LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

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

SUBMISSION FROM GERALD EVE LLP

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

We welcome the Scottish Government’s commitment to undertake a review on business rates. We appreciate the opportunity the Government has provided to allow us to engage in consultation at each stage of the process. We do however have some fundamental concerns on certain aspects of the proposed Bill and we outline these below.

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

We acknowledge that the Government is in a difficult position to align everyone’s views and wishes to provide a business rates system that is robust and adaptable to assist in promoting growth in Scotland. It is not an easy task to undertake this work, however response times from the outcome of the Original Barclay Review to the introduction of the proposed Bill has been cumbersome and time is now a factor in advance of the 2022 Revaluation.

The Government need to provide clear and early guidance for Assessors, Ratepayers and their representatives on how the Government envisage the 2022 Revaluation to take place.

We do however feel that some elements of the proposed Bill move away from the objective of the Scottish Government to ensure that Scotland is the best place for business to invest and operate.

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.

As per our previous submission we welcome this amendment by Government, this will assist in business’ ensuring that rates demands are more in line with market conditions. We would however recommend that the Bill remains flexible and relevant for amendments to occur as market forces determine, for example with an aspiration for Annual Revaluations.

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.

The introduction of this relief is intended as an incentive to encourage investment and growth in Scotland and meets one of the aims of the Barclay review. We consider this as a positive and business friendly message, however we recommend that clear guidance and definitions are provided within the legislation as to what will constitute a “new or improved property”.

We are fully aware that there are issues in the interpretation of the current Secondary Legislation between Local Authorities and Ratepayers which makes it difficult for ratepayers to obtain the reliefs that should be made available under this Government initiative. There is an issue across Scotland in the application of this relief by Local Authority Finance and we would encourage that the Government provide clear and concise interpretations to create a clear and consistent relief.

We welcome the introduction of a “flag” on the Valuation Roll/SAA Portal to be implemented by the Assessor. This should assist Local Authority Finance in awarding this relief.

We note however that the draft Bill does not provide information regarding any appeal mechanisms that require to be made available to ratepayers should there be disagreement or question over whether the Assessor has “flagged” an entry in the valuation roll correctly. We recommend that the Government provide an appeal route in the final legislative position.

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 (eg the running of a café).

The Bill does not provide any clear definition of what the Government consider to be a “commercial activity”. It would be prudent of the Government to consider defining what constitutes “commercial” as the current wording may be open to misapplication by the Assessor and create confusion and uncertainty for Ratepayers.

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).

No comment to make.

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.)

We acknowledge the Government’s intention in this section.
Section 6

We agree that subsection (2ZA)(a) requires to be implemented. A clear definition should be provided by the Assessor on the Valuation Notice notifying the ratepayers which section of the Act they have relied upon when making an entry in the Valuation Roll or amending an existing entry in the Valuation Roll.

We recommend that at subsection (2ZA)(B) this should not be a discretionary power of the Assessor. 14 Assessors with different interpretations as to what is to be included on the Valuation Notice may fail to create a consistent and transparent system.

We encourage the development of the SAA portal in this process. The more information that can be made available online the more transparent the system, for example Valuation Notices should be made available on the portal to allow ratepayers the opportunity to access this information without relying upon the paper version. The development of the portal should also allow the Assessor to provide more information such as analysis, comparisons and the full valuation. This may be restricted to the “bulk” class subjects but this information may reduce the number of proposals/appeals submitted at each revaluation.

We are interested to understand how the Government propose to tackle this issue. Some properties are primarily valued using trade information. This information is market sensitive and should not be made available in the public domain. We would welcome the opportunity to discuss this further with Government how process is anticipated to operate.

Section 7

We have fundamental concerns within this section as this is “key” to the success of the new business rates system operating effectively. The Government have not as yet provided guidance on issues regarding the time limits of proposals, how quickly the Assessor must respond/dispose of a proposal and the timescales when a proposal becomes an appeal. This information is vital to determine whether the wording within the draft Bill can create a system that is workable consistent and transparent.

We question the wording of subsection 3ZA(4)(a). The Bill implies that a Proposal must be made in writing. In today’s digital economy, electronic communication should be a mandatory requirement. The Majority of appeals are lodged through the SAA Portal using the Automated Appeals Lodging System (AALS). This saves considerable time for all concerned. This could be developed further to allow the Assessor to respond electronically through the AALS, i.e. acknowledgement of proposal, exchange of statutory grounds/comparisons, etc.

The explanatory notes intimate that the ratepayer at submission of a proposal must submit their alternative value and include associated information. This will only be possible where the Assessor has provided a full breakdown of the valuation, the analysis and comparisons that they have relied upon in determining the value. This may however only be possible on the bulk subjects where information can easily be provided and checked quickly. For more complex subjects, involving the Receipts or
Contractors approach, the information will likely be derived from a number of different sources.

In England, we object to the underlying requirement of CCA which requires the ratepayer to prove the case without the VO having justified the level of assessment. We should similarly only accept that the ratepayer in Scotland has to provide a valuation and supporting information if the Assessor has previously shared the underlying evidence.

Under subsection 3ZA(5) we would recommend that the final Legislation contain requirements for the Assessor to respond within a set period of time on receipt of a valid proposal.

We question the intention of subsection 3ZA(6). Clear guidance must be provided in advance by Government as to what is to happen at the Proposal Stage and to do this under Secondary Legislation does not provide a consistent system. We understand the requirement to have a time limit for a proposal however we question item (c) for information to be included at proposal stage. We anticipate that the Assessors through their increased power to request information should have sufficient data and therefore to supplement this again at the proposal stage is time consuming. Significant information is exchanged during discussions and this exchange of information should be encouraged to continue.

Should the Government wish to continue with Secondary Legislation on this point, we would recommend that there is a minimum “lead in time” of 12 months prior to any changes brought into force. This would allow all parties to update their electronic programs ahead of the revised changes.

Subsection 3ZB(1)(b)(ii) refers that appeals can only be made on the information provided within the proposal. This proposal would be contentious and create possible issues. The ratepayer will be reliant on the information provided by the Assessor in setting the proposed valuations, however if the Assessor does not have all the appropriate details or misinterprets the information provided this is resolved through discussion. To provide this at the proposal stage only and to limit what is to be relied upon at Appeal stage is prejudicial. For an Assessor/Agent to appear at Valuation Appeal Committee/Tribunal, Surveyors have to adhere to RICS Guidelines on Acting as Expert Witness. If new relevant information is brought to the Attention of Ratepayers Agents or Assessors this information cannot be excluded from the Appeal grounds to the Tribunal.

We disagree with Subsection 3ZB(2)(b) that restricts the withdrawal of appeals only by the Valuation Appeal Committee (VAC). Either party should have the right to withdraw ahead of a VAC and only appeals that are required to be heard by the VAC should require determination by them. To have the VAC administer withdrawals will create an additional administration level that will only create backlogs and delays in the system. With no indication within the Bill of timescales for response of a proposal by the Assessor, we envisage that the VAC’s will have a large number of appeals that will generate significant administration time. The risk of appeals relating to one revaluation overlapping subsequent revaluations is otherwise high and is to be avoided.
We have concerns over subsection 3ZB(3) as per our previous consultation response and are disappointed that this section has been retained by Government in the draft Bill. This suggests that rateable values can be retrospectively increased by a valuation committee hearing. We are of the view that this proposal is counter to the principles and objectives of the Barclay Review.

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.

No comment to make.

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

No comment to make.

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

We acknowledge the principle of this being contained within the draft Bill for Local Authorities to implement debt recovery quicker. We would welcome inclusion in the final legislative position for speedier refunds by the relevant Local Authority to the ratepayers, e.g. four weeks from settlement of a proposal/appeal.

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. We consider that 35 days would be more appropriate; with room for extension in exceptional circumstances.

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.

Section 14 and 15

We are disappointed to see in Section 14 that comments included in our previous consultation response over the ability of the Assessor to serve information request notice on any other person have not been taken on board. To create consistency the Assessor information request should be issued solely on the Proprietor, Tenant and Occupier. Those parties then have the option of instructing a third party to complete and return to the Assessor. To seek information from Accountants, Lawyers, Surveyors, Contractors who have no direct association with a property is too wide, questions accountability and is potentially open to unintended error or abuse.
There is no consistency between Assessors’ powers in Section 14 and that of Local Authority in Section 15. We would also encourage a consistent time limit for response to the Assessor and Local Authorities to ensure a consistent and transparent system. We require the Government to provide clarity on the information required to value particular classes of property. Under the proposed Bill, the Assessor would be able to request information that would not be considered relevant for the valuation of property, i.e. the Assessor requesting trade information for subjects that are not valued traditionally on a receipts basis and in our opinion would not be required.

Section 16

We recommend that this is extended to both Assessors and Local Authorities to ensure that the Valuation Roll and Assessment Roll are maintained as accurately as possible.

We recommend that the timetable for notification is similar to other statutory requirements, i.e. completion of returns for LBTT, etc.

Section 18 and 20

We acknowledge the Government’s intention to provide powers to levy civil penalties to Assessors (Section 18) and Local Authorities (Section 20) for non-return of information when requested by the relevant party. We however are disappointed that under Section 18 subsection 4, this implies that the maximum fine applicable could equal the rateable value. We recommend that this element is removed from the final legislation as being prejudicial to ratepayers.

As per Section 14 above, we have concerns that penalties proposed are inequitable, disproportionate and could be enforced on third parties. Any penalties should be restricted to the Proprietor, Tenant or Occupier.

We recommend that the penalties within Section 18 and 20 are consistent and equitable. The Bill as drafted contains different penalties depending on which party serves the notice. To create a system that is transparent, consistent and understandable these penalties should be equal.

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”.

No comment to make.

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 opportunity to discuss the Bill or our response in more detail with the Government.
We encourage the Government to consider the full impact of small business bonus scheme and the continued merit of this relief in its current form. The introduction of this relief has removed approx. 100,000 properties from the payment of rates. This puts a burden on the other stakeholders within the business rates system and places a larger emphasis on what the Government considers to be large business.

We acknowledge the need to have some form of relief for small business; however this requires to be looked at on an alternative means other than based on Rateable Value. Consideration should be given to taper in the relief rather than exempt properties from payment of rates on a “cliff edge” measure of a cumulative rateable value of less than £15,000.

We recommend that Government adopt the Barclay recommendation to reduce the burden on stakeholders and reduce the large business supplement to bring this in line with England.

Consideration of both these elements would assist in spreading the “burden” between all ratepayers, would potentially reduce the rates poundage below that level in place in England and allow Scotland to be at least equally, if not more attractive for business to invest.