LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

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

SUBMISSION FROM GL HEARN

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

Over the years one of the main criticisms of the Non-Domestic Rates (NDR) system in Scotland was that there was too long between revaluations and that as a result the system could not react quickly enough to reflect movement in rental values across different property sectors. This was abundantly clear after the economic downturn in late 2008 and further exacerbated by the extension of the 2010 Revaluation by two years. In that respect the Bill addresses this point by shortening the period between revaluations to three years and this is a welcome change, especially during periods of prolonged rental decline.

The benefits of other aspects of the Scottish Government’s programme of NDR reform are less clear cut. While on the face of it, incentives that provide rates relief are beneficial to occupiers of property, they have a direct effect on the rent that parties are willing to pay for a property and could potentially have an undesirable upward effect on the rents from which the rateable values are derived.

Another unintended consequence is that the system for appealing a rateable value will potentially become more onerous on both the Assessor and the Appellant. It is unclear what form this new system will take however there is a definite intention to reduce the number of appeals received by the Assessor. This is understandable due to the shorter timescale available to dispose of the appeals before the next revaluation however the Government must be careful not to create barriers to appeal simply through making the system too onerous on the Appellant. If there is a genuine issue that requires to be addressed then the mechanism to do so should be straightforward.

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

We are satisfied that the Government is attempting to implement much of Barclay’s recommendations and are pleased that the proposed out of town/online levy has been abandoned.

Specific proposals in the Bill

The Committee welcomes views on:

3. Section 2 of the Bill which provides that revaluation of properties subject to nondomestic rates would be carried out every 3 years rather than every 5 years.

As stated above this is a welcome change however we are concerned that the increased resources required to administer three yearly revaluations will result in a constrained right of appeal for ratepayers.
Assuming that there is a continued commitment to the three yearly revaluation cycle, if the tone date is moved to one year before the year of revaluation for 2025 as planned then the Assessor will have great difficulty ingathering the rental information required to prepare their valuations as they often won’t be informed of rents until a number of months after they have been struck. They will only have six months from the tone date until the date the draft valuation roll is to be published and it will take at least that long for much of the tone date evidence to make it’s way through the system.

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 terms used in this section are too ambiguous and should relate directly to the Section 2 of the 1975 Act. The introduction of Section 2A to the 75 Act offers some clarity but this description is at the discretion of the Assessor and should be subject to appeal.

This is the third version of this legislation, the first two versions appearing in regulations and the wording is still unclear when considering how the valuation roll is actually altered by the Assessor and what the intention of the legislation actually is.

Local authorities are having great difficulty in applying this relief and this section will do little to make it any clearer. A “building” needs to be defined in more detail as what constitutes a building or a part of a building is not always clear. Furthermore, not all entries in the valuation roll consist of buildings or parts of buildings and surely the intention of this legislation is to encourage the improvement and utilisation of all lands and heritages.

5. Section 4, which aims to increase the degree to which parks are subject to nondomestic rates, in recognition of the commercial activities that take place in some parks (e.g. the running of a café).

We have no comment to make.

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).

We have 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.)
The current high number of appeals is not speculative but it is currently the only mechanism for checking how your assessment has been arrived at. The best and fairest way to cut this number down is to publish the Assessor’s analysis along with the valuation notices or to have it published on the Assessor’s Portal for all subjects.

Currently only a summary of the most common types of valuations are published with absolutely no indication on how the rates were arrived at or full detail of what is included in each assessment.

**Section 6**

(2ZA)(b) - The minimum amount of information to be provided on a valuation notice should be prescribed in the legislation and not left to the discretion of the Assessor.

There are fourteen Assessors and they do not currently adopt the same valuation methodology across all subject types or publish the same information at the Portal, so it is unlikely that if the content of the valuation notice is discretionary that a uniform approach will be followed by all.

**Section 7**

As a framework this seems okay in principle however much of the detail is left to secondary regulations.

4(3ZB)(3)(a) - The Valuation Appeal Committee is being afforded too much scope to change the valuation roll. They should only be able to make changes in relation to the issues in dispute because if they were to make wide ranging changes in relation to an appeal it could set a precedent that undermines the Assessor’s scheme of valuation for a category of subjects.

Fairness also has to be a consideration here and if the Committee decides to make a fundamental change to the entry under appeal that neither the Assessor or Appellant has argued for, then consequential changes should be rolled out to all comparable subjects and a fresh right of appeal granted in relation to those subjects if it has resulted in an increase in value.

**Section 8**

We have no comment to make.

**Section 9**

The wording here is more concise than that of the New and Improved Property Regulations however the concerns raised in relation to section three still apply.

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.
We have 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.

There should be a right of appeal to an independent body on the decision of the local authority on refusal to grant relief otherwise some genuine applicants could be denied simply through an error of judgement on the part of the local authority.

10. Section 13, which will enable councils to initiate debt recovery proceedings for unpaid rates sooner.
In our opinion the proposed time for initiating debt recovery proceedings is too short at 14 days.

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.

While greater information gathering powers for the Assessor are welcome, it is our opinion that information should only be sought from parties with an interest in an entry in the valuation roll i.e. the proprietor, tenant or occupier.

While it is not unreasonable to allow the Assessor to widen their investigations to include anyone who may hold the information, these third parties should not be subject to a civil penalty for non-compliance or failure to return accurate information.

Furthermore the level that the civil penalty can reach is disproportionate to the effect of noncompliance where it could potentially reach the level of the full rateable value of the entry.

To this end Section 18(4)(a) should be removed or a more reasonable cap put in place.

12. Part 4 of the Bill, which give the 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”.

This section of the Bill needs to be assessed in the context of the supplementary regulations which are not yet available.

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 echo the RICS submission and would ask for clarity on the wording of Section 37(1) of the 75 Act in relation to Material Change of Circumstances.
As a result of ambiguously worded legislation and the interpretation of that legislation through case law, MCC’s in Scotland are all but impossible to achieve. This is in contrast to the situation in England where a more reasonable view is taken and MCC’s are more likely to be granted by the Tribunals.

We ask the Scottish Government to consider whether the current situation is what was intended when the wording of the 75 Act was amended and if not then we ask that a further amendment is considered in relation to this Bill to widen the scope of MCC in Scotland.