LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

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

SUBMISSION FROM SCOTTISH CHAMBERS OF COMMERCE NETWORK

Introduction

Call for Evidence

The call for evidence is seeking views on:

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

The NDR Bill follows the work and recommendations brought forward by the Barclay Review instigated by the Scottish Government in 2016. 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.”

- SCC believes this Bill can attain some of the objectives but as currently introduced will fall short on a number of these.
- There are specific issues that need to be tackled, that are not included in the bill, and we have provided our views on these in the last question (13). If these are taken on board the attached objectives may be attained successfully.

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

- Since the publication of the Barclay Review Recommendations, Scottish Chambers of Commerce has publicly stated that the Barclay Review did not go far enough in its recommendations and in our view didn’t adequately address the need to reform the system to reflect changing marketplaces and economic conditions. This was, in part, due to the ‘revenue-neutrality’ constraint imposed on the review group, which no doubt in our view limited the scope for the Review group to recommend significant reforms.
- We recognise that through the Review and subsequent actions of the Scottish Government some of the concerns businesses had with the current Non-Domestic rates system are attempting to be addressed.
These included the need for more frequent valuations and for delays in rates increases in the cases of expansion or investment. SCC advocated for these interventions and welcomed the Scottish Government responses on these aspects initially.

We are however, disappointed that the Scottish Government failed to match the commitment made by the UK Government to have the next Revaluation in 2021. This commitment was later matched by the Welsh Assembly.

We also feel that it would be useful for the Scottish Government to provide a timeline, in which the Large Business Supplement will be brought into parity with England. Doing so would send a stronger message that the reforms are looking to support Scottish business through a level-playing field.

We will be actively contributing to the review on the Small Business Bonus Scheme, which we understand will be studied separately from the NDR Bill, on behalf of our members.

**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.

- Section Two appears adequate to achieve 3 yearly Revaluations but as mentioned above we believe the Scottish Government should have attempted to match the ambition shown by England and Wales to bring forward the next Revaluation to 2021 instead of 2022.
- The Financial memorandum Para 91 highlighted the SAA thought that moving out of line with England and Wales would add to the overall costs of the assessment process in Scotland.
- There will be an increase in the resource burden of Assessors which the Committee should consider how to navigate. Whilst the Financial Memorandum accompanying the bill suggests that there will be £29.1 million afforded to the Assessors over the next 5 years, we do not believe that this has indeed been ringfenced and will be at the mercy of Local Authority Budgets.

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.

- SCC were supportive of the Barclay Review Group’s recommendation of a “Business Growth Accelerator” which would see a 12-month delay introduced before rates are increased when an existing property is
expanded or improved and also before rates apply to a new build property.¹

- The reasoning behind the legislation is sound, as the underlying aim is to incentivize development and investment in business properties. However, the wording of the legislation is far from clear and we understand local authorities are themselves unsure over what scenarios the relief is available in.

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).

- SCC believes this section is disorganized, as ultimately there is no clear definition of what “commercial activity” is. It would be prudent of the Committee to ask that the Interpretation section of the Bill provides a definition of “commercial activity”.

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).

- SCC are concerned that the Anti-Fraud measures in the Small Business Bonus Application has not been utilized to tackle this perceived “loophole”.
- SCC also believe the test that a property must have been let for 70 days puts an undue burden on businesses/holiday homes that are unsuccessful due to market conditions. The policy memorandum seems to give discretion in the example of physical conditions proving problematic but does not account for discretion in case of economic or prevailing market conditions.

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.)

Section 6 - Valuation Notices

- SCC believes that Valuation Notices should contain much more information than that which they currently do.
- SCC acknowledges that this section makes way for secondary regulations which will outline what information will accompany a Valuation Notice but are worried that no firm commitment to ratepayers is forthcoming in the bill about what essential items must be in the Valuation Notice or contained alongside the Valuation Notice
- SCC would want as a minimum:

i) a confirmation of the Date the Entry is Made
ii) confirmation of the appropriate section of the 1975 Act the entry is made under
iii) a full valuation breakdown or link to webpage with full valuation breakdown
iv) a list of comparable properties upon which the assessment is made (if any)

• SCC believes there is an enhanced role for Scottish Assessors Association (SAA) portal here; specifically, the need to move the system to a more digital platform and this would ensure that the portal holds comparable data – an essential component of valuation.

• Without a significantly enhanced digital portal to manage NDRs between the local authority, property professionals and occupants, it is likely this whole exercise will be quickly outdated.

Section 7 - Proposals to alter, and appeal against, Valuation Roll

• Section 4 3ZA (2)(c) references “a material change of circumstances” since the entry was made which SCC provides further views on under question 13 of this submission as this phrase causes huge problems with the desired aim of having a Fair and Level playing field amongst ratepayers across Scotland and this section should be reviewed.

Section 8 - Proposals and appeals: consequential modifications

• SCC has no comments to make on this section.

Section 9: New and Improved properties: rates reliefs

• This is a very important section, as it allows the Scottish Government to introduce secondary regulations to alter the Business Growth Accelerator Relief.

• SCC are supportive of the original aims of the Legislation and the Government’s response to give relief on new and improved properties and are worried that the relief might be taken away or the period of relief restricted.

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 clubs relief.

• SCC believe that by discriminating recognised Charities from the ambit of Charitable Relief in the case of mainstream independent schools there could be a case to say Charitable Relief then falls into the Category of State Aid which could damage the aim of Charitable Relief.
9. Section 12, which aims to address what the Scottish Government describes as a known tax avoidance tactic concerning unoccupied or under-used properties.

- SCC is concerned that the definition of use could prohibit certain less property intensive industries acquiring properties.
- As outlined in our submission to the response to the Scottish Government’s consultation on Barclay implementation, concerns remain over more limiting conditions on empty property relief that could place some ratepayers at a disadvantage, or create a scenario where landlords may avoid renting out to more risk averse companies.²

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

- SCC understand there is a need to ensure that liabilities are paid promptly but would caution about the way in which this power is used and a more engaged relationship with Local Authority and business should be promoted in order to chase down debt.

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.

- In general, these provisions to give the Assessors more power to get information needed to value lands and heritages in terms of making a failure to return a civil penalty rather than the current criminal penalty which the Assessor advice are difficult to prosecute, however Section 14(1)(B) of the Bill goes too far by giving the Assessor the power to call on “any other person “ to provide information.
- SCC believe the only person who can provide a return of information should be the Proprietor, Tenant or occupier of the lands and heritages as is currently provided for in Section 7 of the 1854 Act.
- Likewise, Section 16 dealing with notification of changes of circumstances to the local authority is too ambiguous at present as many ratepayers have no idea what “changes of circumstances” affect “the amount of non-domestic rates payable in respect of them” as detailed in Section 16(2)(b).

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”.

SCC believes that the provisions around avoidance relate to ethical behaviours around legislation.
Not all practices are illegal, and businesses should be allowed to mitigate their tax liabilities within the legislation that is in place.
The definitions or advantage and artificial arrangement will be subject to a large degree of interpretation.

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?

- There are two issues which SCC wishes to raise at this stage:

1. Material Change of Circumstance

At present, the legislation and outcomes of case law around what constitutes a ‘Material Change of Circumstances (MCCs) is indistinct, and consistently leads to confusion for ratepayers and professional advisors.

We appreciate this is a complex arena – especially when considering the application of case law which contributes to the variations in existing use of the term.

This is not a criticism of any participant in the sector, but we believe that the definition of “Material Change of Circumstances” in Section 37 (1) the Local Government (Scotland) Act 1975⁰ should be reviewed if the rating system is to regain the confidence of the public and expert practitioners. Take Brexit as an example. SCC would envisage the Scottish Government would consider this to be a Material Change of Circumstances, however we understand some Assessors do not believe it is. This shows the ambiguity over the current provision. We would ask that the Committee asks the Scottish Government to initiate an independent review into the MCC legislation to determine if it is fit for purpose. It is the clear view of our members and other business organisations that the outcome of recent case law where the Court has stated this appeal right is “severely limited in its scope” is not only damaging for businesses in Scotland compared to the rest of the UK, but in our view appears to run counter to the intention behind the legislation.

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

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⁰ https://www.legislation.gov.uk/ukpga/1975/30/contents
(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 Schedule to the Order gives the timetables and is extracted below for ease of reference:

<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
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</thead>
<tbody>
<tr>
<td>Valuations to be made on the basis of rents prevailing as at...</td>
<td>1st April in the year which is 2 years prior to a year of...</td>
</tr>
<tr>
<td>Last date for the assessor to send certified copies of estimation of...</td>
<td>1st November in the year preceding a year of...</td>
</tr>
<tr>
<td>Valuations to be made on the basis of the physical circumstances of...</td>
<td>1st January in the year preceding a year of...</td>
</tr>
<tr>
<td>properties as at...</td>
<td>15th March in the year preceding a year of...</td>
</tr>
<tr>
<td>In relation to any entry or alteration made in a valuation roll, the...</td>
<td>Whatever is the later of the following dates—</td>
</tr>
<tr>
<td>last date for lodging of any—</td>
<td>(i) 15 September in the year of revaluation;</td>
</tr>
<tr>
<td>(a) appeal or application for redress under section 3(2) of the...</td>
<td>(ii) the last day of the 6 month period...</td>
</tr>
<tr>
<td>(b) complaint under section 13 of the Lands Valuation (Scotland) Act...</td>
<td>(a) 13 March in the second year following the year of revaluation;</td>
</tr>
<tr>
<td>(c) complaint under section 6 of the Valuation of Land (Scotland)...</td>
<td>(b) 31st December in the year following the year in which the...</td>
</tr>
<tr>
<td>Amendment Act 1976(6)</td>
<td>which the appeal or complaint is lodged;</td>
</tr>
<tr>
<td>Last date for the disposal by a valuation appeal committee of appeals...</td>
<td>(iii) 12 months after the date on which the appeal or complaint is...</td>
</tr>
<tr>
<td>and complaints lodged with it.</td>
<td>lodged.</td>
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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.

The need for flexibility over the date the Valuation Roll is delivered to the Rating Authority is obvious but due to the wording of Section 3(4) of the Local Government (Scotland) Act 1975 which provides when a Material Change of Circumstance appeal can be lodged it causes a huge problem for ratepayers.

This issue can produce obscured results in terms of the integrity and consistency of Valuation for Rating across Scotland because an appeal on ground of MCC can only be lodged since the entry was made or in the year of Revaluation the date it is delivered to the rating authority.

For example, if the Assessor for Fife delivers the roll to the Rating authority on 13 March in a year of revaluation, and an MCC occurs on the 14 March, then the ratepayers in Fife could appeal on the grounds that an MCC had occurred since the entries were made.
However, if the Lothian Assessor waits to the last date for delivering the roll i.e. 15 March, as prescribed by the Valuation Timetable (Order), then a ratepayer in Edinburgh cannot appeal on the basis of the same “MCC” because in Edinburgh the roll wasn’t “made up” on that date, and thus the MCC occurred before the entries were made.

This creates inconsistency within the Scottish Rating framework as it benefits one ratepayer against another for no other reason than one Assessor having finalised the drafting of their Valuation Roll before another.

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

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

- We believe that this recommendation is required if the bill is to have any hope of achieving its aim to reflect changing marketplaces, improve ratepayers’ experience and administration of the rating system, and increase fairness and ensuring a level playing field amongst ratepayers.

**Conclusion**

SCC welcomes the opportunity to further engage with the Committee and expand on our Written Submission.