LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE
CALL FOR VIEWS ON THE NON-DOMESTIC RATES (SCOTLAND) BILL
SUBMISSION FROM ROYAL INSTITUTION OF CHARTERED SURVEYORS

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

The Policy Memorandum accompanying this Bill stipulates that its main policy objectives are to:

“Deliver a non-domestic rates system designed to better support business growth and long-term investment and reflect changing marketplaces; Improve ratepayers’ experience of the ratings system and administration of the system; and

Increase fairness and ensure a level playing field amongst ratepayers by reforming rate reliefs and tackling known avoidance measures.”

Whilst the Non-Domestic Rates (Scotland) Bill goes someway to delivering on some of these objectives, there are specific issues that need to be tackled, as well as a sporadic requirement for further detail, and we have provided our views on these throughout this response.

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

Of the 30 Barclay Review recommendations, only two were not accepted, and one partially accepted:

i. Reform charity relief: Charity relief should be reformed/restricted for a small number of recipients (partially accepted)

Whilst it is not within RICS’ remit to comment on the removal of charity relief for most of Scotland’s independent schools, we believe that that further research is required to ensure only appropriate premises benefit from Charity relief.

ii. All property should be on valuation roll (not accepted)

This was an RICS recommendation made to the Barclay Review panel during the evidence gathering stage as a means to ensure transparency and quantify the value of the NDR system.

We did, however, recognise that in making this recommendation, it could invoke additional resource implications for Assessors which would need to be addressed.
iii. Commercial agricultural processing (not accepted)

This recommendation applied similar rates liabilities to large scale commercial processing on agricultural land to similar activity elsewhere.

NDR reliefs and supplements provide the Scottish Government administrations of the day with economic levers to support areas which it feels require it most.

In general, reliefs have the potential to distort markets as one group benefits to policy changes over others. Any changes to the reliefs in Scotland could lead to changing business models, approaches and activity.

RICS, therefore, did not support nor object to this recommendation on the basis.

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.

This section two appears adequate. However, there will be an increase in the resource burden of Assessors which the Committee should consider how to navigate.

Ideally, and for consistency, the revaluation cycle would mirror that of other parts of the UK i.e. England in 2021. However, having made the decision to introduce a three cycle, we would expect a firm commitment from the Government to the three yearly policy, and proceed with the 2025 revaluation, rather than postponing it to fit with England in 2027 (as occurred with the postponement of the 2015 revaluation).

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 mentioned previously, NDR reliefs and supplements provide the Scottish Government administrations of the day with economic levers to support areas which it feels require it most. In general, reliefs have the potential to distort markets as one group benefits to policy changes over others. Any changes to the reliefs in Scotland could lead to changing business models, approaches and activity.
That said, RICS professionals noticed complexities in this section and further engagement with the private and public sector stakeholders should be undertaken immediately to ensure the legislation is achieving its desired aims.

The reasoning behind the legislation is sound, as the underlying aim is to incentivise development and investment in business properties. However, the wording of the Bill is not clear and could lead to litigation, which is very costly, if a settlement cannot be achieved amicably between the Assessor and the Ratepayer; or the Valuation Appeal Committee or Lands Valuation Appeal Court beyond that approach.

For example, we believe there are issues around the interpretation around some definitions. Specifically, clarity on the definition of what could be considered “improved” in relation to Section 2A, and in section 5(c) which refers to “refurbishment”.

RICS believes consideration should be given as to whether the Business Growth Accelerator should be limited to buildings, and include rateable lands and heritages.

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).

RICS believes this section is disorganised, and there is no definition of what “commercial activity” is. Whilst there is no mention of “commercial activity” in the Bill, to achieve its transparency and clarification objectives, it would be prudent of the Committee to consider defining what constitutes “commercial”.

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).

Like other measures in this bill, the policy intention of this proposal is appropriate, but the current provisions could create inconsistencies, and negatively impact on “genuine” owners of properties for holiday-lets that struggle to meet the required 70 days.

An alternate approach to tackling this loophole would be to review the Small Business Bonus Scheme (SBBS); specifically, the appropriateness of some properties and enterprises to be eligible for the relief.

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.)
Section 6
RICS believes there is an enhanced role for Scottish Assessors Association (SAA) portal here; specifically, the need to move system to a more digital platform.

This would ensure that the portal holds comparable data – an essential component of valuation; and in line with the Bill’s three, primary objectives. That said, development in this area must comply with the DPA and commercial sensitivities.

Section 7
In Subsection 4, which inserts a new Section, 3ZA, to the 1975 Act Subsection(2)(c) provides that a proposal to alter an entry in the valuation roll can be made on the ground that since the entry was made, there has been “a material change of circumstances”. RICS has concerns over this section and provides further views on under question 13 of this submission

As per our stated issues under Section 6, in relation to Section 7, part 4 (4), we would urge the enhancement of the digital platform – allowing for a transition to online, or electronic, proposals.

Section 8
RICS has no comments to make on this section.

Section 9
This is a very important section, as the introduction of any reliefs or interventions could have consequences on market activity.

As such, within this provision, the Bill should oblige the Government to hold information and/or data on all reliefs, which should be made publicly available.

This would improve transparency of the system and Government policy-making – which ties in with the primary objectives of this Bill – and hold the Minister to account on reliefs s/he introduces.

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

NDR reliefs and supplements provide the Scottish Government administrations of the day with economic levers to support areas which it feels require it most.
In general, reliefs have the potential to distort markets as one group benefits to policy changes over others. Any changes to the reliefs in Scotland could lead to changing business models, approaches and activity.

Whilst it is not within RICS’ remit to comment on the removal of charity relief for most of Scotland’s independent schools, we believe that that further research is required to ensure only appropriate premises benefit from this relief.

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

RICS cannot provide commentary on this provision on the basis of our pre-stated position on reliefs.

However, under section 12, 5 (B), we believe the 28 day period is too short to gather and provide sufficient explanatory information.

We suggest a slightly longer period of 35 days - beginning with the date on which the notice is given - to provide an explanation.

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

In relation to Section 13, 4(A)(aa) iii, we believe that the “period of 14 days beginning with the day on which that amount became payable has expired” is too short.

35 days is more appropriate; with room for extension in exceptional circumstances.

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.

In general, these provisions are welcome – particularly the provisions that will modernise the existing system.

There is concern amongst some RICS professionals that the proposed changes in the section go too far, and that parties with no ongoing interest in a rateable entry could be compelled to allocate time and resource to the provision of detailed information. This could add to the resource burden of many unconnected sector participants.

Furthermore, some RICS professionals felt that exposing unconnected parties to potential penalties for non-return of information would be unfair; and that enabling the
Assessor to penalise the proprietor, tenant or owner for non-return of information should be sufficient.

Simultaneously, however, we believe Assessors should be entitled to more information; but further discussion on how much information the Assessor is entitled to is required. One solution would be to establish a hierarchy of information providers, but any changes to who, or whom, can provide information should be subject to further Committee deliberation.

RICS also considered the establishment of agreed caveats, around checks and balances, before civil penalties are reached.

Ultimately, in the interests of all ratepayers, more accurate valuations are produced by more accurate and complete information. Measures, therefore, will need to be introduced to ensure information is provided timeously.

The Committee, therefore, needs to consider the legal implications and effects on Scottish ratepayers, business operations and the role of Assessors in broadening the pool of those who can provide information.

The provision of information needs to be efficient, transparent and fair; thus, a balance needs to be struck between the two views expressed above.

RICS offers further assistance in these deliberations.

Looking at the Bill specifics, in relation to Part 3, Section 14, (3), we believe “the period of 56 days beginning with the day on which the notice is given” is too long. For consistency, and as a means to make the system simpler, the time period should align with Section 13, 4(A)(aa) iii i.e. 35 days

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”.

RICS believes that the provisions around avoidance relate to ethical behaviours and interpretation of legislation.

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?

There are two issues which RICS wishes to raise at this stage

1. Material Change of Circumstance
At present, the legislation around what constitutes a ‘Material Change of Circumstances (MCCs) is indistinct, although recent case law has somewhat clarified a number of aspects.

There remains, however, uncertainty among some ratepayers and their agents on the definition. This condition is particularly prevalent for ratepayers and their agents who operate cross-border.

We appreciate this is a complex arena – especially when considering the application of case law.

This is not a criticism of any participant in the sector, but we believe the Committee may wish to assess the current definition of “Material Change of Circumstances” in Section 37 (1) the Local Government (Scotland) Act 1975.¹

We believe that doing so aligns with the stated aims of Bill i.e. reflecting changing marketplaces, improving the ratepayers experience, and increase fairness.

2. Timetable Order
The Valuation Timetable (Order) 1995.

This Order prescribes the timetable for—

(a) certain things which require to be done in connection with the making up of a valuation roll at the time of revaluation; and
(b) applications for redress to the assessor, the lodging of appeals and complaints with the valuation appeal committee, and the disposal of appeals and complaints by the valuation appeal committee

The problem with the current wording of the Order is that it states that 15 March is the last date for delivering the roll to the rating authority. This means that the Valuation Roll in each local authority area can be made up on a different date from another, depending on when the Assessor for that area delivers it to the rating authority.

Valuations are “made” on the basis of the level of rents prevailing two years before the Revaluation date and on the basis of physical circumstances on 1 January in the year preceding the Revaluation.

The need for flexibility over the date the Valuation Roll is delivered to the Rating Authority is understandable. However, due to its interaction with the wording of the current Section 3(4) of the Local Government (Scotland) Act 1975 in relation to when a “Material Change of Circumstance” can be effective i.e. since the entry was made, inconsistencies of Valuation for Rating are produced across Scotland.

This is because an appeal on ground of MCC can only be lodged since the entry was made which in the year of Revaluation the Lands Valuation Appeal Court have opined is the date the roll is delivered to the rating authority as per the Timetable Order. The phrase “since the entry was made” appears to be carried forward in relation to proposal under the new Section 3ZB (2)(c). As detailed earlier, the same inconsistencies could happen in future revaluations if the wording is not amended.

One solution to this issue is to change the wording in Part 7 (4) of the bill to change the newly proposed Section 3ZA (2) (c) of the 1975 Act to read:

(c) on the ground that, since the entry valuation was made, there has been a material change of circumstances

RICS believes this issue, and potential solutions, needs to be evaluated further through discussion with Government policymakers, parliamentarians, and rating and legal experts; and RICS offers its assistance in finding a solution.

We believe that both these recommendations are in line with RICS’ Royal Charter obligation to consider the public interest in our representations, as well as the Bill’s objectives to reflect changing marketplaces, improve ratepayers’ experience and administration of the rating system, and increase fairness and ensuring a level playing field amongst ratepayers.