LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE
CALL FOR VIEWS ON THE NON-DOMESTIC RATES (SCOTLAND) BILL
SUBMISSION FROM THE SCOTTISH BEER AND PUB FEDERATION

The Committee welcomes views on:

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

The Scottish Beer and Pub Association welcomed the Barclay Review and the Government’s commitment to review how Non-Domestic Rates operate in Scotland. We also welcome and appreciate the opportunity to engage with the committee and bill at this stage. Whilst we welcome the bill, we continue to have some concerns with certain aspects with the legislation as currently proposed.

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

We acknowledge the difficult task of trying to balance the views and wishes of all stakeholders and businesses in trying to provide a system which is robust, adaptable, whilst also simultaneously supporting growth and protecting local government finance.

Our prime concern is the amount of time it has taken from the publication of the Barclay Report (August 2017) to the introduction of legislation. With the next revaluation taking place in 2022, we believe it is imperative that Government provide clear and early guidance to all stakeholders and their representatives, including trade associations, on how they envisage the next revaluation taking place.

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.

The Scottish Beer and Pub Association supports the move to a 3 years cycle, we believe this will ensure rates are more in line with market conditions and provided added certainty for ratepayers. The previous seven-year gap between valuations and subsequent issues highlight the importance this.

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 Scottish Beer and Pub Association welcomes the relief and believe that it can be utilised by the pub and brewing industries to ensure businesses remain competitive,
continued high standards and the ability to grow their businesses. Continued investment in the industry is much needed and this provides a welcome incentive for that. Due to the nature of how pubs are valued (turnover, not square footage), it often means that any investment in the business can result in higher valuations, when other businesses making the same improvements, but rated on floor space would not. Whilst this does not complete address this issue, it is a positive and business friendly message which is appreciated by industry.

We do however believe that that there needs to be clear guidance and definitions provided with the legislation as to what will constitute a ‘improved’ property. For our businesses, improvements to the property could be through the addition of a kitchen facilities, new equipment, energy-saving measures, improved customer facilities or a range of other measures which might not be immediately apparent. Setting out what would qualify as an ‘improvement’ would ensure greater certainty and confidence for business, whilst alleviating any issues are different interpretations of Secondary Legislation between councils and ratepayers.

We would 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.

Furthermore, we would welcome an appeal route in the final legislation for ratepayers should there be a disagreement or question as to whether the Assessor has marked an entry in the valuation roll correctly.

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).

We would recommend the legislation defining what it considers ‘commercial activity’ in this context to avoid potential issues or confusion.

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.

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.)
Section 6

Subsection (2ZA) (a): Agree this should be implemented.

Subsection (2ZA) (b): Do not believe this should be a discretionary power of the Assessor and this could create 14 different interpretation as to what is to be included on the Valuation Notice. We believe this should be clear and consistent across the country.

Subsection (2ZB): We would encourage the development of the SAA portal in this process. The more information that can be made available online only creates a transparent system which would also ease the time-burden of dealing with rates. 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.

Section 7

Subsection 3ZA(4) paragraph (a): The current wording of the Bill implies that a Proposal must be made in writing via post and does not state if electronic submissions are allowed. In today’s digital economy, electronic communication should be 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.

It also sets out in the explanatory note that the ratepayer at submission of a proposal must submit their alternative value and including associated information. It is important to note that 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, Receipts or Contractors approach, the information will likely be derived from a number of different sources.

Subsection 3ZA(5): As previously referenced, we would recommend that the final Legislation contain requirements for the Assessor to respond within a set period amount of time on receipt of a valid proposal. This would provide fairness, greater certainty for ratepayers and ultimately work towards the aims identified by the Government.

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 this will be provided at the time of information request 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 echo recommendations by others industry for a minimum “lead in time” of 12 months prior to any changes brought into force.

Subsection 3ZB(1)(b)(ii): States 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 which would 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 should be not excluded from the Appeal grounds to the Tribunal.

Subsection 3ZB(2)(b): We disagree and believe this 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.

Subsection 3ZB(3): We disagree with this subsection and our disappointed that it remains inside the bill. It suggests that rateable values can be retrospectively increased by a valuation committee hearing. We believe this is counterintuitive to the principle and objectives of the original 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.

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

The SBPA acknowledge the reasoning and principle of this being contained within the draft Bill for Local Authorities to implement debt recovery quicker. However, we believe that this must go both ways and would argue for the inclusion of a response time for refunds from Local Authorities to ratepayers. We concur with colleagues that 31 days from settlement would be a suitable and sensible timeframe.

Furthermore, 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.

The SBPA acknowledge and agree that better transparency and sharing on information between ratepayers and Assessors. The lack of information in the 2017 revaluations resulted in inaccurate valuations for many properties in our industry and was acknowledged by government with the 12.5% transitional relief.

However, we fundamentally disagree with the ability given within Section 14 for the Assessor to be able to serve information request notices on persons other than those immediately connected to the property. We believe that Assessor information notices should be solely issued to the property owner, tenant and occupier. These parties then have the option of instructing a third party to act on their behalf. Seeking information from third parties which have no direct association with the property raises serious questions of accountability and increases the potential for errors and abuse.

There is a lack of 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 consistency, clarity and a minimise potential errors.

Similarly, we are concerned that penalties may become a revenue earner leading to significant unfairness for what can be clerical or administrative errors on unsuspecting ratepayers. Whilst the requests can appear straightforward,

This is not always the case. For Scotland’s pubs and bars, rated hypothetical achievable turnover and can include different provisions within individual contracts to incentivise tenants – this can include a variety of benefits which would be deemed commercially confidential and could put those businesses at a significant disadvantage to their competitors.

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.

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?

Non-Domestic Rates remain are frequently identified by our members and their tenants as being a major financial stumbling block for our nation’s pubs and bars. The 2017 revaluation resulted in a clear imbalance, which seen our sector negatively impacted with higher bills in comparison to other sectors. This is shown in the table below highlighting the average increase for different sectors in Scotland.

We welcomed the Scottish Government acknowledgment of an error and subsequent 12.5% transitional relief for the hospitality industry. This remains only a temporary fix and we firmly believe that greater reform of business rates and the hospitality industry is needed.

<table>
<thead>
<tr>
<th>Sector</th>
<th>Pre revaluation</th>
<th>Average bill 2019/2020</th>
<th>Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amusement Arcade</td>
<td>16,499</td>
<td>13,218</td>
<td>-20%</td>
</tr>
<tr>
<td>Bank</td>
<td>22,951</td>
<td>18,017</td>
<td>-21%</td>
</tr>
<tr>
<td>Betting Shop</td>
<td>5,522</td>
<td>4,542</td>
<td>-18%</td>
</tr>
<tr>
<td>Bowling Alley</td>
<td>68,654</td>
<td>67,638</td>
<td>-1%</td>
</tr>
<tr>
<td>Brewery</td>
<td>12,150</td>
<td>15,568</td>
<td>28%</td>
</tr>
<tr>
<td>Café</td>
<td>7,045</td>
<td>7,389</td>
<td>5%</td>
</tr>
<tr>
<td>Hotel</td>
<td>39,672</td>
<td>55,161</td>
<td>39%</td>
</tr>
<tr>
<td>Post Office</td>
<td>3,959</td>
<td>3,623</td>
<td>-8%</td>
</tr>
<tr>
<td>Pub</td>
<td>13,104</td>
<td>15,867</td>
<td>21%</td>
</tr>
<tr>
<td>Restaurant</td>
<td>16,155</td>
<td>18,575</td>
<td>15%</td>
</tr>
<tr>
<td>Shop</td>
<td>7,993</td>
<td>6,769</td>
<td>-15%</td>
</tr>
<tr>
<td>Snooker Hall</td>
<td>9,180</td>
<td>8,726</td>
<td>-5%</td>
</tr>
<tr>
<td>Supermarket</td>
<td>207,828</td>
<td>229,729</td>
<td>11%</td>
</tr>
<tr>
<td>Take away</td>
<td>1,203</td>
<td>831</td>
<td>-31%</td>
</tr>
<tr>
<td>Tea room</td>
<td>120</td>
<td>-</td>
<td>-100%</td>
</tr>
<tr>
<td>Grand Total</td>
<td>13,785</td>
<td>14,626</td>
<td>6%</td>
</tr>
</tbody>
</table>

Furthermore, we would strongly encourage the Government to reduce the large business supplement burden, as recommended in the Barclay review to bring this in line with England. The current policy disincentivises large companies investing in Scotland and impedes growth, while also raising questions of sustainability with regards to the tax base.