

# Local Government, Housing and Planning Committee

## 8<sup>th</sup> Meeting, 2023 (Session 6)

Tuesday, 14 March 2023

### SSI cover note for: Non-Domestic Rates (Restriction of Relief) (Scotland) Regulations 2023

#### SSI 2023/28

**Title of Instrument:** Non-Domestic Rates (Restriction of Relief) (Scotland) Regulations 2023

**Type of Instrument:** Negative

**Laid Date:** 9 February 2023

**Circulated to Members:** 16 February 2023

**Meeting Date:** 14 March 2023

**Minister to attend meeting:** No

**Motion for annulment lodged:** No

**Drawn to the Parliament's attention by the Delegated Powers and Law Reform Committee?** No

**Reporting deadline:** 14 March 2023

### Recommendation

1. The Committee is invited to consider any issues which it wishes to raise on this instrument.
2. An electronic copy of the instrument is available at: [Non-Domestic Rates \(Restriction of Relief\) \(Scotland\) Regulations 2023](#)

3. Copies of the Scottish Government's Explanatory and Policy Notes are included in **Annexe A**.

## Purpose

4. The policy note states that "These Regulations require that from 1 April 2023, the granting of prescribed mandatory non-domestic rates reliefs must be compatible with the Subsidy Control Act 2022, in particular the subsidy control requirements set out in that Act."

5. The policy note then explains that "These regulations ensure that the awarding of certain prescribed mandatory reliefs from non-domestic rates is compatible with the requirements set out in the Subsidy Control Act 2022 ("the 2022 Act")" which come into force on 1 April 2023.

6. The prescribed reliefs are listed in regulation 3(2). These are "Renewables relief (including Hydro relief), Enterprise Areas relief, Telecommunication Mobile Masts relief, mandatory Rural relief, District Heating relief, transitional relief in respect of the 2017 revaluation, Day Nursery relief, Retail, Hospitality and Leisure relief awarded in 2022-23 and transitional relief for parks or parts of parks previously exempt from rating and becoming rateable on 1 April 2023."

7. Should these reliefs be awarded as Minimal Financial Assistance, the total amount of minimal or SPEI (services of public economic interest) financial assistance must not exceed the amount set out in section 36(1) of the 2022 Act (currently £315,000 over the current and preceding two financial years)

8. In circumstances where the relief exceeds the amount specified in section 36(4) of the 2022 Act (currently £100,000), certain requirements as to transparency (i.e. making an entry in the subsidy database) must be followed.

9. The reliefs specified in the Regulations would only apply in financial years 2021-22 and 2022-23.

10. The existing reliefs described in regulation 3(2) of the Regulations, as restricted by the provisions of the Non-Domestic Rates (Restriction of Relief) (Scotland) Regulations 2021, are treated as "legacy schemes" under the regime provided for in the 2022 Act and will remain in force up to 31 March 2023.

11. The majority of these reliefs are provided for by the Non-Domestic Rates (Levying and Miscellaneous Amendment) (Scotland) Regulations 2023 which the Committee will also consider at this meeting.

## Delegated Powers and Law Reform Committee consideration

12. At its meeting on 28 February 2023<sup>1</sup> the DPLR Committee considered the instrument and agreed not to draw it to the attention of the relevant lead committee.

### Procedure for Negative Instruments

13. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds). Under Rule 10.4, any member (whether a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument. If the motion is agreed to, the Parliamentary Bureau must then lodge a motion to annul the instrument for consideration by the Parliament.

14. If that is also agreed to, Scottish Ministers must revoke the instrument. Each negative instrument appears on a committee agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow correspondence to be entered into or a Minister or officials invited to give evidence. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendation on it.

**Clerks,  
Local Government, Housing and Planning Committee**

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<sup>1</sup> <https://digitalpublications.parliament.scot/Committees/Report/DPLR/2023/2/28/31dd5c50-cd7e-4c2c-afb4-3538f49774ec#Annex-A>

# Annexe A

## Scottish Government Explanatory Note

### EXPLANATORY NOTE

These Regulations place conditions on the granting of certain relief from non-domestic rates to ensure that the granting of such relief is compatible with the Subsidy Control Act 2022 (“the 2022 Act”).

The 2022 Act imposes various requirements (the subsidy control requirements) that apply to the giving of certain forms of financial assistance that are considered subsidies (as defined in that Act). The 2022 Act provides that the subsidy control requirements in that Act do not apply to minimal financial assistance given to an enterprise (as defined in that Act) where the total amount of minimal or SPEI (services of public economic interest) financial assistance given to the enterprise over the applicable period does not exceed a specified threshold.

The relief to which these Regulations apply is that specified in the Regulations listed in regulation 3(2).

Regulation 3(3) provides that any such relief that is to be given as minimal financial assistance is to be granted only where certain conditions contained in the 2022 Act are met. These are that (a) the total amount of minimal or SPEI financial assistance given within the applicable period does not exceed the amount specified in section 36(1) of the 2022 Act (currently £315,000), (b) the procedural requirements in section 37 of the 2022 Act are followed, and (c) where the relief exceeds the amount specified in section 36(4) of the 2022 Act (currently £100,000), certain requirements as to transparency (i.e. making an entry in the subsidy database) are followed.

Regulation 3(4) provides that any relief granted to a person under the Regulations specified in regulation 3(2) that is not given as minimal financial assistance is to be granted only to the extent that such relief is (a) compatible with the subsidy control requirements in the 2022 Act, and (b) granted in accordance with those requirements.

Regulation 4 amends the Non-Domestic Rates (Restriction of Relief) (Scotland) Regulations 2021 so that they only apply to the financial years beginning 1 April 2021 and 1 April 2022. Thereafter, these Regulations will apply.

### POLICY NOTE

#### THE NON-DOMESTIC RATES (RESTRICTION OF RELIEF) (SCOTLAND) REGULATIONS 2023

#### SSI 2023/28

The above instrument was made in exercise of the powers conferred by section conferred by section 153 of the Local Government etc. (Scotland) Act 1994 and

all other powers enabling them to do so. The instrument is subject to negative procedure.

These Regulations require that from 1 April 2023, the granting of prescribed mandatory non-domestic rates reliefs must be compatible with the Subsidy Control Act 2022, in particular the subsidy control requirements set out in that

## Policy Objectives

These regulations ensure that the awarding of certain prescribed mandatory reliefs from non-domestic rates is compatible with the requirements set out in the Subsidy Control Act 2022 (“the 2022 Act”). They come into force on 1 April 2023.

The prescribed reliefs are listed in regulation 3(2). These are Renewables relief (including Hydro relief), Enterprise Areas relief, Telecommunication Mobile Masts relief, mandatory Rural relief, District Heating relief, transitional relief in respect of the 2017 revaluation, Day Nursery relief, Retail, Hospitality and Leisure relief awarded in 2022-23 and transitional relief for parks or parts of parks previously exempt from rating and becoming rateable on 1 April 2023.

Regulation 3(3) specifies that the following requirements must be met if these reliefs are awarded as Minimal Financial Assistance<sup>1</sup> (“MFA”):

- the total amount of minimal or SPEI financial assistance<sup>2</sup> must not exceed the amount set out in section 36(1) of the 2022 Act (currently £315,000 over the current and preceding two financial years);
- the procedural requirements in section 37 of the 2022 Act must be followed; and
- where the relief exceeds the amount specified in section 36(4) of the 2022 Act (currently £100,000), certain requirements as to transparency (i.e. making an entry in the subsidy database) must be followed.

Regulation 3(4) specifies that, if not awarded as MFA, these reliefs can only be awarded if this is compatible with the subsidy control requirements in the 2022 Act, and if they are granted in accordance with those requirements.

Regulation 3 amends the Non-Domestic Rates (Restriction of Relief) (Scotland) Regulations 2021 to specify that those Regulations only apply in the financial years 2021-22 and 2022-23.

The 2022 Act provides a new framework for the provision of subsidies within the United Kingdom which build on the provisions in the subsidy control chapters of the UK-EU Trade and Co-operation Agreement. It came into force on the 4 January 2023.

The 2022 Act imposes various requirements (the subsidy control requirements) that apply to the giving of certain forms of financial assistance that are considered subsidies under that Act). The 2022 Act provides that the subsidy control requirements do not apply to MFA given to an enterprise where the total

amount of minimal or SPEI (services of public economic interest) financial assistance given to the enterprise over the applicable period does not exceed the specified threshold.

The existing reliefs described in regulation 3(2) of the Regulations, as restricted by the provisions of the Non-Domestic Rates (Restriction of Relief) (Scotland) Regulations 2021, are treated as “legacy schemes” under the regime provided for in the 2022 Act and will remain in force up to 31 March 2023.

## Consultation

There is no statutory obligation to consult on these Regulations.

## Impact Assessments

No Business and Regulatory Impact Assessment is required because the Regulations will not impose new regulatory burdens on businesses, charities or the voluntary sector.

## Financial Effects

The award of the reliefs prescribed in these regulations has to date been subject to some form of cap for *de minimis* state aid. The MFA threshold under the 2022 Act is set at a similar, although not identical level. It is anticipated that the prescribed reliefs will not exceed this threshold. On that basis, it is anticipated that the Scottish Fiscal Commission's forecast of non-domestic rates income, which is in part based on historical data from previous years' returns, remains accurate as regards the cost of the specified reliefs in future years.

Scottish Government  
Local Government and Housing Directorate  
February 2023

Background

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<sup>1</sup> 'Minimal Financial Assistance' is defined in section 36(3) of the 2022 Act.

<sup>2</sup> 'Minimal or SPEI financial assistance' is defined in section 42(8) of the 2022 Act