



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Local Government and Communities Committee

**Wednesday 22 May 2019**

**Session 5**



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**LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE**  
**15<sup>th</sup> Meeting 2019, Session 5**

**CONVENER**

\*James Dornan (Glasgow Cathcart) (SNP)

**DEPUTY CONVENER**

\*Alex Rowley (Mid Scotland and Fife) (Lab)

**COMMITTEE MEMBERS**

\*Annabelle Ewing (Cowdenbeath) (SNP)

\*Kenneth Gibson (Cunninghame North) (SNP)

\*Graham Simpson (Central Scotland) (Con)

\*Alexander Stewart (Mid Scotland and Fife) (Con)

\*Andy Wightman (Lothian) (Green)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Kevin Fraser (Institute of Revenues Rating and Valuation Scotland)

Morag Johnston (Society of Local Authority Chief Executives)

Eileen Rowand (Convention of Scottish Local Authorities)

Jonathan Sharma (Convention of Scottish Local Authorities)

**CLERK TO THE COMMITTEE**

Peter McGrath

**LOCATION**

the James Clerk Maxwell Room (CR4)



**Scottish Parliament**  
**Local Government and  
 Communities Committee**

*Wednesday 22 May 2019*

*[The Convener opened the meeting at 09:45]*

**Decision on Taking Business in  
 Private**

**The Convener (James Dornan):** I welcome everyone to the 15th meeting in 2019 of the Local Government and Communities Committee. I remind everyone present to turn off their mobile phones.

Agenda item 1 is consideration of whether to take item 4 in private. Do we agree to do so?

**Members indicated agreement.**

**Non-Domestic Rates (Scotland)  
 Bill: Stage 1**

09:45

**The Convener:** Under item 2, the committee will hold its first evidence session on the Non-Domestic Rates (Scotland) Bill at stage 1. I welcome Eileen Rowand, director of finance at Fife Council; Jonathan Sharma, policy manager at the Convention of Scottish Local Authorities; Kevin Fraser, treasurer of the Institute of Revenues Rating and Valuation Scotland; and Morag Johnston, director of financial business services at Glasgow City Council and representative of the Society of Local Authority Chief Executives Scotland.

We will move straight to questions from members.

**Alex Rowley (Mid Scotland and Fife) (Lab):** Does the bill, along with the early measures that the Scottish Government has implemented, sufficiently address the Barclay review's findings and recommendations?

**Jonathan Sharma (Convention of Scottish Local Authorities):** COSLA very much welcomes the bill. It covers a number of the Barclay review recommendations, as we understood them. We have worked very closely with the Scottish Government, and local government offices have been involved in that work, too. We have worked on an implementation advisory group, so we have a good understanding of how the Barclay review recommendations are being managed.

We understand why some recommendations have not been progressed and where the Scottish Government is coming from. I can mention issues relating to charity relief as the conversation develops. In the main, the provisions in the bill are what we expected to see following the Barclay review recommendations.

**Morag Johnston (Society of Local Authority Chief Executives):** I echo those points. The bill picks up a number of the Barclay review recommendations. Its provisions will enable local authorities to bill and collect taxes more quickly, which we want to do. The move to three-yearly revaluations will also help.

**Alex Rowley:** Scottish councils are generally happy that the bill's proposals will implement the Barclay review recommendations.

**Jonathan Sharma:** Yes. In our discussions with the Government, we have said that certain things need to happen. If there are to be three-yearly revaluations, it is key that the assessors are fully supported. We welcome the fact that the Scottish

Government has provided funding for 2019-20 to ensure that assessors can start their preparation. It is essential that such funding continues into the next period, to ensure that assessors are able to undertake their activities effectively.

There must be reform of the appeals system. A significant amount of work has been undertaken on that, and local government representatives and assessors have been involved in discussions with the Scottish Government and other stakeholders about what the new appeals system should look like. That reform has to happen, because the three-yearly revaluation cannot proceed unless there is a convincing enough appeal system that will reduce the number of, in particular, speculative appeals.

Although we support the bill's provisions, the essential thing is what is delivered on the ground.

**Andy Wightman (Lothian) (Green):** I will talk about the broad scope of non-domestic rates. This is the first non-domestic rates bill that the Parliament has dealt with in the devolution era. In 2012, the Government was committed to conducting what it described as

“a thorough and comprehensive review of the whole business rates system.”

However, the Barclay review was limited to looking at the impact on business, and asked just one question.

The bill is an opportunity to change the law on non-domestic rates. Are there other things that you might wish to use the bill to do on, for example, who sets the rates and on the design of relief schemes? NDR was a local tax until the 1990s, after which it was centralised. Are there other things that you want that go beyond what the Government has introduced to Parliament?

**Jonathan Sharma:** I guess that it is best for me to answer that question. COSLA wants greater local fiscal empowerment, which is a key driver for us at the moment. We welcome the commitments that were made by the Scottish Government in the Budget (Scotland) (No 3) Bill, which were supported by the Greens following the stage 2 amendments.

We are strongly committed to working on a cross-party basis to look at a potential replacement for council tax and develop a fiscal framework that would encompass the whole local funding arrangement. We believe that non-domestic rates should be considered as part of that; it should not sit outside it. At the moment, it is a national tax—there is no escaping that.

We welcome the proposal to devolve empty property relief, and we are speaking to Government and local government officers about what that would look like. We need decisions from

COSLA's leadership on the options and its perception of the risks for local government.

It is important to stress that, although we might aspire to returning non-domestic rates to local government, a huge amount of thinking is required before we can even consider whether that would be possible. That includes a whole range of issues such as how local government financing would work and how the return of non-domestic rates would bring back accountability and proper local democracy to those who pay them.

There is a long road to travel to get anywhere near that happening. Nonetheless, there are aspects of the bill, along with potential devolution of empty property relief, that would start to bring in more local fiscal control of the rates system, and that is welcome.

**Andy Wightman:** I am aware that you have all been heavily involved in the Government's follow-up to the Barclay review, and I saw that there were 27 responses from local authorities to various Barclay recommendations. However, now that the bill is before Parliament, there is an opportunity to do more, if we wish to.

I move on to the two Barclay recommendations that were rejected by the Scottish Government. Recommendation 28 is that all non-domestic properties should be on the valuation roll. That would mean that agricultural land, which is currently exempt, would be on the roll. We could give that land 100 per cent relief if we wanted to—if we did that, at least the cost would be transparent. Recommendation 29, which was also rejected, is that large-scale commercial processing—mainly food processing—taking place on agricultural land should pay the same rates as commercial food processing on a food park.

Do you have any views on the recommendations that were rejected? Are you content with that?

**Eileen Rowand (Convention of Scottish Local Authorities):** We understand that it was the scale of the work required to get such properties on the valuation roll and then whether they would be exempted that led to those recommendations being rejected. We have had discussions with the Government about that and we understand the rationale for its decision.

**Andy Wightman:** You understand where the Government is coming from, but do you agree with its recommendations?

**Eileen Rowand:** The working group reached a position where it supported that.

**The Convener:** Will you clarify that point for me? Did the group support that recommendation 29 should be agreed to or that it should be left out because of the complexities of implementing it?

**Eileen Rowand:** We supported that it should be left out because of the complexities and the practicalities of implementing it.

**Kenneth Gibson (Cunninghame North) (SNP):** We have already learned that such a measure would not raise any money, so what would be the point of it?

**Andy Wightman:** If no one else has anything to add, I will move on to recommendation 22, on the small business bonus scheme loophole for self-catering properties. Section 5 of the bill makes provision to define what a dwelling is, which is a precursor to implementing recommendation 22, which is to close a loophole whereby people with holiday homes can claim that they are self-catering properties for let and put them on the non-domestic rate roll then claim under the small business bonus scheme and pay nothing. The policy proposal is that such properties have to be intended to be let for 140 days and actually let for 70 days to qualify to be on the non-domestic rate roll.

The bill does not implement the policy recommendation—it only makes enabling provisions to allow the regulations. I noticed that there was quite a split of opinion in the responses in the report, “Analysis of responses to Barclay Implementation: A consultation on non-domestic rates reform”. IRRV Scotland said that properties

“must meet the multiple of 70 days total over the three or five years”

or over one year, and Scottish Borders Council asked what would happen if the requirement to let for 70 days was not met. Has anyone got any views on how the proposal might work in practice?

**Kevin Fraser (Institute of Revenues Rating and Valuation Scotland):** It would be difficult to make it work in practice. We would like appropriate rates relief to be given to proper holiday lets. Sometimes, second homes are put into the ratings system purely for financial gain, and we want that situation to be addressed. The problem with the 70-day rule is that, when first written, the proposals referred to “a year” but did not specify whether that was a calendar or a rolling year. Therefore, there could be difficulties if the 70-day period crosses a financial year. It can be extremely difficult if things frequently move in and out of the rates roll and the valuation list, or if things change quite drastically.

We recognise that some properties are usually let out or occupied regularly, but that that might not be possible in some years—perhaps because someone is ill or there are structural issues and it is difficult to access the property. There may be situations in which occupation may not be possible in one particular year but the rules have been met

in general. We want there to be something that addresses that.

**Andy Wightman:** Do you believe that we can do it?

**Kevin Fraser:** It will be quite difficult to judge where the decision-making power lies between the local authority and the assessors. However, it is achievable.

**Andy Wightman:** The assessors make decisions on what is admitted to the roll, but the separate question is whether councils should have discretion in how they apply the relief. I suppose that that is really a question for the councils.

**Kevin Fraser:** Yes. It would be useful for them to have that discretion.

**Alex Rowley:** What are the potential policy impacts of the changes to guidance for local councils on granting discretionary relief for recreational clubs? Do you have any concerns?

10:00

**Kevin Fraser:** We would still want to support local and community-based sports clubs and anything of that ilk. There is an issue if wider sports clubs or organisations go beyond the local authority’s boundaries. There is recognition that there are two streams of sports clubs: there are local clubs, which we would want to support; and there are national clubs, which can afford to pay their way through membership income or other income. Perhaps we need to consider that approach.

**Alex Rowley:** So, a local bowling or football club—

**Kevin Fraser:** I would still want to see them being supported. However, there is an argument that larger-scale golf clubs, for example, should be able to pay their way.

**Graham Simpson (Central Scotland) (Con):** I will jump back to something that Jonathan Sharma said about his desire to see non-domestic rates fully devolved to local government. He seemed to be saying that that might be too big a job. Surely, now is the opportunity to act. We have the bill in front of us, so why has that work not been going on?

**Jonathan Sharma:** As I said, we welcome the commitments that the Scottish Government made at stage 1 of the Budget (Scotland) (No 3) Bill to look at developing a fiscal framework. We think that non-domestic rates should be part of that, along with a potential replacement for the council tax. We want to couch this in terms of local taxation and local government funding, so that we can start to ask the questions. There are a lot of questions to ask about non-domestic rates and

returning them to local control—if we were simply to do that tomorrow, that could create substantial disruption to local authorities, businesses and communities.

We believe that there is a path to follow. So far, we have not had that discussion with Government, but we hope that those questions will be part of it.

**Graham Simpson:** Do you not think that there is a role for the bill in tackling the issue?

**Jonathan Sharma:** There is no role for the bill to tackle it. Further devolution will be a longer-term discussion that will go into the next spending review and even beyond that.

**Graham Simpson:** Given that we have legislation in front of us, if you do not deal with the issue now, do you not think that there is a danger of it getting kicked into the long grass?

**Jonathan Sharma:** Given the commitments that it has made to us, I do not think that the Government has accepted that this is the end of the road for what could be done on local fiscal empowerment. I do not want to say whether the Government thinks that it has done enough on rates, but when it comes to local fiscal empowerment, it is committed and willing to sit down with us and the political parties to see what that looks like. That should help to shape how we look at a wider, more far-reaching transfer of powers on non-domestic rates.

**Kenneth Gibson:** I will follow up on that point. Do you see the domestic rates issue as being a two-stage process, whereby the Non-Domestic Rates (Scotland) Bill will be put to bed during this session of Parliament and we will have a further piece of legislation that looks at local fiscal empowerment in the next session?

**Jonathan Sharma:** I cannot spell out the shape of that. We are still in the early stages of discussion. We know that ministers are speaking to other political parties about the issue; they might not be speaking specifically about non-domestic rates, but they are talking about the fiscal framework and local fiscal empowerment.

**Kenneth Gibson:** The argument that is always made against giving local authorities the power to set rates locally is to do with where people spend their money. For example, people in North Lanarkshire spend their money in Glasgow, which obviously gives Glasgow a real advantage in rates income relative to North Lanarkshire. There are plenty of other examples from around Scotland of our cities benefiting in that way.

However, does that not just mean that the Scottish Government would have to readjust the grant settlement for local authorities to take account of the money that is lost by some and gained by others? Does COSLA take the view

that, if that happened, we would just start with a clean sheet and move forward from there? In such a reorganisation, Glasgow City Council's grant would be reduced, North Lanarkshire Council's grant would be increased and that would be the page from which we would start. Is that how you envisage the process working?

**Jonathan Sharma:** As I have mentioned, those are the issues that we would have to discuss properly if any step were taken to consider a return of rates to local control. We have not had that discussion. I do not think that the bill is the place to have such discussions, but we welcome the opportunity to flag up the issue to the committee.

**The Convener:** We are veering away from the subject matter.

**Kenneth Gibson:** Yes, we will leave that for another day.

**The Convener:** I am sure that we will have that discussion on another day.

**Kenneth Gibson:** I think that it was important that we got that issue out of the way, because it is obviously the elephant in the room.

**Graham Simpson:** I want to look at the change whereby revaluations will be carried out every three years. What impact will that have on your organisations? The question is not just for Mr Sharma—we can hear from other people.

**Morag Johnston:** I mentioned in my introductory comments that I think that councils support that move to three-yearly revaluations. We accept that additional costs will be associated with that, which the financial memorandum to the bill sets out. At this stage, it is difficult to be certain what those additional costs will be, so we hope that conversations about that can continue with the Government and that we can keep those costs under review.

I have mentioned local authorities' role in billing and collection, and their engagement with ratepayers when they receive their new rates bill. Although ratepayers will have received notification from the assessor at the time of the revaluation, it tends to be the local authority that ends up getting involved in the discussions at the time that the revaluation notices are issued.

The move to revaluations every three years will remove some of the issues that we experienced with the most recent revaluation. The fact that that took place after a seven-year period explains a lot of the significant movements in certain areas. I think that everybody's view is that, if we move to three-yearly revaluations, significant variations will be limited in certain sectors, because people will not have to wait as long for the revaluation to catch up with what has happened economically.



**Eileen Rowand:** We welcome three-yearly revaluations. As Morag Johnston said, we hope that that will help us to get a better indication of market values and to keep that up to date.

If the assessors are to deliver on three-yearly revaluations, there will have to be a reduction in the number of appeals, because of the sheer volume of that work. We must consider the impact of what is proposed. We very much support the move to three-yearly revaluations, but we really need to take action on the appeals, and there are proposals in the bill to do that.

**Kevin Fraser:** You have a full house, because I, too, fully support three-yearly revaluations. I also support the move to a one-year rather than a two-year time date, which will bring the values closer to market values at the time. As I have mentioned, I have concerns about the volume of appeals and the ability of the assessors to deliver the change.

**The Convener:** Andy Wightman wants to come in at this point. Is that okay, Graham?

**Graham Simpson:** I was going to continue on the same line of questioning, but I am happy for Andy Wightman to come in.

**Andy Wightman:** Section 2 of the bill will change the period between revaluations from five to three years, but it will not change the scope for ministers to change that period, as they have in the past. Do think that the bill should hardwire in the three-yearly revaluation period, or should the power to change the period still exist?

**Morag Johnston:** I do not know whether we have formed a view on that. There always has to be recognition that something might occur that might mean that achievement of a three-year revaluation might not be good for local authorities, assessors or even ministers. On the basis that it is useful to have flexibility, we might not want to hardwire in three-yearly revaluations.

**Alex Rowley:** Are you not concerned that ministers might be concerned about an upcoming election?

**The Convener:** You are so cynical, Alex.

**Alex Rowley:** Would removing the politics from it not be a better way of ensuring that what is meant to happen does happen?

**Morag Johnston:** I suppose that my response was based on the assumption that ministers' use of that flexibility would be economically rather than politically driven.

**The Convener:** Absolutely. *[Laughter.]* Following Alex Rowley's cheap political shot, we will move back to Graham Simpson.

**Graham Simpson:** Thank you, convener. Morag Johnston mentioned that moving to three-

yearly revaluations will mean extra costs. Have there been any discussions with the Government about how to meet those extra costs?

**Morag Johnston:** I understand that the financial memorandum reflects primarily the costs that will be incurred by the assessors. As the cycle stands at the moment, they will have staff who are working on appeals or a revaluation. If a three-yearly cycle is brought in, the assessors will need staff who do both, so additional staffing resources will be required and the associated information technology costs will have to be met.

As I mentioned earlier, the costs for local authorities are also reflected in the bill. When we were asked to submit what the costs of the Barclay recommendations could be, it was difficult for us to make an assessment. We tried to do so—we know that there will be IT costs—but it has been difficult to assess the administration costs. We recognise that we can continue to have discussions with the Scottish Government.

**Kenneth Gibson:** Do you think that the financial memorandum represents a realistic assessment of the costs that the bill will impose on the assessors and local government? Do you have any issues with it?

**Jonathan Sharma:** I am probably best placed to answer that. The financial memorandum broadly reflects the figures that COSLA provided to the Scottish Government, which we welcome, because there have been situations in which we have submitted figures but they have been ignored.

I will add to what Morag Johnston said about the assessors' costs. We tested those costings vigorously with the assessors, who are having to make estimates as well. The figures will never be absolutely accurate, but there is room for a bit of refinement, which the Government officers want us to do. We and the assessors will look at their costs for future years; their costs are the most significant from the point of view of administration costs, although there are costs to councils as ratepayers, which we might come on to.

With regard to the councils' costs, in the course of preparing our response to the committee—I apologise for not being able to provide it until our leaders have signed it off—councils have said to us, "Hang on a minute—this provision will come at a bit of a cost," so we need to look again at the figures that we provided to the Government. The Government officers know that, and they have said, "Go away and start to speak to the councils again." We are looking to do that and we hope to bring back more refined costings that will help to inform the Government's budget considerations.

**The Convener:** We will go back to Graham Simpson, although Andy Wightman might want to come back in on that point later on.

10:15

**Graham Simpson:** If the bill is passed, the next revaluation in Scotland will be in 2022. I believe that the next revaluation in England will be in 2021. A lot of firms operate in England and Scotland, so would it be doable to bring forward the revaluation in Scotland to 2021? Would that be a good idea?

**Jonathan Sharma:** All I can say is that, from our meetings with the assessors through the Barclay implementation advisory group, I got the impression that they are pretty clear that even getting to 2022 will be challenging. It is more a question for the assessors, but that is what they have told us.

**Eileen Rowand:** I echo that view. The assessor whom I deal with would have real concerns about being able to carry out the revaluation before 2022, and they need to take into account where they are on appeals and other matters. It would be a real struggle for them to bring forward the revaluation.

**Graham Simpson:** There will still be outstanding appeals.

**Eileen Rowand:** Yes.

**Graham Simpson:** On a different subject, how will the proposed changes to the valuation roll and notices impact on the administration of non-domestic rates?

**Kevin Fraser:** Are you referring to the markers for the new and improved properties and the properties that are under repair?

**Graham Simpson:** Yes.

**Kevin Fraser:** The changes will help us greatly. We are already setting up some informal arrangements with assessors locally, whereby they will voluntarily put markers that are similar to those that are proposed on the roll. Including provisions on the markers in legislation will ensure consistency throughout all local authority areas and will help local authorities to make changes more quickly. More important, it will save people from needing to make applications for certain forms of relief, as it will be possible for those to be awarded automatically.

**Graham Simpson:** Mention has been made of appeals. What do you think about the proposal for a pre-appeal mechanism?

**Kevin Fraser:** Again, that is more a question for the assessors to answer directly, but we welcome the proposal. We welcome any appeal being dealt

with at the earliest opportunity, at the lowest level possible.

**Graham Simpson:** Will the proposal help to reduce the number of appeals?

**Kevin Fraser:** It would force there to be an earlier exchange of information, which should be supported, because the lack of such an exchange is usually the cause of any disagreement about rateable values.

**The Convener:** What are the expected impacts of changes to how parks are entered on the valuation roll? Is there likely to be an impact on the services that are offered within park spaces?

**Morag Johnston:** Generally, I do not think that the proposals will necessarily impact on the services that are offered, but there is one area of concern. As you will be aware, a number of local authorities have set up charitable arm's-length organisations, some of which are responsible for leisure services, which might take place in a park environment.

It is welcome that, very early on, the decision was made not to take forward the Barclay review recommendation regarding charitable relief for arm's-length external organisations. However, conditions have been set and, in effect, a baseline has been created for the rates relief that is provided to charitable council-owned organisations.

Our reading of the bill is that if, in the future, a council's ALEO was to set up within a park, it would not get charitable relief. There would, therefore, be a cost to local authorities in those circumstances. Existing services would not be affected, but there is a concern that there could be an additional cost for services delivered by an ALEO in the future, which we would need to take into account before setting up a new service.

**The Convener:** Do you accept or disagree with the suggestion that the change creates fairness across the piece? If something inside the park is providing pretty much the same service as something outside the park, is it fair if the one outside is paying rates while the one inside is getting relief?

**Morag Johnston:** If it were to be an organisation other than a local authority organisation, the way the bill is written—as we have interpreted it—means that it would be liable for rates. In that context, I think that the change is fair. My point was about the considerations for local authorities in relation to the additional costs that might fall to them because of the change.

**The Convener:** Okay. Does anybody else have any comments on that?

**Eileen Rowand:** As Morag Johnston said, the restriction on the relief that our ALEOs can receive, taken together with the changes that are proposed in the bill, means that there could be a cost pressure. We believe that those organisations are there for the community good and to deliver public services, so that is obviously causing a bit of concern.

**The Convener:** Is that the sort of technical issue that you are discussing with the Government or anybody else who is involved?

**Jonathan Sharma:** We have made it clear to the Government all along that that is a concern. We understand that if there are commercial facilities sitting in a park and others on the edge of the park, there is a question about why those outside the park should be paying rates when the ones in the park are not. However, to put this in context, the bill proposes an exemption for specialist schools—

**The Convener:** I am about to come on to that issue.

**Jonathan Sharma:** My point is that, if those schools are seen as being valuable, and our council services within the park are valuable, the fact that they are run by an ALEO is simply an organisational consideration rather than—

**The Convener:** Are those discussions going on just now?

**Jonathan Sharma:** Yes, they are.

**The Convener:** Okay. That is great.

**Annabelle Ewing (Cowdenbeath) (SNP):** I have a brief supplementary. Taking advantage of Eileen Rowand's presence, I have a question about Fife. The bill, as drafted, would require local authority owned parks that generate a net profit for the local authority to be entered for the first time in the valuation roll in circumstances in which there is not "free and unrestricted" access to the park, or where a local authority park consists solely of facilities that are charged for. At this time, would any park in Fife be impacted? I appreciate that I am putting you on the spot.

**Eileen Rowand:** We have considered the possible impact for Craigtoun country park, but we need to explore that further. There could be implications, because it is run by a body other than the council.

**Annabelle Ewing:** Okay. Is that the only park that springs to mind?

**Eileen Rowand:** Yes. I would have to come back to you with further detail.

**The Convener:** We will move on to the impact of changes to rates relief for independent mainstream schools. Does anyone have any

comments on that? Will it impact them hugely or lightly?

**Morag Johnston:** For local authorities that bill for and collect rates, it will just be somebody else to bill and collect rates from. From that perspective, I do not see any particular issue. I imagine that there are broader issues concerning the fact that organisations that previously had relief from rates will now have to pay them. However, that was well discussed when Barclay first made that recommendation.

**The Convener:** Okay.

**Graham Simpson:** From COSLA's point of view, there is the potential risk—and it is just potential—that some kids might leave the independent sector and come into the local authority sector schools. Have you done any analysis of that, or of the costs to councils?

**Jonathan Sharma:** We have not done any analysis, but that is interesting to hear. In our submission to the Scottish Government, we said that it is fair that the independent schools be treated the same as local authority schools. We are not aware that the changes would drive loads and loads of children out of independent schools and into local authority ones.

**Eileen Rowand:** I echo Jonathan Sharma's comment. We believe that there is an issue of equity and we believe that the suggested changes are fair.

**Alex Rowley:** I want to broaden this out to the bill's impact on the cost of council rates for a rate payer. Councils pay rates on their schools as they do on other buildings. Is there any concern in councils that the bill will have a negative impact on council finances?

**Eileen Rowand:** We have already raised the potential cost implications in relation to the parks. There has also been a lot of discussion about an increase in our administration costs. It is important for councils to look at the quantum of funding; the sums that are collected for non-domestic rates help to fund councils. If we improve our collection rates with earlier interventions, it should help us. We are looking at the financial impacts, and we are flagging the one relating to parks.

**Andy Wightman:** The last bit of the Barclay review's remit was that the recommendations should be based on overall revenue neutrality; in other words, any recommendations that result in increases in rates should be balanced by decreases in rates.

It is my understanding—I might be wrong—that what drove this recommendation on schools was that councils looked down the list of reliefs and thought, "Which ones can we withdraw because we need to raise some money?". It was not based

on any fundamental appraisal of which properties that are currently charged for relief should have that status removed. For example, as I understand it, charitable relief will still be available to Shelter and Oxfam shops on the high street. That does not seem to be fair. I am trying to work out why you think that it is fair to pick out one particular sector from charitable relief—that is, schools—while not tackling universities, which are also charities.

Also, the provisions in section 10(3) of the bill are about exempting independent music schools. There is only one independent music school, but there are four mainstream centres of excellence—in Dyce, Plockton, Bearsden and the city of Edinburgh. Why is that fair? I do not understand that fairness argument, because it seems to apply to one narrow bit of the non-domestic rating system.

**Morag Johnston:** I will try to assist with that question. As has already been said, the focus on independent schools is seen as improving fairness because at the moment local authorities provide schools and have to pay rates for those schools. Therefore, the conclusion to charge fee-paying or independent schools was because local authority schools do not get rates relief. That is where the fairness argument has come from.

**Andy Wightman:** My question is whether that relief should also apply to charity shops in the high street.

10:30

**Morag Johnston:** The challenge for local authorities is in determining whether the charity is national or local. Whether the benefits from the funds that are raised by the charity are seen locally—whether the funds stay in the local community—can be a consideration for local authorities. The issue of national charity shops has not necessarily come out through the bill process and, as far as I am aware, it has not been discussed more widely.

**Andy Wightman:** Do you support the relief for independent music schools, which do not have to pay full rates although mainstream, state-supported music schools do?

**Morag Johnston:** We need to try to understand why the independent music schools have been identified as being different from other independent schools. I draw a comparison with my point about local authority schools having to pay rates and other schools currently being partially exempt, which may explain why certain independent schools would continue to get rates relief and others would not. From the perspective of administrative processes, it would create more complexity in the system.

**Andy Wightman:** What would create more complexity? Are you referring to the provisions of the bill?

**Morag Johnston:** The fact that certain schools would no longer get relief, but a group of independent schools would still get relief would do that. We need to understand how to determine which schools fall within that group. If a new school is established, how do we know whether it is eligible for relief? My point relates to the potential challenges around non-domestic rates administration.

**Kenneth Gibson:** I point out that charity shops in my constituency are all run by local volunteers.

Presently, independent schools can get an 80 per cent discount on non-domestic rates. After the bill is passed, if a local authority wishes to continue to give those schools an 80 per cent discount, surely it will be allowed to do so?

**Kevin Fraser:** Under the Community Empowerment (Scotland) Act 2015, local authorities can grant any relief that they wish, but they have to fully fund it, therefore it is a financial matter.

**Kenneth Gibson:** The councils would still have the ability to grant the discount, though. The argument that was made earlier was that, if the 80 per cent discount was removed from independent schools, it might have an impact on state schools. My understanding is that charging independent schools at the full rate would result in only a 2 per cent increase in annual school fees, but local authorities would still have discretion as to whether they grant those schools the discount.

**Kevin Fraser:** Yes, under the 2015 act, the local authority is free to grant relief if it chooses to do so, as long as it fully funds that relief. There is an argument that that approach is an option, depending on individual financial implications.

**Kenneth Gibson:** Indeed. So, if a local authority felt that it was losing out financially by eliminating the discount, it could reinstate it.

**Kevin Fraser:** It could consider doing so.

**Eileen Rowand:** The local authority would have to consider the financial implications. It is fairly challenging for local authorities to get to a balanced budget position. Although the flexibility to grant the discount is there, we would have to look at our ability to do so.

**Kenneth Gibson:** Okay. Thank you.

**Alexander Stewart (Mid Scotland and Fife) (Con):** I want to go back to Graham Simpson's point. He talked about a potential knock-on effect on state schools in certain council areas. Not all councils would be in that position, but a number of them have a larger proportion of independent

schools in their area. Depending on the non-domestic rates situation in that area, any such knock-on effect could potentially be an issue. For example, Perth and Kinross and Edinburgh have large independent school sectors, so pupils moving to state schools could have a massive impact on the community. Is that a potential problem, or has it not been looked at as part of the equation?

**Kevin Fraser:** Obviously, that is a potential problem, but my understanding is that there has not been sufficient analysis to know what the financial impact would be and what the likelihood of any transfers from private schools to state schools could be. There is still an argument that there is work to be done on that issue.

**Alexander Stewart:** In some locations, the number of pupils on school rolls already exceeds the number that should be on them, and the schools are at breaking point because they do not have enough capacity. The independent sector has capacity, which takes some pupils out of the state sector and supports it. If that was reversed, there could be consequences for both sectors.

**Kevin Fraser:** There could be.

To return to the point about the Community Empowerment (Scotland) Act 2015, a local authority does not have to give an 80 per cent discount; it could give a smaller discount if it chose to do so. Again, the local authority would not invite applications as such, but it would make people aware that there is scope for that and that the award does not have to be a full award to that value. The awards could be calculated case by case.

**The Convener:** If independent schools decided that they were not making quite enough money out of pupils and described or identified pupils as their profit, would that put at risk their charitable status? They have charitable status because they register as charities so, if they say that they cannot take in all those children because they will lose money, surely that would put at risk their charitable status.

**Kenneth Gibson:** That is certainly true for scholarship children.

**Graham Simpson:** There is an exemption for music schools. Would not it be relatively easy for other independent schools to rebadge themselves as music schools? [*Laughter.*]

**Kevin Fraser:** As long as there is a definition of what a music school is, it would be quite easy to scratch the surface and find out whether a school was being operated as such.

**Graham Simpson:** Do we have a definition?

**Kevin Fraser:** I think that there is one.

**Jonathan Sharma:** I want to speak slightly more broadly about the point that I made earlier.

There are provisions in the bill on which the Scottish Government has clearly taken a view: it is as simple as that. It has taken the view that it wants to protect particular institutions because it believes that they have a certain value. All that we want to say is that there is a point of principle relating to some of the services that local government provides, perhaps through arm's-length organisations. That is where we are coming from.

We have not done the sort of analysis that has been alluded to. We are more than happy to take away the point that was raised about the potential risk of pupils coming across to state schools.

**Annabelle Ewing:** I will turn to collection of non-domestic rates. There are provisions in the bill that seek to put debt recovery of unpaid non-domestic rates on the same footing as recovery of council tax. Various proposals are intended to allow local authorities to take action sooner on debt recovery. Would the proposals in the bill achieve the objective that is sought in that regard, which is that councils would have the same powers in relation to non-domestic rates as they have in relation to council tax? Do you wish to see other provisions included in the bill?

**Kevin Fraser:** No—the provisions are as they should be. Aligning non-domestic rates with council tax will make things easier to understand from an administration's and a customer's point of view. The bill will do what it intends to do. As well as seeking earlier collection, it seeks earlier interaction with customers so that, if people are having difficulty paying, it will not be October before the council finds out. The bill will give us the right balance with those powers.

**Annabelle Ewing:** Do the other witnesses agree with that summation?

**Morag Johnston:** Yes.

**Annabelle Ewing:** In light of the relative ease with which people would be able to seek to recover non-domestic rates debts, do you foresee that that would be of significant help in reducing the administration around non-domestic rates and improving the financial pot that is available to local authorities?

**Eileen Rowand:** The main advantage of the proposed move to instalments is that there would be earlier engagement with businesses about payments. The earlier we can work with individuals, organisations or businesses to get them to a position in which they can pay, the better. The move to a similar approach to instalments to that for council tax is welcome. We hope that that will improve our recovery position,

although we do quite well at recovering non-domestic rates.

**Annabelle Ewing:** If somebody gets into debt, the best time to engage—for the individual and the creditor—is when that happens, so that both sides can come up with something together. If things are left to slide, it is difficult to find a solution.

The proposed information notices will facilitate a greater flow of information to local authorities, which will support assessment, billing and reliefs. Is the bill's approach to such notices generally welcome?

**Morag Johnston:** The bill says that, if information is not provided, the assessor and the local authority can raise a civil penalty, which is welcome. That provides the ability to make an additional charge if ratepayers do not engage.

However, I have a point about the penalty levels that the bill sets. The purpose is to encourage people to provide information; if they do not do so, it is probably because they do not want to. For some businesses, the penalty levels that the bill sets might not be enough to create an incentive to provide information, although they might be enough for others. If a business is due to pay thousands of pounds, the penalty levels might not be enough of an incentive.

**Annabelle Ewing:** For failing to give the assessor information, the penalty will be £100, and failing to comply within 21 days of a notice being issued will lead to a further £100 penalty and a daily penalty of £20, up to a maximum of £500. Your point is that that is adequate for some businesses but is perhaps not enough of an incentive to comply for larger players.

**Morag Johnston:** Yes. A penalty of £500 might encourage some businesses to pay their rates, but the risk is that it might not do that for others. Responses to consultations had suggested introducing a scale of charges that was linked to the rateable values of properties; I appreciate that that might cause a difficulty if a property had not been valued, but having the ability to vary the civil penalty rate might better meet the intention of encouraging businesses to pay their rates.

**Annabelle Ewing:** Are discussions about the issue on-going? Do you seek discretion—full stop—for assessors or additional provisions to carve out the larger player side of things?

**Morag Johnston:** I do not know whether my colleagues know about that, but I am not clear about whether such discussions have taken place. The bill needs to set parameters; I imagine that linking them to rateable value bandings might be doable, but I am not aware of any discussions about that.

**Jonathan Sharma:** We have had comments from councils about the penalty levels and about who can be asked for information. Kevin Fraser can correct me if I am wrong, but I think that one comment was about whether councils can approach solicitors for information. There is a question about which party withholds information.

We welcome the fact that the bill provides for assessors and councils to request the information by law. That should be enough to encourage compliance; otherwise, people would end up transgressing the law. In our submission to the committee, we said that we would consider how that works out in practice and whether there is a need to be clearer about aspects of it.

10:45

**Eileen Rowand:** We have had discussions about that with the Scottish Government at the working group. It is therefore aware of concerns about the ability of the £500 penalty level to act as a deterrent.

**Kevin Fraser:** If the ratepayer was a limited company, it would be useful if there was the power to ask the director of the company to provide information and to hold them personally responsible for any failure to do so. If a company will not pay rates and its intention is to go through the phoenixing process later down the line, I imagine that—in a lot of cases—it will not be much bothered about an additional fine. However, the power to ask the directors for information and to hold them personally liable for the fees would go a long way to helping the position.

**Annabelle Ewing:** That is an interesting suggestion.

I have one last brief question. The penalty levels that have been set for failure to comply with local authority information notices appear to be slightly different. The initial penalty is £95, and I am not quite sure what the maximum penalty is. As far as you are aware, why has a slightly different level been set?

**Kevin Fraser:** To be honest, I do not know the answer to that. I know that there is a second level penalty of £370 for failure to comply with a first notice. However, I do not know why there are two different schemes.

**Alexander Stewart:** I will ask about anti-avoidance measures. Sections 5 and 12 aim to tackle or minimise tax avoidance. Are the tactics in the bill strong enough? Should they be seen as a positive devolution of power to local authorities or as an extra burden on the local authority?

**Kevin Fraser:** Those powers are definitely welcome, because there is certainly work to be done to tackle wide-scale rates avoidance.

However, my worry is that the bill does not go far enough to tackle real problems such as the phoenixing companies that I mentioned. There is nothing in the bill that would help us to get out of that problem.

There needs to be more in the bill to help us to pierce the corporate veil, as the phrase goes. We need to find out who is behind the business and profiting from it, and to scratch under the surface of any companies that are set up in order to appear to be running. It would therefore be welcome to see more in the bill about phoenixing companies specifically.

**Alexander Stewart:** Is there enough resource or capacity, with workforce planning behind it, to achieve that? Alternatively, is it the case that there are not enough people to go and find that information, meaning that it would have to be in legislation to give that extra bonus?

**Kevin Fraser:** It would be helpful to have it in legislation because, at the moment, phoenixing companies are not breaking any law in the way that they operate. We therefore do not have much power to do anything. If the bill said that that action is wrong and should not happen, that would give us the power to address it head on and people would not be able to hide behind company rules, as they do at the moment.

**Morag Johnston:** On resourcing, part of the difficulty for local authorities is the way that the legislation is framed. As Kevin Fraser outlined, such companies are not breaking any laws, so it can be quite difficult. We would therefore look for the general anti-avoidance rule to put in place parameters that make it much easier for local authorities to get to a place where they can recover rates in a situation where there is a phoenix company.

**Alexander Stewart:** What does local government think needs to be there to make that happen?

**Eileen Rowand:** On the previous question, there would be increased policing costs for us, but those would be vastly outweighed by the additional non-domestic rates that we would be able to collect.

**Alexander Stewart:** As I said, local authorities do not have those powers at the moment. Unless they are beefed up, will it be a major issue to achieve that?

**Jonathan Sharma:** Yes. We would need to understand what is required. In a way, we are talking about a proposal for a new regulation and we have not had that discussion yet. We welcome the general anti-avoidance rule, because it is a placeholder to allow consideration of subordinate legislation or other measures to tackle the issue.

We will be calling for that kind of discussion. We need to get the Government and the right people round the table to talk about how we can tackle it and whether we need legislation or other measures. The general anti-avoidance rule is about trying to give us scope to do that without getting caught up in primary legislation. There is more to come in that discussion.

**Alexander Stewart:** As you say, it gives you a stepping stone to something else, which would be much more beneficial to the organisations because it would bring in the revenue and help fund some of the gaps. It would also give back some of the burden.

**Jonathan Sharma:** COSLA would want to be fully engaged with the Government at an early point in any consideration of that.

**The Convener:** Will you describe what a phoenix company is, Mr Fraser?

**Kevin Fraser:** Phoenix companies are common in the public house trade, for example. A company will trade under a name or banner, that company will dissolve—its debts will have to be written off—and then a new company will open up the next day, but the sign above the pub will not change and nor will the staff. The business will not change—it is just the mechanics of doing away with debt and a company re-inventing itself.

**The Convener:** Thank you, that is very clear.

**Kenneth Gibson:** I will just add that that is why we have to make company directors individually liable, rather than the business. That is being done through the Unsolicited Marketing Communications (Company Directors) Bill that Patricia Gibson MP introduced in the House of Commons.

What is the estimated level of avoidance in Scotland?

**Kevin Fraser:** I do not have direct figures on that.

**Kenneth Gibson:** I am looking for parameters. If it is being avoided it will be hard to know exact amounts.

**Kevin Fraser:** There is one case that is going through at the moment where £2 million is at risk of being written off—that is for just one operation. There are not that many. I should stress that the vast majority of ratepayers are 100 per cent honest and we have no problem at all with them—they pay their dues when they are due. It is a very small minority who avoid paying, but the sums involved can be substantial.

**Kenneth Gibson:** Eileen Rowand talked about the fact that the new anti-avoidance measures would bring in more revenue than they would cost. To look at this another way, do you have any

ballpark figures for how much additional revenue could be brought in through the new anti-avoidance measures? I realise that it is quite difficult to get hold of figures for people who are avoiding paying, but it would be good to understand how significant the new measures would be.

**Eileen Rowand:** We are well aware that it happens and that avoiders exist. At the moment, we do not have effective tools to tackle that, which is why we welcome the anti-avoidance rules that are being introduced. We cannot really put a figure on it. Individual authorities will have identified instances of avoidance over the past few years but, as you say, that is not the full picture.

**Graham Simpson:** The question around phoenix companies is interesting. Is it possible for us to get some kind of idea of the scale of the issue from the perspective of individual councils that have been unable to collect rates debts from companies because they have closed down? Do you have any examples that you can pass on to us?

**Kevin Fraser:** The scale is not huge. There are probably one or two that are known to carry on at any one time in each local authority area.

**Morag Johnston:** It can be quite difficult to identify a company as a phoenix company. Although we might see a pattern of a particular premise continually changing hands, the directors of the companies are often different. Although we may suspect what is going on, unless it is obvious that the directors are the same, it can be difficult to identify such companies.

Often, it depends on local knowledge. As Kevin Fraser identified, the name over the door might not have changed but, from our rates records, we know that there have been three or four different companies in place. That is where it can be difficult. In Glasgow, we have a rates base of about 28,000 properties. To give you some context, we are not even talking about hundreds of cases, but it happens and it is unfair for the ratepayers who pay.

**Graham Simpson:** Mr Fraser, it sounds like you are looking for an amendment to the bill.

**Kevin Fraser:** Ideally, yes. We are highlighting the fact that we need to look at the corporate veil or company liability and to deal with phoenix companies.

**Kenneth Gibson:** I had already taken a note of that, but I am sure that the minister will be listening.

**Andy Wightman:** A couple of questions ago, Jonathan Sharma mentioned a note that he had given the committee, but we have no written evidence from COSLA.

**Jonathan Sharma:** We expect the committee to have COSLA's submission by the end of May. The council leaders will meet a week on Friday and I hope that the submission will be available immediately after that.

**Andy Wightman:** That is excellent.

Kenny Gibson raised the financial memorandum, and we have just talked about penalties. Perhaps I should know this, but do you receive the moneys from penalties or do they go to the courts administration?

**Kevin Fraser:** I understand that councils retain the moneys.

**Andy Wightman:** They come to the councils—that is fine.

The financial memorandum says that the administrative cost to local authorities, assessors and the Scottish Government will be £32 million and that the cost to ratepayers through NDR liabilities and potential penalties will be £68 million. Broadly speaking, do you accept all the figures in the financial memorandum?

**Eileen Rowand:** Yes.

**Andy Wightman:** You are broadly content.

The figures of £32 million and £68 million are dealt with in the summary table on page 21. Have there been discussions with the Government about baselining those costs? If councils are to receive £68 million over the next five years, have there been discussions about netting off the enhanced administrative costs that will arise? As a consequence of the bill, will councils be no worse off?

**Jonathan Sharma:** It has been made clear to us that there will be nothing forthcoming for any costs to councils as ratepayers. Councils will be expected to pay along with all other ratepayers—that is the message that we have had from the Government. We have made our point about the implications for ALEOs; some of that is captured in the financial memorandum.

Our councils provided the figures for the costs as ratepayers and the administrative costs. For the administrative costs and, in particular, the assessors' costs, which are the biggest element, I have already stated that we welcome the funding for 2019-20 and that we expect full funding to be provided for future years. We will do a little more work on assessors' costings and local authorities' costings.

**Andy Wightman:** You are correct that the biggest single administrative cost—£29.1 million out of a total of £31.9 million—is for the assessors. Local authorities govern the assessors—the valuation joint boards are run by councils—and councils pay them. You want the Government to



make sure that the costs of the £68 million of income from ratepayers are met from that £68 million and that you are left no worse off from having to pay your valuation joint boards £29.1 million to meet extra costs.

11:00

**Jonathan Sharma:** We have to accept that there will be some costs to councils as ratepayers; there is no getting away from that. If there are ways to alleviate costs through charitable relief for ALEOs, the message that we want to get across today to the Government is, “Look—can we have greater flexibility on that?” That might bring down the costs to councils as ratepayers.

As I said, we expect all the administrative costs that have been identified to be covered through central funding.

**Andy Wightman:** I make it clear that I was not asking about the impact on councils as ratepayers, which is covered in the £41.9 million. I am merely asking whether you expect the £29.1 million—the biggest single administrative cost—to be covered.

**Jonathan Sharma:** In the discussions that we will have on refinement of the costs, we will expect the costs to be recognised—for example, in the next spending review.

**Andy Wightman:** Are you content with the financial memorandum’s assessment of the potential costs to ratepayers and the impact of those costs on, for example, independent schools and others that will have to pay more rates?

**Eileen Rowand:** It is hard for us to say that we can sign those elements off, as we have not necessarily provided the figures. We are happy to speak about the administration costs that have come through and been provided by local government, but the Scottish Government has worked on the other elements.

**The Convener:** On that note, I thank the panel for attending today’s evidence session on the bill. Further sessions will take place over the remainder of May and June. The committee will consider the evidence that has been heard later in the meeting.

11:02

*Meeting suspended.*

11:04

*On resuming—*

## Subordinate Legislation

### Private Landlord Registration (Fees) (Scotland) Regulations 2019 (SSI 2019/160)

**The Convener:** Agenda item 3 is consideration of SSI 2019/160. I refer members to paper 3. The instrument has been laid under the negative procedure, which means that its provisions will come into force unless the Parliament agrees to a motion to annul it. No motion to annul has been lodged.

The Delegated Powers and Law Reform Committee considered the regulations at its meeting on 14 May 2019 and determined that it did not need to draw the Parliament’s attention to the regulations on any grounds in its remit. As committee members have no comments, do we agree that we wish to make no recommendation on the regulations?

**Members indicated agreement.**

**The Convener:** Thank you. That ends the public part of the meeting.

11:05

*Meeting continued in private until 11:16.*



This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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