LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

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

SUBMISSION FROM COSLA

1. COSLA welcomes the opportunity to provide written evidence to the Local Government and Communities Committee on the Non-Domestic Rates (Scotland) Bill. COSLA’s submission covers the broader questions asked by the Committee and provides views on the specific provisions in the Bill.

COSLA’s key messages on Non-Domestic Rates reform and the NDR Bill

- COSLA welcomes reforms to the Non-Domestic Rates (NDR) system and has worked closely with Scottish Government in implementing the Barclay Review recommendations.

- The Bill reforms will improve the NDR system but will not bring about any substantive transfer of powers to local government.

- COSLA wishes to see local fiscal empowerment increased. The commitments made by the Scottish Government at Stage 1 of the 2019/20 Budget, to a replacement for Council Tax and to developing a Fiscal Framework, are welcomed. NDR should be considered as part of this work and we believe there is a discussion to be had on what it could mean to return NDR to local control.

- Whilst welcoming the improvements which the Bill brings, COSLA has two key concerns.

  1. The first concern is the implication for Councils/ ALEOs of commercial activity in parks becoming liable for rates.
     - COSLA believes there is a need to recognise the valuable role ALEOs deliver to communities, promoting social inclusion and healthy lives, and that they should not be impacted by this change.

  2. The second concern is that a move to 3 yearly revaluations is a significant change to the NDR system.
     - The Assessors who will undertake the revaluation must be fully supported in making the changes required.
     - This includes fully funding the costs of preparing for and implementing the changes.
     - Reform of the appeals system is essential and 3 yearly revaluations cannot be introduced until we are sure the new appeal process can work.
Broader Questions asked by the Committee

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

2. COSLA welcomes the Scottish Government’s reform of Non-Domestic Rates and has worked closely with the Government on implementation of reforms, following the recommendations put forward by the Barclay Review. It should be recognised up front that Non-Domestic Rates (NDR) is a national system of taxation and, whilst Councils administer NDR and the income forms part of the overall Local Government Settlement, Councils have little or no autonomy in managing NDR locally. COSLA has highlighted this in various submissions in recent years, that NDR is not a local tax and there is little or no accountability at the local level with the current system of NDR.

3. Whilst powers to offer NDR reliefs to businesses were devolved under the Community Wellbeing Act, which COSLA welcomed, there has been no substantive transfer of NDR powers since they were removed from local authority control. To date the use of this power has been limited, primarily as the power can only increase reliefs which come at a cost to Councils who are facing significant financial pressure.

4. COSLA believes that there is a discussion to be had about where NDR fits within any future system of local taxation. In COSLA’s response to the Barclay Review, COSLA argued that increased local control of NDR could increase fiscal autonomy for local government and promote local democratic accountability. COSLA has long argued that a substantial return to local control of NDR would shift the balance of funding to a more equitable split between national and locally raised revenues. However, any wholesale return of powers over NDR to local control would require careful consideration as to the implications both for national and local government. COSLA would still welcome that discussion with the Scottish Government.

5. It is worth highlighting other work which COSLA has undertaken and is continuing to pursue around wider local fiscal empowerment and a new system of local taxation. This provides the context for COSLA’s comments on reforms to NDR, particularly where such reforms offer the potential for increased local powers over aspects of NDR. Recently COSLA welcomed the commitments made by the Scottish Government as part of the Scottish Budget to explore on a cross party basis a fiscal framework for local government and increased local fiscal empowerment, including the potential for a new system of local taxation.

6. One of these commitments is to devolve Empty Property Relief which is a potentially welcome step in increasing local fiscal empowerment, recognising that there are both opportunities and risks arising from this which need to be explored further. COSLA notes that the Scottish Government is proposing to bring forward devolving the Empty Property Relief at Stage 2 of the NDR Bill, so it is recognised that this is not specifically for consideration by the Committee this time. However, COSLA is happy to speak with the Committee further on this topic in the coming months.
7. With regard to the reforms outlined in the Bill, as well as other administrative reforms, these do not bring about any significant changes to the national system of NDR, however there are welcome measures which should see a far improved NDR system going forward. There are however a number of challenges and concerns for local government in some of the Bill provisions which need to be highlighted to the Committee. These are discussed further under the specific provisions part of this submission, however COSLA would wish to highlight up front a concern about commercial activity in parks becoming liable for rates, in particular for the Arms-Length Organisations (ALEOs) which run vital services for communities on behalf of Councils.

The Committee has asked how the Government has responded to the Barclay Review, in particular on those recommendations it has rejected in full or part

8. COSLA has worked closely with the Scottish Government throughout the implementation of the Barclay recommendations. COSLA recognises that the Scottish Government gave valid reasons for rejecting in full or part some of the Barclay recommendations. Indeed, COSLA welcomed the Government’s decision not to implement the recommendation on withdrawal of charity relief in full, which would have impacted significantly on Council established Arms-Length Organisations (ALEOs). Whilst the charity relief is no longer available for any new ALEOs established, it does at least protect the relief for existing ALEOs. This has ensured that the valuable services these organisations provide to communities have received a degree of protection.

9. With regard to the out of town levy which the Scottish Government has decided not to pursue at this time, COSLA did not have a strong position as to whether this should be taken forward or not. However, COSLA indicated that local government would be willing to participate in pilot schemes to test out the potential benefits of such a levy and equally to ensure that dis-benefits are fully understood, before proceeding with any rollout of such a scheme.

10. Given COSLA’s view that local fiscal empowerment needs to be strengthened and that Councils should be able to tailor solutions to local circumstances, COSLA would encourage the Government, at a future point, to give further consideration to an out of town/ on-line levy, or indeed other local solutions which could be viable in certain circumstances, and not simply rule these out.

The Committee has asked for views on specific provisions of the Bill

Section 2 revaluation every 3 years

11. COSLA welcomes the move to 3 yearly revaluations as this will introduce a significant degree of certainty and stability to the current process. This will bring the valuation of properties more in line with market values and should reduce the need for property owners to challenge or appeal the valuation applied by the Assessor.
12. Moving to 3 yearly revaluations will nonetheless have significant financial and operational implications for local government. This will impact primarily on the Assessors, who are ultimately funded by local government. Any increase in the cost to the Assessors will in turn present financial challenges to Councils as the funding authorities.

13. It is COSLA’s position that all new policies introduced by the Scottish Government are fully funded. The implementation of the Barclay recommendations is no exception and therefore the costs of the changes must be understood, with full funding provided for these. COSLA therefore welcomes the funding provided by the Scottish Government for Assessors costs for 2019/20 which is included in the local government finance settlement. This funding must continue to be provided, as set out in the Financial Memorandum, and COSLA will work with the Assessors and the Scottish Government to ensure any refinement to the costs identified in the FM, to ensure that funding is provided at the level required.

14. There is also a major issue of the Assessors’ capacity to bring about the 3 yearly revaluations within the timescale determined by the Scottish Government. This is predicated on the new revaluation cycle resulting in less appeals, which in turn is strongly dependent on the outcome of the review of the appeals system. There needs to be confidence that the reforms will have the desired effect, before embarking on a move to a shorter revaluation timescale.

Section 3 new or improved properties

15. COSLA noted the secondary legislation which introduced the business growth accelerator from 1st April 2018. Councils have indicated that this measure is already having a positive economic impact. The Bill establishes the Business Growth Accelerator in primary legislation which should ease the administrative burden for Councils as these properties will be marked in the Assessors’ valuation roll, thus removing the need for applications to be processed.

Section 4 commercial activity in parks

16. COSLA has significant concerns with regard to the provision to include properties operating commercial activity in parks. Whilst in principle it can be argued that it is only fair for such activity to be liable for rates as with any other businesses operating nearby, COSLA believes that commercial activity should be defined in such a way that it does not prejudice the ability of Councils to deliver services to the public in a cost effective and sustainable way.

17. COSLA noted that the broad intent of Part 2, section 4, of the Bill appears intended to create a distinction between the ‘person who controls the park’ (the local authority) and another entity or person deriving a profit from operating on the site. However, from reading the Bill and the Policy Memorandum, COSLA is concerned that the proposed approach will have a negative effect on Council established Arms-Length Organisations (ALEOs). These include sport, leisure and culture trusts which deliver valuable services to communities in the areas of social inclusion and promoting healthy lives.
18. Currently existing ALEOs are eligible for 80% rates relief, although this relief is not available for any new ALEOs established by Councils. Therefore, any further properties which go on to the valuation roll, as a result of Scottish Government’s planned changes in the legislation will be an additional cost.

Whilst it is difficult to quantify the impact for Councils until the properties become liable, the Financial Memorandum to the Bill recognises there are costs arising for ALEOs and ultimately Councils who subsidise the ALEOs.

19. The additional liability created by the change will simply add to the financial burdens on the Council, resulting in further reductions in service either within the Council or within ALEOs through reduction in their subsidy. This would not only impact on facilities such as cafes, it would also have implications for the provision of sporting activities such as football pitches, municipal golf facilities and bowling greens.

20. Such an outcome appears inconsistent with Scottish Government’s ambitions for our citizens to live long, healthy and active lives, and access aspirations for public parks and related facilities.

21. At the very least, consideration should be given to adjusting ALEO relief thresholds to any Council affected by such a scenario. If this is not done, then the impact on the viability of valuable facilities provided for the benefit of whole communities is likely to be significant.

Section 5 holiday homes known loopholes

22. COSLA supports the removal of this loophole and for local authorities to be able to apply discretion to react to local circumstances.

Sections 6-9 reducing volume of valuation appeals

23. Reform of the appeals system is a key part of the Barclay implementation. In order for 3 yearly revaluations to take place there must be a significant reduction in the number of appeals, so the legislation is welcomed in this regard. COSLA notes that no restriction is being placed in the Bill for public sector appeals which is welcome. COSLA would argue strongly that the public sector has equal right to appeal valuation decisions, as these have a direct financial bearing on Council budgets. This recognising that there is need for overall reform of the appeals.

Section 10 charitable relief for independent schools and sports club relief

24. COSLA agrees that it is fair that independent schools are treated the same as local authority schools and therefore the Bill’s provision to remove the charitable relief for these schools seems reasonable. COSLA notes that independent special schools and specialist independent music schools will still qualify for charitable
relief and that the Scottish Government justifies this in terms of the importance of these services and lack of alternatives.

25. The Committee will be aware that charitable relief is no longer available where Councils choose to establish Arms-Length Organisations to run some local services. COSLA however welcomed the Scottish Government’s decision to leave the charitable relief intact for existing ALEOs, in recognition of the importance of the services they provide to local communities.

There remains an anomaly in COSLA’s view in restricting Council’s flexibility to establish ALEOs and be able to use the NDR savings, to protect essential front-line services which provide social inclusion and healthy living benefits to the whole community, in the same way as specialist schools are valued for the benefits they offer to communities.

Section 12 Tax avoidance unoccupied or under-used properties

26. COSLA welcomes this provision which should empower Councils to take action to reduce the level of tax avoidance. This links with the change to the 42-day rest period to 6 months which will be introduced in secondary legislation and should assist in reducing avoidance tactics by ratepayers. However, Councils have raised concerns that there is no definition of active properties in the Bill, though COSLA notes that there was no consensus reached as to the definition of active property.

27. The Bill does not specify that the ratepayer has any right of appeal and that the Council’s decision stands. It would be helpful to have clarification that the Bill provides that the Council with that authority.

Section 13 initiate debt recovery proceedings earlier

28. COSLA supports this change to allow Councils to initiate debt recovery proceedings earlier. This will bring Non-Domestic Rates into line with Council Tax collection and gives Councils discretion to act as soon as payment instalments are missed, resulting in earlier recovery and improved collection levels. COSLA would welcome further discussion with the Scottish Government on communicating the changes to ratepayers which should be a mix of national and local communication.

Sections (14,18,19 and 22; 15,16,17,20,21 and 22) dealing with powers for assessors and local authorities to obtain information from ratepayers

29. COSLA welcomes the changes to strengthen the power of assessors and local authorities to obtain information from ratepayers. This should result in ensuring more accurate rateable values to assessors and improved billing of ratepayers. Councils have commented that the powers may not be wide enough as to who the information is requested from and the type of information provided. Therefore, there would need to be consideration going forward as to the effectiveness of the powers both for assessors and for Councils. Councils have also commented that
the Fixed Penalty Notices may be too low to enforce ratepayers’ obligations to provide information. Again, the effectiveness of the powers will need to be gauged going forward.

**Part 4 of the Bill anti-avoidance power**

30. COSLA welcomes the introduction of a general power for Scottish Ministers to make regulations to tackle anti-avoidance. As the Policy Memorandum points out the GAAR is an additional tool to respond to areas of anti-avoidance where it becomes clear that the ratepayer is deliberately seeking advantage in avoiding rates liability. COSLA welcomes that any intentions to regulate will be consulted on and COSLA would wish to engage early with Scottish Government as to any proposals being considered.

Any additional administrative financial burdens on Councils of additional regulations would need to be considered and fully funded.

**Any other comments about the Bill**

31. COSLA has no further comments about the Bill provisions specifically, however it is clear from Councils’ comments that in considering the provisions, Councils are noting that there will likely be administrative and software changes to implement a number of these. It is COSLA’s position that any new policy changes which carry a cost to local government must be fully funded.

32. Some of this is captured in the Financial Memorandum to the Bill on which COSLA will provide evidence separately to the Finance Committee.

33. It is worth however highlighting the potential for these costs to become burdensome for Councils and that the FM captures only broad estimates of costs at an early point in time, prior to the detail of the Bill being known. Along with reviewing Assessors costs for future years, COSLA proposes to do further work with Scottish Government and Councils to review the cost assumptions for local authority costs.