, the net annual value or rateable value of the land and heritages, or some part of them, has been reduced.

(2) In determining liability for non-domestic rates in relation to such lands and heritages, a local authority must disregard any change which has been determined by an assessor to result in a reduction in their rateable value where the local authority is satisfied, in all the circumstances, that—

- (a) the making of the change has as its sole or main purpose the gaining of an advantage within the meaning of section 38 of the 2020 Act, and
- (b) the making of the change is an artificial non-domestic rates avoidance arrangement within the meaning of sections 39 and 40 of the 2020 Act.

(3) In determining whether the condition in paragraph (2)(a) is met, the local authority may have regard to the amount of non-domestic rates that would have been payable in respect of the lands and heritages in the absence of the change.

(4) A local authority may only be satisfied that the condition in paragraph (2)(b) is met where it reasonably appears to the local authority, in all the circumstances, that—

- (a) the change has been made for the sole reason of reducing the net annual value or rateable value of the lands and heritages, or

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<sup>(1)</sup> 1966 c. 51. Section 24(3) was amended by section 1(2) of the Local Government Finance (Unoccupied Properties etc.) (Scotland) Act 2012 (asp 11) and section 24A was added by section 155 of the Local Government etc. (Scotland) Act 1994 (c. 39).

- (b) there is no clear link between the change that caused the reduction in net annual value or rateable value and an intention to make the lands and heritages the subject of economic activity.

(5) In determining whether the condition in paragraph (4)(b) has been met, the local authority may have regard to comparable lands and heritages or comparable economic activity.

(6) Where a change is disregarded in accordance with this regulation, non-domestic rates are to continue to be payable on the basis of the rateable value that applied on the day before the day on which the change took effect.

### **Notice of intention to disregard change**

**9.—**(1) Where a local authority intends to disregard a change to lands and heritages in accordance with regulation 8, the local authority must send a notice in writing to the person or body liable to pay the non-domestic rates advising the person or body—

- (a) of the intention to disregard the change,
- (b) the basis under regulation 8 on which the local authority proposes to do so, and
- (c) the proposed effect of a decision to disregard the change.

(2) Any person or body who receives a notice under paragraph (1) may make representations to the local authority as to why they consider—

- (a) that the change made does not have as a main purpose the gaining of an advantage within the meaning of section 38 of the 2020 Act, and
- (b) that the effecting of the change is not an artificial non-domestic rates avoidance arrangement within the meaning of sections 39 and 40 of the 2020 Act.

(3) Representations under paragraph (2)—

- (a) must be made to the local authority in writing,
- (b) must be sent to the local authority within the period of 28 days beginning with the day on which the notice under paragraph (1) is presumed to have been received, and
- (c) may be sent by electronic communication.

(4) A notice under paragraph (1) is to be presumed to have been received 48 hours after it is sent.

(5) The local authority must, within the period of 28 days beginning with the day on which representations under paragraph (2) are received or, where no representations are submitted, the last day on which representations could be submitted, send to the person or body liable to pay non-domestic rates in respect of the lands and heritages a final notice advising—

- (a) whether or not the change is to be disregarded in accordance with regulation 8(2),
- (b) reasons for the decision, including a summary of consideration of any representations made under paragraph (2), and
- (c) whichever of the following applies—

- (i) where the change is to be disregarded, that for rating purposes the rateable value of the lands and heritages on the day before the day on which the change took effect will apply, or
- (ii) where the change is not to be disregarded, that for rating purposes the rateable value which has been determined by the assessor to apply to the lands and heritages will apply.