



The Scottish Parliament  
Pàrlamaid na h-Alba

Clerk to the Delegated Powers and Law Reform Committee  
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15 May 2019

### **Non-Domestic Rates (Scotland) Bill at Stage 1**

The Delegated Powers and Law Reform Committee considered the above Bill on 14 May 2019 and seeks an explanation of the following matters:

#### **1. Section 3 (inserting section 2A(6) to (8) of the Local Government (Scotland) Act 1975) – New or improved properties: mark in valuation roll**

**Power conferred on: the Scottish Ministers**

**Power exercisable by: Regulations**

**Parliamentary procedure: (1) negative, (2) affirmative:**

**(1) power to make provision about things to be treated as “buildings” for the purposes of provision being added to the Local Government (Scotland) Act 1975, and**

**(2) power to modify the definition of “relevant increase” in that provision**

Proposed new section 2A(7)(b) would permit ancillary provisions in the regulations (incidental, supplementary, consequential, transitional, transitory or saving). The DPM does not explain why such provisions could be either necessary or appropriate.

**Please explain why the ancillary powers in the proposed new section 2A(7)(b) of the Local Government (Scotland) Act 1975, inserted by section 3, are necessary or appropriate and how these powers could be used - in particular the power to make supplementary provision?**

#### **2. Section 6 – Valuation notices**

**Power conferred on: Scottish Ministers**

**Power exercisable by: Regulations**

**Parliamentary procedure: Negative**

Similarly to the explanation sought above, the proposed new section 3(6) would permit ancillary provisions in the regulations (incidental, supplementary, consequential, transitional, transitory or saving). Again, the DPM does not explain why such provisions could be either necessary or appropriate.

**Please explain why the ancillary powers in the proposed new section 3(6) of the Local Government (Scotland) Act 1975, as inserted by section 6(b), are necessary or appropriate and how these powers could be used - in particular the power to make supplementary provision?**

**3. Section 7 – Proposals to alter valuation roll: procedures**

**Power conferred on: Scottish Ministers  
Power exercisable by: Regulations  
Parliamentary procedure: Negative**

Again, the Committee considered that more explanation in relation to the ancillary powers was required.

**Please explain why the ancillary powers in the proposed new section 3ZA(7) of the Local Government (Scotland) Act 1975, inserted by section 7(4), are necessary or appropriate and how these powers could be used?**

**In particular, why the power to make supplementary provision is required, given that section 3ZA(6)(e) would enable Ministers to specify in regulations such other matters in connection with the making of a proposal as they consider appropriate?**

**4. Section 7 – Appeals against entries in the valuation roll: procedure**

**Power conferred on: Scottish Ministers  
Power exercisable by: Regulations  
Parliamentary procedure: Affirmative for provision regarding fees, otherwise negative**

As noted above, the Committee considered that more explanation in relation to the ancillary powers was required.

**Please explain why the ancillary powers in the proposed new section 3ZB(7)(b) of the Local Government (Scotland) Act 1975, inserted by section 7(4), are necessary or appropriate, and how these powers could be used?**

**In particular why the power to make supplementary provision is required, given that section 3ZB(6)(g) would enable Ministers to specify in regulations such other matters in connection with appeals as they consider appropriate?**

**5. Section 9 – Power to grant relief for new or improved properties**

**Power conferred on: the Scottish Ministers  
Power exercisable by: Regulations**

## **Parliamentary procedure: Negative**

Section 9 enables the Scottish Ministers to make regulations providing for rates relief in relation to newly built or improved properties. The Committee asks the Scottish Government to explain:

**(a) What may be done within regulations under section 9 of the Bill which could not be done presently within regulations under section 153 of the Local Government etc. (Scotland) Act 1994 and an order which may make ancillary provisions under section 181 of the 1994 Act?**

**(b) Why are the ancillary powers (including supplementary provision) in section 9(3)(b) considered to be appropriate, and how might they be used?**

## **6. Section 11 – Guidance on reduction or remission of rates for certain organisations**

**Power conferred on: the Scottish Ministers**

**Power exercisable by: Guidance**

**Parliamentary procedure: None, but published**

Section 11 adds a power to issue guidance to rating authorities about the use of their discretion to grant rate relief for certain properties. The Committee asks for explanation of the following matters, in relation to the power to issue guidance to rating authorities in section 11:

**(a) It appears that, depending on the content of the guidance, it could affect the amount of discretionary rate relief which could be granted by a rating authority in respect of properties, or certain properties, occupied for recreational purposes in accordance with section 4(5)(c) of the Local Government (Financial Provisions etc.) (Scotland) Act 1962.**

**Why is it considered appropriate that the Parliament should not have the right to annul the guidance (by means of the negative procedure), if it does not agree with its effects in relation to rating relief?**

**(b) The DPM explains that the Parliament could choose to debate a particular instance of this guidance if it wishes. Why is it considered unsuitable for a copy of the guidance to be laid before Parliament, as publication in a manner considered appropriate by the Scottish Government might not ensure that it is drawn to the Parliament's attention?**

## **7. Sections 18(10) and 20(8) – Power to make further provision about civil penalty notices**

**Power conferred on: Scottish Ministers**

**Power exercisable by: Regulations**

**Parliamentary procedure: Negative**

Part 3 of the Bill creates obligations on a ratepayer to notify an assessor or the local authority (as the case may be) of information required by a notice, or of a relevant change of circumstances. Sections 18 and 20 specify penalty amounts for failing to

comply with such notices or failing to notify a change in circumstances. Regulations made under sections 18(10) and 20(8) enable further provision about the civil penalty notices. In each case they may make ancillary provisions, including supplementary provision.

**Please explain, in relation to sections 18(11)(b) and 20(9)(b), why it is considered necessary or appropriate that the regulations may make provision which is supplementary to the further provision about penalty notices that is enabled by those sections?**

#### **8. Sections 19(7) and 21(6) – Power to make further provision relating to appeals against the imposition of a civil penalty**

**Power conferred on: Scottish Ministers**  
**Power exercisable by: Regulations**  
**Parliamentary procedure: Negative**

A person given a civil penalty notice under section 18 or section 20 may appeal to a valuation appeal committee. Sections 19(7) and 21(6) enable further provision about such appeals. The Regulations may make ancillary provisions, including supplementary provision.

**Please explain why the ancillary powers in sections 19(8)(b) and 21(7)(b) are necessary or appropriate, and how these powers could be used?**

**In particular why the power to make supplementary provision is required, given that sections 19(7)(d) and 21(6)(d) would enable Ministers to specify in regulations such other matters in connection with appeals as they consider appropriate?**

#### **9. Section 23– Power to make provision to prevent or minimise non-domestic rates avoidance**

**Power conferred on: Scottish Ministers**  
**Power exercisable by: Regulations**  
**Parliamentary procedure: Enhanced form of affirmative**

The Committee asks the Scottish Government to explain the following matters in relation to the powers in section 23:

**(a) In relation to the devolved taxes which are the subject of the Revenue Scotland and Tax Powers Act 2014, Part 5 of that Act contains provisions in connection with counteracting tax advantages arising from tax avoidance arrangements that are artificial. Sections 66 to 71 specify powers of Revenue Scotland to counter tax advantages, and other provisions for how court or tribunal proceedings in relation to tax avoidance arrangements are to be conducted.**

**Why is it considered necessary or appropriate that section 23 of the Bill contains general powers to make provisions with a view to preventing or minimising advantages arising from non-domestic rates avoidance arrangements that are artificial, whereas those enforcement powers of Revenue Scotland and further provisions could be specified on the face of the 2014 Act?**

**(b) Section 27(5) provides that the Scottish Ministers must have regard to any representations about the proposed draft anti-avoidance regulations received as a result of consultation. Section 27(4) states that Ministers must notify the Parliament about the consultation, without specifying the timing of this.**

**As representations could be received from the Parliament as a result of the consultation, could the provision be made clearer if the timing for the notification was also specified?**

#### **10. Section 29 – Ancillary provision**

**Power conferred on: Scottish Ministers**

**Power exercisable by: Regulations**

**Parliamentary procedure: Affirmative if regulations amend primary legislation, otherwise negative**

The Committee noted that section 29 contains the powers to make ancillary provisions by means of “stand alone” regulations.

**The Committee considered that section 29(2)(a) appears to be unusual, as providing that the regulations making ancillary provision under subsection (1) may make incidental, supplementary, consequential, transitional, transitory or saving provision. Therefore, please explain why this duplication is considered appropriate, or whether it is an error?**

Please email your response to the Delegated Powers and Law Reform Committee e-mail address above by 5pm on Tuesday 28 May 2019, or earlier if at all possible.

Thank you.

Andrew Proudfoot

**Clerk to the Delegated Powers and Law Reform Committee**