LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

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

SUBMISSION FROM ARGYLL AND BUTE COUNCIL

Overall programme of NDR Reform and the Barclay Review

The Committee welcomes views on:

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

The Bill is clearly framed to progress the implementation plan set out by Scottish Government in December 2017 following the Barclay Review and is very much welcomed.

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

Specific proposals in the Bill

The Committee welcomes views on:

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.

We welcome the proposal to move to a 3 yearly revaluation cycle. We agree that such a move will only be successful if there is an associated reduction in the volume of appeals so this is crucially linked to the proposals at sections 6-9 below. Retaining the status quo on appeals along with more frequent revaluations would not be acceptable.

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 properties.

We welcome the aim of this section which could change the need for application for this new relief and allow it to be applied in a more automated form through additional detail being recorded in the valuation roll under section 3 and this detail could be transferred to local authorities administering the billing and collection of non-domestic rates. However we note that this will require changes to local authority billing and collection systems and to the interfaces with the Assessors, and we expect that these changes should all be funded by the Scottish Government.
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 are generally supportive of the principle that commercial activity within parks should be rated in the same way as commercial activity elsewhere. We are concerned that the definition used could be difficult to implement in practice as it requires the authority to derive “a net profit from the lands and heritages”. This could require regular review of the financial accounts, and result in a change in status if an activity moves between loss making and profit making or vice versa. Consideration could be given to whether the activity is intended to be profit making as opposed to actually making a profit.

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).

The detailed regulations have still to be prescribed for this and we await these with interest. We would ask the Scottish Government to consider properties which are used seasonally for short term lets (usually in summer months) and also for long term lets (usually in the off season). Any secondary legislation needs to cater for these as this is common practice. The long term let will usually require the property to move to the council tax register and off the valuation roll. The requirement for availability for letting and actual letting should cater for part years. It is proposed that there is a degree of discretion with the requirement for actual letting. If this is enacted, it would be helpful if the types of scenarios envisaged could be set out in guidance. At present the responsibility lies with the Assessor to determine whether a property should be entered onto the council tax register or the non-domestic rates valuation roll. It would seem strange to shift this responsibility to the local authority for this single type of dwelling. We would recommend that this discretion is exercised by the Assessor.

7. Sections 6-8, 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 welcome the removal of speculative appeals which clog up the appeals system, and the proposal for levying fees and applying refunds. Together with the possibility of rateable values being increased as well as decreased, this should reduce the very high number of appeals which are currently settled with no change to rateable values and free up Assessor resources to concentrate on settling the remaining appeals much quicker. We note that the detailed arrangements will be set out in future regulations and we would welcome the opportunity to comment on those at the appropriate time.

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.
Argyll & Bute Council has always exercised its discretion not to award discretionary relief to independent or fee paying schools. We do not have any independent special schools or specialist independent music schools in our area. In terms of discretionary relief, this Council has since June 1998 required sports clubs to demonstrate their commitment to equality in their constitution and through promotion of an equal opportunities policy. We welcome these proposed changes which are in line with our local policies.

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

We welcome the intention of closing a loophole where properties gain charitable relief of small business relief despite being largely unused, where the minimal usage is solely to continue to obtain such relief. However, we are not convinced that the proposed method of closing this loophole will be effective or free from significant levels of challenge. We consider that any such legislation needs to directly address the definition of active occupation. It is also unclear how such decisions made by a local authority on this matter are to be appealed.

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

We welcome these proposals to bring the collection of non-domestic rates broadly into line with council tax.

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 welcome these provisions. We would prefer this to be extended to include the ability to require provision of such information from solicitors or other agents acting on behalf of property owners and occupiers. We have found that solicitors are regularly refusing to provide this information now, citing Data protection concerns.

We had expected that civil penalties to be collected by local authorities would be collected in the same way as civil penalties in council tax. In council tax, we have the option to add these to the council tax liability and collect them along with any other council tax due and in exactly the same manner. This is efficient and cost-effective and we would prefer this to be replicated for non-domestic rates rather than having to bill and collect these entirely separately where they are payable by the ratepayer. Clearly if they were levied on someone other than the ratepayer, we need to be able to collect them in a different manner, so some flexibility is required as is the case under council tax.

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”.

We fully support the concept of anti-avoidance regulations, and the bill provides a framework for bringing these in. However, we anticipate that it will be very challenging to develop detailed regulations to support this. The biggest issue in terms of collecting rates is in dealing with so-called phoenix companies where new companies are created, lease the relevant premises from the owner (who is usually a connected party), the company then goes bust and has never paid any rates, and another new company is created immediately to start the cycle all over again. We would like the powers to publish the names of the parties behind these companies. Another area is where entities are split into a number of separate companies so that each company can own or lease properties which individually qualify for small business bonus scheme relief, but collectively they would be well over the limit if it were possible to aggregate the values across the ownership chain. It is not at all clear that either of these scenarios would be assisted through the anti-avoidance regulations. These provisions may well never be utilised because they are unlikely to cover the commonest issues.

Other

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 welcome the stated intention to amend empty relief for listed buildings in subordinate legislation. Awarding them 100% relief indefinitely creates an incentive not to bring them back into use in a reasonable timeframe. We need to recognise that it will usually take much longer to make changes to listed buildings because of the additional requirements to be adhered to, but these are important buildings by the very nature of their listing and we would wish to see them brought back into use. Making them subject to payment of rates after a reasonable period should assist with this objective.

Consideration should also be given to the applicability of Small Business Bonus Scheme Relief for empty properties. At present there is no requirement for occupation, and therefore there is no incentive to re-occupy these smaller premises quickly.