LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

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

SUBMISSION FROM RATING SURVEYORS ASSOCIATION

THE CONSULTATION

Turning now to the specific questions raised:

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 reflecting changing marketplaces; Improve Ratepayers’ experience of the rating system and administration of the system; and Increase fairness and ensure a level playing field amongst ratepayers by reforming rates reliefs and tackling known avoidance measures.” The Rating Surveyors’ Association (RSA) welcomes reform of the current rates system. However, we have some reservations on some of the Sections in the Bill that it will seek the objectives to support business growth and long-term investment and we will comment on these reservations in the appropriate Sections. Furthermore, some of the Sections appear sketchy and require more detail and thought about how they will work in practice.

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

The Barclay review was welcomed by the RSA. Out of the 30 recommendations only 2 were not accepted and one partially accepted. We agree with the Government on those recommendations which were not accepted or partially accepted.

Specific proposals of 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

The RSA is in support of this recommendation. More frequent Revaluations should provide ratepayers with more accurate rates payments based on market conditions close to the Revaluation date.

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 occur liability to non-domestic rates. The underlying aim is to incentivise development and investment in business properties.

In principle, the RSA support this recommendation. However, in practice, there appears to be a lack of clarity on which subjects will receive this benefit. For example,
many Assessors are making entries in the Valuation Roll for land, which then developed for another use will not qualify for relief. We also have reservations about the combination of properties which are often improved or expanded but will not qualify for relief. The interpretation on the Sections on ‘improved’ and ‘refurbishment’ need refined. Whilst the intention of the legislation is good, the wording and intentions need clarified and an appeal system put in place where an application has been refused. There also appears to be inconsistencies with Councils on granting relief and interpretation of the Regulations.

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. running of a café).

There is currently legislation in place (Section 19 of the Local Government (Financial Provisions) (Scotland) Act 1963) and case law determining what should be included or excluded in the Valuation Roll. There is no mention of the phrase ‘commercial activities’ in the draft legislation. If the intention is to include this phrase in the legislation a clear definition of ‘commercial activities’ is required. This Section may have an impact on some uses ‘within a park’ such as a golf course or tennis court run by a local council or organisation and may have serious financial implications on the running of that activity.

Section 5, intended as a measure to address a perceived ‘loophole’ that enables owners of holiday homes to avoid council tax and non-domestic rates by making it more difficult to enter a home on the Roll (and through this, to claim relief under the small business bonus scheme.

Some council tax payers identified this ‘loophole’ as a result of councils being able to charge twice the amount of council tax for second or unoccupied homes. The easiest way to prevent this happening is to remove the small business bonus scheme (SBBS) for holiday-lets. The current provisions need to careful not to have an impact on genuine owners of properties for holidaylets.

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 rating Revaluation in Section 2 is also seen as a component of this reform).

Section 6 – Valuation Notices The RSA is of the view more reliable information at how a ratepayers valuation is arrived at should be provided with the issue of a Revaluation Notice. This should include details of what information the Assessor has used to arrive at his valuation. In a more digital era these Notices can be provided electronically on line. The words in paragraph (b) of new subsection (2ZA) should be altered to remove ‘if the assessor considers that to be appropriate’ as the current wording suggests it is discretionary for an Assessor to provide information to a ratepayer.

Section 7 – Proposals to alter, and appeals against, valuation roll There has been a considerable amount case law and of expense in taking cases to the Lands Valuation Appeal Court. The current legislation needs review to confirm when a material change of circumstance occurs. Practitioners on the public and private sectors struggle to
interpret the current legislation. The legislation in England is much more open often leading to criticism of the current system in Scotland by ‘national’ ratepayers. Furthermore, following the change to 3 yearly Revaluations the current legislation needs altered to allow ratepayers the opportunity to lodge a proposal or appeal sooner when a draft Valuation Notice is issued rather than the current position of 1st April in a year of Revaluation. Paragraph 49 gives the Committee powers to decide what alterations the Assessor should make to the entry. Valuation Appeal Committees comprise of lay people and should only decide on the evidence before them. The Lands Valuation Appeal Court judges have often criticised committees for not keeping to the evidence before them.

Section 8 – Proposals and appeals: consequential modifications No comment is required.

Section 9 – New or improved properties: rates relief We have made comment under this under 4. To support the aim of business growth the rate of relief should be announced at the Scottish ‘budget’ to enable businesses to budget properly. We are also concerned at the delay with some Councils in granting relief. We would argue the Council must make a decision within 35 days after an application is made.

Section 10, which removes eligibility to claim charitable relief from nondomestic 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.

Section 10 is a political issue and we have no comment to make other than relief or the removal of relief must be consistent between all local authorities. Further research is required to identify the effect it will have on the running of independent schools.

Section 11 Again we would argue any relief granted to sports clubs should be consistent across all Councils. Most of these clubs provide a social service to the local community and any removal or reducing the amount of relief may result in closure.

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

Ratepayers make legitimate claims for rates relief for unoccupied or underused properties. The Courts have upheld these claims. The rating hypothesis of ‘occupation of part is deemed to be occupation of the whole’ would need to be reviewed and could lead to consequences elsewhere depending on the wording. Under Section 12(2) it appears sensible to extend this period to 35 days in line with other time limits. The local authority should have to make a response within 35 days of receiving an application for relief. There also is a need for an appeal process should an application be refused.
Section 13, which will enable Councils to initiate debt recovery proceedings for unpaid rates sooner.

We are in agreement the Councils should be able to initiate debt recovery proceedings sooner for unpaid rates but would argue 14 days is too short and should be increased to 35 days in line with other time limits.

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 shall look at each Section in turn.

Section 14 – Assessor information Notices The Assessor already has powers to request information from ratepayers. However, we accept that many ratepayers or organisations fail to provide full details of the information requested. We have no objection to Assessors seeking information from the Proprietor, Tenant or occupier but do have reservations about giving Assessors powers to obtain information from any other person. This could be on the grounds of confidentiality, a breach of data protection regulations and client confidence. There may be a case in for Assessors seeking information from any other person in exceptional circumstances but a case must be made by the Assessor that he has taken all reasonable steps of receiving the information from the proprietor, tenant or occupier. The regulations should make it clear what information the Assessor can seek. We have no difficulty in the Assessor seeking information to value a subject but sometimes this can go beyond what is reasonable e.g. seeking cost information to value a shop or public house. An appeal system should be put in place to protect the ratepayer if the information sought by the Assessor goes beyond what is reasonable.

Section 18 – Civil Penalties for failure to comply with assessor information notices. A clear indication must be made on the civil penalties to be imposed and whether this will be a fixed penalty, a penalty based on the level of Rateable Value and who will be liable (the proprietor, tenant, occupier or any other person).

Section 19 – Penalties under section 18: appeals and enforcement For a Valuation appeal Committee to decide whether a penalty notice is valid the regulations must be concise and a hearing must take place within 35 days of the appeal being made.

Section 22 – Sections 19 and 21: consequential modifications This would need to happen.

Section 15 – Local Authority information notices Penalties under section 20: appeals and enforcement We are in agreement with this section but the person who receives the information notice should have 35 days to comply. The local authority should then have 35 days to alter their records and issue a new notice.

Section 16 – Duty to notify changes of circumstances This section should extend to the proprietor, tenant or occupier. We would suggest 35 days of the change in
circumstances occurring. Some ratepayers may not be aware of reliefs granted to a property.

Section 17 – Offences in relation to information notices and notifications under section 16 No comment.

information notices and failure to notify changes in circumstances. Like the rating appeal process an appeal should be allowed to the Valuation Appeal Committee or similar Committee. Section 21 - Penalties under section 20: appeals and enforcement See answer to Section 19.

Part 4 of the Bill, which give Scottish Ministers the power to make antiavoidance regulations to prevent ratepayers gaining an advantage from avoidance arrangements that are considered artificial, and sets out definitions of ‘advantage’ and ‘artificial’.

Rating professionals advise their clients on legitimate ways to mitigating the level of rates a ratepayer pays. Where a ratepayer submits a false claim or fails to provide accurate information then ratepayers should be penalised accordingly. In some areas, the legislation needs clarification and more information on what constitutes avoidance is required.

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 is a lack of provision in the draft regulations what information an Assessor should supply to a ratepayer. More information on all categories of subject is needed prior to a ratepayer making a decision to appeal. Secondly, there is a severe lack of consistency on information supplied by Assessors and some Assessors make their own policies out with the legislation. For example, some Assessors adopt a strict policy of no further negotiations 35 days prior to a Committee hearing whilst other Assessors do not. The policy adopted should be consistent with all Assessors. There is a flaw in the current Timetable Order on the making up of the Valuation Roll. There should be one date and the Regulations should clearly state a date and not use the word ‘by’. The legislation governing material change of circumstances needs reviewing. See our comments under Section 7. A Valuation Appeal Committee member must undergo a degree of training and Secretaries to Valuation Appeal Committees should be asked to re-apply for the position at each new Revaluation.

For and on behalf of The Rating Surveyors’ Association

President of The Rating Surveyors’ Association