



The Scottish Parliament
Pàrlamaid na h-Alba

Delegated Powers and Law Reform Committee

Sarah Boyack MSP
By email

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15 January 2020

Non-Domestic Rates (Scotland) Bill

Dear Ms Boyack,

At its meeting yesterday, the Committee considered the delegated powers in the Non-Domestic Rates (Scotland) Bill as amended at Stage 2.

The Committee agreed to write to the Scottish Government raising several concerns about the powers in the Bill. As one of the issues raised relates in part to new section 9A of the Bill, which was inserted following an amendment from you at Stage 2, the Committee also agreed to write to you to draw this to your attention. Please see the annexed letter to the Scottish Government explaining the Committee's concern.

The Committee intends to consider this Bill again at its meeting on 28 January.

Yours sincerely,

Graham Simpson
Convener of the Delegated Powers and Law Reform Committee

Annex

Clerk to the Delegated Powers and Law Reform Committee
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James Hynd
Head of Cabinet, Parliament and Governance Division
Scottish Government

14 January 2020

Non-Domestic Rates (Scotland) Bill at Stage 2

The Delegated Powers and Law Reform Committee considered the above Bill on 14 January 2020 and seeks an explanation of the following matters:

Section 7 – Proposals to alter valuation roll

Power conferred on: Scottish Ministers

Power exercisable by: Regulations

Revised or new power: Revised

Parliamentary procedure: Affirmative making provision about fees; otherwise negative

Section 7(4) inserts sections 3ZA and 3ZB(6) into the Local Government (Scotland) Act 1975 (“1975 Act”).

The Bill as amended at Stage 2 now provides at new section 3ZB(6A) that before making regulations under that power about fees payable in connection with an appeal relating to a proposal, the Scottish Ministers must consult local authorities, assessors, representatives of the business sector and such other persons as they consider appropriate. There is no such requirement in relation to the similar power in new section 3ZA(6) (relating to the fees payable in respect of the initial proposal to alter an entry in the valuation roll).

1. Does the Scottish Government consider that, to maintain consistency with the powers in new sections 3ZB(6) and (6A) of the 1975 Act, there should be a requirement on Scottish Ministers to consult local authorities, assessors, representatives of the business sector and such other persons as they consider appropriate in respect of the power to make regulations about the procedure for proposals in new section 3ZA(6) of the 1975 Act?

Section 8C – Levying of rates

Power conferred on: Scottish Ministers

Power exercisable by: (1) regulations made by Scottish statutory instrument (new section 7ZA(1)); (2) order made by Scottish statutory instrument (new section 7ZA(3))

Revised or new power: Revised

Parliamentary procedure: (1) affirmative procedure; (2) no Parliamentary procedure

Section 7ZA of the 1975 Act (inserted by section 8C of the Bill) makes reference to giving full effect to section 7 of the 1975 Act as amended by the Bill as enacted. However, the Bill does not appear to amend section 7 of the 1975 Act itself.

2. Does the Scottish Government consider that the duty to make regulations in new section 7ZA(1) of the 1975 Act, inserted by section 8C of the Bill, is properly framed insofar as it makes reference to giving full effect to section 7 of the 1975 Act as amended by the Bill as enacted, despite the Bill not amending section 7 of the 1975 Act?

The Bill removes the provisions in section 110 of the 1992 Act and section 153 of the 1994 Act allowing Scottish Ministers to set the non-domestic rate. However, it does not appear to amend or remove the power in section 7B of the 1975 Act conferred on Scottish Ministers to set the non-domestic rate to be levied throughout Scotland each financial year.

3. Does the Scottish Government consider that section 7B of the 1975 Act should be explicitly repealed in order to meet the intended policy outcome?

A power is conferred on Scottish Ministers in new section 7ZA of the 1975 Act, inserted by new section 8C(1) of the Bill, to set a non-domestic rate to be levied throughout Scotland, which would apply to a rating authority that does not propose to set a rate. However, it appears that the exercise of this power would not be subject to any parliamentary procedure.

4. Does the Scottish Government consider that this affords the Parliament sufficient opportunity to conduct oversight of such provision, particularly where an order under section 7B of the 1975 Act is subject to the negative procedure?

Section 9A – Contribution to net-zero emissions target: rates relief

Power conferred on: Scottish Ministers

Power exercisable by: Regulations

Revised or new power: New

Parliamentary procedure: Affirmative procedure

Section 9A inserts text into section 153 of the Local Government etc. (Scotland) Act 1994 (“the 1994 Act”). However, section 8C(3) of the Bill purports to repeal section 153 of the 1994 Act. New section 9A would therefore be inserting text into section 153 which no longer exists.

5. Does the Scottish Government consider that section 8C(3) of the Bill makes provision that is contradictory to the amendment to section 153 of the Local Government etc. (Scotland) Act 1994 made by section 9A (and contradictory to section 13C, which applies the affirmative procedure to regulations made

under section 153 of the 1994 Act) insofar as section 8C(3) of the Bill repeals section 153 of the 1994 Act?

Sections 23 and 27 – Power to make provision to prevent or minimise non-domestic rates avoidance and procedure for anti-avoidance regulations

Power conferred on: Scottish Ministers

Power exercisable by: Regulations

Revised or new power: Revised

Parliamentary procedure: Enhanced form of affirmative

The Committee welcomes the amendment to section 27(4) of the Bill agreed at Stage 2 to make it clearer that the Parliament must be notified of the consultation on anti-avoidance regulations when the Scottish Ministers begin the consultation.

Although the Committee is to some extent reassured that a form of super-affirmative procedure applies to the power to make anti-avoidance regulations in section 23, it nevertheless remains concerned that this power is particularly broad in its scope.

The Committee would appreciate further explanation, following the Scottish Government's response to the Committee's Stage 1 report (27 October 2019), on the reasons why it is considered not possible to provide further specification in section 23 of types of provision that could be made in anti-avoidance regulations. The response indicates that "specifying types of provision risks unintended effects on the breadth that this power is intended to give".

The Scottish Government's response (28 May 2019) to the Committee's Stage 1 questions on the delegated powers in the Bill set out examples of the sort of provision that could be made in anti-avoidance regulations under the power in section 23(1); e.g., provision about calculation of a single assessment of the taxpayer's liability, when a relief should be made available or withdrawn, reset periods for reliefs and the way in which local authorities can treat arrangements that involve unreasonable business conduct.

6. Please consider whether section 23 could be amended to set out examples of types of provision that could be made in anti-avoidance regulations, without prejudice to the breadth of the power overall.

Please email your response to the Delegated Powers and Law Reform Committee e-mail address above by 12 noon on Monday 20 January 2020.

Thank you.

Andrew Proudfoot

Clerk to the Delegated Powers and Law Reform Committee