LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

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

SUBMISSION FROM RENFREWSHIRE COUNCIL

Views on the Scottish Government’s overall programme of non-domestic rates reform and how the Bill fits into this.

Renfrewshire Council welcomes the opportunity to contribute to the call for evidence and would make the following points:

- Business Growth Accelerator – this will be positive in terms of investment and economic development in Renfrewshire;
- A new relief for day nurseries – this new 100% relief will be welcomed by the sector as it attempts to meet the government growth targets for 3-5yr olds;
- Town Centres - expanding Fresh Start relief – Renfrewshire Council welcomes this in terms of bringing vacant property back into use, but unsure why the RV value threshold is set at £65k. The largest town centre properties (once vacated) are often the most difficult to re-let / sell. It would be helpful if Fresh Start relief was applied to all town centre properties;
- A “rateable value finder” product should be used – to identify properties that are not currently on the valuation roll, so as to share the burden of rates more fairly – Renfrewshire Council accepts this is particularly important for towns centres such as Paisley, but also more generally, when it comes to the issue of vacant listed buildings (see below);
- To focus relief on economically active properties, only properties in active occupation should be entitled – this proposal is supported from a town centre regeneration perspective;
- To encourage bringing empty property back into economic use, relief should be reformed to restrict relief for listed buildings to a maximum of 2 years – Renfrewshire Council understand the Scottish Government have not accepted this recommendation from Barclay Review and have opted to extended this period to 5 years; noting that it is unclear when the clock starts for the 5 year period. Renfrewshire Council contends that extending to 5 years will do little to incentivise investment in empty listed buildings which is a particular issue in (although not exclusive to) Renfrewshire’s town centres;

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

Out-of-town on-line storage and distribution centres
In Renfrewshire Council’s view the fact that Scottish Government (SG) have taken the decision to not include a higher rate charge for large multinational retailers’ out-of-town storage and distribution centres in the NDR Bill is a missed opportunity.

Retail as a sector has changed dramatically in the last 10 years. This is important as retail has been the principal space user and principal non-domestic rates contributor as a sector in town centres for as long as the system has existed. As the retail floorspace demand changes (partially as a result of competition from out-of-town and online alternatives) the dynamics of town centres are altering. Property owners are struggling to come to terms with this change and, as a result, are facing a growing uncertainty over whether the retail sector in town centres will continue to play the role it has done in civic society.

The introduction of differential in the rates levied for large out of town on line storage and distribution businesses (or similar) the proceeds of which are reinvested into town centres (via the RCGF, Town Centre Fund, or similar) could play a role in helping to offset this structural transformation affecting the retail sector and assist traditional town centres to adjust and repurpose for a significantly smaller retail footprint in the future.

**Listed Buildings**

The SG acceptance of the principle to restrict empty property relief for listed buildings is a positive step forward. What is not clear, however, is the rationale for delaying this restriction to a particular period of time. We understand the proposal from SG is to delay the removal of the relief until the listed building has been vacant for 5 years.

In traditional town centres there is often a significant concentration of listed buildings as these locations were often the original centre of settlements where significant Victorian and Georgian investment took place in the buildings. Many of these buildings were built for commercial trading and remain as shop units today. Given the point made above, about structural change in the retail sector, there is now a high proportion of vacant shop units that are in listed buildings and benefit from 100% relief on business relief.

This has the effect of disincentivising owners from investing in such empty listed buildings, with the result of such buildings falling into disrepair. If an owner finds an occupier for the shop unit / building they immediately become liable for business rates (assuming RV is above SBBS threshold). Unless the owner can ensure that the tenant will also cover the non-domestic rates cost then they are faced with paying this alongside any investment required into making the floorspace occupiable. Listed buildings in a poor state of repair in most cases remain empty, with the NDR relief contributing to this.
The SG decision to only charge non-domestic rates on listed buildings that have been vacant for 5 years is counter intuitive in terms of regenerating town centres and the speed at which the retail and other service sectors are changing. What is also not clear from the proposed approach by SG is whether the building needs to be vacant for a period of 5 years consecutively. If a listed building is empty for 3 years then occupied for 12 months and then vacant for 2 years, does the non-domestic rates relief still apply for a further 3 years?

We would contend that 5 years is far too long a period. Such a proposal is likely to lead to the abuse of the non-domestic rates system with owners introducing pop-up uses during the 5 years to try to get 10 years in total if the periods run consecutively. It is unlikely to trigger the investment that many of these listed buildings in town centres require.

Renfrewshire Council would recommend that 2 years is the maximum period allowed for relief to apply to listed buildings from the date of legislation enactment and that 100% non-domestic rates continues to be payable if the listed building becomes vacant again within 2 years of being occupied.

**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.**

A 3 year review cycle should result in the Assessor determining a rateable level which is more reflective of the current market conditions and may assist in reducing major movements valuations, which is to be welcomed.

It is likely to have resources issue for not only the Assessor, who will require to resolve the new mandatory proposal stage and subsequent appeals in a more diligent manner, but also for landlords/owners who own more than one property, (including local authorities) who have a large operational portfolio.

With a 3 year cycle, as opposed to a 5 year cycle, there will be less time available for both the appellant and the Assessor to determine whether the rateable value proposed is fair and reasonable. The introduction of a mandatory proposal stage as a precursor to a subsequent appeal will reduce the overall number of appeals but will still require all parties to document their reasons for a review and support the decision made. In such circumstances, the Scottish Government will require to provide adequate resource to Assessors to enable them to meet the workload demands of an increasingly regular revaluation cycle.

**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.**
underlying aim is to incentivise development and investment in business properties. 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).

Only properties in active occupation should be entitled – this proposal is supported from a town centre regeneration perspective;

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).

This is not a particularly relevant issue within Renfrewshire, however the principle of owners demonstrating evidence of letting or some other evidence of business operations is supported.

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 description of the new process appears to transfer the responsibility for progression of a disputed rateable value. In order for this to work in a fair and transparent manner, the Assessor when issuing their Valuation notice, should also be required to provide to the appellant a copy of the revised summary valuation, a copy of the valuation scheme along with the evidence used by the Assessor to reach the proposed valuation and if possible a commentary on the Assessors thoughts on how they reached the valuation decision. This information currently only becomes available after an appeal has been lodged, and if the purpose of the move to a 3 year review process is to improve the accuracy of the rateable value for the subjects, and to remove from the appeals process, appeals that do not go anywhere, then an increased transparency is required from the Assessor.

The introduction of a mandatory proposal stage from any ratepayer wishing to appeal will reduce the overall number of appeals but will still require all parties to document their reasons for a review and support the decision made. In such circumstances, the Scottish Government will require to provide adequate resource to Assessors to enable them to meet the workload demands of an increasingly regular revaluation cycle.

The introduction of a fee to raise an appeal and the possibility that the original Rateable Value (RV) could increase as a result of a dispute is likely to deter speculative appeals for two reasons; once submitted an appeal cannot be withdrawn unless agreed by the Valuation Appeals committee (VAC); and, it is proposed that the fee would only be
refunded where the appeal was considered justified. The level that fees are set at may have an impact however it is important to note that where a rateable value is close to a threshold for relief (such as SBBS) this may provide a greater to appeal.

It is noted that ratepayers, including local authorities, will look to check that when determining the RV the Assessor, has done so in a fair manner and that the valuation proposed is accurate and in accordance with the Scheme. It is noted that currently, it is often through the appeals process that anomalies are found and resolved, so it is important that when moving to the new 3 year review cycle steps are taken to ensure that a transparency exists enabling the appellant to check the proposed new valuation figure, before determining whether to lodge any appeal.

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.

Renfrewshire Council is supportive of what is proposed and outlined in the Bill.

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

It is noted that this section of Bill provides powers for the first time in respect of unoccupied properties and this is to be welcomed in order that rates avoidance can be tackled. It is noted that this provision in the Bill will put the onus upon the ratepayer to provide evidence in respect of occupation and rate reliefs, however, the Bill or other legislation should be extended to provide a definition of “active occupation” in order to assist the local authority with the decision making powers that section 12 of the Bill is proposed to give them. At present, there may be inconsistency in how local authorities approach active occupation currently and it would assist if a statutory definition was provided.

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

This section of the Bill will allow councils to initiate recovery proceedings sooner and it is noted that the Bill has been drafted like the provisions for the recovery of council tax. This would then bring the recovery of council tax and non-domestic rates to be broadly similar and would allow a local authority to commence recovery in respect of non-domestic rates far sooner than under current legislation. It should be noted that the Bill as drafted would allow individuals and businesses to be treated the same in recovering any debt from them and as such the draft proposals make it fairer for all. The council tax recovery legislation seems to work well and has been bedded in for some time, and it would make sense if the non-domestic rates recovery legislation was
along the same broad lines. By having a statutory framework in place for the recovery of rates this would also ensure uniformity across the councils in Scotland as currently they may apply their discretionary powers differently in respect of recovery. It should be noted that there would still be enough discretion in terms of negotiating payment arrangement for any arrears for council as there is with the recovery of council tax.

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.

The Bill introduces new powers to local authorities to serve notices on persons such as proprietors, tenants or occupiers in terms of section 15 of the Bill. In principal this can only be welcomed as this will allow local authorities to seek information especially in cases where there is avoidance of paying non-domestic rates and this will hopefully reduce fraud. However, there should be scope given to extending the power to seek information beyond proprietors, tenants or occupiers to agents such rating agents or letting agents. The penalties for rate payers are contained within section 20 of the bill and it is unclear how the figures have been calculated and while this welcome, the rates of penalties specified within may not be a sufficient deterrent for a person that has been served a notice as £95 and £370 does not seem to be a huge monetary deterrent. If the penalties were to be low amounts such as a £95 penalty, then there may be little incentive for a local authority to recover this from a person as it may not be cost effective for the local authority to do so through the courts. It is not clear how the fine could be enforced from the Bill and in addition, there would be concerns in how penalties would be enforced especially against companies that may no longer be trading and as such may be too resource heavy for very little monetary gain. If the penalties were of a higher amount, then it would be perhaps more cost effective for a local authority to recover them and give an incentive for a person to provide the information as required.

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”.

It is noted that the General Anti Avoidance Rules (GAAR) set out in part 4 of the Bill seem to broadly be along the same lines as the GAAR for Revenue Scotland. As such the GAAR that is proposed should be consistent with those existing provisions for other forms of taxation and this seems to be covered in draft Bill. However, it should be noted that where the pattern of behaviour among businesses who systematically avoid their NDR liabilities through winding up/phoenixing their business and continuing to trade under a different name from the same premises without contributing is growing
and the GAAR should also aim to address this type of avoidance and it is not clear from this part of the Bill if the GAAR will cover this type of avoidance. In addition, the GAAR should be extended as to include individuals accountable for avoidance and as such penalties should be considered within any future legislation as a deterrent to individuals such as company directors who hide behind the company’s corporate structure.

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?