LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

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

SUBMISSION FROM INSTITUTE OF REVENUES RATING AND VALUATION (IRRV) SCOTTISH ASSOCIATION

The Institute of Revenues Rating and Valuation is the professional body for local taxation, benefits and valuation. We promote best practice and support the professional activities of our members working in government and commerce. The Institute’s mission is expressed through its policy work and research; the advice it gives to governmental and other agencies; its educational initiatives and promotion of standards of lifelong learning and teaching; and its national and international conferences, seminars and training programmes. The Institute is geared to serving the professional needs and interests of over five and a half thousand members worldwide. Membership is closely regulated and highly prized, and our aim is to create an IRRV community dedicated to the highest standards of professional activity which help governments to create effective and fair local tax systems.

The Institute’s associations are active throughout the UK. The associations organise programmes of professional and social activities that take place regionally and provide the opportunity for members to become more involved in the work of the Institute at a local level.

The Scottish Association welcomes the opportunity to give its voice to the Non-Domestic Rates (Scotland) Bill proposals and is also grateful for the opportunities to be involved in discussions leading up to this point.

The Association would also like to formally recognise the excellent working arrangements and access we have to the Scottish Government Non-Domestic Rates team.

In response to the Call for Evidence, the Scottish Association would like the following comments to be considered by the Committee;

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

The IRRV Scottish Association welcomes the bill and its potential to modernise the tax regime to align with current business environment.

We believe the principles of the Bill show that the Scottish Government is moving in the right direction in addressing long term concerns such as appeal timescales, frequency of revaluation, rates avoidance and recovery, fairness of relief schemes etc.
However serious concern remain that the Bill does nothing to address appeal volumes; a matter that is critical to the success of the move to three-yearly revaluations and all that depends upon this.

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

We strongly believe that fairness should be the key pillar of the rating system and have some concerns that agricultural lands and heritages do not bear any part of the Rates burden.

While not 100% convinced exempt, particularly agricultural, subjects should not be included in Valuation Rolls (in some way) it makes sense not to add them all simply to make them exempt or provide a blanket relief scheme.

Although we conceded that this detracts from the transparency of Reliefs, and does not show the true cost of the Reliefs being provided.

It is also felt that the decision not to proceed with the out of town levy options could/should have been delayed until some pilots were proposed, considered and evaluated.

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 Association fully supports this move as it brings rates charges more in line with current market conditions. This should, in theory, negate or reduce any need for complex transitional arrangements.

It should also be noted that this may prompt more frequent review of rateable value based reliefs such as SBBS; good in principle but will create additional work for Local Authorities.

We cannot understate the resource implications for Assessors and need for effective reform of appeals system to facilitate this.

We would also note that such changes will also incur administrative costs to Local Authorities.

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

We fully support the principles of this however feel that there are unresolved issues with definitions, restrictions and responsibilities.

With regard to definitions; legislation regarding definition of “new” and “improved” subjects needs to be simpler. Further the Bill seems to exclude subject which are plant & machinery based (Batching plants, mobile telecoms masts etc.) as the relief is dependent on the presence of ‘buildings’. We would therefore recommend replacing the word “buildings” with “structures”.

We also feel that “splits & mergers” should not be excluded from eligibility for relief/support. We feel that developing part of an existing building (where a new entry in the Valuation Roll is made) should be treated the same way as the improvement of development of a newly built building.

We also feel that, to protect the public purse consideration should also be given to capping relief for certain subjects – well known case of a major banking organisation receiving £1m+ relief is clearly not best use of public resources.

On a practical level, there are differing points of view within the Association as to the use of markers on the Valuation Roll.

While Local Authority rating practitioners would welcome this, Valuation members have concerns about the division of duties between the maintenance of the Valuation Roll and the awarding of relief. For example; how would an appeal be taken forward if the Assessor failed to notify of a change and/or if the Rating Authority did not award relief once notified.

It is felt that further dialogue is required between interest parties to address these shortcomings of this particular section of the Bill.

Should this progress if should be noted that Assessors will require to develop their systems to deal with this, and sufficient time should be afforded between the bill being finalised and the implementation date.

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 (e.g. the running of a café).

We believe this to be a sound principle as it will see Rates applied regardless of location and this appears to be fair and reasonable.
This will help reduce anomalies whereby commercial ventures receive unfair advantage as their operations are carried out on land owned or vested under the control of Local Authorities.

We have concerns that Arm’s Length Internal Organisations (ALEOs) may suffer increased liability due to this and believe it would be appropriate to consider adjusting ALEO relief thresholds set in November 2017 to reflect any new additions to the Valuation Roll where such entities were in existence at the 2017 cut-off date.

We would also highlight that nothing should discourage any link to health and wellbeing through reduced access/use of public parks etc.

With regard to specific definitions, the Barclay recommendation related to ‘commercial’ entities but this would extend much further and bring many amateur sports grounds and similar into the roll. Clarity required in respect of ‘free and unrestricted’ access, particularly in relation to local authority charges for putting greens, tennis courts, football pitch rentals etc.

Specific consideration should also be given to the treatment of one-off and/or annual events such as concerts etc.

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).

We recognise and support the rationale and intention of this section and are encouraged to see potential consequences being considered in advance of any regulation being passed.

However we do not believe that Local Authority discretion is the answer and maintain that the decision of whether a subject should be liable for Rates or Council Tax should remain with the legislators and the Assessor and remain independent from the billing authority.

Should the matter be progressed, it may assist if a greater emphasis on the evidence to be provided was included in the legislation, for example actual use must be demonstrated by way of accounts/bank statements/public liability insurance etc. The current legislation allows for an entry to be made in the Valuation Roll where there is an intention to make it available for use – removing this may assist, which would then leave there having to be actual use.
An alternative solution to the issue of lost income through property moving from the Council Tax Valuation List into the Non-Domestic Rating Valuation Roll would be to exclude self-catering accommodation from the Small Business Bonus relief scheme.

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.)*

We fully support all and any action taken to reduce speculative appeal volumes; stressing that this must be done in conjunction with better information exchanges at the earliest possible opportunity to allow the ratepayer to fully understand the basis of valuation.

However these sections of the Bill complicate the process and do nothing to make reduce the numbers of proposal that will be received. We recommend that Scottish Government consider restrictions on making proposals where relief has been granted and where Assessor requests for information remain outstanding.

The Bill requires significant tidying up in respect of the wording and structure of several subsections. Clarity will be an absolute requirement and early, clear unambiguous regulations on the details of the proposals and appeals processes will be required.

As it is not believed that the proposed system will cut down the number of appeals the Assessor will receive, the associated administrative burden will be the same as that for a 5 year revaluation, although the two stage system should assist with clarity of what appeals are proceeding to hearing.

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.

We agree that relief to certain large and profitable sporting enterprises and fee paying schools does not seem a good use of public funds.

Although we would stress that there is still a need to fully support those with a more localised and inclusive impact and ensure any changes to relief schemes do not reduce healthy activities.
We feel that there is a need to be wary that removing such relief does not put too much pressure on Council to use discretionary powers under the Community Empowerment Act.

With regard to restrictions, we are not convinced that music is more important that the rest of the school curriculum and therefore not sure if such an exclusion/exception is fair. An alternative to address the matter and keep any administration as simple as possible may be to use direct Government funding/grants for such music or other schools that are worthy of special treatment rather than rates relief.

It would also be helpful if any guidance and the actual application processes are not over complicated; and that any changes to existing relief awards are phased in over a period of two to three years to allow organisations to adjust.

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

Again we fully support the intention but are wary of the administrative impact/cost in ensuring validity of occupation or lack of it.

In issuing guidance it should be made clear that relief of rates for unoccupied properties is a function of the billing authorities, and not something that should be reflected by way of altered valuations in Valuation Rolls.

We have concerns that such changes will no doubt have the potential to increase/create legal challenges and full costs should be reimbursed. It is suggested that Scottish Government should also issue appropriate guidance in this area

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

We fully support anything that prompts earlier contact with ratepayer but would highlight that this will require a wide scale awareness campaign that should be led/funded by Scottish Government.

It should also be clear that Councils are allowed to accept alternative payment methods to suit local need, where appropriate.

If allowing annual payment it would be advantageous to match this annual payment date with that of Council Tax i.e. 1st June.
It is also recommended that any awareness campaign be linked to a Direct Debit take up campaign allowing extended payments over 12 months (as I believe is done in England).

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.

We strongly advocate that the ingathering of accurate information in a timeous fashion is absolutely fundamental to the Rating system; it allows us to make entries in the Roll, issue bills, prevent income loss and reduce appeals. All of which underpins the integrity of the rating system.

We fully support theses sections of the Bill in principle but are wary of the administrative burden and expectations of successful use (based on limited use of similar powers re Council Tax).

We also feel that there needs to be clear guidance/consistency on the practice cancelling penalties if information subsequently provided.

Additionally, we feel powers should be extended to include information from managing agents. and other professional advisors. Power for Assessors could easily be extended to “any reasonable request for information from anyone, for the purposes of the Valuation Acts”.

There is also a concern that the upper, Rateable Value based, limit on fees is not appropriate where the current Rateable Value is nil, where entry is currently in the Valuation List or an entry in the Roll is yet to be made. We feel that the maximum fee in such instances of £500 is inappropriate for large scale developments.

Where the ratepayers is a limited company we strongly believe that powers should allow us to seek information from directors (and that they be help personally responsible for any non-compliance penalties).

With regard to S16, clarity is required in respect of the requirement for ratepayers to inform councils (and not Assessors) in relation to changes to the circumstances of ‘the lands and heritages’.

We also feel that such requirement could be further developed i.e. through a system such as the Inland Revenues Self- Assessment system could be established, placing an onus on owners and occupiers of Non Domestic subjects to complete annual returns online, with automatic penalties being issued for non-return. This would reduce the administrative burden of issuing paper forms, and ensuring that such
forms are properly served to ensure that future penalties can be applied without challenge to the validity of service.

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”**

Fully support but wary of potential complexity and challenge from ratepayers, solicitors – and impact on appeal levels.

The legislative framework and definitions are key and must be “future-proofed” – i.e. to address all known and unknown/future avoidance tactics.

Consideration should also be given to amending “current year plus one” rule for amending assessment/liability role if avoidance tactics have been found to be used – i.e. if it is discovered that company was held liable but did not actually trade we should be able to go back more than one year to re-establish correct liability.

Would also like to see specific measures to address limited company behaviours such as “Phoenixing”; and ideally granting the authority to hold individual directors or property owners liable where ‘in the view of the billing authority’ they are complicit in the avoidance scheme adopted.

We also believe, once again, that Scottish Government should consider issuing guidance and ensure any additional Local Authority costs through addressing potential legal challenge are provided for.

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?**

We are disappointed that no new or improved form of incentivisation schemes have been suggested or introduced.

We welcome the commitment to review the Small Business Bonus Scheme – as this appears too generous to some and there is opportunity to redistribute relief to those more deserving.

The Institute would be happy to share its ideas on modernising and creating a fairer system that properly awards businesses that are struggling to survive.

As part of the review, with the ease at which Companies information can now be searched, perhaps it would be fairer to apply the limits of relief on directors of companies, instead of the companies themselves. This would help alleviate current
issues of the same person setting up many different companies in order to achieve rates relief.

On a National level the Institute would also like it noted that it is disappointed that the question of missing value and the use of a “Finding Service” was subordinated to an administrative matter. The issue appears to have been passed to the Spatial Scotland team and they will not be delivering any results for some years. The reality is that missing value is an aspect of rates avoidance and there is significant evidence of missing value across the whole of Scotland. Actual cases from England and Northern Ireland have revealed a worrying level of missing and undervalued property which is counted in £millions. As the companies who participate in rateable value finding operate on a contingency basis any exercise in Scotland would be self-financing. It therefore difficult to understand why this exercise has not been pushed forward as a simple procurement exercise.

It could be driven either by individual local authorities couple with an incentive scheme or perhaps more sensibly by the Scottish Government through Ordinance Survey Scotland and the Assessors. This approach would give Spatialist Scotland experience of this type of service which is a little more complex that the current approach of data gathering through Geographic Information Systems (GIS).

**Conclusion**

The IRRV Scottish Association thanks the Committee for considering its submission. We welcome many features of the Bill and look forward to ongoing dialogue and involvement so that necessary processes and regulations can be implemented as effectively and efficiently as possible.

We again would stress the level of resources that all the proposed changes, particularly the three yearly revaluations but also administrative, training and software costs, will require and the need for adequate funding to achieve this along with and suitable time given for implementation.

Finally, we would insist that all changes should be simple to understand for ratepayers and their agents and to administer for Assessors and Billing Authorities wherever possible.