

NON-DOMESTIC RATES (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

1. As required under Rule 9.3.3 of the Parliament's Standing Orders, this Policy Memorandum is published to accompany the Non-Domestic Rates (Scotland) Bill introduced in the Scottish Parliament on 25 March 2019.
2. The following other accompanying documents are published separately:
 - Explanatory Notes (SP Bill 44–EN);
 - a Financial Memorandum (SP Bill 44–FM);
 - statements on legislative competence by the Presiding Officer and the Scottish Government (SP 44–LC).
3. This Policy Memorandum has been prepared by the Scottish Government to set out the Government's policy behind the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

POLICY OBJECTIVES OF THE BILL: GENERAL

4. As outlined in *Delivering for today, investing for tomorrow: the Government's programme for Scotland 2018-2019*¹, the Scottish Government firmly believes that a strong economy with growing, competitive and innovative businesses is essential to supporting jobs, incomes and our quality of life. The Scottish Government will continue to drive forward work that will make Scotland the most competitive place to do business, delivering a strong, dynamic and productive economy which creates wealth and employment across Scotland.
5. The policy objectives of the Non-Domestic Rates (Scotland) Bill are to:
 - deliver a non-domestic rates system designed to better support business growth and long-term investment and reflect changing marketplaces;
 - improve ratepayers experience of the rating system and administration of the system; and

¹ <https://www.gov.scot/publications/delivering-today-investing-tomorrow-governments-programme-scotland-2018-19/>

- increase fairness and ensure a level playing field amongst ratepayers by reforming rate reliefs and tackling known avoidance measures.

6. The policy objectives of the various individual changes provided for in the Bill are discussed in more detail from paragraph 39 onwards.

BACKGROUND

Non-domestic rates

7. The Scottish Government has responsibility for setting non-domestic rates policy (including rates, reliefs and exemptions) and the legislative framework for the tax (such as this Bill). Responsibility for the day-to-day administration of the non-domestic rates system, including the billing and collection of taxes, rests with each of Scotland's 32 local authorities. Each local authority within Scotland is a valuation authority and responsible for appointing an assessor. There are 14 assessors in Scotland², four are appointed directly by a single local authority and the remaining ten are appointed by valuation joint boards (VJBs) comprising elected members appointed by two or more local authorities.

8. The assessors act independently of the Scottish Government. The independence of the assessor is necessary to ensure that decisions are made on considerations of value without political pressure. The actions of the assessor are subject to scrutiny through an independent appeals process. Appeals are dealt with by a valuation appeal committee (VAC) or on a reference by the VAC to the Lands Tribunal for Scotland. Members of the VAC are drawn from an appeal panel appointed by a sheriff principal and are independent of the assessor, local authority or VJB.

9. Assessors have responsibility for the valuation of all heritable properties for local taxation purposes within their respective valuation areas. Currently all rateable (non-domestic) properties are shown in the valuation roll ("the roll") and domestic subjects are contained within the council tax valuation list. Non-domestic properties are properties such as shops, offices, warehouses and factories, and any other property that is not classed as domestic property. In some cases, properties may be used for both domestic and non-domestic use (for example, a guest house or hotel) in which case both council tax and non-domestic rates will be charged. It is the assessor who determines the classification of properties as domestic and non-domestic. This Bill provides for changes to the non-domestic rates regime.

10. The roll is a public document which contains an entry for all non-domestic properties in an assessor's valuation area except those specifically exempt by law (for example agricultural land and buildings). Each entry in the roll includes such things as the names of the proprietor, tenant and/or occupier as appropriate and the rateable value set by the relevant assessor. New properties are added to the roll as they come into existence or are occupied and entries are deleted when, for example, properties are demolished.

11. The rateable value of all non-domestic properties are re-assessed usually (but not always) every five years by the assessors – this is referred to as a revaluation. The rateable value of a

² Scottish Assessors <https://www.saa.gov.uk/assessors-links/>

property is generally based upon its estimated open market value on the “tone date” were it to be vacant and to let. The tone date is 1 April two years before the date of the revaluation. For the 2017 revaluation (the most recent revaluation) this was 1 April 2015. The tone date determines the level of value to be applied throughout the period of the revaluation (for the 2017 revaluation that period is 1 April 2017 to 31 March 2022) by the assessors.

12. A revaluation results in the production of a new roll which contains revised values for existing rateable properties and rateable values for new rateable properties in an assessor’s valuation area. Following a revaluation new values will generally remain unchanged until the next revaluation, unless the property is altered or other changes take place. This new roll comes into force on the first day of the revaluation. For the 2017 revaluation, there were 233,386 entries on the roll on 1 April 2017 with a total rateable value of £7,358 million. Revaluation appeals were made against the assessments of 73,868 of these properties that accounted for £5,391 million of rateable value.

13. Revaluations are intended to redistribute the tax base to reflect shifts in market values that have taken place since the last revaluation. They are not intended to increase the overall tax burden and are generally revenue-neutral as any increase in total rateable value is accompanied by a fall in the tax rate, known as the poundage.

14. Local authorities use the roll, for their respective areas, when calculating a property’s non-domestic rates liability. The pre-relief non-domestic rates bill for a property is determined by multiplying the rateable value of the property by the poundage. The poundage is a pence in the pound tax rate set annually by the Scottish Government. The same national tax rate (poundage) applies throughout Scotland. For the 2019-20³ financial year the poundage rate is 49 pence.

15. There is also a poundage supplement – known as the large business supplement – for all non-domestic properties with a rateable value exceeding £51,000. For the 2019-20 financial year the poundage supplement is 2.6 pence⁴. If a ratepayer is eligible for a relief (for example rural rate relief) then an adjustment is made to arrive at a total sum due. Local authorities generally issue rates bills in March of each year for the following financial year (i.e. 1 April to 31 March). Generally, the proprietor, tenant and/or occupier of a non-domestic property is the person liable for the payments of rates.

16. There are a number of rate reliefs available within the non-domestic rates system⁵. For example, small business bonus scheme, rural rate relief, charitable rate relief and day nursery rate relief. Some rate reliefs are mandatory, some are discretionary and some are a mixture of mandatory and discretionary. A mandatory rate relief is a relief which will be granted by a local authority subject to criteria set out in legislation being met. Current mandatory reliefs provide 50%, 80% or 100% rate relief. A discretionary relief is a relief that a local authority may grant after taking due cognisance of: any legislative requirements; whether it would be in the interests of council tax payers to do so given local authorities fund a proportion of discretionary relief

³ The Non-Domestic Rate (Scotland) Order 2019 <http://www.legislation.gov.uk/ssi/2019/35/contents/made>

⁴ The Non-Domestic Rate (Levying) (Scotland) Regulations 2019
<http://www.legislation.gov.uk/ssi/2019/39/contents/made>

⁵ Non-domestic rates reliefs <https://www.mygov.scot/business-rates-relief/overview/>

granted from their own resources; and its policy for granting such relief. Councillors determine the discretionary rate relief policy for their own local authority.

17. For example, if a non-domestic property is in a designated rural area with a population below 3,000 and it is a small food shop, general store or post office with a rateable value below £8,500 or a small hotel, public house or petrol filling station with a rateable value of up to £12,750 then the non-domestic property will be entitled to 50% mandatory rural rate relief⁶. A local authority may elect to use its discretionary powers to top up the mandatory rural rate relief up to 100%. Provision is also made for a local authority to grant up to 100% discretionary rate relief for a property (other than those in receipt of mandatory relief) with a rateable value up to £17,000 used for purposes beneficial to the local community and where it would be in the interests of council tax payers to do so.

18. All non-domestic rates income collected by a local authority is retained by that authority to fund local services including those benefiting non-domestic properties. The Scottish Government then distributes additional central government grants to each local authority according to a needs-based formula which has been agreed by the Convention of Scottish Local Authorities (COSLA) on behalf of Scotland's 32 local authorities. This protects local authorities from volatility in rates income and ensures that each local authority budget is not solely determined by its revenue-raising capacity (non-domestic rates, council tax and various fees and charges for services provided by the authority).

The Barclay Review and the Scottish Government's response

19. In 2016, the Scottish Ministers commissioned Ken Barclay to carry out an independent review of the non-domestic rates system in Scotland ("the Barclay Review") with the following remit:

"To make recommendations that seek to enhance and reform the non-domestic rates (also sometimes referred to as business rates) system in Scotland to better support business growth and long term investment and reflect changing market places, whilst still retaining the same level of income to deliver local services upon which businesses rely."

20. The 2017 *Report of the Barclay Review of Non-domestic Rates*⁷ ("the Barclay Review Report") contained 30 individual recommendations on how the rates system could be reformed in Scotland. On 12 September 2017, the Cabinet Secretary for Finance and the Constitution made a statement⁸ in the Scottish Parliament outlining substantive responses to 25 of the Barclay Review recommendations, accepting the vast majority and choosing to add further measures to support investment and growth including several that are unique in the UK (e.g. a relief for qualifying day nurseries) whilst noting that the remaining five required further engagement and consideration, reflecting the complexity of the issues at hand. Following such engagement, a further response was confirmed on 28 November 2017 in respect of council arm's-length external organisations (ALEOs)⁹.

⁶ Legislative framework: Schedule 2 to the Local Government and Rating Act 1997 and SSI 2005 No. 103 as amended

⁷ Report <https://www.gov.scot/publications/report-barclay-review-non-domestic-rates/>

⁸ Response to Barclay Review <https://www.gov.scot/publications/barclay-review-report-ministerial-response/>

⁹ Press Release <https://news.gov.scot/news/sports-arts-and-community-centres-to-keep-rates-relief>

21. In December 2017, the Scottish Government published *Non Domestic Rates: Implementation plan in response to the Barclay review*¹⁰ which set out the Government's response to all of the Barclay Review recommendations. At that time, 27 Barclay Review recommendations were accepted; one Barclay Review recommendation was partially accepted; and two Barclay Review recommendations were rejected.

22. The two Barclay Review recommendations which were not accepted by the Scottish Government were: that all property should be entered on the roll (except public infrastructure such as roads, bridges, sewers or domestic use) and current exemptions should be replaced by a 100% relief to improve transparency; and large scale commercial processing on agricultural land should pay the same level of rates as similar activity elsewhere so as to ensure fairness.

23. The rationale for not accepting these Barclay Review recommendations was that, whilst it could be beneficial to have better valuation information for those properties currently excluded from the roll, the administrative burden on assessors and businesses does not warrant implementing this when there is no intention to levy non-domestic rates. Moreover, there could be state aid implications with ending a measure that pre-dates EU accession (i.e. exclusions from the roll that have been in place since before 1973) and replacing it with a new relief that could constitute state aid; and the rationale for the latter being that certain agricultural property is currently excluded from the roll, and however this exclusion is defined there will be a cut-off point open to interpretation. The Scottish Government was not convinced there is sufficient cause to re-define the current scope of the exclusion, in the context of the important contributions made to the economy by the agricultural sector.

24. Whilst the strategic direction of the reforms to the rating system has been set by the Barclay Review, the Scottish Government also ran a three month public consultation, *Barclay Implementation: A consultation on non-domestic rates reform*¹¹, from 25th June to 17th September 2018 to seek views on the specific details of how the legislation underpinning several of the Barclay Review recommendations will work in a number of areas.

25. The Minister for Public Finance and Digital Economy announced by way of a Government Inspired Parliamentary Question¹² on 22 February 2019 the outcome of the consultation exercise and thereby the provisions that would to be included in the draft Non-Domestic Rates (Scotland) Bill.

26. There are three Barclay Review recommendations, included in the Scottish Government Implementation Plan which do not form part of the draft Bill. The first is the recommendation to charge businesses based predominantly online or out-of-town, a business rates supplement. The Cabinet Secretary for Finance, Economy and Fair Work, confirmed in the Scottish Budget that the Scottish Government would not be taking forward this recommendation at this time. The imposition of a 10% supplementary charge on property that has been vacant for over five years will not be taken forward but the proposal to restrict empty property relief for listed buildings to two years will be taken forward, however the empty property relief will be available for five years.

¹⁰Implementation Plan <https://www.gov.scot/publications/barclay-review-of-non-domestic-tax-rates-implementation-plan/>

¹¹ Consultation document <https://consult.gov.scot/local-government-and-communities/non-domestic-rates/>

¹² Question S5W-21757

The recommendation to increase the current 42 days reset period (to six months) for empty property relief will be progressed. These changes to empty property relief will be dealt with by subordinate legislation.

27. To inform delivery of the Scottish Government's response to the Barclay Review Report, the Government convened a Barclay Implementation Advisory Group (BIAG)¹³. An appeals sub-group¹⁴ has also been set up with the role of providing advice to the Government on how to best implement the recommendations of the Barclay Review that relate to appeals. The BIAG includes representatives from all the key non-domestic rates stakeholder groups including COSLA, rating surveyors, the Scottish Assessors Association, the Federation of Small Businesses, Confederation of British Industry, Scottish Property Federation and Scottish Retail Consortium.

28. The BIAG met on six occasions between January and September 2018. The appeals sub-group has met seven times and will continue to meet throughout the passage of the Bill. Additionally, meetings were also held with: representative bodies from the business community, education sector, listed building/heritage and sports sectors; Scottish Assessors Association, and COSLA.

29. The Non-Domestic Rates (Scotland) Bill sets out the legislative framework to enable a number of the Barclay Review recommendations to be implemented.

Consultation

30. Discussion and debate began with the Barclay Review of Non-Domestic Rates. The Barclay Review team sought written submissions during a consultation period which ran from 13 July to 7 October 2016. Over 150 businesses, trade bodies, professionals, ratepayers, councils and members of the public responded¹⁵; with many more people subsequently sending in emails and information to the Barclay Review team.

31. Meetings and events were attended or hosted across Scotland to enable further views to be heard. Additionally, five oral evidence sessions were heard to allow the Barclay Review team to probe ideas and options in more depth. Ken Barclay, the Chair of the Barclay Review team, also appeared before the Local Government and Communities Committee on 26 April 2017¹⁶.

32. As mentioned in paragraph 24 above, the Scottish Government also ran a three month public consultation, *Barclay Implementation: A consultation on non-domestic rates reform*¹⁷, from 25th June to 17th September 2018 to seek views on the specific details of how the legislation underpinning several of the Barclay Review recommendations will work in a number of areas.

¹³ BIAG <https://www.gov.scot/groups/barclay-implementation-advisory-group/>

¹⁴ Appeals sub-group <https://www.gov.scot/publications/barclay-implementation-appeals-sub-group/>

¹⁵ Link to published formal written submissions where permission to publish given <https://consult.gov.scot/rates-review/barclay-review-of-business-rates/>

¹⁶ Official Report <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=10917>

¹⁷ Consultation document <https://consult.gov.scot/local-government-and-communities/non-domestic-rates/>

33. The consultation document posed 26 questions which were classified under three headings as follows:

- measures to support economic growth (questions 1 to 4 covered the business growth accelerator; three yearly revaluations, and out of town/on-line levy).
- measures to improve administration (questions 5 to 16 covered penalties for non-provision of information to the assessors and to local authorities; earlier initiation of debt recovery by local authorities; and reform of the appeal system).
- measures to increase fairness and ensure a level playing field (questions 17 to 30 covered anti-avoidance issues; and changes to reliefs and exemptions).

34. Just under 150 consultation responses were submitted. The percentage split of responses received between organisations and individuals was 84%:16%. Copies of non-confidential responses can be accessed through the Scottish Government Consultation Hub¹⁸. An independent analysis of all the consultation responses submitted was undertaken by ERS Newcastle and their report¹⁹ has been published on the Scottish Government’s website.

Table 1: Breakdown of respondent categories²⁰

Respondent Category	Term Used in Text	Number of responses
Businesses	Businesses	13
Chartered Surveyor (Private Sector)	Chartered Surveyor	5
Independent Education Sector	Independent Education Sector	17
Individual	Individual	24
Local Authority, Local Authority Association, Local Community	Local Authority	29
Other Public Sector and Third Sector	Other Sector	6
Professional, Representative, Trade Body	Representative Body	47
Valuation Board, Assessor, Related Organisation	Assessors	7

Summary of responses

35. The consultation sought views on the detail of how the recommendations should be implemented which in turn would help shape the underpinning legislative framework. The consultation responses ranged from comments made on a single measure (e.g. reform of charity relief) to detailed comments on every question posed in the consultation paper.

36. As evidenced by the consultation responses, there was clear support for the business growth accelerator to be set out in primary legislation, a move to three-yearly revaluations based on market conditions on a date one year prior (the “tone date”) to the revaluation, and the general

¹⁸ SG consultation Hub <https://consult.gov.scot/local-government-and-communities/non-domestic-rates/>

¹⁹ Analysis <https://www.gov.scot/publications/analysis-responses-barclay-implementation-consultation-non-domestic-rates-reform/>

²⁰ Source: ERS Newcastle Analysis Report

anti-avoidance regulations (GAAR). Businesses and business representative organisations were opposed to the running of a small number of out-of-town/on-line levy pilot schemes and the mainstream independent school sector were not in favour of the proposed changes to charity relief.

37. More detail on the consultation responses is provided below within the “Policy objectives of the Bill: individual provisions” section, along with the alternative approaches that were considered in relation to the Barclay Review recommendations.

38. The consultation process was valuable and the Scottish Government is grateful to all who contributed their time, input and assistance to the process.

POLICY OBJECTIVES OF THE BILL: INDIVIDUAL PROVISIONS

Three yearly revaluations (section 2 of the Bill)

Policy objectives

39. Currently the assessors undertake a revaluation of non-domestic property normally every five years, with a “tone date” two years prior to a revaluation taking effect.

40. The Scottish Government agreed with the Barclay Review Report on the need for more regular revaluations and plans to vary the current revaluation cycle. Moving to a three-yearly revaluation with a “tone date” brought forward from two years to one year before the revaluation takes effect, will help ensure that the rating system in Scotland is more flexible to the changing economic circumstances that the owner, tenant or occupier of a non-domestic property will face. This approach should, as far as can reasonably be expected, reduce the likelihood of ratepayers facing significant increases in their rates Bills at the time of a revaluation. Changes to the “tone date” can be dealt with through subordinate legislation.

41. The Scottish Government plans to implement the move to a three yearly revaluation cycle after the 2022 revaluation. The subsequent revaluation will therefore take effect from 1 April 2025 with a valuation “tone date” of 1 April 2024.

42. The Scottish Government concurs with the Barclay Review Report’s reasoning for ruling out a revaluation before 2022. A number of changes require to be put in place before the next revaluation including, amongst others, the transfer of the current appeals structure into the Tribunal Scotland structure; new powers and penalties for the assessors to ensure robust data collection need to be created; and appeals lodged against the 2017 revaluation to be largely cleared prior to another revaluation taking place.

Consultation

43. 98 responses commented on this issue. The move to three-yearly revaluations with a one year “tone date” was broadly welcomed as the view was that non-domestic rates paid would more accurately reflect market conditions. Some respondents commented on the need to ensure the assessors were funded to deal with more frequent revaluations. A number of respondents from across different sectors highlighted that whilst a reduction in the length of the revaluation cycle was welcome this would only be possible if the number of appeals lodged following a revaluation

were significantly reduced (73,867 appeals were lodged following the 2017 Revaluation and to 31 December 2018²¹ a total of 30,443 appeals against the 2017 revaluation have been resolved). A number of respondents called for an alignment of revaluation dates throughout the UK – the UK Government having announced on 13th March 2018 that England and Wales would move to three-yearly revaluations from 2021.

Alternative approaches

44. One option would be to have more frequent revaluations, for example yearly revaluations. The Scottish Government considered that the increased administrative burden (on ratepayers – particularly businesses – to provide information; on the assessors to act on that information; and on local authorities to bill and then ingather the taxes) set against what, in general, are likely to be modest changes in the property market over a one-year period did not make this approach a reasonable proposition.

45. Another option would be to retain the status quo which means non-domestic property revaluations would continue to take place every five years with a “tone date” two years prior to the revaluation date. The Barclay Review Report commented “that there was a strong consensus among stakeholders that 3 yearly revaluations with a tone date one year prior to the revaluation date, would provide a better timeframe”. As discussed above a shorter revaluation cycle will introduce a greater level of flexibility into the rating system thus enabling a quicker response to a changing economic environment. Maintaining the status quo is therefore not considered by the Scottish Government to be a reasonable option.

Business Growth Accelerator (sections 3 and 9 of the Bill)

Policy objectives

46. A key objective of the Scottish Government is to grow the economy. In order to achieve this objective the Scottish Government is keen to do all it can, whilst being mindful of budgetary constraints, to make Scotland a better place to do business.

47. The Scottish Government accepted the Barclay Review recommendation to create a business growth accelerator (BGA). The policy rationale is that this will encourage development and investment by providing a twelve-month delay before non-domestic rates are increased when an existing property is expanded or improved and also before a new build property incurs a non-domestic rates liability. In the Implementation Plan mentioned above the Scottish Government went beyond the Barclay recommendation and outlined that a new property would only be entered on the valuation roll only once it was first occupied, meaning the new property would not be liable for rates until it becomes occupied.

48. Where possible the Scottish Government wished to respond quickly to the Barclay Review recommendations and that is why it introduced The Non-Domestic Rates (New and Improved

²¹ Non-Domestic Rates Appeals Revaluation 2018-19 Q3 <https://www2.gov.scot/Topics/Statistics/Browse/Local-Government-Finance/NDR-Rates-Relief/Appeals2018-19Q3>

Properties) (Scotland) Regulations 2018²². These regulations enabled a BGA relief to be available to qualifying non-domestic properties with effect from 1 April 2018 for one year.

49. With the aim of offering greater certainty and better encouraging investment the Scottish Government will make provision for elements of the BGA within the Bill but detailed elements of the relief will continue to be set out in subordinate legislation. A relief of 100% for 12 months will be available on rateable value increases due to property improvements. After further reflection (in light of consultation responses) the Scottish Government agrees with the Scottish Assessors Association that in order to maintain the integrity and transparency of the roll, new property should be entered on the roll when it comes into existence. 100% relief will therefore be made available on new properties for 12 months after the non-domestic properties are first occupied in order to deliver the policy intent set out in the Scottish Government's Implementation Plan.

50. A statutory instrument entitled "The Non-Domestic Rates (New and Improved Properties) (Scotland) Regulations 2019"²³ has been laid before the Scottish Parliament and will be effective from 1 April 2019. This statutory instrument provides one hundred per cent relief on new properties until twelve months after they are first occupied and one hundred per cent relief for twelve months on property improvements.

Consultation

51. 94 responses were submitted and all categories who responded supported the BGA. The Scottish Whisky Association commented that "it had already seen member businesses benefit from the Accelerator". The largest respondent categories were representative bodies and local authorities.

52. The main points made in support of providing for a BGA in primary legislation were it offers certainty over the existence of the relief and better encourages investment and it was thought that primary legislation would streamline the process and "reduce administrative burdens on councils and those seeking reliefs" (Law Society of Scotland) and create greater consistency across Scotland.

53. Some responses commented that the twelve-month period before a rates liability arose should be extended to five years. The Scottish Assessors Association commented that the roll "would not always reflect the existence, nature or extent of non-domestic properties in existence in Scotland" if new build properties were not subject to valuation (and hence entered onto a roll) until they are first occupied.

Alternative approaches

54. The Scottish Government could have rejected the Barclay Review recommendation to introduce a BGA but as discussed above a key priority for the Scottish Government is to grow the economy and implementing a BGA is one of a range of measures taken by the Scottish

²² SSI 2018 No.75 <http://www.legislation.gov.uk/ssi/2018/75/contents/made>

²³ SSI 2019 No. 40 <http://www.legislation.gov.uk/ssi/2019/40/contents/made>

Government to achieve this aim. Rejecting the recommendation was therefore not seen to be a reasonable option.

Entering of parks in valuation roll (section 4 of the Bill)

Policy objectives

55. Currently parks under the control of, or vested in, a local authority are not entered in the roll, unless the local authority derives a net profit from the park. Similarly, parks under the control of, or vested in, a Minister of the Crown, Government department or other body exercising Crown functions are not, provided the public has free and unrestricted access to the park, entered in the roll. No rates are payable in respect of parks which are not entered in the roll.

56. Lifestyles have changed over recent years and considerably more commercial activity now takes place in these types of parks. The Scottish Government agrees with the Barclay Review Report that in the interests of fairness it is right and proper that such commercial activity should be rated in the same way as commercial activity that is undertaken elsewhere. The Bill therefore makes provision for non-domestic properties (for examples, cafes or bowling greens) within such parks which are occupied by a person other than the person who controls the park, or in whom the park is vested, to be entered in the roll. In addition, the Bill provides that local authority parks which do not have free and unrestricted public access will require to be entered in the roll. Affected properties will be brought onto the valuation roll in time for the next non-domestic rates revaluation in 2022 (and rates will therefore be payable in respect of such properties).

Consultation

57. The general view expressed was that if the activity is profit raising or fee charging then it should be defined as commercial activity. However, a distinction was recognised between whether the activity charges a fee to cover costs or to raise a profit. If the fee was to cover costs then the activity should be defined as non-commercial. A further suggestion on how to define commercial activity was that it should be based on the length of time and/or the number activities that take place within a given time period.

58. Additional comments made included: calls for non-profit organisations to be automatically exempt from any tax liability; scope for local authorities to be given discretion over commercial activity in their jurisdiction; and definitions were highlighted as a concern, e.g. profit raising.

Alternative approaches

59. The option here would be to retain the status quo and not to bring these parks and land onto the roll. However, the Scottish Government agreed with the Barclay Review recommendation that in the interests of fairness this was not a reasonable option.

Discretion in relation to whether entries in the valuation roll are to be deleted (section 5 of the Bill)

Policy objectives

60. Under current legislation self-catering holiday accommodation is subject to non-domestic rates if, broadly speaking, it is not someone's sole or main residence and is made available for let (on a commercial, "for profit" basis) for at least 140 days per financial year. Otherwise it is liable for council tax and entered on the council tax valuation list.

61. An avoidance tactic used by some property owners is to avoid payment of council tax on second homes by claiming the property has moved from domestic use (liable for council tax) to non-domestic use as a self-catering property (and liable for non-domestic rates). A subsequent application is then made for relief under the small business bonus scheme and no rates are payable. Thus the contribution to the cost of local services is nil. The current criteria to switch from the domestic to the non-domestic use is fairly loose – i.e. an intention to let for 140 days.

62. The Scottish Government considers it is important to tackle tax avoidance and intends to address this loophole by requiring a property owner to demonstrate that a property has been actually let for 70 days in any financial year (1 April to 31 March) and also is actually available to let for 140 days in the same period before the property can be moved from the council tax valuation list onto the roll (in the case of a new property) or remain on the roll (in the case of a property already on the roll). If the owner of the property is unable to evidence this activity then the property will remain on the council tax valuation list or be deleted from the roll and entered on the council tax valuation list. These changes can be implemented through secondary legislation.

63. The Scottish Government acknowledges that there may be occasions where through no fault of the owner of the property in question, an owner is not able to actually let it for 70 days. The type of scenario envisaged here could be, for example, where a property is located in the outer islands and the ferry service is not operational; other examples could be weather related issues such as flooding or a landslide.

64. In these specific types of situations the Scottish Government considers it appropriate for local authorities to be able to exercise a degree of discretion with regard to the 70 day actual let criterion and thus whether or not a property should be entered on/remain on the non-domestic rates roll.

65. The Bill delivers this intention by amending an existing regulation-making power in section 72 of the Local Government Finance Act 1992, which allows Ministers to set out classes of property which are not to be regarded as "dwellings" (making them liable to non-domestic rates instead of council tax). The Bill provides for such regulations to also set out circumstances where local authorities have discretion to decide whether particular properties can continue to be regarded as falling within a class set out in the regulations, despite not meeting the criteria for inclusion in the class.

Consultation

66. 57 responses offered comments on whether there should be any local discretion in the application of the proposed policy. The largest respondent category was local authorities at just over 47% of the responses submitted. Opinion was divided, representative bodies, businesses and individuals were in favour of discretion, whereas chartered surveyors and the assessor that responded to this question did not believe in local discretion. Local authorities were split between agreement and disagreement with the proposal.

67. 39 responses offer comments on the type of circumstances where discretion should apply. Representative bodies and local authorities were the largest respondent categories here accounting for 72% of the responses received. “Extenuating” or “exceptional” circumstances which may be outwith the ratepayer’s control were cited as reasons for local discretion to be used.

Alternative approaches

68. One option would be to retain the “status quo” thus allowing a known tax avoidance loophole to remain open. The Scottish Government firmly believes in promoting a culture of responsible tax paying to protect the interests of compliant taxpayers and users of public services. By not addressing this matter the Scottish Government could be perceived as giving tacit approval to tax avoidance and therefore this was not deemed to be an acceptable option.

69. A potential second option would be not to enable local authorities to exercise discretion in certain circumstances when considering whether or not a property owner has demonstrated that a property has been actually let for 70 days in any financial year (1 April to 31 March). The Scottish Government considers that local authorities are best placed to know what is happening within their own authority area and that as discussed above circumstances may arise which genuinely prevents a property owner from being able to let a property for 70 days. In the interests of fairness the Scottish Government considers it is important to allow local authorities a degree of flexibility in such cases and therefore considers this is not an acceptable option.

Reform of the appeal system (sections 6 to 9 of the Bill)

Policy objectives

70. Owners and occupiers of non-domestic property currently have a period of 6 months (30 September 2017 for the 2017 revaluation) to make an appeal against the revaluation rateable value. There were 73,867 appeals made by 30 September 2017 (up from 66,975 appeals against the 2010 revaluation). Appeals can also be made in case of material change in circumstances.

71. As at 31 December 2018, there were 43,425 outstanding appeals against the 2017 revaluation, representing £4,169 million of appealed rateable value. Over three quarters of appeals resolved as of December 2018 (22,989) did not result in any change in rateable value. However, while only 24% of appeals resolved to date have resulted in a reduction in rateable value, these appeals accounted for almost 54% of the total rateable value that has been resolved so far.

72. The Barclay Review recommended the appeals system be modernised to reduce the volume of speculative appeals and ensure greater transparency and fairness. As mentioned above the

BIAG established an appeals sub-group to assist in taking forward this work. This group continues to meet to discuss the appeals timetable that will be set out in secondary legislation as well as the information to be shared between parties.

73. The reasons for the large volume of appeals are many and varied but could include amongst other reasons: there had not been a revaluation in seven years at the 2017 revaluation; the principles underpinning the valuation system and associated rateable values are complex and not widely understood; ratepayers currently receive limited information on how rateable values are calculated; there are no risks to appealing as the appeals system is free to access and easy to access (appeals can be submitted at the press of a button by sending an email to an assessor saying little more than “I appeal my rateable value”), and rateable values either go down or stay the same; ratepayers are unable to benefit from systemic adjustments to rateable values to equivalent properties unless they have also appealed, which can lead to speculative or “protective” appeals; and the last two revaluations have taken place during exceptional economic circumstances which has led to volatility in rateable values.

74. The move to more frequent revaluations where valuations will more currently reflect market values is aimed at reducing the need for speculative appeals. Increasing the assessors’ information-gathering powers, along with an increase (14 to 56 days) in the time period by which an assessor must receive a reply, should improve the assessors’ ability to assign an accurate value to a non-domestic property from the outset. This in turn should lead to a reduction in the number of appeals. These changes, though a step in the right direction, will not by themselves resolve the issues relating to the current appeals system.

75. The Scottish Government considers that the key to reforming the appeals system is trying to ensure that only those cases that will actually go to a hearing will have a notice for hearing issued by the VAC. In short the VAC should not require to consider cases that will be resolved before the hearing date.

76. The Bill provides a framework for a revised system for appeals:

- a requirement that a ratepayer lodges a proposal with the assessor in order to subsequently lodge an appeal. A ratepayer will not be allowed to lodge an appeal unless they have made a proposal, with supporting information, to the assessor by a set deadline.
- a period must elapse before an appeal can be made, to allow the assessor to consider and respond to the proposal. That will give an opportunity for the assessor to accept the proposal, make a counter-proposal, or justify further their valuation in response to the information provided. The Bill provides that a ratepayer may appeal against a valuation only if the assessor decides not to alter the valuation or if no decision has been made within a certain period. Timings for the proposal and appeals stages will be set out in secondary legislation, as is currently the case for appeals. Provision has been made within the Bill to ensure rejection of an appeal if the foregoing process has not been followed.
- provision of a regulation-making power enabling the Scottish Ministers to levy a fee for taking an appeal forward but also providing for circumstances in which the fee may be refunded. The type of scenario envisaged here would be that the ratepayer had

achieved an appeal outcome which indicated that their appeal was justified, perhaps because of some form of reduction in the valuation of their non-domestic property.

- provision for a VAC to be able to increase the rateable value of the subject under appeal where evidence has emerged to support this. Further, the Bill provides that an appeal, once made, is only capable of being withdrawn with leave of the VAC, and regardless of whether the ratepayer and assessor reach an agreement after the appeal is lodged (the policy rationale being that such a requirement will deter a party from pursuing an appeal then withdrawing it if their appeal appears likely to result in a higher valuation).

77. These new proposal/appeal procedures apply when the proprietor, tenant or occupier of a property changes, when there has been a material change of circumstances in relation to the entry in the roll and when there is an error in the entry in the roll as well as in relation to changes in rateable values following a revaluation.

Consultation

78. 64 responses commented on how the changes in the appeal system should be communicated to ratepayers. Representative bodies and local authorities submitted the majority of responses – 68%. The general view expressed was that the Scottish Government should be responsible for communication. Suggested channels of communication were not dissimilar to those outlined above under the heading earlier initiation of debt recovery by councils.

79. 74 responses commented on the proposal to allow to allow a rateable value to be increased at a valuation appeal. Representative bodies and local authorities submitted the majority of responses – 55%. There was a general consensus that a valuation should be capable of being increased at an appeal hearing. There were some comments made which were related to valuation methodology and what were stated to be inconsistencies in valuation of properties that are not directly related to the question posed. A comment was made that the potential threat of increases to rateable value on appeal may act as a disincentive to a small business to submit an appeal. The specific example given was where the rateable value assigned to the property at the revaluation was at the upper threshold for benefitting from small business bonus relief. If the VAC considered that rather than there being a decrease in rateable there should be an increase in rateable value then that might result in the loss of small business bonus relief.

Alternative approaches

80. One option would be not to amend the current appeals system. Given the move to three-year revaluations it is critical that there is a reduction in the significant level of appeals lodged at the time of a revaluation as well as a quicker throughput of appeals in the system. The Scottish Government does not consider that retaining the status quo would be a reasonable option and this is a view strongly shared by the BIAG and stakeholders across all sectors.

Charitable relief: independent schools (section 10 of the Bill)

Policy objectives

81. In Scotland, an organisation can only call itself a charity if it is entered in the Scottish Charity Register, published and maintained by the Office of the Scottish Charity Regulator. Existing legislation²⁴ provides that all independent schools who are registered as a charity are eligible for 80% mandatory rates relief. Local authorities have a discretionary power to “top up” this relief, up to 100%. Local authority schools do not qualify for charitable relief and generally will pay rates. Whilst the Scottish Government agreed with the Barclay Review Report that this is unfair and that this inequality should end by removing eligibility for charity relief schools from independent schools, the Scottish Government considers this change should apply to mainstream independent schools only.

82. Mainstream independent schools will still retain their charitable status and other benefits will continue to flow to them from that status. In addition, mainstream independent schools will still be eligible for disability rates relief where they qualify for this.

83. The Scottish Government considers that due to the importance of the services they provide and the lack of alternative provision, independent special schools and specialist independent music schools should continue to be eligible for charity rate relief.

84. Whilst children and young people should be educated in mainstream schools certain circumstances may exist which would prevent this (for example, where placing a child in a mainstream school would not suit the child’s ability or aptitude, would negatively affect the learning of other children in the school, or would cost the local authority an unreasonable amount of money).

85. Independent special schools cater for children (funded by their local authority who are required by statute to provide an education that meets the needs of the children in their authority area) with specific or complex needs and offer a range of services that are usually not available in mainstream schools. They provide much more help for children who have complex additional support needs such as behaviour problems, learning difficulties, or physical or sensory disabilities. They are often staffed by specialist teachers and can offer a range of education and therapies.

86. St Mary’s Music School is the only current example of an independent specialist music schools. While registered as an independent school, St Mary’s Music School is unusual in that sector. It provides a significant public service, providing both the general education and musical education for around 80 young people who have all been selected by reason of their ability and potential for musical excellence.

87. St Mary’s Music School is around 70% publically funded, with a large proportion of its remaining income coming from charitable donations. All pupils, unless they do not qualify on residence and/or nationality grounds, receive assistance towards fees, from the Scottish Government or from St Mary’s Music School’s own charitable sources (or those of St Mary’s Episcopal Cathedral). For choristers in receipt of a scholarship, the fee is significantly subsidised,

²⁴ Local Government (Financial Provisions etc.) (Scotland) Act 1962

while for other choristers and instrumental pupils only a limited, means-tested parental contribution to school fees is required. So financial circumstances are not a barrier to attending the school.

88. St Mary's Music School is also an important cultural asset to Scotland, providing a classical music education for young people who overwhelmingly go on to study music at further and higher education and to careers in our national orchestras. For these reasons it is not considered in the public interest to impose additional costs on the provision of the public benefits that are provided by independent specialist music schools.

Consultation

89. 71 responses offered comments on the treatment of independent schools with exceptional circumstances such as specialist music schools. The largest respondent categories were local authorities, individuals and the independent education sector which accounted for 82% of the responses. The general view expressed by respondents was that schools should not be treated differently if they are specialised, independent or state run. The main points made included that there should be parity across all schools who support children with additional needs, and that further consultation was needed to determine criteria and define "exceptional circumstances". Independent schools also highlighted that this recommendation unfairly targeted them and may unfairly benefit some schools, while the Scottish Charity Regulator highlighted that treating certain independent schools differently to others could create a "two-tier" charity system. A discretionary scaled relief was suggested as an alternative to removal of relief to make relief proportional to the recipient.

Alternative approaches

90. One option would be to remove eligibility for charitable rate relief from all independent schools as recommended by the Barclay Review. The Barclay Review Report commented that "independent special schools will be eligible for disability rates relief where they qualify for it". Relief of up to 100% is available to establishments where nursing care is provided within the terms of the Rating (Disabled Persons) Act 1978. To qualify for any relief, 50% or more of the premises must be used exclusively for one of the following: residential accommodation for care or aftercare of those suffering from illness; training or activities for people suffering/who have suffered illness or are disabled; or provide welfare services for disabled people.

91. It is unlikely that all independent special schools will meet the eligibility criteria for non-domestic rates disabled relief. The Scottish Government considers that due to the importance of the services provided by independent special schools and the lack of alternative provision all such schools should benefit from rate relief. Similarly with regard to independent specialist music schools – of which St Mary's Music School is the only current example – the Scottish Government considers that as the young people are selected by reason of their ability and potential for musical excellence and receive a classical music education which helps talent flourish it should do what it can to support such schools through the provision of rate relief. The Scottish Government therefore does not consider this option was an acceptable option.

92. An alternative option would be to introduce some form of discretionary rate relief scheme for independent schools thus enabling each local authority to decide its own policy for granting

relief. Local authorities have an existing power under the Local Government (Financial Provisions etc.) (Scotland) Act 1962 (“the 1962 Act”) relating to reduction or remission of rates levied by them in any financial year from 2015-16 onwards. This power allows any local authority to create, local relief schemes for any non-domestic rates levied by it. In light of this the Scottish Government did not consider this was an acceptable option.

Power to remit or reduce rates for certain organisations (section 11 of the Bill)

Policy objectives

93. Sports club relief is not a mandatory rate relief. Local authorities grant this relief using the discretion available to them under section 4 of the 1962 Act. The Scottish Government’s policy intent here is to continue to support, and encourage local authorities to support, affordable community based facilities that give people the chance to take part in sporting activities thus contributing to (amongst other aims around an active Scotland) the Scottish Government aim to cut physical inactivity in adults and teenagers by 15% by 2030. There is already legislative provision within the same section of the 1962 Act for up to 100% relief for sports clubs on the Scottish Charity Register and for sports clubs which are registered with Her Majesty’s Revenue and Customs (HMRC) as a community amateur sports club (CASC).

94. The Scottish Government however agrees with the Barclay Review recommendation that the current arrangements relating to the granting of discretionary relief (often 100% relief which results in no rates being paid) might not give due consideration to matters such as the size of the club and the type and degree of openness of membership amongst other matters.

95. The Bill provides the Scottish Ministers with a power to issue guidance which will cover the matters discussed and impose a duty on local authorities to have regard to the guidance in exercising their discretion under section 4 of the 1962 Act. Representatives from local authorities and the sports club sector will be involved in the drawing up of the guidance.

Consultation

96. 55 responses offered comments on the consultation question how should affordable/community sports clubs be defined. The largest category of responses came from local authorities with almost 47% of responses.

97. A theme that strongly came through the responses was that terms such as “fee thresholds”, “availability of facilities” and “transparent and inclusive membership policies” were all matters that should have a bearing on any decision to grant relief.

98. Some responses expressed concerns around definitions particularly in relation to terms such as “affordability” as this was seen as a subjective matter. The CASC definition was highlighted by a number of respondents as being a potential definition upon which to base relief exemptions. Responses from the independent education sector proposed that any definition (of affordable/community sports facilities) should include the extensive sporting facilities operated by independent schools, and shared with state schools, local teams and communities as part of the explicit public benefit provisions of each school.

Alternative approaches

99. No alternative approach to that of issuing statutory guidance to local authorities was considered following feedback from stakeholders in the sports club sector who welcomed the opportunity to input – through the vehicle of a working group involving Scottish Government policy and local authority colleagues – into the drafting of guidance material which (subject to the Bill’s progression through the parliamentary process) will be issued to all 32 local authorities.

Non-use or underuse of lands and heritages: notification (section 12 of the Bill)

Policy objectives

100. The Barclay Review Report made reference on several occasions to “known avoidance tactics” and a number of the Barclay Review recommendations sought to address specific examples. Payment of tax (whether that is non-domestic rates, land and buildings transaction tax, or landfill tax) demonstrates social responsibility and the Scottish Government is committed to promoting a culture of responsible tax paying to protect the interests of compliant taxpayers and users of public services. Tax avoidance is not an illegal activity but it does place revenues at risk, for example if other taxpayers begin to take comparable action, leading to a fall in revenues. Tax avoidance may be felt to be unfair by compliant taxpayers who continue to meet the full extent of their liabilities as intended by the law.

101. Current legislation²⁵ provides for the rates payable in respect of rateable properties which are unoccupied to be reduced. However, it was suggested to the Barclay Review that a well-known avoidance tactic to reduce a property’s rates liability when it is empty is to occupy only a small part of the property for storage to either qualify for another relief (for example charitable rate relief or relief under the small business bonus scheme) which may be more advantageous to the ratepayer or to allow a new period of empty property relief to begin after a set period (currently 42 days but subordinate legislation will be brought forward to increase this period to 6 months)²⁶. Section 12 of the Bill deals with the first of these aspects (the second aspect will be dealt with through subordinate legislation).

102. The policy objective is to empower local authorities to address this tax avoidance activity by putting the onus on the ratepayer to provide evidence to demonstrate that they are in receipt of the correct rate relief. To achieve this, the Bill provides that a local authority can serve a notice on a ratepayer who is in receipt of a relief other than unoccupied property relief in two circumstances: where a local authority considers that the property is not being used, thus suggesting that unoccupied property relief ought to apply instead of whatever relief is being received; and where the local authority is of the opinion that the property is significantly underused, thus suggesting the amount of relief being received is greater than would be received if unoccupied property

²⁵ Sections 24 to 25 of the Local Government (Scotland) Act 1966

²⁶ Barclay Review recommendation 21 “To counter a known avoidance tactic, the current 42 days reset period for empty property should be increased to 6 months in any financial year. Current legislation requires that in order to qualify for an initial 3/6 month rate free period, a property has to be occupied for a period of at least 42 days prior to becoming unoccupied. The loophole arises whereby for example a landlord can ensure a property is “occupied” (e.g. occupation may be limited to a pallet of stored goods) for 43 days to then reclaim a new 3/6 month rate free period with this process repeating until the property is either re-let or developed.

applied, and the ratepayer's reason for not leaving the property empty is to benefit from the greater amount of relief.

103. Ratepayers will have 28 days from issue of the notice to respond. If no response is received within that period, and the local authority considers that one of the described avoidance tactics is being used, the local authority may immediately take further action, which could for example result in the local authority issuing a revised rates demand to the ratepayer based on unoccupied relief rather than any other relief.

104. Where a response is received, the local authority must consider, in light of the information provided, whether either of the circumstances described in paragraph 102 do exist, and notify the ratepayer accordingly. If a local authority concludes the circumstances are as it thought (for example the "occupation" may be limited to one bag of goods donated for charitable purposes) then in addition to notifying the ratepayer of the reasons for reaching this view, the local authority must indicate to the ratepayer what further action it proposes to take. Again this may depend on what relief the ratepayer is receiving (for example mandatory 80% charitable rate relief) but could involve the local authority issuing a revised rates demand for based on unoccupied property relief rather than the more generous (in the longer term) charity rate relief.

105. The Scottish Government recognises that there will be occasions where it is reasonable to hold capacity in premises for an anticipated future use and local authorities will be able to take account of this in deciding what action to take following the issuing of a notice under section 12.

Consultation

106. 54 responses offered comments on how "active occupation" should be defined. The largest respondent category was local authorities who accounted for almost 47% of the responses. The three criteria suggested in the consultation paper were the most popular criteria for definition of active occupation. Namely: floor space used; accessibility to the public and/or local authority; and demonstration of accounts for a business in operation at the property. Additional criteria suggested were: "physical evidence of a business being run from the property; and providing a service or being used to support active use of another property". Other points raised were: the GAAR may be the best route given the complexities of defining occupation; active occupation is not a reasonable strategy when determining if rates relief should be granted but no other alternative was suggested; and agreement to remove charity relief from properties that are no longer occupied by a charity.

Alternative approaches

107. One option would be to retain the "status quo". This would mean the Scottish Government would be allowing an identified tax avoidance loophole to remain open. As discussed above, the Scottish Government firmly believes in promoting a culture of responsible tax paying to protect the interests of compliant taxpayers and users of public services. For these reasons this option was not considered to be an acceptable approach.

108. A second option would be to implement the Barclay Review recommendation that with the exception of empty property relief, that to qualify for any relief, it must be demonstrated that over 51% of the area of the property is in active use (not vacant). The BIAG agreed with the need to

address this avoidance tactic but expressed significant concerns that over 51% of the area being in active use would be sufficient to address the problem. The BIAG considered ways in which “active use” could be defined but were unable to reach a definitive conclusion. Given the considerable rating experience amongst the BIAG members, the Scottish Government concluded that this was not a reasonable option.

109. Whilst a number of consultation responses commented that the GAAR should be used to deal with this tax avoidance loophole, in part because of the perceived difficulty in arriving at a practical and effective definition of active occupation, no commentary was provided as to how this would operate in practice. A number of consultation responses set out how they would define “active occupation” but equally other consultation responses commented that it was simply not possible to come up with a workable definition of active occupation. Given the lack of consensus on a clear way forward in terms of defining active occupation, the Scottish Government did not consider any further alternative approaches.

Earlier initiation of debt recovery by local authorities (section 13 of the Bill)

Policy objectives

110. The Scottish Government agreed with the Barclay Review recommendation that local authorities should be able to initiate debt recovery for non-payment of non-domestic rates more quickly than current rating legislation²⁷ allows. Local authorities cannot take enforcement action in relation to outstanding non-domestic rates monies until after 30 September in any year. The policy rationale for this change is that, just as ratepayers should expect prompt payments from local authorities, then local authorities should expect the same from ratepayers. The Bill therefore brings the enforcement position for non-domestic rates broadly into line with that which pertains under council tax. This means that a local authority will be able to commence recovery action against a non-domestic ratepayer as soon as payment of any instalment is missed. This applies where payments are made in instalments as provided for in section 8(1) of the Local Government (Scotland) Act 1975, and not to any alternative payment plans.

Consultation

111. The consultation paper explored issues around communication of debt recovery changes to ratepayers and whether a local authority should retain discretion over debt recovery in cases where there may be extenuating reasons for non-payment.

112. There were 55 responses to the communications questions with a strong preference expressed that the Scottish Government should be responsible for communicating the proposed changes to ratepayers although to a lesser extent it was suggested that local authorities should also play some role in the information dissemination exercise. Communication strategies suggested in the responses included: annual non-domestic rates billing; via social media or websites; via email; via press releases; and via trade and business associations.

113. There were 61 responses in relation to the question around local authority discretion. The majority of local authorities who submitted a response and COSLA were in favour of discretion

²⁷ Local Government (Scotland) Act 1975

being given to local authorities. A small number of responses raised concerns that allowing discretion to be applied by local authorities would create inconsistencies. Glasgow City Council commented “discretion generates inconsistency for ratepayers who pay to multiple councils with resultant potentially negative impacts”.

Alternative approaches

114. One option would be to retain the “status quo” and make no changes to existing local authority debt recovery procedures for non-payment of non-domestic rates. The Scottish Government considers that in the interests of fairness non domestic ratepayers should – as far as debt recovery procedures go – be treated no differently to council tax payers. Additionally, from a local authority administrative viewpoint operating two debt recovery systems is not efficient. For these reasons the Scottish Government did not consider this was a reasonable option.

115. An alternative option would be to design a completely new debt recovery system for the non-domestic rates regime. Feedback received from local authorities during the three month public consultation was that the non-domestic rates debt recovery procedures should replicate, as far as practical, those procedures which operated under council tax. These procedures work well and local authority revenue staff are experienced in following these procedures. In light of this the Scottish Government did not consider this to be an acceptable option

Assessor information notices etc. (sections 14, 18, 19 and 22 of the Bill)

Policy objectives

116. As discussed above, at each revaluation the assessors undertake a valuation of all non-domestic properties unless expressly exempted by law. Ensuring a valuation is correct from the outset is of benefit to all parties. This gives ratepayers certainty over rates that will be due, provides the Scottish Government with more certainty over income levels and reduces the administration on ratepayers, assessors and the appeal system.

117. The purpose of the information an assessor requires will vary depending on the non-domestic property being valued. For example, the assessors have commented that “the information may be the lease details of a small workshop which has a rateable value of less than £1,000 or the total throughput, development costs and commercial transport agreements for a national hydrocarbon products line where the assessment could be in excess of £1 million”.

118. The Barclay Review Report commented that “Considerable evidence was presented to us to indicate that the provision of information by ratepayers to assessors to enable assessors accurately to calculate rateable values was often poor and that this happened for various reasons, including where ratepayers were advised to do so by a professional rates advisor (who stood to gain a portion of any reduction in rates paid following a successful appeal)”.

119. Current legislation provides that where an assessor has requested information in writing from a person and this information has not been received within 14 days then that person may be liable on summary conviction to pay a penalty not exceeding level 3 on the standard scale. This provision is repealed by the Bill.

120. The policy rationale for introducing a civil penalty, combined with an increase from 14 to 56 days to respond to a request for information, is to act as a deterrent for withholding information by incentivising full disclosure of information and reduce the volume of appeals. As discussed elsewhere in this document a reduction in appeals is a key component in enabling a successful transition from five-yearly revaluations (with a “tone date” two years prior to the revaluation) to three-yearly revaluations (with a “tone date” one year prior to the revaluation). To give effect to this policy the Bill includes provision such that, if a person has not responded within 56 days of having received a written request for information from an assessor, then the person will be liable to a penalty of £100.

121. The assessor will require to ensure that any penalty notice served states why the person is liable for a £100 penalty and that, if the person fails to submit the outstanding information within 21 days of the date of the notice being served, then a further £100 penalty will be imposed along with, subject to a “maximum liability”, a further penalty of £20 for each day in respect of which the failure to provide the outstanding information continues. The “maximum liability” which a person will require to pay shall not exceed the greater of the value of the non-domestic property concerned on the day the notice is served or £500. The Bill provides that an assessor can mitigate or remit any penalty under these provisions. The proposed penalty is on a par with that which is currently applied by Valuation Office Agency officials (the equivalent of the Scottish assessors) in England.

122. A person will have a right of appeal to VAC against a penalty notice within 28 days beginning with the day the penalty notice was served. The lodging of an appeal will not by itself prevent the possibility of any further penalty or penalties accruing. Only the provision of the outstanding information would prevent further penalties. The VAC may mitigate or remit any civil penalty charged for the non-provision of information to the assessors on certain grounds.

123. The policy objective is that by increasing the time period by which a person must return the information to the assessors and introducing a civil penalty, this will improve the flow of information to the assessors. Whilst mindful of the Barclay Review Report comment that “it is not the intention that this penalty be used to raise new revenue” the Scottish Government considers it is sensible to have the flexibility to vary the level of penalties set – subject to stakeholder engagement – should it subsequently transpire the proposed provision does not deliver the desired improvements.

124. The Bill also provides that a person will be deemed to have committed an offence if they knowingly provide false or misleading information when complying with an assessor’s information notice. A person who commits such an offence is liable on summary conviction to a fine not exceeding level 3 (£1,000) on the standard scale.

125. The assessors have to value a wide range of non-domestic properties, for example from public toilets through to defence infrastructure or telecommunications networks. Assessors may need information on construction costs and their corresponding bills of quantities for a wide range of buildings and plant constructed in both the public and private sector. Frequently this information is not held by owners or occupiers of the finished building or plant (the persons currently required to provide information) but by design and build developers, turnkey project contractors or PPP solution providers and as such the relevant information is held confidentially from the subjects’

owner or occupier. From a policy perspective the Scottish Government considers that in addition to being able to seek information from “the proprietor, tenant and occupier” the assessor should also be able to seek information from any other person whom the assessor thinks has information which is reasonably required for the purposes of assigning an accurate valuation to a non-domestic property.

Consultation

126. The consultation paper explored issues around the setting of a penalty and which organisations/individuals should be required to supply necessary information to the assessors. Four questions were posed and the number of responses which covered this topic ranged from 51 to 61. In each case representative bodies and local authorities submitted the majority of the responses.

127. Local authorities and the assessors commented that the penalty needed to be higher than the cost of administering it. A small number of responses (majority from business) were opposed to changing the nature of the penalty. These respondents felt that simplification of the current system would address problems of non-payment rather than the change to a civil penalty.

128. The majority of responses were in favour of a scaled penalty based on the rateable value. Chartered surveyors were split between a scaled and a fixed penalty, with business generally favouring a fixed penalty. For those who advocated for a fixed penalty this ranged from “capped at £100 plus VAT” (GL Hearn Ltd) to “up to £10,000 or 20% of rates bill, per rates year” (West Dunbartonshire Council).

129. Responses were broadly in favour of the assessors administering the penalty albeit a small number of responses favoured the local authority for this role. Three respondents favoured the setting up of an independent body to administer the penalty without providing detail on how this might work.

130. In terms of widening the category of persons an assessor should be able to approach for information, the general perception was that ratepayers should be approached by the assessors “in the first instance”. Other suggestions included retaining the current legislative position – proprietor, tenant or occupier – and Ayrshire Joint Board commented “all bodies” (meaning “any person who holds, or has access to, any relevant information other than the proprietor, tenant or occupier. This will, for example, include contractors, architects, surveyors, solicitors, accountants, agent’s advisors”).

Alternative approaches

131. The Scottish Government could have maintained the “status quo” i.e. maintained the current criminal penalty for non-provision of information to the assessors and only enabled the assessors to seek information from “the proprietor, tenant and occupier”.

132. This approach would not assist the assessors in being able to establish an accurate valuation from the outset. In turn, ratepayers would not have certainty over rates that would be due and the Scottish Government would have less certainty over income levels.

133. Additionally, this approach would increase the administration burden on ratepayers, assessors and the appeal system. The Scottish Government recognises that a number of the Barclay Review recommendations are interlinked and not progressing one recommendation will have an adverse impact on other elements of the package of reforms to the non-domestic rating system. The Scottish Government therefore considers this approach is not a reasonable option.

Local authority information notices etc. and duty to notify change of circumstances (sections 15, 16, 17, 20, 21 and 22 of the Bill)

Policy objectives

134. The policy rationale for introducing a new civil penalty for non-provision of information to a local authority is to ensure that as far as practical, local authorities have up to date information on occupiers of non-domestic properties. This is important to ensure that rates bills not only go to the correct person but are also accurate and any relief entitlement is correctly applied. The latter point is important to minimise the possibility of fraud.

135. To give effect to this policy objective, the Scottish Government considers there is merit in introducing a system similar to that which pertains under council tax as this will reduce the administrative burden on local authorities given they have existing systems in place.

136. The Bill therefore provides that a local authority can issue an information notice to a person seeking, for example, information to ensure the non-domestic rates liability has been correctly calculated. If the person fails to comply with the notice within the period of 21 days beginning with the day on which the notice is given then an authorised officer must give notice (a “penalty notice”) to the person. In sections 15, 20 and 21, an “authorised officer” in relation to a local authority, means a person authorised in writing by the local authority for the purposes of sections 15 and 20.

137. The authorised officer will require to ensure that any penalty notice served advises the person that they have failed to comply with a local authority information notice within the required timescale and that they are liable to a £95 penalty (or, if the penalty is in respect of a failure to comply with a further local authority information notice issued after the initial notice was not complied with, a £370 penalty). The penalty notice must also advise the person that they have a right of appeal to a VAC against the amount of the penalty imposed within 28 days beginning from the day the penalty notice was served. The Bill provides that an authorised officer may mitigate or remit any penalty under these provisions.

138. Additionally provision is made within the Bill requiring a person to notify their local authority within 21 days of any change in their circumstances e.g. that they are vacating the premises or that they are no longer eligible for a relief currently being applied to their premises, rather than wait for a local authority to write to them seeking information. Failure to comply will result in the issue of a civil penalty notice which will result in a £370 penalty.

139. As outlined above the penalty notice served must contain information as to: why the person is liable for a £370 penalty; and that they have a right of appeal to a VAC against the level of

penalty within 28 days beginning from the day the penalty notice was served. The Bill provides that an authorised officer may mitigate or remit any penalty under these provisions.

140. The Bill also provides that a person will have committed an offence if they knowingly provide false or misleading information when complying with a local authority information notice or when notifying a local authority of a relevant change in their circumstances. A person who commits such an offence is liable on summary conviction to a fine not exceeding level 3 (£1,000) on the standard scale.

Consultation

141. The consultation paper explored issues around the introduction of a civil penalty for the non-provision of information to local authorities. The responses submitted made a number of points similar to those made in the responses to the increase in the assessors' information gathering powers proposals. The number of responses received to the four questions posed ranged between 44 and 65. In each case, local authorities submitted the majority of the responses.

142. The point was made that the penalty must be large enough to act as an incentive to supply information. East Dunbartonshire Council stated that it "must be a de-minimis figure recommending upwards of £500". COSLA suggested the same figure as that for non-provision of information in relation to council tax. Chartered surveyors agreed there should be "a maximum level ranging from £200 to £500".

143. The main view expressed as regards the structure of the penalty was that this should be proportionate to/banded by rateable value. Some responses favoured a fixed penalty. There was no consensus among local authorities, representative bodies or chartered surveyors on their preferred method of penalty.

144. The general consensus, amongst all respondents, was that local authorities should administer the penalty. Other suggestions were assessors; use of an independent body; and the VAC.

145. There was general support in favour of the penalty being discretionary, this was partly due to the view that "a mandatory penalty could be difficult to administer and may be disproportionate for some ratepayers" emphasised by COSLA. A smaller number of local authorities, business, chartered surveyors and individuals were in favour of a mandatory penalty.

Alternative approaches

146. One option would have been not to accept the Barclay Review recommendation to introduce a civil penalty for non-provision of information to local authorities. However, as this approach would not have helped to improve the administration of the non-domestic rates system, nor would it have addressed potential fraud, the Scottish Government considered this was not a reasonable option.

147. A second option would have been to introduce a civil penalty but not to allow local authorities any discretion to mitigate or remit a penalty. It was clear from the consultation

responses that there was general support in favour of local authorities having an element of discretion based on their local knowledge. The Scottish Government took account of the feedback received and decided not to proceed with this option.

Anti-avoidance regulations (Part 4 of the Bill)

Policy objectives

148. Tax avoidance – in the context of non-domestic rates – takes place where a ratepayer seeks to reduce, delay or avoid the tax liability by taking action which the ratepayer believes is legal, but which is not in keeping with the spirit of or the intention behind the non-domestic rates legislation. Tax avoidance often involves artificial mechanisms for which the sole or main reason, or one of the main reasons, is to reduce the tax due. Tackling this avoidance is important because: it reduces public revenues, and can lead to lower spending on vital public services; there is a risk to the non-domestic rates pool if other ratepayers behave in the same way; it is unfair to ratepayers who continue to meet their liabilities as intended by the law; and tax avoidance can undermine public confidence in the rating system and lead to reduced rates of compliance.

149. As discussed above, the Scottish Government sets the overarching non-domestic rates policy whilst the day to day responsibility for the administration of the non-domestic rates system rests with Scotland’s 32 local authorities. The Scottish Government views GAAR as an additional tool that can be utilised in those cases where abuse cannot be tackled through refinement of existing legislation under existing powers. Part 4 of the Bill sets out provision to tackle the avoidance. It empowers the Scottish Ministers to make regulations, which include such provision as they consider appropriate to counteract the tax advantages that, should these regulations not be in place, would arise from tax avoidance arrangements that are artificial.

150. This Part sets out the criteria for determining whether a non-domestic rates avoidance arrangement is artificial and whether an advantage has been obtained. Essentially, these depend on the arrangements lacking a reasonable justification. In practice, it is likely that local authorities will draw such arrangements to the attention of the Scottish Government.

151. This Part also sets out the procedure for any anti-avoidance regulations which will be subject to the affirmative procedure. Prior to laying a draft of a statutory instrument containing anti-avoidance regulations before the Scottish Parliament, the Scottish Ministers must consult with COSLA or the Scottish assessors and may consult with such ratepayers or potential ratepayers and such other persons as the Scottish Ministers consider appropriate. Consultation must include a copy of the draft statutory instrument and before then inviting the Scottish Parliament to approve the making of the instrument, the Scottish Ministers must have regard to any representations about the draft anti-avoidance regulations received as a result of the consultation.

Consultation

152. 65 responses offered comments on what they thought the principles of the provision for GAAR should encompass. The largest response categories were local authorities and representative bodies who submitted 62% of the responses. General support for the power to make regulations came from across all respondent categories. UNISON however commented that the “GAAR at a UK level has not been an effective tool in deterring or countering tax avoidance.”

153. A number of local authorities recommended that any use of the power to make GAAR should include a statement that indicated who was currently conducting any potential avoidance. There is a perception amongst those who submitted responses that, if it is possible to name someone personally responsible for any perceived abuse of the non-domestic rates system through the GAAR, this will deter blatant violations.

154. A number of local authorities, advocated strongly for measures against known loopholes to be included in action taken using GAAR, such as phoenix companies and misuses of the small business bonus scheme. To counter these loopholes some local authorities advocated for: a framework to be created whereby data and details of avoidance tactics could be shared amongst them; annual reviews of the feedback to be carried out and then used to support the making of regulations; and South Ayrshire Council suggested that data sharing with other agencies such as HMRC would help reduce avoidance.

155. Some respondents advocated that penalties for avoidance should include disclosure of businesses to the public, significant financial penalties to be enforced and seizure of property as a last resort. Some concerns were raised over clarity of definitions and the GAAR procedures. There were calls for guidance on the general rules that would be implemented using the power to make GAAR.

Alternative approaches

156. One option would be for the Scottish Government to retain the “status quo”. This would mean that the Scottish Ministers would have no enabling power to make “anti-avoidance regulations” with a view to preventing or minimising advantages arising from non-domestic rates avoidance arrangements that are artificial and which had been drawn to their attention by local authorities.

157. The Scottish Government considers it is important to send a clear message to ratepayers who seek to abuse the non-domestic rates system that this is not acceptable behaviour and that local and central government will work together to tackle such behaviour. The Scottish Government considers it is important to maintain public confidence in the rating system to ensure high levels of compliance and for these reasons does not consider this is an acceptable option.

158. Whilst consultation responses offered many comments about the type of scenarios which consultees would wish the GAAR to address – some of which are outwith the legislative competence of the Scottish Parliament – there was little concrete comment offered with regard to the design of the GAAR. Some consultees suggested setting up a data sharing agreement with HMRC but that would be a matter for individual local authorities, who have responsibility for the day to day administration of the non-domestic rates system, rather than the Scottish Government to explore on an individual basis with HMRC. In light of this no other options were considered.

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

Equal opportunities

159. The Bill is intended to apply equally to those affected by its provisions. An Equality Impact Assessment (EQIA) has been conducted in order to ascertain the impact of the Bill on equality groups. The EQIA has confirmed that the provisions of the Bill will not directly or indirectly discriminate on the basis of age, disability, gender reassignment, sex (including pregnancy and maternity), race, religion or belief or sexual orientation. The EQIA will be published on the Scottish Government website shortly after the introduction of the Bill.

Human rights

160. The Bill is considered by the Scottish Government to be fully compatible with the European Convention on Human Rights (ECHR).

161. The effect of some provisions in the Bill will be to increase tax liabilities for some ratepayers, in particular by ending some current reliefs. Other provisions improve the ability to enforce payment of taxes. Article 1 to the first Protocol to the ECHR recognises that a person may be deprived of possessions in the public interest, as long as that is subject to conditions imposed by law. That Article confirms that a State retains the right to control the use of property in the public interest and to secure payment of taxes. It is for the Scottish Parliament, as the democratically elected institution of the State, to determine where the public interest lies here, and the appropriate balance between the private and public interests.

162. The Scottish Government also sees no doubt that the civil penalties provided for in the Bill are proportionate and fair. In simple financial terms, they are comparable to other civil penalties, including those that apply in similar situations in England and Wales. Provision is made for appeals to an independent and impartial body, as well as for remission of liability where that is considered to be justified. The reforms that are proposed to appeal systems do not create hurdles to access to independent review, rather they seek to encourage exchange of information so that meritorious challenges can be resolved without the necessity of an appeal.

Island communities

163. The Bill will apply to all communities across Scotland, including island communities. Specific provision is made within the Bill which means that a local authority may be able to exercise discretion in certain prescribed circumstances when deciding whether a self-catering holiday property satisfies the criteria for entry onto the roll (and eligibility for the small business bonus scheme and a reduced rates bill) or whether the property should be entered onto the council tax valuation list (with the taxpayer then facing a potential second home charge). It is envisaged that the prescribed circumstances will cover the type of scenario where, for example, a property is located in the outer islands and the ferry service is not operational for a period of time. This could result in a ratepayer, through no fault of theirs, being unable to satisfy the criteria for entry into the roll.

Local authorities

164. The Bill will have an impact on local authorities and this is expected to occur in 2 areas. Firstly, administrative costs on local authorities relating to their day to day responsibility for operating the rating system in Scotland. Secondly, local authorities will be affected by the Bill in terms of their non-domestic rates liability, as a ratepayer themselves. Local authorities directly hold about 6% of all non-domestic properties in Scotland (65% of the public sector), and 8% of total rateable value in Scotland (48% of the public sector). The cost implications are set out in the Financial Memorandum.

Sustainable development

165. The effect of the Bill in terms of the three pillars of sustainability: environmental protection, social equity and economic viability are as follows:

- environmental effects: a pre-screening report confirmed that the Bill has minimal or no impact on the environment and consequently that a full Strategic Environmental Assessment does not need to be undertaken. It is therefore exempt for the purposes of section 7 of the Environmental Assessment (Scotland) Act 2005.
- social effects: the Bill introduces a number of measures (for example, the GAAR discussed above) to ensure a level playing field amongst ratepayers such that everyone pays the rates they are properly liable to pay.
- economic effects: the Bill may result in an increase in non-domestic rates income as set out at table 5 in the Financial Memorandum.

166. The Scottish Government's National Performance Framework sets out a clear purpose for Scotland – to focus on creating a more successful country with opportunities for all of Scotland to flourish through increased wellbeing, and sustainable and inclusive economic growth. The National Performance Framework embeds the UN Sustainable Development Goals. This Bill contributes towards the Scottish Government achieving its purpose and therefore supports United Nations Sustainable Development Goal 8: Decent work and economic growth.

This document relates to the Non-Domestic Rates (Scotland) Bill (SP Bill 44) as introduced in the Scottish Parliament on 25 March 2019

NON-DOMESTIC RATES (SCOTLAND) BILL

POLICY MEMORANDUM

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