LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

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

SUBMISSION FROM THE SCOTTISH ASSESSORS’ ASSOCIATION

The Scottish Assessors’ Association (SAA) welcomes the opportunity to contribute to the Local Government and Communities Committee’s consideration of the Non-Domestic Rates (Scotland) Bill 2019.

As the Committee may be aware, The SAA, which has been in existence in one form or another since 1855, has as its purpose:

“to encourage amongst its members the exchange of ideas regarding their statutory duties; to record results of discussions on all subjects brought before its meetings; to promote consistency in the operation of the Valuation, Council Tax and Electoral Registration legislation; to act as a consultative and advisory body; engage in partnership work both internally and externally with organisations and public bodies; and to represent the collective interests of its members in carrying out their duties”

Although a voluntary organisation, all Assessors and their senior staff are members of the SAA. The SAA gives each Assessor equal voice thus ensuring a balanced approach.

The SAA notes that the policy objectives of the Bill 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.

The SAA has submitted extensive responses to two previous consultations undertaken by the Scottish Government; “Supporting Business – Promoting Growth” and “Non-Domestic Rating – Valuation Appeals System” in February 2013 and March 2015 respectively and contributed extensively to both the Barclay Review in September 2016 and the Barclay Implementation Consultation in September 2018. The Committee may wish to refer to these submissions for further detail.

The SAA believes that matters regarding the Scottish Government’s overall programme of Non-Domestic Rates Reform, and how the Scottish Government has responded to the Barclay Review, are matters for policy makers and are out with the remit of the Association’s consideration. Therefore, other than welcoming the fact that these matters have been addressed quickly and in a positive fashion, the SAA has restricted its comments to consideration of the detailed provisions of the Bill and likely impact these will have on the system on Non-Domestic Rates in Scotland, which in total affects some 255,000 properties with an overall Rateable Value of £7.46B
The SAA’s consideration of the various elements of the Bill is set out below. This follows the order in which the sections appear in the Bill:

S1 **Overview** – The SAA has no comments on this section of the Bill.

S2 **Revaluation Years**

In its previous submissions, the SAA has recognised the advantages to ratepayers of moving to a system of three yearly revaluations. It therefore welcomes this amendment but notes that the impact of this change on workload and resources will be significant. Details of the estimated resource impacts are noted in the Financial Memorandum and the SAA welcomes the fact that the required resources are being made available within the current financial year. The principal concern of the SAA is that this funding stream must be maintained for future years. Very considerable difficulties will be encountered if Assessors engage additional staff and commence IT system development if this funding is not continued as outlined in the Memorandum.

S3 **New and Improved properties**

The SAA recognises the advantages to business of the Growth Accelerator for new and improved Properties. It welcomes the opportunity to assist in this process by adding markers to the Valuation Roll in appropriate circumstances. It is recognised that this will open up a new work stream and that the inclusion of a marker in the Valuation Roll will allow appeals against the presence or absence of the marker to be made to the Valuation Appeal Committee and, potentially, to the Lands Valuation Appeal Court.

In respect of the terms of the proposed new Section 2A of the Local Government (Scotland) Act 1975, the SAA would make the following comments:

- It is suggested that there should be different marks for “newly built lands and heritages” and “improved lands and heritages”. This may be achieved through secondary legislation without alteration to the Bill.

- Clarity will be required as to how long these marks should be retained against the entry on the valuation roll, and whether such marks should be retained when a new Valuation Roll is published following a General Revaluation. It is suggested that marks should only be retained until the next alteration is made to that entry in the Valuation Roll.

- It is considered that there may be some ambiguity regarding the precise definitions of “newly built lands and heritages”, “improved lands and heritages” and “relevant increase”.

- It is understood that certain types of property such as; those which include a part of a building that is already included in the Valuation Roll,
or where there is a change of use, or where there is no building, will not benefit from this relief.

- It is suggested that provision should be made for Ministers to have the power to amend the definition of “newly built lands and heritages”.

S4 **Entering Parks in the Valuation Roll**

The SAA notes that this was a specific recommendation of the Barclay Review. It is clear to the SAA that the proposed amendment to the Local Government (Financial Provisions) (Scotland) 1963 will serve to bring a significant number of subjects into the Valuation Roll which are currently exempt, which will improve the integrity and transparency of the Valuation Roll in so far as it should include all lands and heritages.

The subjects that will be brought into the Valuation Roll will include, amongst other things, parks (or facilities within parks) occupied by an ALEO or Leisure Trust and subjects within parks that are in the separate occupation of amateur sports clubs such as bowling greens, tennis courts, rugby and football pitches, golf courses, and their associated clubhouses. It is likely however that a significant number of these subjects may be entitled to relief.

The SAA would welcome clarity on what is meant by “free and unrestricted access”. For example, some local authority run facilities may require a booking to be made for use of the facilities notwithstanding that no fee is charged.

It is not clear from the Bill how Assessors should deal with local authority parks where part is open for free and unrestricted access and part is not. It would be helpful if clarity were included within the Bill on the treatment of these subjects.

S5 **Discretion of local authority to determine whether lands and heritages are dwellings**

The SAA recognises the rationale behind the proposed change to section 72 of the Local Government Finance Act 1992 to allow Ministers to make regulations that may confer discretion on a local authority to determine whether, in certain circumstances, particular lands and heritages fall within the definition of a dwelling.

This provision, if exercised, would allow a degree of local discretion within the recommendation of the Barclay Review that “to counter a known avoidance tactic for second homes, owners or occupiers of self-catering properties must prove an intention let for 140 days in the year and evidence of actual letting for 70 days.” Whilst the SAA welcomes the initiative to address this area of potential tax avoidance, it notes that this is something of a departure from previous practice. In other aspects of rating, Local Government has powers to grant relief, but does not have powers to directly determine which subjects should be assessed for non-domestic rating and which subjects should be liable to pay council tax. If exercised this provision will confer that power upon
Councils within the bounds of the criteria set. For this reason the SAA would recommend that the exercise of that discretion should require a policy decision of the Council.

Each transfer of a subject between the Valuation Roll and Council Tax Valuation list will require a degree of data capture, valuation and administrative processes, and will give rise to the possibility of appeals. The SAA would wish to ensure that such policy decisions are not subject to frequent change and would request that clear criteria are established as to when this power may be exercised and whether the power can be applied retrospectively or not.

The SAA notes that the examples given in the Policy Memorandum are transient in nature – ferry service breakdown, flooding or landslide, and that these would not appear to cover a situation where, e.g. in an island situation or very remote area, the letting season is not as long as 70 days. Clarity as to the policy intention on this aspect would be welcome.

S6 **Valuation Notices**

The SAA welcomes the initiative to make more information available to ratepayers when they receive details of their rateable value at each revaluation.

The SAA has, through its consultation framework, engaged with ratepayer organisations and representative bodies to ascertain that the focus of additional information to be provided relates to the details of those properties used as a comparison in rental valuations (subject to addressing confidentiality concerns). However, the SAA has some concern that the proposed provision requires this information to be included within a paper Valuation Notice (or in certain circumstances in electronic form of a Valuation Notice). The SAA considers that, in many cases, it will be unfeasible or prohibitively costly to include such information within a paper Valuation Notice. The SAA would suggest that this type of material is more readily displayed on the Assessors’ Portal (website) and that a link to this information should be provided on a paper Valuation Notice should one require to be issued.

In this context, the SAA notes that, whilst provision is made for Ministers to prescribe the information to be contained in the notice, there appears to be no express provision for prescribing that information is made available in different ways. It may be helpful if the wording of this section could include that option.

In general, the SAA would wish to support and deliver on the digital agenda and would recommend that digital communications are promoted throughout the Bill. It would be helpful if at each stage where communication with ratepayers is required the principle of digital by default is adopted. Specifically, in terms of Valuation Notices the SAA considers that the requirements for the issue of notices by email under S2ZB are overly burdensome and not very practical.
Proposals to alter; and appeals against, valuation roll

The SAA recognises that it will be necessary to significantly overhaul and streamline the appeal procedures. The current appeal volume of circa 80,000 appeals across Scotland at each revaluation is unsustainable in the context of three yearly revaluations.

In particular, the introduction of a two stage process (a proposal being lodged with the Assessor followed by an appeal to the Valuation Appeal Committee / Tribunal Service) is anticipated to be more complex and administratively burdensome. The transfer of the existing Local Valuation Appeal Panels to the Scottish Courts and Tribunal Service, which is currently scheduled for 1 April 2022, is likely to exacerbate that position further. At this stage details of how the Tribunal Service will deal with these appeals are not available. However, the manner and the timescales in which the Tribunal Service deals with these appeals will be key to the success or otherwise of the move to three yearly revaluations.

The SAA notes that there are no measures contained within the Bill that will reduce the overall volume of proposals / appeals. Rather, the measures set out in S3, S4, S5 and S19 of the Bill suggest that there is likely to be an increase in the total number of proposals / appeals. Whilst the SAA understands that consideration is being given to the role of proposals within the public sector, other measures such as prohibiting proposals being lodged for subjects which are in receipt of 100% relief or payment of a fee when lodging a proposal are not included within the Bill. In addition, the SAA believes that the lodging of a proposal should be prohibited where the ratepayer has failed to provide meaningful information in response to an information notice served by the Assessor.

The SAA also believes that, in the context of three yearly revaluations, provision for alterations to entries in the Valuation Roll and for the lodging of proposals / appeals should be limited to changes in the physical circumstances of the property only. All other matters regarding economic changes or changes in the wider environment should be addressed at the next three yearly revaluation.

The SAA would make the following additional comments on the detailed provisions of the Bill:

- The SAA notes that there is no guidance within the bill as to how “complaints” about entries in the valuation roll should be dealt with. The SAA would recommend that complaints are subject to the proposal process in the same way as appeals.

- The SAA is keen to promote the concept of pre agreements with the proprietor, tenant or occupier of a property as to what the rateable value of the subject should be before it is first entered in the Valuation Roll, or before an entry is altered in the Roll or before a revaluation comes into force. This process would provide greater certainty to ratepayers...
regarding their rating liabilities and greater certainty to the government regarding rates income. However, it would be appropriate to include a restriction preventing proposals being lodged where the Assessor and the proprietor, tenant or occupier has reached such a pre-agreement.

- There are a number of issues of detail within the proposed wording of S3ZB of the 1975 Act that the SAA consider could be reviewed to ensure that any ambiguity is removed.

S8 Proposals and appeals: consequential modifications

The SAA has no comments on this section of the Bill.

S9 New and Improved Properties – rates relief

The SAA has no comments on this section of the Bill.

S10 Charitable Relief – independent schools

The SAA has no comments on this section of the Bill.

S11 Power to reduce rates for certain organisations – guidance

The SAA has no comments on this section of the Bill.

S12 Non-use or underuse of lands and heritages

The SAA has no comments on this section of the Bill.

S13 Failure to pay instalments

The SAA has no comments on this section of the Bill.

S14 Assessor information notices

The ingathering of accurate information in a timeous fashion is absolutely fundamental to the ability of the Assessor to make accurate entries in the Valuation Roll. The ability to make accurate entries in the Valuation Roll is, in turn, absolutely essential in order to provide certainty of rates liabilities to business, to reduce the risk of income loss to Government and to reduce the number of appeals. These procedures underpin the very integrity of the rating system.

The SAA therefore welcomes the introduction of powers for Assessors to levy civil penalties. However, the SAA would prefer that civil penalties were
introduced in addition to, rather than a substitute for, the existing offence. The importance of information gathering to the integrity of the process is such that all possible tools to ensure early and accurate provision of information should be available to Assessors, including the prospect of a criminal prosecution.

The SAA also welcomes the early introduction of this section of the Bill, which is intended to come into effect prior to the “tone” date for the 2022 revaluation (i.e. 1 April 2020 - the date at which levels of value are to be based). This will be essential in order to ensure that the Rateable Values ascertained for the 2022 revaluation are as accurate as possible.

With regard to the terms of the proposed section, the SAA would make the following comments:

- The specific terminology used in S14(2) relates to information reasonably required for the purposes “of valuing the lands and heritages referred to in the notice”. The SAA considers that this term is unduly restrictive. Provisions that are more comprehensive are available in relation to Council Tax through Section 90 of the Local Government Finance Act 1992 and in relation to Electoral Registration through Section 23(1) of the Representation of the People (Scotland) Regulations 2001. The SAA would request that wording such as “information reasonably required for the purposes of maintaining the Valuation Roll under the Valuation Acts” is utilised.

- The SAA consider that a time limit of 56 days for response to an information notice is too long. If the information is not provided after 56 days a further 28 days becomes available to the ratepayer before the penalty must be paid. If an appeal is made to the Valuation Appeal Committee at the end of that 84 day period the procedure may be further significantly delayed whilst an appropriate hearing is convened by the Valuation Appeal Committee. Should such an appeal be successful, the Assessor will require to start the process again from the beginning with a different person. The SAA would prefer that the initial period for the return of information in response to a notice is reduced to 28 days.

- The SAA has a significant concern regarding S14(4), which excludes a person from providing anything in respect of which a claim to confidentiality of communications could be maintained in legal proceedings. It is understood that this provision is intended to apply legal privilege where a notice is sent to a lawyer. However, it is not clear how this provision will be restricted to that situation. In practice leases routinely contain standard confidentiality clauses, and the SAA is concerned that builders, developers, agents or other contractors could claim confidentiality under the terms of the lease or contract. Further, leases and other relevant documents may require to be sourced from the ratepayer’s lawyers who, presumably, may simply refuse to supply these on the grounds of confidentiality. The SAA would wish to work with officials to ensure that the impact of this subsection does not mitigate against effective use of the provisions.
• As noted under S7 above, the SAA believes that parties who have failed to respond meaningfully to a validly served Assessor’s Information Notice should be unable to lodge a proposal against the rateable value of the property in the Valuation Roll.

S15 Local Authority information notices

The SAA has no comments on this section of the Bill.

S16 Duty to notify change of circumstances

The SAA notes that this section of the Bill imposes a duty on ratepayers to notify the local authority of any “relevant change in circumstances”. A relevant change in circumstances includes, amongst other things, a change in the circumstances of “… the lands and heritages…”. Physical changes to the lands and heritages are matters that should be addressed to the Assessor in order that the Valuation Roll may be altered as required. The SAA would therefore suggest that this section should be clarified to make this position clear.

S17 Offences in relation to information notices and notifications under S16

The SAA notes that this section creates an offence (on summary conviction to level 3) of knowingly providing false or misleading information to an Assessor or local authority. However, it does not include the non-provision of information requested. As referenced above, the SAA would prefer that non-provision of information reasonably requested was retained as an offence.

S18 Civil Penalties for failure to comply with Assessor information notices

As noted above, the SAA welcomes the introduction of civil penalties for failure to supply meaningful information reasonably requested, notwithstanding that this will present some challenges.

The SAA notes however that the upper penalty limit (equivalent to the Rateable Value of the property) will be inapplicable if the subject has not been entered in the Valuation Roll at the date the notice is served – for example a specialised building such as a power station or hospital under construction. In those circumstances, it would appear that only the upper limit of £500 would apply. This very low level would be entirely inappropriate for developments that may have significant Rateable Values when entered in the roll.

The SAA also has a concern that the reference at S18(1) to “person” should include both private and limited companies, trusts, charitable organisation and all forms of corporate organisations.

S19 Penalties under S18: appeals and enforcement
The SAA notes that this is an entirely new procedure. The effectiveness of this procedure will be heavily dependent upon the support of the Local Valuation Appeal Panels (soon to be replaced by the Scottish Courts and Tribunals Service) particularly in terms of what is considered to be a reasonable excuse for non-provision and the time taken to process appeals against civil penalties.

For the reasons set out above, the SAA would request that provision is made to enable a review of the effectiveness of the procedure to take place at an appropriate interval after its introduction along with provision to amend the procedure if it is found to be ineffective.

S20 Civil penalties for failure to comply with local authority information notices and failure to notify changes

The SAA has no comments on this section of the Bill.

S21 Penalties under S20 – appeals and enforcement

The SAA has no comments on this section of the Bill.

S22 S19 & 21: consequential modifications

The SAA has no comments on this section of the Bill.

S23 Anti avoidance regulations

The SAA has no comments on this section of the Bill.

S24 Meaning of advantage

The SAA has no comments on this section of the Bill.

S25 Non-domestic rates avoidance arrangements

The SAA has no comments on this section of the Bill.

S26 Meaning of artificial

The SAA has no comments on this section of the Bill.

S27 Procedure for anti avoidance regulations

The SAA has no comments on this section of the Bill.

S28 Interpretation

The SAA has no comments on this section of the Bill.

S29 Ancillary provision
The SAA has no comments on this section of the Bill.

S30  **Commencement**

The SAA has no comments on this section of the Bill.

**Conclusion**

The SAA welcomes many features of the Bill and looks forward to working with the Parliament, and with officials, to ensure that the necessary administrative procedures can be implemented effectively and efficiently.