LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

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

SUBMISSION FROM: UK PETROLEUM INDUSTRY ASSOCIATION

Overall programme of NDR Reform and the Barclay Review

The Scottish Government's overall Programme of Non-Domestic Rates reform and how the Bill fits into this.

UKPIA commends Scottish Government for the breadth of the review, the degree of consultation taken at each stage and for embracing many of the Barclay recommendations. Key reservations that we still hold on any parts are expressed below.

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

UKPIA understands that a balance needs to be struck and that local services from which our members assets benefit to varying degrees need to be paid for. We accept that compromises need to be made and accepted. However, UKPIA do feel that some of the measures as expressed in the bill have tended to move away from one of the stated principles set for Barclay which was for Scotland to be the best place to do business anywhere in the UK. We have a concern that elements of the bill may no longer achieve that objective. Matters that we feel strongly about are outlined in our responses below.

Specific proposals in the Bill

1. 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.

**UKPIA Response:** UKPIA view this is a positive step for business moving closer to market conditions. Ideally however, it would be prudent for the bill to facilitate, at a later date the ability to move to biannual or annual revaluations if so desired.

2. 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.

**UKPIA Response:** UKPIA view this as a positive and business friendly step and incentive.

3. 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 (e.g. the running of a café).
UKPIA Response: Not relevant to our members business - No comment.

4. 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).

UKPIA Response: Not relevant to our members business - No comment.

5. 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.)

UKPIA Response: UKPIA understands the ‘quid pro quo’ of the procedures set out. However, these must operate in a balanced and fair way. We note that Section 7 Subsection (6) enables the Minister to make regulations concerning the information and documentation that must be supplied by a ratepayer making a proposal under section 3ZA. Section 6 Subsection 2ZA visualises regulations being set by the Minister as to information provided by the Assessor in valuation notices as to how value was calculated.

In setting either set of regulations transparency by both parties as to the rental or cost evidence in support of a valuation at any stage should be encouraged and the requirements balanced and not put the ratepayer at a disadvantage. As a minimum Assessors should be required, if requested by the ratepayer at proposal stage, to present the rental or cost evidence on which valuations are based once the ratepayer has submitted their own evidence.

We retain serious concerns over Section 7 subsection 3ZB(3) which facilitates a retrospective increase by a valuation committee hearing. We are of the view that this proposal is counter to one of the principles and objectives of the Barclay review that Scotland becomes the best place to do business in the UK and are disappointed that it has resurfaced in the bill.

We are concerned that this may encourage tactical responses by Assessors based merely on opinion thus unnecessarily clouding and prolonging the proposal and appeal procedures. Such instances should be limited to factual matters where for example there are incorrect survey facts relating to the property or robust and documented market evidence to support such an increase.

The proposed legislation leaves the matter too open and to some extent removes the responsibility on the Assessor to get the valuation correct in the first place. To avoid any existential issues to businesses arising due to backdating, if it is considered that such an ability to increase RV be retained then this should be limited to 6 months prior to the relevant Tribunal decision or the end of a Valuation Roll, whichever is the earlier and subject to the conditions above.

6. 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.

**UKPIA Response:** Not relevant to our business - No comment.

7. Section 12, which aims to address what the Scottish Government describes as a known tax avoidance tactic concerning unoccupied or under-used properties.

**UKPIA Response:** No comment.

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

**UKPIA Response:** We acknowledge the need for a speedier process for Councils to receive payments promptly. However, in the interests of fairness there needs to be a corresponding requirement on Councils to refund payments as promptly to ratepayers with penalties. We can see no such requirement in the legislation as drafted.

Re Section 8A(3) many large Corporates now offshore payment processes in order to keep costs down and remain competitive. Often missed instalments in such circumstances are due to innocent mistakes by either party. Seven days, particularly if including a bank holiday or weekend is normally insufficient time to establish internally why the payment has not been made and establish corrective action or set up an urgent payment. We would request that this be amended in the draft bill to fourteen days.

Re Section 13(4) it can occur that the first a business is aware of an outstanding rating liability is when a summons and/or warrant and/or sheriff turns up. The information provided with such a summons/warrant can be vague as to the dates and periods giving rise to the liability and as to the calculation of it. This can lead to a number of time consuming calls to sheriff’s offices, council rates departments and around the business. It would be helpful if a requirement could be placed on the billing authority and/or the sheriff to attach a copy of the relevant bill or a statement of the relevant rate year and calculation of the amount outstanding to the summons or warrant presented to the ratepayer.

9. 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.

**UKPIA Response:** UKPIA are disappointed to see in Section 14 (1) (b) that our comments in an earlier consultation over the ability of the assessor to serve information request notices on **any other person**...’ have not been taken on board. The field for this is very wide, could impinge on privity of contract and contract confidentiality issues, affect commercial relationships and potentially impose significant costs on third parties who otherwise have no interest in the rating assessment. This opens a whole new area for potential litigation, and we would again counsel against it.
We note in Section 16 the proposed requirement for a ratepayer to notify the local authority of relevant changes which would 'affect the amount of rates that should be payable' in relation to the lands or heritages. Given that significant elements of a rating valuation can be subjective and based on opinion or interpretation of law rather than entirely objective, this measure unfairly exposes ratepayers to potential penalties and costly disputes over whether something is a ‘relevant change’. It will potentially create significant extra bureaucracy and costs for both parties. We would strongly recommend that this requirement is dropped. This could be done by redrafting so that relevant changes are restricted to occupational or ownership liability issues rather than valuation issues.

Re Section 18 and Civil penalties for failure to comply with assessor information notices, we are concerned at the proposal in subsection (4) that the cap for failure to comply is to be set at the higher of £500 or the rateable value of the land and heritage. Many of the properties in our members portfolios are highly complex and valued on a cost basis where costs may be sought by an Assessor. Rateable values are significantly higher than the norm. Whilst our members will always endeavour to comply within time limits, obtaining these and in a format as requested can be difficult and time consuming for various legitimate reasons. This inadvertently creates a bias against our industry compared to many other ratepayer groups. It also creates a temptation on the assessing side to become a revenue raising exercise. In this respect we note with concern the comments alongside the Financial Memorandum consultation that two thirds of the costs of the bill are expected to fall to ratepayers ‘through higher rates bills and payment of newly introduced penalties’!

We would suggest a redraft of this subsection to give a minimum penalty of £500 and a maximum penalty cap of £4000. (It appears incongruous in comparison that under Section 17(3) the fine for providing false or misleading information (effectively fraud) under section 16 will not exceed £1000 (Level 3 Standard Scale)).

10. 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”.

UKPIA Response: No comment

11. 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?

UKPIA Response: We understand that a review of the Plant and Machinery Regulations are the subject of existing secondary legislation and we look forward to contributing to such review as recommended by Barclay.