LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

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

SUBMISSION FROM THE SCOTTISH VALUATION APPEAL COMMITTEES FORUM

Introduction

This submission has been prepared by the Policy Committee of the SVAC Forum, and is submitted on behalf of all Scottish Valuation Appeal Panels and their Committees (VACs). It is submitted in response to the call for evidence launched on 9 April 2019.

Extent of Submission

This submission is restricted to commenting on the provisions of the Bill relating to Valuation Appeals and in particular to clause 7 of the Bill.

Present Valuation Appeal System

At present appeals lodged against entries in the Valuation Roll are formally made to a Valuation Appeal Committee (VAC). In practice over 98% of appeals are settled in discussion between appellants and assessors or will be abandoned but this generally only happens after they have been cited for hearing by the VAC. Of the remainder, some are referred for consideration by the Lands Tribunal for Scotland (LTS) and the remainder are considered by the VAC. On average VACs hear only about 1% of all the appeals lodged initially. This is an extremely inefficient arrangement but it is the inevitable result of the present statutory provisions; VACs have no alternative but to operate this way.

Committees do have to sit, however, to deal with purely formal motions in relation to the 98% of cases that will never be heard by them or by LTS. Furthermore cases have to be cited without any prior knowledge as to whether they will have to be heard or not. This results in there being many VAC hearings at which there is no substantive business to be conducted which is a waste of the time and expense of Committee members and secretaries as well as the assessors who are obliged to attend. It also results in there being hearings with more substantive cases to be heard than can be considered at one sitting and so several cases have to be continued or adjourned to later days with consequent waste of the time and expense of ratepayers or their agents and, often, counsel who have to attend only to be asked to return on another date.

Scottish Government Policy underlying clause 7 of the Bill

The policy intention of Clause 7 is to split the appeal process into two separate stages. In the first stage a ratepayer submits a Proposal for a change in the Valuation Roll for
the assessor to consider. It is envisaged that a timetable for this consideration will be prescribed in secondary legislation. The management of the process of considering Proposals will be the responsibility of the assessor. The VAC will have no involvement at this stage. In the second stage there will be an opportunity to lodge an Appeal to the VAC if the assessor does not agree with the ratepayer’s proposal and there is no agreement between the assessor and the ratepayer on a compromise. By comparison with the present system it is anticipated that Appeals will only be lodged in relation to the 1-2% of proposals that are equivalent to the appeals that are currently actually heard by either VACs or LTS.

We wholeheartedly support the intentions of this policy and welcome these provisions overall. They should result in the responsibility for scheduling negotiations, that only involve assessors and ratepayers or agents, resting with them and not involving VACs. They will also result in VACs knowing that most, if not all, Appeals lodged with them will require a substantive hearing and so their business can be more efficiently scheduled for the convenience of all concerned.

**Concerns in relation to the detailed provisions**

We are extremely concerned, however, that the provisions of section 3ZB(1)(b) to be inserted in the 1975 Act by clause 7 will undermine the merits of the overall policy of which we approve. This provision allows an Appeal to be lodged not only when a ratepayer disagrees with an assessor’s response to his Proposal but also when the assessor has failed timeously to consider the Proposal.

It is appreciated that such a provision ensures that Proposals cannot just be ignored by the assessor with impunity. But it will result in Appeals being lodged with VACs without sufficient focus and possibly without there having been proper pre-discussion between the parties. We suspect that, just as at present, VACs will have to cite cases that will then be the subject of discussion and will be settled and withdrawn before the hearing date.

Furthermore, if several ratepayers lodge Appeals under this provision the VAC will have no alternative but to cite multiple cases with no prior knowledge as to which, if any, will fall to be considered. As at present this will lead to all parties having their time wasted attending for cases that cannot proceed. In short, therefore, all the inefficiencies of the present system that the policy aims to eliminate will be allowed to continue.

It may be argued that this provision will only be triggered in exceptional cases as assessors will normally consider all Proposals timeously. In an ideal world that might be true. But we do not believe it will necessarily be the case, particularly during the first revaluation cycle to which these provisions apply. With the introduction of 3 yearly revaluations it is expected that the timetable for assessors to consider Proposals will
require them to reach decisions in a much shorter period than under the present system. Unless both the assessors and the professional agents acting for many ratepayers have considerably enhanced resources available to them this will place them all under considerable pressure and we anticipate that large numbers of Proposals might not be fully considered timeously or even at all. The concerns we express above are, therefore, in relation to a very real perceived risk.

A Possible Solution

We believe there may be an alternative approach that could provide the protection of the ratepayer’s interests that this provision attempts without introducing the problems that we envisage.

Instead of new section 3ZB(1)(b) there should be a provision allowing a short period of time (to be prescribed) during which a ratepayer, aggrieved that his Proposal has not been considered, could apply to the VAC for an order that the assessor should deliver a decision on the Proposal within a timescale to be determined by the VAC, after considering submissions from both the ratepayer and assessor as to what are the difficulties causing the delay.

This would ensure that cases which might result in Appeals are brought to attention and are progressed while still ensuring that the substantive Appeal can only be lodged once there is a decision from the assessor to allow an orderly appeal under new section 3ZB(1)(a).

At the same time this would allow other Proposals to be concluded without further procedure. This might happen, for example, when no decision had been issued because there had been no discussion as a result of the ratepayer, in effect, abandoning the process.

We believe this approach should protect the interests of both ratepayers and assessors, while ensuring that only well focussed and substantive Appeals are lodged with VACs. As a consequence that should ensure that there will be far better use made of the time and other resources of VACs, appellants and assessors alike. We ask that the Bill should be amended to achieve this solution.