

# Delegated Powers and Law Reform Committee

## 8th Meeting, 2023 (Session 6) Tuesday, 7 March 2023

### Instrument Responses

#### Valuation for Rating (Plant and Machinery) (Scotland) Amendment Regulations 2023 (SSI 2023/32)

On 24 February 2023, the Committee asked the Scottish Government:

The instrument seeks to exclude plant and machinery used for the generation or storage of power from renewable energies and plant and machinery used for powering vehicle charging points from being considered part of lands and heritage for the purposes of valuation for non-domestic rating. The Policy Note indicates that the exception for specified plant and machinery used in connection with on-site renewable energy generation and storage, or storage at electric vehicle charging points should take effect from 1 April 2023 until 31 March 2035.

The instrument amends schedule 1 (prescribed classes of plant and machinery) in the Valuation for Rating (Plant and Machinery) (Scotland) Regulations 2000 (“the principal Regulations”). Paragraph 1 of schedule 1 prescribes Class 1 plant and machinery in an opening paragraph and in Table 1. Regulation 2(2)(a) of this instrument replaces the existing text in the opening paragraph of Class 1 with the following text: “(except to the extent that plant and machinery has microgeneration capacity and excluding excepted plant and machinery)” with “(excluding plant and machinery with microgeneration capacity, excepted plant and machinery and, in relation to any day before 1 April 2035, excepted renewables plant and machinery and excepted electric vehicle charging point plant and machinery)”. Regulation 2(2)(b) inserts definitions of the terms “excepted renewables plant and machinery” and “excepted vehicle charging point plant and machinery”.

The new exception is made by way of a change to the description of Class 1 plant and machinery made by the amending instrument and is qualified only by the end date of 1 April 2035. The changes to Class 1 plant and machinery in the principal Regulations will be made when the amending instrument comes into force on 1 April 2023. However there is no start date identified in the description of the newly excepted plant and machinery and it will not be obvious on the face of the principal Regulations when these changes were made.

1. Is it sufficiently clear from the principal Regulations as they will be amended by these Regulations that the exclusion for excepted renewables plant and machinery and excepted vehicle charging point plant and machinery which applies in relation to any day before 1 April 2035 does not also apply in relation to any day before 1 April 2023?
2. Please confirm whether any corrective action is proposed, and if so, what action and when.

On 28 February 2023, the Scottish Government responded:

1. The exception for the specified plant and machinery is intended to take effect from 1 April 2023 and it does so, by virtue of the fact that the amending Regulations come into force on that date. It would be unusual for amended legislation to state, on its face, a start date from which particular amendments or provisions take effect. The two previous amendments to the principal Regulations (made by the Valuation for Rating (Plant and Machinery) (Scotland) Amendment Regulations 2001 and the Valuation for Rating (Plant and Machinery) (Scotland) Amendment Regulations 2008) did not make any provision about a start date for the changes they made to the principal Regulations. They similarly take effect from the date the amending instrument comes into force and there is a presumption against retrospective operation in the construction of statutes. The source and date of taking effect of the amendment will generally be footnoted on legislation databases and therefore should be apparent to any informed user of the legislation. Whilst we strive to make all legislation as clear and accessible as possible, this particular legislation is aimed at specialist users in the form of Scottish assessors and commercial entities subject to non-domestic rates, who can be expected to understand that legislation is amended from time to time and that amendments are not, unless specified otherwise, retrospective.

2. In light of the above comments, we do consider it sufficiently clear from the principal Regulations, as they will be amended by these Regulations, that the exclusion for excepted renewables plant and machinery and excepted vehicle charging point plant and machinery which applies in relation to any day before 1 April 2035 does not also apply in relation to any day before 1 April 2023. It is not therefore proposed to take any corrective action in relation to this instrument.

**First-tier Tribunal for Scotland Local Taxation Chamber and Upper Tribunal for Scotland (Rules of Procedure) (Miscellaneous Amendment) Regulations 2023 (SSI 2023/40)**

On 24 February 2023, the Committee asked the Scottish Government:

Regulation 2 of this instrument amends the First-tier Tribunal for Scotland Local Taxation Chamber (Rules of Procedure) Regulations 2022 (SSI 2022/364) to address issues raised by the DPLRC during its scrutiny of that instrument. One of the issues raised by the DPLRC was whether the reference in rule 20(4) to paragraph (1) should be to paragraph (2). (This was question 5 in the questions asked on 15 December 2022.) The Scottish Government's response on 21 December, in answer number 4, appeared to indicate that the Scottish Government intended to amend to address all points raised on rule 20, including this one. However, the present instrument does not address this point.

Do you agree that the reference in rule 20(4) to paragraph (1) should be to paragraph (2)? Please confirm whether any corrective action is proposed, and if so, what action and when.

On 28 February 2023, the Scottish Government responded:

We thank the Committee for bringing this point to our attention.

The Scottish Government agrees that the reference in rule 20(4) of the schedule of SSI 2022/364 should be to paragraph (2) rather than paragraph (1), but considers that despite this the intention of the provision is sufficiently clear from the context for it to be interpreted as intended.

The error was not corrected in this instrument as it appeared that these paragraph references in rule 20 were correct from the version of SSI 2022/364 published on the legislation.gov.uk website, which does not show the error but correctly refers to paragraph (2). On further consideration, it is apparent that there is a discrepancy between the versions published – the original King’s Printer version of the instrument includes the erroneous reference to paragraph (1).

The Scottish Government considers that the provision is capable of being operated effectively, but for the avoidance of doubt will rectify the issue by correction slip, and also rectify the discrepancy with the registrars at the King’s Printer.