



The Scottish Parliament  
Pàrlamaid na h-Alba

Published 8 March 2023  
SP Paper 336  
3rd Report, 2023 (Session 6)

## Local Government, Housing and Planning Committee

# Subordinate Legislation: The Non-Domestic Rates (Miscellaneous Anti-Avoidance Measures) (Scotland) Regulations 2023



**Published in Scotland by the Scottish Parliamentary Corporate Body.**

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# Local Government, Housing and Planning Committee

To consider and report on matters relating to local government, housing and planning falling within the responsibility of the Cabinet Secretary for Social Justice, Housing and Local Government and the Cabinet Secretary for Finance and the Economy, and matters relating to the Local Government Boundary Commission and local governance review and democratic renewal within the responsibility of the Deputy First Minister.



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# Committee Membership



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Scottish Conservative  
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**Paul McLennan**  
Scottish National Party



**Marie McNair**  
Scottish National Party



**Annie Wells**  
Scottish Conservative  
and Unionist Party

# Introduction

1. At its meeting on 7 March 2023, the Local Government, Housing and Planning Committee considered the following affirmative instrument:
  - The Non- Domestic Rates (Miscellaneous Anti-Avoidance Measures) (Scotland) Regulations 2023 <sup>1</sup>

# The Regulations

2. The Regulations are made under powers conferred by section 37(1) and (3) of the Non-Domestic Rates (Scotland) Act 2020 and the Policy Note states that they are intended “to prevent or minimise advantages arising from artificial avoidance arrangements in relation to non-domestic rates.”
3. The Regulations-
  - prescribe the circumstances in which the owners of lands and heritages, rather than the occupiers, are to be treated as liable to pay non-domestic rates and the circumstances in which any relief (reduction or remittal) in relation to non-domestic rates for those lands and heritages is to cease to be available (Part 2); and
  - prescribe the circumstances in which changes to lands and heritages causing a reduction in rateable value are to be disregarded (Part 3).
4. The Regulations also “set out the process for notification of the owner in relation to Part 2 and 3, which includes an opportunity for the owner to make representations to the local authority before a final determination is made.”
5. The application of empty property relief will be devolved to local authorities on 1 April 2023. The Policy Note explains that-

“Tax avoidance in the context of non-domestic rates takes place when a ratepayer seeks to reduce, delay or avoid the tax liability by taking action(s) which, although permissible within the existing legal framework, is (are) not in keeping with the spirit of non-domestic rates Certified copy from legislation.gov.uk Publishing 2 legislation. Tax avoidance often involves artificial mechanisms for which the main reason, or one of the main reasons, is to reduce the tax due.”
6. The Policy Note then provides further information on the “observed types of avoidance behaviours that are covered by these regulations” as follows-
  - Avoidance through the transfer of liability to a third party;
  - “Artificial” Leasing (including doing so in order to meet the criteria for a relief);
  - Insolvency and “Phoenix-ing”: Pheonix-ing involves leasing a premises to another company (typically a Special Purpose Vehicle company with little or no assets) which then becomes insolvent and is wound up either by a court order or voluntarily, meaning that any NDR liability is generally not recoverable.
  - Making physical changes to a property for the purpose of reducing or removing a rates liability.

## Consultation

7. The Policy Note confirms that a closed consultation was undertaken in Autumn 2022 which sought views from a number of bodies as required under the 2020 Act. A summary of the consultation is attached as an annexe to the Policy Note. The

summary states that “generally, respondents did not have any strong objection to the policy intent of the instrument, or what the regulations sought to achieve.” However, the Annex also provides a summary of resulting changes to the Draft Regulations, mostly “related to the indicators pertaining to the characteristics and behaviours of the person named by the occupier as liable for payment of rates (regulation 4(5)), and the provisions regarding the treatment of owners as liable for non-domestic rates (regulations 4 to 7 generally).”



## Committee Consideration

8. The Delegated Powers and Law Reform Committee considered the Regulations on 21 February and determined that, in terms of its remit, it did not need to draw the Parliament's attention to the instrument.
9. The Local Government, Housing and Planning Committee took evidence on the Regulations on 7 March 2023 from the Minister for Public Finance, Planning and Community Wealth.
10. After taking evidence, the Committee was invited to consider Motion S6M-07676— That the Local Government, Housing and Planning Committee recommends that the Non- Domestic Rates (Miscellaneous Anti-Avoidance Measures) (Scotland) Regulations 2023 be approved.

The Committee agreed the motion.

# Conclusion

The Local Government, Housing and Planning Committee recommends that the Non-Domestic Rates (Miscellaneous Anti-Avoidance Measures) (Scotland) Regulations 2023 [draft] be approved.

- [1] <https://www.legislation.gov.uk/sdsi/2023/9780111056370/contents>. (2023). Retrieved from <https://www.legislation.gov.uk/sdsi/2023/9780111056370/contents>

**Local Government, Housing and Planning Committee**

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