LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

CALL FOR VIEWS ON THE NON-DOMESTIC RATES (SCOTLAND) BILL

SUBMISSION FROM NORTH AYRSHIRE COUNCIL

North Ayrshire Council welcomes the opportunity to provide comments on the Non-Domestic (Scotland) Bill to the Local Government and Communities Committee.

1. The Scottish Government’s overall programme of Non-Domestic Rates reform, and how the Bill fits into this.

The Scottish Government responded within a month of the published Barclay review and has since moved quickly to implement several reforms some of which go beyond the 30 recommendations of the Barclay review. The reforms listed below have been implemented; reforms 1 to 3 below have provided ratepayers with new rates relief to help support and sustain their business. Reforms 4 to 7 provide a timeline for changes to the rates system up to 2025, better information for ratepayers, an action plan from Assessors and a template for a standardised rates demand notice. All of these are welcome.

1. Secondary legislation for business growth accelerator recommendation (1)
2. 100% relief for day nurseries (4)
3. Expanded Fresh start relief (5)
4. The Scottish Government has published a non-domestic rates roadmap that provides a timeline detailing the changes to the business rates system from 2017 to 2025 (8).
5. Better information on rates available to ratepayers – Scottish Government website updated (9)
6. Assessors to be more transparent and consistent in their approach – Scottish Assessors Association action plan (12)
7. Standardised Bills (14) – Currently with the Council’s software supplier

The Bill contains 11 of Barclay’s recommendations where Primary Legislation is required and these fit into the Scottish Government’s response to the Barclay review and timeline. The Council especially welcomes earlier debt recovery action, which is long overdue and will help the Council recover its debts much quicker and improve collections levels; powers to impose a civil penalty for non-provision of information, which will improve administration and accuracy of rating records; and general anti avoidance rules will help close known loopholes in the rating system.

1. 3-year revaluations (2);
2. Civil penalty for non-provision of information to Assessors (13);
3. Civil penalty for non-provision of information to councils (16);
4. Earlier debt recovery (18);
5. Reform of appeal system (19);
6. General anti avoidance rule (20);
7. Self-catering actual letting 70 days and intention to let 140 days (22);
8. Ending charitable relief for Independent schools (24);
9. Only properties in active occupation entitled to relief (25) – changed to “significant difference”;
10. Sport relief to be reviewed – guidance to be issued by Scottish Government (27); and
11. Commercial activity on LA parks (30)

Recommendations still to be implemented

The Scottish Government has still to implement the 10 recommendations noted below and the Council is keen for all of these to be progressed especially online billing as this will make it easier for ratepayers to receive their bills and reduce administration costs; and extending periods of occupation from 42 days to 6 months before empty relief can be awarded, which will make it harder for ratepayers to avoid a rates charge.

1. Reduce large business supplement (3);
2. Plant and Machinery valuations (6);
3. Review of small business bonus scheme (7);
4. Full list of recipients of rates relief to be published (10);
5. A rateable value finder product to identify properties not on the valuation roll (11);
6. Online billing (15);
7. Councils to refund overpayments more quickly – Scottish Government to write to all Councils (17);
8. Empty period of 42 days extended to 6 months (21);
9. Scottish Government responsible for checking rates relief awarded (23); and
10. Relief restricted to listed buildings for 2 years – changed to 5 years (26)

2. How the Government has responded to the Barclay review, in particular on those recommendations it has rejected in full or part.

The Scottish Government has responded well to the Barclay Review and kept Councils fully informed of its plans to implement recommendations and explained the reasons for not taking forward the four recommendations noted below.

1. Discretionary powers for Councils to apply a levy for out-of-town retailers and online retailers (part of 5);
2. Charity relief should be reformed and ended for arm’s-length external organisations (24);
3. All properties should be entered on the valuation roll (28); and
4. Large scale commercial processing on agricultural land should pay same level of rates as similar activity elsewhere (29)

The Council agrees with the continuation of charitable relief for its arms-length organisation and was in favour of a pilot scheme to permit a discretionary rate increase by out of town and online businesses provided appropriate safeguards were in place. The Council accepts the Scottish Government’s decision that not all properties should be entered in the valuation roll where there is no intention to charge rates and the current exclusion of agricultural property from the valuation roll should continue.
3. **Section 2 of the Bill** which provides that revaluation of properties subject to non-domestic rates would be carried out every 3 years rather than every 5 years. The Bill provides that revaluations will be carried out every 3 years from 2022-23.

Reducing revaluations from 5 years to 3 years will mean less time between changes in Rateable Value, smaller increases more frequently, which may help sustain businesses and help ratepayers effectively manage changes to their NDR liability. More frequent revaluations will mean rates bills may accurately reflect current market values and reduce speculative revaluation appeals.

Changing to 3 yearly revaluations from 2022-23 may have a significant impact on the Assessors capacity to deliver this reform, there may be increased workload and administration costs which in turn may result in financial challenges to Councils as funding authorities. There may be an increased risk to the 3-year revaluation process if not sufficiently resourced and it is essential that the costs associated with this reform are fully funded.

4. **Section 3 of the Bill**, which (together with section 9) makes provision in relation to new or improved properties. These delay the point at which non-domestic rates are increased because a property has been expanded or improved, or at which a new build property begins to incur liability to non-domestic rates. The underlying aim is to incentivise development and investment in business properties.

One of the current difficulties is identifying a new or improved property in the Valuation Roll to ensure that 12 months rates relief from the Rateable Value increase is awarded. The Bill has addressed this issue by requiring the Assessor to provide an indicator in the Valuation Roll. This should reduce the administrative complexity that currently exists. The Assessor will be required to identify new and improved properties and there may be cost implications to achieve this, software changes may be required by Councils to upload the indicator provided by the Assessor.

Rates relief for up to 12 months currently must be applied for per Regulations and not all ratepayers apply for this relief, the Council contacts ratepayers to ensure an application is completed. There is an opportunity to include a clause in the Bill that rates relief for new or improved properties can be awarded either by application or based on the information provided by the Assessor without the need for an application. This would reduce the administration burden required by Councils and Ratepayers.

5. **Section 4**, which aims to increase the degree to which parks are subject to non-domestic rates, in recognition of the commercial activities that take place in some parks (eg the running of a café).

The Bill does not define commercial activity and will bring any commercial property operating within a local authority park into the valuation roll and subject to non-domestic rates. While it is considered fair to bring “for profit” commercial properties into the Valuation Roll, non-profit making organisations will also be rated. Councils
may award charitable or non-profit making discretionary relief increasing administration and the Council's 25% contribution towards discretionary relief awarded; although the level of relief involved is expected to be low.

6. Section 5, intended as a measure to address a perceived “loophole” that enables owners of holiday homes to avoid both council tax and non-domestic rates by making it more difficult to enter a home on the roll (and, through this, to then claim relief under the small business bonus scheme).

There is a current loophole where a property owner can avoid council tax on a second home by claiming there is an intention to let it out for 140 days as a self-catering unit and being charged for non-domestic rates and eligible for up to 100% small business bonus relief. This can result in a loss of council tax income to the Council; by making it more difficult to move from council tax to non-domestic rates will protect the Council’s income and this is welcome.

The Bill provides Councils with discretion to determine whether lands and heritages are dwellings; this discretion is welcome and provides flexibility when deciding if there is a valid reason why an owner could not actually let a property for 70 days in any financial year and/or their property was not available for 140 days in the same period for example storm damage or fire etc.

7. Sections 6-9, which aim to reduce the current high rate of valuation appeals, which the Scottish Government perceives as speculative. (Increasing the frequency of ratings revaluations in section 2 is also seen as a component of this reform.)

The introduction of 3-year revaluations requires an appeal system that reduces speculative appeals and offers ratepayers a quicker resolution. The Bill provides that a ratepayer is required to submit a proposal to alter an entry in the valuation roll, a fee is charged for taking an appeal forward, and the Valuation Appeal Committee can increase as well as decrease a Rateable Value entry; all these reforms may reduce speculative appeals.

8. Section 10, which removes eligibility to claim charitable relief from non-domestic rates from mainstream independent schools, and section 11 which gives the Scottish Ministers the power to issue guidance to local authorities on the appropriate way to use their powers to grant sports club relief.

Section 10 - The Bill retains charitable relief for Independent Schools based on musical excellence. The Council considers that specialist independent schools such as music schools should not be treated any differently to other charitable independent schools and should be charged rates.

Section 11 – The Council welcomes that Scottish Ministers will consult with Local Authorities on the non-mandatory guidance that may be issued regarding the award of sports club relief. The Council will consider this guidance when granting sports relief.
9. Section 12, which aims to address what the Scottish Government describes as a known tax avoidance tactic concerning unoccupied or under-used properties.

Some ratepayers will occupy part of an empty property to avoid paying rates and qualify for more advantageous rates relief. The Bill will provide Councils with the power to serve notice to ratepayers regarding the use or non-use of their property and close a known tax avoidance activity, this change is welcome.

The Council notes that following consultation no consensus has been reached on the definition of “active occupation”. Section 12 4(a) of the Bill therefore requires Local Authorities to decide if there is a “significant difference” between what a property is being used for compared to what it could reasonably be used for; this terminology is subjective and may be open to different interpretations across Local Authorities and may lead ratepayers to challenge decisions. The Bill does not include an appeal process for a ratepayer should they disagree with a Local Authority decision. The Bill should either include appeal rights or state the decision of a Local Authority is final.

10. Section 13, which will enable councils to initiate debt recovery proceedings for unpaid rates sooner.

The recovery of unpaid rates has broadly been aligned with the recovery of council tax and will mean that recovery action can be taken as soon as a monthly instalment is missed. The wording in the Bill meets the Councils requirements and will streamline the recovery process, help recover unpaid rates quicker and improve collection levels. The retention of alternative payment plans under Section 8 (7) of the Local Government (Scotland) Act 1975 means that the Council can continue to offer other methods of payment for example two half-yearly instalments and help sustain local businesses.

11. Sections 14, 18, 19 and 22, which together aim to strengthen the power of assessors to obtain the information they need to carry out their role, and sections 15, 16, 17, 20, 21 and 22 which give local authorities increased powers to obtain information from ratepayers, in order to ensure that the information they have is accurate, and to reduce the risk of fraud.

Sections 14, 18, 19 and 22 – The imposition of civil penalties may improve the provision of information by ratepayers to assessors and result in more accurate rateable values thereby reducing the number of appeals and support a 3-year revaluation programme. There are some sectors that are traditionally poor at providing up to date information to assessors for example owners of public houses and this can often lead to differences in rateable values and complaints by ratepayers. The level of penalties of £100 up to a maximum £500 for failure to provide or £1,000 for false information is considered low compared to rateable values and may not act as a deterrent and prevent fraud.

Sections 15,16,17,20,21 and 22 – The levels of civil penalties that can be imposed by Local Authorities of £95 and £370 are low and may not act as a sufficient deterrent for ratepayers to provide information. The civil penalty should be proportionate to the rateable value.
12. Part 4 of the Bill, which give the Scottish Ministers the power to make anti-avoidance regulations to prevent ratepayers gaining an advantage from avoidance arrangements that are considered artificial and sets out definitions of “advantage” and “artificial”.

The Council welcomes the powers for Scottish Ministers to make anti-avoidance regulations, as avoidance of rates has been an ongoing issue for some time. Such regulations will provide Local Authorities with a way of tackling abuse that exists in the rating system. The Council has no comments on the definition of “advantage” and “artificial”.

13. Do you have any other comments about the Bill? In particular, is there anything not in the Bill concerning non-domestic rates that should be in the Bill?

The Council has no other comments on the Bill.