LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE
CALL FOR VIEWS ON THE NON-DOMESTIC RATES (SCOTLAND) BILL

SUBMISSION FROM ABERDEEN AND GRAMPIAN CHAMBER OF COMMERCE

Aberdeen & Grampian Chamber of Commerce is North-east Scotland’s leading business membership organisation and the largest Chamber of Commerce in Scotland.

Representing more than 1,150 organisations collectively employing 125,000+ people across all sectors, we work locally, nationally and internationally to support businesses from sole traders to multinational corporations.

AGCC welcome the opportunity to respond to the Local Government and Communities Committee Call for Evidence on the Non-Domestic Rates Bill. Please find answers to the committee’s questions below.

AGCC would equally welcome the opportunity to host a visit of the committee or individual members as appropriate, to illustrate the challenges experienced by firms with regards to Non-domestic rates, following the oil and gas downturn in the region and its interaction with the most recent revaluation.

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

The Bill is obviously critical to the overall programme of NDR reform, delivering the bulk of required legislative reforms expected through primary legislation.

Equally important are the ongoing administrative reforms, with revised billing and improved information access for ratepayers likely to be essential to achieve the ambition of an accelerated revaluation cycle. Further detail is provided on these at the end of this submission.

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

To date, the Scottish Government has responded constructively to the Barclay Recommendations as they stand.

In particular, rapid action on the Business Growth Accelerator, alongside a firm commitment to three-yearly revaluations is welcome – although as expressed below, an aligned revaluation cycle in 2021 would be preferable.

The vast majority of recommendations were accepted initially. Of those partially accepted, concern remains with the partial restriction of charitable relief, now focused on independent schools, expanded upon in the relevant section below.

Outside of the formal Barclay Review Implementation response, the Scottish Government has made additional positive steps. The decision to extend Transitional
Relief is of course welcome, and firms have benefitted from TR across the Aberdeen City Region. However, as expanded upon further in our submission, restrictions inherent in transitional relief will constrain the ability of many businesses to continue to claim this relief.

Numerous examples have been cited to AGCC of firms which are either no longer eligible for transitional relief due to tightening thresholds, or have now reached the de minimis threshold for State Aid.

As highlighted in the Aberdeen Economic Policy Panel report, average room rates for Aberdeen city hotels have declined substantially from £85 in 2015, to £63 in 2017. RevPAR levels for both weekday and weekend occupancy have also declined substantially from 2013/2014 peaks. Firms have indicated to AGCC that turnover levels remain depressed from the peaks experienced closer to the tone date, and prior to the oil and gas downturn.

AGCC would suggest that a broader understanding is required of the impact on firms, both in the North-east and within the hospitality sector, as transitional relief becomes increasingly restrictive to access.

The Scottish Government’s decision to forgo moving ahead with the Out of Town / Online Levy proposals is also welcomed. The levy was at odds with some of the reasoning outlined in the Barclay Review, such as the following from Annex C of the report:

“We are of the opinion that adapting non-domestic rates as a tool to ensure that the digital economy makes a fair contribution to local services would be inefficient. Attempting to crowbar a property tax upon some businesses that do not rely on property is not only counter-intuitive, but will also likely lead to significant unintended consequences”

Finally, policy decisions to limit the inflationary uplift in the poundage rate, by the CPI rate or most recently, below the rate of inflation, are also welcome. With regards to the poundage rate however, the Large Business Supplement remains at its current level. AGCC would argue that the Scottish Government should provide further clarity on an expected timeline to bring the LBS to parity with England – a Barclay Recommendation which the Scottish Government committed to consider.

**Specific proposals in the Bill**

**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.**

Moving forward with more regular revaluations is undoubtedly the right step. However, the business community in Aberdeen and across Scotland will continue to be disappointed that the Scottish Government have not joined counterparts in England and Wales by bringing forward the next revaluation to 2021.

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The Barclay Review illustrated the importance of parity between England and Scotland throughout. Whether this was in regards to the Large Business Supplement or the broader system. Indeed, the Review highlighted that ratepayers viewed the alignment of the Scottish and English systems positively, as illustrated by the following quote:

“In our discussions with ratepayers, this was repeatedly highlighted as a benefit of the Scottish system. Ratepayers often made the point that the broadly similar tax structure between England and Scotland allows ratepayers to plan for rates in a consistent manner and means that rates will not affect investment decisions. More broadly, ratepayers thought that the commitment to a competitive non-domestic (business) rates environment was good for business confidence.”

And further, that:

“In order to achieve this, the Scottish Government maintains a similar NDR structure to that in England. Most notably, Scotland has achieved this by having revaluations at the same time as England and Wales and ensuring that the Scottish poundage rate matches the equivalent rate in England.”

The Barclay Review group would have envisaged an aligned timetable (as was the case at the time of the review process and publication). An annex to the report suggests that alignment in the medium term at least was expected:

“This will mean that valuations in Scotland and England will likely be aligned until at least 2025.”

As outlined consistently by AGCC, Scottish Chambers of Commerce, and other business representative associations (e.g. SCDI, SRC), an aligned revaluation with other UK jurisdictions, taking place in 2021, would be the preferable option.

This would allow for more accurate, reflective rateable values in geographical regions such as the North-east which have experienced significant change in economic circumstances since the tone date / prior revaluation, and in disproportionately affected sectors such as hospitality.

The Scottish Assessors Association have equally outlined concerns on asynchronous revaluations, and the potential impact on the cost of upcoming reforms and impact to information sharing which derives from moving the process out of sync with the rest of the UK.

Further, more frequent revaluations will not be a panacea in creating a more responsive NDR system. As with our comments on Material Change of Circumstances legislation referenced later in this submission, it remains clear, particularly to businesses in Aberdeen City Region, that the NDR System remains broadly inflexible to changing economic circumstances within regions or sectors.

If it is not an overhaul of the legislation relating to Material Change of Circumstances, then AGCC suggest that consideration should be given as to the mechanisms
available to address severe economic events, such as the oil and gas downturn, and how the NDR system can reasonably respond to such issues.

AGCC argued for, and welcomed, the Scottish Government’s decision to introduce Transitional Relief to provide some mitigation to the challenging economic circumstances faced by businesses following the downturn, but we would equally argue that the system should be able to account for such events by design.

Finally, it is important that all parts of the NDR system, particularly Assessors, are adequately provided with ring-fenced resources to deliver the vision of an accelerated revaluation cycle.

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.

As outlined, the Business Growth Accelerator is a welcome addition to the rates system, and should act to encourage additional business investment.

We would caveat this point by highlighting that feedback from the Scottish Chambers of Commerce Business Rates Advisory Group suggest that some disparity may exist in the application of the BGA to properties across local authorities. It may be appropriate for the Scottish Government to provide transparent guidance on the application of the initiative, to ensure uniformity across Scotland.

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).

It seems appropriate to ensure that activity on parks is subject to rates in the same form as other commercial activity. Scottish Chambers of Commerce has provided comment on the need to appropriately define “commercial activity” in prior submissions to the Scottish Government on this issue.

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).

It’s completely appropriate for the Scottish Government to take steps to prevent purposeful tax evasion, but as a point of principle, the actual letting condition introduces a disparity into the system and may impact on equality of treatment of ratepayers.

Applicants to the SBBS are not required to provide a measure of “business success” as per the “actual let” condition. Ensuring firms provide detailed evidence of intention
to let the property is reasonable as part of anti-fraud measures, but an actual let condition introduces an inequitable barrier.

Furthermore, looking at data for self-catering occupancy, this sits at 51% across the Aberdeen City region, and 53% in Scotland as a whole. This is significantly higher during peak months, but can be as low as 24% in the winter months².

At the least, local discretion on the application of this threshold, to reflect economic circumstances, seems appropriate. However, it also seems appropriate to consider further investigation into the anti-fraud provisions within SBBS and understand why these provisions are insufficient.

Barclay suggested that 10,000 properties claimed SBBS under the auspices of self-catering premises in 2015, it would be useful to understand if targeted enforcement campaigns have already been undertaken related to this category of SBBS claimant.

Given that the Small Business Bonus Review is currently underway, and the broader regulatory debate around the micro-hospitality sector, it may be appropriate to further explore this issue as part of the SBBS review.

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.)

AGCC would reflect prior concerns outlined by Scottish Chambers of Commerce with reference to the potential fees / charges for appeals. Although it is recognised that the accelerated cycle implies that frivolous appeals must be reduced significantly, this should not come at the expense of access to justice for the smaller ratepayers.

As also outlined by the SAA in their oral evidence session on this matter, the two-stage proposal / appeals system must be correctly structured to avoid additional administrative load on the system. Businesses continue to outline concerns about the range

Fundamentally, the reforms planned for the appeals system, many of which are still to be finalised, are heavily dependent on the success of non-legislative measures. These are further expanded upon in the final section of this submission.

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.

There is again a point of fundamental principle in Section 10, wherein the NDR system is being used to effectively create an additional tier of charitable status.

These Independent Schools are registered charities, meeting the guidelines set out by the OSCR to attain charitable status. It seems inequitable, and fundamentally not the role of the NDR system, to begin to create disparity between charities based on their function / purpose.

At the time of writing, the committee has already received a range of submissions outlining the potential effects on the independent schools sector. Many of these reinforce concerns around the potential unforeseen consequences of charging rates on this sector.

Equally, independent schools operating in the Aberdeen City Region have expressed concern around the impact of a substantive rates burden on their ability to fulfil their purpose. Feedback from one independent school suggests that their expected rates bill would outstrip their combined budgets for facilities and professional development, severely impacting on their ability to deliver for students.

At minimum, AGCC would suggest that the committee explore this issue in further depth directly with affected independent schools. The potential impacts and secondary effects of charging rates on the sector remain poorly understood, and further evaluation should be conducted prior to moving forward this section of the bill.

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

As outlined in prior submissions by Scottish Chambers of Commerce to the Scottish Government consultations on this matter, active occupation must first be suitably defined in order to take this forward with the appropriate level of clarity for both ratepayers and rating authorities.

Also, as with the SCC response to the SG consultation on implementation, there remain concerns that more restrictive conditions on empty property relief could disadvantage certain ratepayers, or lead to unintended behaviour from landlords – who may avoid letting to genuine pop-up or perceived “riskier” tenants, such as more innovative businesses. This was referenced by the Welsh Government in their own investigation into NDR avoidance³.

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

It’s reasonable to expect that ratepayers promptly pay sums which are due to the rating authority. However, the Scottish Government consulted on local discretion in the Barclay Implementation consultation conducted in 2018.

Responses (as noted in the Policy Memorandum) were broadly supportive of discretion for local authorities in this matter. It remains unclear as to the level of local discretion available, but the wording of the Bill appears relatively uncompromising on this issue.

There is also a commitment for local authorities to ensure the refund of overpayment more rapidly, which in itself has not been enshrined in legislation. We would suggest, as with a range of measures in this bill, that a communications campaign outlining the commitment of local authorities in this area would be appropriate.

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.

It's accepted that assessors and local authorities must have more timely information in order to fulfil the need for the accelerated revaluation cycle.

The Bill’s phrasing introduces some problematic issues however, particularly:

- The reference to “Any other person” in Section 14(1)(B). To ensure accuracy and oversight, information gathering powers should be restricted to the tenant, proprietor or occupier of the relevant property.

- Section 16, which outlines a duty to notify the local authority of changes in circumstances as these apply to their property. As has been outlined in submissions by Chambers of Commerce, and other business membership organisations, the rating system is poorly understood, and many ratepayers will be unaware of the range of circumstances at which they would be obliged to update the rating authority.

At minimum, it seems appropriate to provide further detail of a defined set of circumstances at which a ratepayer could reasonably be expected to provide an update.

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”.

AGCC is supportive of reducing purposeful tax evasion within the NDR system. Scottish Chambers of Commerce outline some potential concerns around definitions of ‘advantage’ and ‘artificial’ in their submission to the committee.

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?

A more flexible NDR system

There’s a fundamental, outstanding question about the need for the NDR system to adequately balance flexibility for business, by accurately reflecting economic circumstances, with stability in terms of government revenue for taxation purposes.
The scope of the Barclay Review was as below:

“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 marketplaces, whilst still retaining the same level of income to deliver local services upon which businesses rely.”

More frequent valuations, and reducing the period between the tone date and the revaluation date, will go some way to ensuring that “changing marketplaces” are reflected more effectively than in the current system. However, further steps could be taken to ensure a fairer system for businesses.

Businesses in the Aberdeen City Region remain confounded that the oil and gas downturn, an event which has had myriad effects on the regional economy, was not accepted as a Material Change of Circumstances following legal challenge.

The Barclay Review did not touch on this critical part of NDR legislation. This is no doubt partially driven by the revenue neutral constraints of the review and its broader remit, but it is important to address the ability of the system to react to unique geographical or sectoral circumstances.

Methodologies, Communication and non-legislative reform

Sectoral rating methodologies also continue to be controversial, with hospitality a particular point of concern for firms in the region. The Barclay Review was unable to address this in the timescales available, but did outline that measures, such as bringing ALEOs into the NDR system (who can act as competitors through facility hire etc), could mitigate this.

Some of these measures have now been abandoned, and as yet, there has been little progress when it comes to reviewing methodologies, with ratepayers and assessors unable to generate agreement.

As outlined earlier in our submission, legislative reforms alone will not fulfil the vision of an accelerated revaluation cycle. A better understanding from ratepayers of the system will aid in reducing inappropriate or frivolous appeals, but fundamentally, transparent methodologies which share the agreement of the sectors evaluated by them will be the only way to prevent firms appealing values which they see as inaccurate.

Given that a substantive portion of the success of the Bill and NDR reform in general is independent of the legislative proposals, AGCC would suggest that the committee explores the long term communication plans of the Scottish Government, local
authorities and Scottish Assessors, and considers whether further engagement is required.

We also note that in their oral evidence session, the SAA indicated a preference to communicate digitally with ratepayers. Where possible, we would encourage all parties within the rating system to move to digital delivery, where this does not impact on accessibility – in order to allow for better coordination, signposting of information, and presentation of key resources such as comparator properties etc.

Better-informed ratepayers, buy in from business from reformed, genuinely reflective rating methodologies, and improved interactions with the ratings system via digital delivery, will be equally as important as the outlined legislation in achieving the goal of a reformed Scottish Non-Domestic Rates system. AGCC would encourage the committee to explore these issues with relevant parties where possible.