



LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

AGENDA

18th Meeting, 2019 (Session 5)

Wednesday 19 June 2019

The Committee will meet at 9.45 am in the James Clerk Maxwell Room (CR4).

1. **Decision on taking business in private:** The Committee will decide whether to take item 4 in private.

2. **Non-Domestic Rates (Scotland) Bill:** The Committee will take evidence on the Bill at Stage 1 from—

John Edward, Director, Scottish Council of Independent Schools;

Liam Harvey, Headmaster, St Mary's School, Melrose;

Colin Gambles, Rector, Hutchesons' Grammar School;

Martin Tyson, Head of Casework, Scottish Charity Regulator (OSCR);

and then from—

Cheryl Hynd, Customer Manager - Transactions, and Fiona Law, NDR Team Leader, City of Edinburgh Council;

Brian Murison, Revenues Manager, The Highland Council;

Jack Orr, Senior Property Executive, West Lothian Council.

3. **Subordinate legislation:** The Committee will consider the following negative instrument—

The Licensing (Personal Licenses: Supplemental and Transitional Provision) (Scotland) Order 2019 (SSI 2019/177).

4. **Non-Domestic Rates (Scotland) Bill:** The Committee will consider the evidence heard earlier in the meeting.

LGC/S5/19/18/A

Peter McGrath
Clerk to the Local Government and Communities Committee
Room T3.40
The Scottish Parliament
Edinburgh
Tel: 0131 348 5232
Email: peter.mcgrath@parliament.scot

The papers for this meeting are as follows—

Agenda Item 2

Note by the Clerk

LGC/S5/19/18/1

PRIVATE PAPER

LGC/S5/19/18/2
(P)

Agenda Item 3

Note by the Clerk

LGC/S5/19/18/3

Local Government and Communities Committee

18th Meeting 2019 (Session 5), Wednesday 19 June 2019

Stage 1 Scrutiny of the Non-Domestic Rates (Scotland) Bill - Note by the Clerk

Introduction

1. The Non-Domestic Rates (Scotland) Bill was introduced in the Scottish Parliament on 25 March 2019 by the Cabinet Secretary for Finance, Economy and Fair Work. It is a Scottish Government Bill. The Bill and accompanying documents can be found [here](#). The Committee, which is the lead Committee at Stage 1, will hold its third evidence session on the Bill on 19 June 2019 with witnesses from the Scottish Council of Independent Schools; two independent schools (St Mary's School, Melrose and Hutchesons' Grammar School); and the Scottish Charity Regulator (OSCR) and thereafter with representatives from City of Edinburgh, Highland and West Lothian Councils. Written submissions from those attending are attached at Annexe A.

Non-domestic rates

2. Non-domestic rates, also sometimes called business rates, are a tax collected by local authorities to help pay for local services. They are levied on non-domestic properties. In terms of revenues raised, they are the second largest tax in Scotland and, overall, the second largest source of revenue for local authorities, just ahead of council tax, although the percentage varies across councils. Properties are valued by assessors, with the Scottish Government setting an annual "poundage" rate: a multiplier, that together with the rateable value, determines the amount to be paid on each property. A number of reliefs and exemptions are potentially available depending on the nature of the property or the activity being carried out, whilst larger businesses will pay a rates supplement.
3. More information on the NDR system can be found in the Scottish Parliament Information Centre [briefing](#) on the Bill.

The Bill

4. The Bill implements most of the recommendations of the 2017 [Barclay Review](#) that were thought to need primary legislation. The remit of the Barclay Review was to "make recommendations that seek to enhance and reform the non-domestic rates system in Scotland to better support business growth and long term investment and reflect changing marketplaces, whilst still retaining the same level of income to deliver local services upon which businesses rely."
5. Reforms in the Bill include:
 - changing the cycle of property revaluations from every 5 to every 3 years;
 - increasing the relief available to properties that have undergone improvement or expansion;

- reforming the rate revaluation appeals system to try to cut down on speculative appeals and enable earlier resolution;
 - removing charitable relief from most independent schools;
 - measures to enable more effective debt recovery by local councils;
 - measures to address general avoidance and close known loopholes.
6. More information on the detail of the Bill is set out in the Scottish Government's [policy memorandum](#). Paragraph 5, states that the three underlying policy aims are:
- to deliver a non-domestic rates system designed to better support business growth and long-term investment and reflect changing marketplaces;
 - to improve ratepayers' experience of the ratings system and administration of the system; and
 - to increase fairness and ensure a level playing field amongst ratepayers by reforming rate reliefs and tackling known avoidance measures.

Stage 1 so far

7. The Committee has held two formal evidence sessions with policy experts so far. On 22 May it held an evidence session with Fife Council, COSLA, the Institute of Revenue Rating and Valuation and the Society of Local Authority Chief Executives, and on 29 May it took evidence from the Scottish Assessors' Association. The focus in these sessions was enforcement and collection of the tax. On 12 June, Committee Members also visited George Watsons College to meet with a representatives of number of independent schools to hear concerns about the proposal in the Bill to remove charitable relief from the sector.

Evidence session on 19 June and next steps

8. The focus of discussion with the first panel will be the impact of the proposal in the Bill to remove the right to charitable relief currently available to mainstream independent schools. This was the most commented upon aspect of the Bill in the Committee's [call for evidence](#), which closed on 30 May 2019.¹ Representatives from each council are likely to discuss how the Bill will impact on councils' current powers and duties within the NDR system, for instance whether it will make the tax easier to administer and collect in the council area, will help close known tax loopholes and will add to or reduce current administration.
9. As the lead Committee at Stage 1, it falls to the Committee to gather evidence and information on the Bill and to report to the Parliament on whether to agree to the general principles of the Bill. There will then be a debate of the whole Parliament at Stage 1 on whether to agree to the general principles. The Stage 1 deadline is 11 October 2019. The next evidence session will be on 26 June, when the Committee will hear from a panel of business tax ratepayers.

¹ All submissions accepted as evidence are available at:
<https://www.parliament.scot/parliamentarybusiness/CurrentCommittees/111709.aspx>

ANNEXE A

Written Submission from the Scottish Council of Independent Schools (SCIS)

SCIS is the membership body for 74 independent mainstream, additional support needs, and specialist schools in Scotland.

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

The Government is committed to "*a non-domestic rates system designed to better support business growth and long-term investment and reflect changing marketplaces.*"

However, Section 10 of the Bill directly contradicts the ambition to make Scotland a better place to do business, by placing successful not-for-profit Scottish educational institutions at a two-fold (see below) competitive disadvantage to England, Wales and the wider world – at a time when the global market for school-age education is expanding exponentially.

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

The consultation did not address any of the wider context relating to independent schools:

- it did not consider the existing OSCR test – established by the Scottish Parliament - that was applied specifically to independent schools;
- it did not consider the implications of creating a unique, second tier of charities within Scotland or GB;
- it was supported by a BRIA which made a broad assumption about the cost to the sector, which itself ran contrary to the way schools were tested for their public benefit and sought to minimise the impact on individual schools;
- it is a matter of public record through FOI that neither OSCR, nor some departments of the Scottish Government, were convinced of the wisdom of creating a small, anomalous group of charities - one that had already been singled out for testing. No consideration of, or reflection on, that advice appeared as a result of the consultation process;
- the consultation, and the period since the Government's statement in December 2017, involved no data gathering from the independent sector, no direct contact with the schools involved, and made no reference to any of the data supplied by SCIS to the Scottish Government in advance of the December 2017 decision.

In addition, the **Financial Memorandum** attached to the Bill assumes no cost to the taxpayer of the proposal, and showed that the impact on schools would now be more

than £7 million per year, rather than the £5 million proposed by the Barclay Review and put to public consultation.

Every penny of the additional tax burden will have to be derived from existing parental fee income, salary costs of the staff roll, existing school assets, or from the money allocated to means-tested fee assistance as part of the Public Benefit test. Any fee rise will affect those paying full fees but also those receiving up to 80% means-tested fee assistance, and every pupil leaving the sector will be a cost to the taxpayer of c.£6,500 (at Government figures), added to the impact on class sizes, catchment, teacher numbers etc.

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.

If the revaluation is to become three yearly from 2022, then any increases following from the Barclay proposals – if accepted - should at the very least await that 2022 revaluation. The proposals have been put forward too late for any bodies to appeal their rates valuation in the current period. As such, those bodies should undergo an up-to-date revaluation before rate rises are implemented.

Schools are locked into budgetary cycles of at least 5-6 years, that being the length of a secondary school career for a pupil on means-tested fee assistance. A five-fold, one-off increase in business rates, in a very short timeframe, will have a disproportionate effect on school finances, scrutinised as they are by the Charity Regulator.

Sections 6-9, which aim to reduce the current high rate of valuation appeals, which the Scottish Government perceives as speculative.

See response to Section 2.

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.

The Bill enshrines two fundamental misconceptions – that local authority schools “pay” rates in the same way independent schools pay reduced rates, and that independent schools can and should be treated differently from all other registered charities.

On the first point, no local authority Head needs to know their school’s **rateable value**. That value is a notional one, allocated then budgeted away at source by a local authority that pays all the running costs of that school. Those same Heads or

their business managers will never need to consider, as every independent school now will, what cost-cutting steps they would take to address any rise or fall in that notional rate – because they will never have to do it. The Government has used an argument of parity which it does not extend elsewhere.

Parity is not considered in relation to other **registered charities** either. The passage of the Charities and Trustee Investment (Scotland) Act 2005 through the Scottish Parliament, steered by a previous Communities Committee, established that independent schools would remain on the charity register only if they passed a public benefit test devised by the Parliament and confirmed by the Bill's passage in June 2005. Passing that charity test involved considerable work by the schools and the regulator from 2007 to 2014². This Bill now seeks to make a further exception for those schools that passed the test, while making no such demands of thousands of other registered charities that may charge fees, that may restrict membership, that exist to “advance education” and/or which parts of society may not support for personal, political, religious or other reasons.

The principle on which charities are afforded relief from business rates is long established. In a 1959 Report, the Committee on the Rating of Charities and Kindred Bodies commented on the position with a focus on England and Wales, but setting down principles which were adopted across Great Britain. It stated that it would require a strong argument to deny one group of charities relief, while all other charities would be treated more favourably. There is no logic in singling out one type of charity for a denial of relief while taking a different view of both Universities and ALEOs, and not considering independent health and care providers.

Independent schools are expected to deliver the same level of means-tested widened participation, and sharing of facilities, staff and resources – all of which have flourished through the public benefit demands of the charity test - while the financial model on which those projections, and supported by previous legislation, is pulled apart.

The proposal separates **additional support needs** from mainstream schools. It does so in the very same year that the Scottish Government has published further guidelines on providing education in a mainstream setting. While all will agree that special needs schools, including independent ones, are an unalloyed good for Scottish education provision, creating separate tax treatment makes a distinction in their worth and worthy, precisely when mainstream independent schools have very substantial learning support and mainstreaming commitments (in some cases bigger than the entire special needs sector).

² <https://www.oscr.org.uk/about-oscr/reviews-of-charitable-status/#review-of-schools>

Exactly the same dilemma comes about when creating an exemption for any independent school where all the pupils are selected “on the basis of **musical ability or potential**,” and follow a curriculum which includes “classes aimed at developing musical excellence”. Music instruction and provision is flourishing in the independent sector, at a time when its absence elsewhere makes regular headlines. In most independent schools all pupils learn music and most can be graded in that subject.

As a result of the Barclay Review, allowing for 100% rates relief to private, profit-making providers at **early years/nursery** level but not stand-alone independent school nurseries is inconsistent, and an imbalanced use of public support. Withdrawing that relief from pupils at the age of 5 who continue to independent school makes no sense in terms of equity, opportunity or parity. Nor does reintroducing that same public support at the age of 16-18 should those same pupils continue to further or higher education. If schools provide and advance education and care, as they do, they should not be separated arbitrarily from any other body doing the same by an Act of the Scottish Parliament.

If the Bill is genuinely motivated by equity and parity with state schools, that must work both ways. Parity would see the Scottish Government and Parliament ask HMRC to show parity in **VAT treatment**, extending VAT exemptions that are only partial for independent schools to full exemption as with local authority schools. Education is an exempt supply and so no VAT can be levied on school fees but many costs incurred by schools attract VAT. State-maintained schools, however, benefit from an exemption by virtue of their statutory obligation to deliver education and so all VAT can be recovered on relevant expenditure.

As such, if the Government wishes both sectors to operate under identical conditions, they should balance the impact of VAT recovery. After 2010 the UK Government brought in specific provisions to ensure that Academies (legally charities and not statutory bodies) could reclaim VAT, a route the Scottish Government could pursue for independent schools in tax equality was its aim. The VAT relief for any state school itself exceeds the amount the Government is seeking to raise from independent schools.

The expectation that such **school resources and facilities** should - rightly - be as widely used as possible - runs contrary to the decision to remove business rates relief from those same schools. This is at a time when sports training provision is at a premium, and fully-maintained grass pitches, all-weather pitches, swimming pools and other facilities are increasingly hard to access and afford. When local authorities are seeking to increase the public contribution to access their own facilities - which only recently sought charitable status - it is manifestly counter-productive to the wider health needs of the nation to exclude other facilities in the same way, or to force them, by paying full business rates, to provide access to their facilities at more commercial rates to recoup the added overheads.

If independent schools are to be charged non-domestic rates, like genuinely private, commercial businesses, is it the expectation that they now rent out their football, hockey and rugby pitches; their music facilities; swimming pools; their shared careers and subject events; professional staff and all other local activity at commercial rates? The Bill's Policy Memorandum recognises that "*The Scottish Government's policy intent here is to continue to support, and encourage local authorities to support, affordable community based facilities that give people the chance to take part in sporting activities thus contributing to (amongst other aims around an active Scotland) the Scottish Government aim to cut physical inactivity in adults and teenagers by 15% by 2030.*" Section 10 would work against that.

There is nothing objectionable about holding bodies that educate this nation's, and others, young people to account. It is highly problematic and contradictory to do so by singling out 50 bodies from 24,000 others, while failing to address any of the inherent contradictions. Every child removed from an independent school if fees rise will be an additional cost and space for Scottish local authorities to deal with, just as every staff member lost to rising costs will be an expensive loss for Scotland – the draft Bill makes no mention of them.

The Scottish Parliament was the first to introduce a widening access measure for independent schools in 2005. This Bill runs the risk of narrowing it again.

Written Submission from Liam Harvey, St Mary's School, Melrose

I write to provide evidence of the contribution made by St. Mary's Prep School, to the local community and to a much wider area covering the South of Scotland and North Northumberland.

Removal of rates reduction for independent schools, such as St. Mary's, will inevitably deprive many hard-working, dedicated parents of the choice to educate their offspring in an environment that provides their children with a better chance of fulfilling potential. This cannot be good for young people, let alone the future of the country, and it certainly will not alleviate the pressures on our already underfunded, overcrowded local authority schools from which so many of our pupils arrive.

As an independent prep school, we strive to provide a quality of learning to young people of school age up to thirteen years that in an ideal world would be accessible to all. In order to provide an average academic class size of fourteen pupils, and an average adult to pupil ratio of 1:7, we operate independently from Scottish Government.

St. Mary's class sizes, level and quality of support, both in and out of the class lessons, provide young people with a much stronger chance of fulfilling their potential. This in particular applies to young people who have found it impossible to cope in local authority schools' composite classes of over thirty pupils, with intermittent and ever decreasing Additional Needs Auxiliary support, despite the most outstanding teaching provided by so many of our colleagues in their schools under these extremely difficult circumstances.

St Mary's School employs 54 staff, and educates 200 pupils whose parents have chosen to forego the local authority education for their children, already paid for through the taxation system. A significant majority of St. Mary's parents are striving to afford the independent education they have chosen for their children, whether they are paying 5%, 50% or 100% of the termly fees we charge to provide an education that every young person deserves.

My own philosophy, formed when teaching in the local authority sector for the first twelve years of a thirty-year career so far, is based on first hand 'coal face' experience teaching across both the secondary, and primary age ranges in inner-city and rural locations.

Parents who recognise the value of appropriate class sizes and levels of support, are welcome to come and discuss the possibility of a St. Mary's education for their children, irrespective of their total household income. Any parent willing to invest a third or more of their disposable income whilst foregoing the state education for which their taxes already pay, demonstrates to me that they too believe in the educational

provision we offer, and the school's Bursary Committee strives to help me develop educational possibilities for their children.

Here in the Scottish Borders, many local businesses benefit from the school, the pupils, their parents, and countless visitors we invite to attend school related functions that run throughout the year.

We provide a catering service that prepares all meals on campus made from fresh, local produce. A three course lunch is provided to all pupils, staff and guests five days a week and our boarding pupils receive a cooked breakfast twice a week and a continental breakfast twice a week. We have strong and positive relationships with our local suppliers who are equally accommodating when working with us to meet individual pupils' dietary needs.

In the winter months at the school's expense, our estates manager treats the roads, paths and play areas we have on campus, whilst within metres of our school gates, employees of Scottish Borders Council strive to do the same on all paths and surfaces used by Melrose Primary School. SBC operate to make paths, playgrounds and roads safe for children at school, but not if they attend St. Mary's School. This is another small but important example of hidden expense not considered by those who believe rate relief should not be afforded to independent schools, despite them having already passed the Charities Test.

Our curricular and extra-curricular activities include the hiring of local facilities such as Tweedbank Astro turf, Galashiels Swimming Pool, Melrose Tennis courts and The Queens Centre indoor sports area. When paying for the use of these facilities, the school is contributing to the running costs and upkeep of these local authority amenities.

On campus here at Abbey Park, the school hosts our annual science festival 'Bang Goes the Borders'. We welcome over one thousand visitors from the Scottish Borders and further afield take part in science workshops run by science related businesses, science research centres, universities, colleges, senior schools from both the local authority and independent sector and science enthusiasts. Entry is free of charge and a goodie bag is provided for all children who come along. This September will see the ninth event the school has put on and its popularity is anticipated to be as strong as ever.

An annual Teamwork and Leadership challenge is also organised and hosted by the school in May. Participants include up to twelve local primary schools, with invitations sent out to more than sixteen each year. Like the 'Bang Goes the Borders' science festival, this free event is extremely popular. The day involves companies who provide activity stations such as AR Entertainments who provide a climbing wall with qualified instructors and iZorbs who run a fun zorb racing station. All other activities; drama,

sports, art, treasure hunt and teamwork activities are run by St. Mary's teaching and support staff.

These on-going initiatives demonstrate our strong relationship with the local community as do the many small but significant gestures detailed in the following list;

- Minibus use for transportation of local clubs and societies.
- Choir performances at church concerts, charity events, local nursing homes and local festival celebrations.
- School facility use for local athletics clubs, parking for disabled visitors to The Borders Book Festival, classroom use for Operations HQ at Melrose 7s, extra catering space for Melrose 7s and extra parking for players and officials of Melrose RFC on match days.
- Kindergarten staff host reading days for parents and toddlers.
- Scottish Borders Council senior school pupils join us for work experience.
- Borders College students join us for work experience and practical elements to courses being undertaken.
- Annual charity performance of senior school production.

The school promotes charity fund raising endeavours and in recent months, the St. Mary's community has raised funds for the following;

- The Rowan Bowland Trust
- Hazel's Footprints
- Galashiels Foodbank
- Cash for Kids
- The Margaret Kerr Cancer Care Unit
- The Children's Ward at the Borders General Hospital
- My Name is Doddie
- Down Syndrome Awareness UK
- Book Aid
- McMillan Cancer Care
- Chest Heart and Stroke Scotland
- Clic Sargent
- Borders Children's Charity

Finally, the school has taken a proactive role in a number of environment related initiatives. These include the planting of trees, town and river clean ups, a drive to make Melrose a single use plastic free town, participation and success in RSPB Wild Challenge Award, Woodland Trust Green Tree Schools Award, Forestry Commission Scotland's Finest Woods Award and John Muir Explorer Awards.

As part of the above theme the school is currently working with the following organisations; RSPB, Woodland Trust, Tweed Forum, Borders Forest Trust, Surfers Against Sewage, A Greener Melrose, Plastic Free Borders, South of Scotland Eagle

Project, The Royal Highland Educational Trust and Scottish Borders Council.

This letter is by no means a comprehensive account of St. Mary's School's contribution to Melrose and the wider community, but it covers the main points. The school aims to provide extra facilities for community use in the future and St. Mary's will continue to embrace its place in the town, as part of this close community. Arguably, St. Mary's is contributing more to the community than it has ever done before in the school's 124-year history. I for one am very proud of that and hope that this letter highlights the very strong case for the Non-Domestic Rates (Scotland) Bill to be overturned.

Written Submission from the Board of Governors of Hutchesons' Educational Trust

I refer to the above Call for Evidence and am pleased to provide the following response on behalf of the Board of Governors of Hutchesons' Educational Trust. This is the Scottish-registered charity (charity number SC002922) that runs and operates the Hutchesons' Grammar School in Glasgow (known throughout Glasgow and beyond as Hutchesons' or 'Hutchie'). The Charity's primary purpose is the advancement of education. Our Trust Scheme obligates the Trustees to govern and administer the affairs of Hutchesons' Grammar School. The main aim of our charity is to provide a primary and secondary education for boys and girls between the ages of 4 and 18. We are shortly to extend our nursery and will provide a 3-18 education from August 2019. Section 10 of the Non-Domestic Rates (Scotland) Bill, as drafted will remove our Charity's eligibility to claim charitable relief from non-domestic rates, as we are what is deemed a 'mainstream independent school'.

What does this mean for Hutchesons'?

In simple cash terms, this will see our charity's annual rates bill increase five-fold from £82k to £408k at current rateable values. This is an increase of £326k per annum.

Potential impact on Hutchesons' activities On Bursaries

As a long standing Scottish charity, we are extremely disappointed that in the review, consultation and draft legislation no reference has been made to the public benefit test that we and all other independent schools have undergone. We fully satisfied OSCR as part of their review process, that we passed the Charity Test. We did this by making our facilities available to a range of schools and other community and sporting organisations and by expanding our bursary programme. We are delighted to have significantly grown our means-tested bursary provision over the past ten years. Our Financial Statements and Annual Accounts for y/e 30 June 2018 confirm that we currently have committed £3.84M in current bursary awards to cover the future education of existing recipients. This is a huge commitment by any measure. In 2017/18, the value of our means-tested bursaries, amounted to £854k and there were 129 pupils in receipt of bursary support, representing almost 11% of our School roll. It is particularly noteworthy that we have 38 children (over 3% of our School roll) in receipt of full, i.e. 100%, bursaries.

On Community use of our facilities

We have noted with interest that the Bill's policy memorandum, in reference to rating of sports clubs, mentions the Scottish Government's policy to continue to support, and encourage local authorities to support, affordable community based facilities that give people the chance to take part in sporting activities thus contributing to (amongst other aims around an active Scotland) the Scottish Government aim to cut physical inactivity

in adults and teenagers by 15% by 2030. Sport is a hugely important part of every pupil's education here at Hutchesons'. In addition to that we make a significant annual contribution to our local sporting organisations and clubs. We invested in an all-weather running track and on the back of that, and our other sporting facilities, we have 27 outside sports clubs and organisations, using our facilities each year. (We have another 20 non-sporting, community groups and organisations that use our school facilities, in an average year.)

We are concerned that the removal of our rates relief would force us to increase our charges to such clubs and thereby reduce sports access/involvement. Surely that is an unintended consequence of the proposal on removal of rates relief.

On fees

At committee in December 2017, the Scottish Finance Secretary indicated that he had been advised that the estimated impact on fees paid by parents of children at Scottish schools was over £200 per pupil but that sum could be easily absorbed by parents who chose to pay for their children's education. We disagree. The additional £326k rates cost for Hutchesons' represents 2.4% onto every pupil fee. Our parents are hard-working and sacrifice many things in order to provide their children with the benefit of a Hutchesons' education. We know this because of the increasing number of applications we receive from parents to our means-tested bursary provision (see previous). We are clear that such an increase will cause some of our parents to leave the sector and return to the state sector. With our pupils families coming from across Glasgow and beyond, we are aware that not every local authority would be able to accommodate a major influx of Hutchesons' pupils into the local state sector.

Scottish Government figures indicate that educating a child in a state-maintained school in Scotland costs on average £6,500 (not including some PFI and other costs). Each child removed from Hutchesons' due to increased fees, could therefore be considered an additional cost to the Scottish taxpayer. One way of seeing that is using the Scottish government's own cost of £6,500 per pupil, it would only take 47 Hutchesons' pupils (ie 3.7%) to leave and enter the state sector, for the impact on the Scottish taxpayer to be greater than the extra income that the removal of rates relief would secure. In addition there will be further pressure on class sizes, school buildings, school catchment areas, and teacher numbers and recruitment in the local authorities our pupils come from.

On Fairness

We note that the Barclay Review and Government response both stress the inequity of state-maintained schools paying full rates and independent schools receiving charitable relief, and aim to "increase fairness and ensure a level playing field".

However we would point out that the state school rates valuation is an entirely paper-

based exercise. No new money is raised each year and the staffing or operation of schools is not affected by rate changes in any way. State schools are fully funded, including their nominal rates valuation, via central and council taxation, both of which are charged universally.

In terms of VAT, all state schools receive full VAT exemption as educational bodies, while Hutchesons' exemption is only partial. There has been no debate reflecting this lack of parity between the state and independent school sectors.

In relation to our nursery provision, the Scottish Government accepted the Barclay proposal to extend 100% NDR relief to all nurseries and early years facilities, whether not-for-profit or profit-making. Our own nursery currently provides an education for 4-year-olds and is about to expand to accommodate 3-year-olds. It seems entirely unfair to us that purely because we house our nursery/early years facility in part of our Junior School building with all of the best educational continuity that gives, our charity will pay 100% rates while private, non-charitable and profit-making nursery/early years facilities within a few hundred metres of our School can receive 100% relief.

It is a matter of real concern to us as Trustees, that Hutchesons' Grammar School, along with 55 other independent schools are effectively being 'singled out' to lose rates relief from 24,000 other Scottish registered charitable bodies, not to mention a further 180,000 charities in England and Wales. We question the fairness of this when there remain other fee-charging, restricted admission education charities which continue to attract the rates relief, as we should.

We fully acknowledge that the process of rating revaluation is a well understood one. This Bill proposes a new three-year cycle of rates revaluation starting in 2022. Nevertheless, under this particular part of the Bill, the Government proposes removing Hutchesons' rates relief in April 2020. This means that we will be unable to appeal our rating valuation despite our bill being increased fivefold. Surely it would be fairer to allow us to ensure that Hutchesons' rating valuation is accurate before this fivefold increase is introduced. This would also give us a much longer period to prepare for such a change. We have already flagged up that our budgetary commitment to bursaries is over £3.8M and is effectively made for six years in advance. It appears unjust to make such a major change to Hutchesons' financial position within a year of the Bill being introduced without any mention or consideration of any phasing and/or discretionary relief period.

On the way ahead

We welcome the opportunity to make our own views known regarding the Government's proposals contained within the Non-Domestic Rates (Scotland) Bill. We would strongly encourage the Committee to:

In light of this submission, and that of others in or representing the independent school

sector, reconsider the Bill as currently worded. Specifically to redraft section 10 such that the current charitable benefit of rates relief not be withdrawn from mainstream independent schools, such as Hutchesons’;

Should you wish any further information in relation to our submission, please contact me and I will be happy to assist.

Yours sincerely

Mr John McColgan
Bursar & Clerk to the Governors

Written Submission from the Scottish Charity Regulator (OSCR)

1. Background

The Scottish Charity Regulator (OSCR) is established under the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act) as a Non-Ministerial Department forming part of the Scottish Administration. We are independent of Scottish Government and report directly to the Scottish Parliament every year.

We are the independent regulator and registrar for over 24,000 Scottish charities including community groups, religious charities, schools, universities, grant-giving charities and major care providers. Our work as Regulator ultimately supports public trust and confidence in charities.

2. OSCR's response

Our response focuses on sections 10 and 11 of the Bill:

- 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.

2.1 Independent schools

Our ultimate aim is to underpin public trust and confidence in charities. With this in mind, OSCR has a long held general concern that treating any group of charities in a differentiated way for tax or other purposes, as proposed by the Barclay Review and now the Bill, introduces the potential for confusion in the minds of the public as to what it means to be a charity. There is a long-standing public understanding that all charities will enjoy similar treatment in relation to taxation and in other respects, on the basis that they are all subject to the same statutory test of charitable status. Removal of charitable relief from non-domestic rates from the majority of independent schools has potential to undermine this understanding.

We have concerns about treating any group of charities in a differentiated way for tax or other purposes. Charity regulation in Scotland is comprehensive, all charities enjoy equal status under charity law, which does not place more or less value on different groups of charities. Where it appears that any government policy or new legislation has the potential to have a clear, adverse impact on charities, or a group of charities, and ultimately their beneficiaries we will highlight this. Removal of mandatory and

discretionary charitable tax relief from any charity has the potential to impact on financial viability. These changes may have implications for the charities' beneficiaries and their local communities.

Whilst the consequences for the individual charities in this case of removing charitable tax relief are unknown, we think it prudent to highlight two possible outcomes that are likely to affect beneficiaries:

1. As can be seen in the publicly available annual reports and accounts of the independent schools, and in recent wind-ups and mergers in the sector a number of independent schools are in marginal financial positions. Changes to charitable tax relief to this group of charities has the potential to impact on financial viability, which in turn may affect the funds available for bursary or other assistance payments and have implications for the charities' beneficiaries and their local communities.
2. There is the possibility that some schools may wish to request removal from the Scottish Charity Register under section 18 of the 2005 Act, in effect a voluntary de- registration as a charity.

When a charity is removed from the Register for any reason, it must still prepare and submit accounts to OSCR for any outstanding charitable assets (including property) held at the time of removal. This is because the assets still need to be used for charitable purposes (but not public benefit) and we use the accounts to check that is the case.

During our comprehensive review of all the fee-charging schools on the register we identified 10 charities that failed the charity test. OSCR took action to enforce compliance with the requirements of charity law, using our powers to give directions to the charities.

The actions the charities took included increases in the support they provided for those unable to pay the fees and increasing the amount of educational benefit provided without charge. As part of the provision of public benefit the charities also provide activities that benefit their local communities, for example:

- Provision of facilities, such as classrooms, sports facilities, halls and theatres, to a number of external users on a regular and scheduled basis. Users include state schools, sports clubs and community groups
- The provision of secondary education to state school pupils where the subject was not offered by their own school
- Lectures, seminars and other events open to pupils from other schools
- The use of halls or sports facilities by community bodies or local sports clubs.

There is a clear risk that should the charities decide to de-register these benefits to the wider community will not continue.

2.2 Sports clubs

We welcome the decision to produce statutory guidance in relation to relief for sports clubs.

All the sports clubs that OSCR have registered as charities have already been assessed on the basis that they meet the charity test. In assessing whether an organisation meets the charity test, we consider whether they provide public benefit, whether access to activities is unduly restrictive, and if the membership criteria is open and transparent. Further details are set out in our [Meeting the Charity Test guidance](#).

Where access to the benefits a club provides is unduly restrictive or if it appears that the club has been set up wholly or mostly for the private benefit of its members, it is unlikely that it will pass the charity test and be registered as a charity.

We highlighted in our response the Scottish Government's consultation on the implementation of the Barclay review that consideration also needs to be given to [Community Amateur Sports Clubs \(CASC\)](#) as recognised by HMRC, where membership and fees are key to CASC status. It is desirable that the rules around Sports Club relief and those for CASCs are not in conflict. CASC status is a long established alternative to charitable status for many amateur sports clubs to enjoy various tax reliefs without being a charity. In many cases these clubs may not be eligible for charitable status.

We also highlighted the interaction between changes to sports club relief and Ministers' policy agenda of encouraging community empowerment and transfer of assets to community bodies. Much of the interest we have seen in community-based charities taking over local authority assets relates to sports facilities. Changes or uncertainty to rates relief for sports facilities could affect the take up of community asset transfers.

We hope that these factors will be considered when drafting this guidance and welcome OSCR's inclusion on the working group being established by Scottish Government.

3. Conclusion

We welcome the engagement from Scottish Government so far on these aspects of the Bill and others. While the Barclay Review and Scottish Government assert that the charitable status of any organisation is not in question, there is a sense in which the proposals might result in a devaluing of the charity status of certain groups of

charities. Allowing the creation of a 'two-tier' charity sector within a 'single-tier' regulatory regime could be damaging to the public's trust and confidence in both the sector and charity law.

Should Parliament consider that treating groups of charities differently or a change to the criteria for charitable status is necessary or desirable, then we suggest a review of Scottish Charity law is the most appropriate route. The Scottish Government's recent [Consultation on Scottish Charity Law](#) focused on proposals to make technical changes to the 2005 Act.

Given the potential impact on groups of charities and the various consequences the Bill could have on individual charities and ultimately their beneficiaries, it is important that OSCR continues to be involved as the legislation progresses.

We are content for the information provided to be released in full, including contact details. Should you wish to discuss any aspect of the response please contact:

Caroline Monk
Engagement Manager (Policy and Guidance)

Written Submission from the City of Edinburgh Council

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

CEC: This modernises legislation, reflecting current social and economic practices.

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

CEC: A balanced approach taken based on feedback from stakeholders. In particular, not taking forward an out-of-town levy and the proposal to impose a 10% supplementary charge on property that has been vacant for over 5 years. Additionally amending the proposal to restrict empty property relief for listed buildings from 2 years to 5 years.

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.

CEC: The Council has concerns over how appeals to revaluation would be treated, as the current appeals process can be lengthy during the 5-year process. If this is shortened to 3 years, would appeals be settled within the actual revaluation period?

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.

CEC: Legislation is in place and working effectively. Collaborative working with Assessors has made the process more streamlined. The amended wording to the 2019 regulations (change from "building" to "entry") has led to applications from entities such as advertising stations, site huts and show homes which would have not been eligible prior to 1/4/19. Further clarification is currently being sought.

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 (e.g. the running of a café).

CEC: Guidance from the Scottish Government must be made very clear to allow all Local Authorities to have a consistent approach and ensure that what is deemed as commercial activity in one authority is treated the same across Scotland.

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).

CEC: The Council agrees with the policy intent, as Small Business Bonus Scheme (SBBS) was not created for this intention. As SBBS is the major reason for accessing this loophole, by removing this relief or reducing from 100% it may deter home owners from using this loophole.

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.)

CEC: No change to original comments made in 17/9/18 consultation:

Councils would hope that appeals did not increase due to the high level of accuracy of initial valuation. However, for the cases which do go to appeal, if the process was simplified this would reduce the time taken end to end. This would result in both a better customer journey and a better timeline for Councils to process outcomes.

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.

CEC: Guidance from Scottish Government must be made very clear to allow all Local Authorities to have a consistent approach and ensure that all independent types of schools are being treated in the same way.

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

CEC: No change to original comments made 17/9/18 consultation:

In addition to closing known loopholes, CEC believe in setting up a framework to annually analyse feedback from Local Authorities for any future Anti-Avoidance Tactics. Evidence from this professional forum can be used to inform future legislative changes.

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

CEC: No change to original comments made 17/9/18 consultation:

CEC welcome this and feel that to be fair and to allow a consistent application of legislation, there should be no discretion retained by Councils over debt recovery to allow for any extenuating circumstances. Recovery should be set in line with Council Tax recovery regulations and should be the same for all Scottish Authorities.

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.

CEC: No change to original comments made 17/9/18 consultation:

CEC agree that any powers awarded to the Assessors may increase the return of information allowing the Valuation Roll, and, in return, the information supplied to Local Authorities, to be more up to date. CEC however feel that questions surrounding the implementation of these further powers can only be answered by each Assessor.

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”.

CEC: The Council endorses this approach, as when the current loopholes are closed, ratepayers may find further loopholes. To enable effective management a forum or working group should be put in place to actively highlight these and close them down.

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?

CEC: As mentioned in our feedback in the previous consultation on 17/9/18, communication of changes to ratepayers is critical to the Bill's success. The communication strategy also needs to be confirmed, whether this is a collaborative approach with the Local Authorities and Scottish Government or inserts from Scottish Government with Local Authority bills etc.

The Council would request confirmation of the funding arrangements/model for the new discretionary powers given from Scottish Government for reliefs etc.

Written Submission from the Highland Council

Revaluation years

While we understand the justification for this, recognition needs to be given to the additional workload this will result in for local authorities. Although there is an automated interface between the Assessor's and Rating systems for Revaluation, there is still the issue of manual intervention on rejections. Consequential changes in relief thresholds could result in a more frequent requirement for reviews. Possibility TR schemes would still be in operation over a number of revaluations or conversely if there are more frequent revaluations will there be a need for TR schemes? There will be costs attached to more frequent revaluation for the reasons specified above. Will funding be provided to meet these additional costs?

New and Improved mark in roll.

While this is matter for the Assessor, a marker will be beneficial to local authorities when processing new and improved applications. We think it will be useful if there are two markers, one for new properties and one for improved property to avoid dubiety. Will the local authority have the discretion to turn down an application if they feel relief criteria have not been met despite the Assessor placing a marker on the property or are the marker the determining factor?

Entering of parks in valuation roll

In general we do not support the proposal to enter parks in the valuation roll. We do accept that permanent commercial activities within public parks should be valued, for example a shop in a local park should be levied however this would probably attract full sbbs so would simply be an administrative exercise with no net gain.

We feel free and unrestricted use by the public is not viable in that there is a cost of maintenance and general upkeep. For example amateur football clubs using a local park. There would be a requirement for general upkeep of grounds etc which comes at a cost which the local authority would need to recover.

The issue of the Authority deriving net profit could be applicable where the authority allows the areas to be used for commercial concerts or offers franchises to set up at free events/shows during bonfire nights. However over the course of a year such concerts / events can total less than two to three weeks and as such it would appear excessive to enter a park into the valuation roll for a whole year. The Assessor would have an administrative burden quantifying net profit. Perhaps a de minimus use threshold could be set.

Local authority discretion over dwellings

We feel this is a matter for the Assessor and as such are not keen for Local Authority discretion. There needs to be clear division of duties.

Valuation notices

This is matter for the Assessor however in relation to (2ZB) we would encourage use of electronic notices where ever applicable.

Proposals to alter and appeals against valuation roll

This is, in the main, a matter for the Assessor however we agree in principle with the proposal to increase valuations following appeal where applicable. This would prevent ratepayers submitting spurious appeals.

Proposals and appeals: consequential modifications

No comment

New and improved properties: rates relief

We see this as a vehicle to amend the current new and improve regulation.

Charitable relief: Independent schools

In this time of fiscal austerity we would question whether granting relief to fee paying independent schools is fair and best use of resources. As such we support the proposed legislation.

Power to reduce or remit rates for certain organisations: guidance

The Highland Council wishes to make a general comment on the issue of ALEO's. We are aware that we have not been alone in seeking clarity from the Scottish Government as to the rules relating to / assessment of ALEO's.

Our initial understanding was that the recommendation from the review was that relief was to be removed; we are now aware that this was not fully accepted by the Scottish Government and although relief can still be awarded to an ALEO, a corresponding sum will be removed from the grant settlement paid to the relevant Authority. This will mean that Authorities will in effect be funding this relief awarded, relief that in accordance with legislation determined by the Scottish Government that must be awarded.

The impact of such a decision is unlike any other change recommended by the Barclay Review. Given that ALEO's hold charitable status and as such under the Government's own legislation must be afforded 80% relief, if the occupation of the

property in question meets the qualifying criteria. The Council will have no discretion in awarding such relief and failure to reimburse such costs would result on a strain on already perilous council budgets. Failure to award such reliefs to these organisations would not only contravene Government legislation but could have a detrimental effect on rural and deprived areas that rely on such organisations. Any such decrease in grant funding would obviously result in increased costs to local taxpayers.

Non-use or underuse of lands and heritages: notification

Fully support any regulations which will counter avoidance of rates payable on unoccupied by ratepayers utilising charities for occupation.

Failure to pay instalments

We fully support any regulations which allow us to take swifter recovery action.

Assessor information notices

No comment

Local authority information notices

This regulation would give us the legislative power to request the information required to update the assessment roll. While we already request this information, there being a legislative requirement to comply should aid our information gathering process. Looking at the phrase “as it may reasonable require” who will determine this? The local authority and the ratepayer may have different opinions on what is reasonable. In the past we have requested leases from ratepayers but they have refused to provide them. We feel the provision of a lease is a reasonable request however in some cases the ratepayer clearly doesn't.

Duty to notify changes of circumstances

We are in agreement with the legislative prescription of as time limit for notifying of changes. However, we would rather that local authorities were given powers to allow us to refuse to amend the roll for late notification with the original liability remaining payable (apart from in exceptional circumstances) . While fines may encourage some ratepayer to respond many already indebted ratepayers will not be prompted by this means. Additionally, there may be software administration costs to implementing a fine's regime.

Offences in relation to information notices and notifications under Section 16

We agree.

Civil penalties for failure to comply with assessor information notices

This is matter for the Assessor but recognise that this may be an administrative burden.

Penalties under section 18: appeals and enforcement

This is a matter for the Assessor.

Civil penalty for failure to comply with local authority information notices and failure to notify changes in circumstances

Before responding specifically, the Highland Council would make the following general comments. They also reflect a general view that there is insufficient information to make an informed response.

We have a question mark over the validity of the penalty without recourse to primary legislation. We recall the issues which arose with the community charge civil penalty and whether this new civil penalty would sufficiently offset the administrative burden, especially when one also includes ultimate collection levels of such penalties.

Could it be included, if imposed, as part of the Rates charge and as such be enforceable under summary warrant along with any unpaid rates charge? We are unclear on that.

Are penalties merely addressing the *effect* of the non-provision of information to Council's rather than the *cause* which is felt to be an attempt by individuals / companies to avoid the payment of rates? Would effort be better spent ensuring rates avoidance schemes are eliminated?

Subject to the comments above and insufficient information thus far, if penalties were taken forward it would be better if the penalty level was proportionate to rateable value. Local Authorities should administer the penalty and deal with any appeals in the same way as any rates appeal process. It should be a mandatory penalty for the non-provision of information after a 21 day period. But, similar to concerns expressed above concerning the lack of information thus far, would councils, for example, have the discretion to overturn on appeal?

Penalties under Section 20: appeals and enforcement

We question why an appeal under this Section would be made to a valuation appeal committee. All (non valuation) NDR appeals are dealt with "in-house" with the final appeal being heard by a NDR internal committee of the local authority as per the terms of the Section 238 of the Local Government (Scotland) Act 1947.

On reflection, we would ask whether all NDR should be made to the independent

valuation appeal committee. The Highland Council has administered several NDR appeals made to the NDR internal committee (as detailed above) and the appellant has questioned the impartiality of the committee when it is comprised of local members (councillors) who represent The Highland Council.

Sections 19 and 21 consequential modifications

No comment

Anti-avoidance regulations

We are fully supportive of these regulations however we will be interested to see how they work in practice. We foresee a lot of grey areas in terms of interpretation which will have to be ultimately decided by the courts. That in itself is not a bad thing as it will establish case law going forward.

Written Submission from West Lothian Council

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.

West Lothian Council is supportive of this proposal as it will help to smooth out any major changes in rateable values due to underlying movements in property markets between revaluations. It is important however that sufficient resources are provided to local Assessors offices to facilitate this change. It will also allow the removal of transitional arrangements for certain property types. These can be both confusing and administratively time consuming.

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.

West Lothian Council is supportive of this measure as it should encourage more development in various sectors of the property market. However, implementation needs to be simple and straightforward. In this respect, it would be preferable to only have one fixed period, and for the new property not to be entered into the Valuation Roll until the 12 month period from completion has expired. This would minimise the impact on existing council collection resources. Notwithstanding the foregoing, the proposals in the Bill to amend the 1975 Act appear to achieve this, albeit in a different way.

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).

As many individual commercial activities on public parks are already captured by the rating valuation process (e.g. caravan sites, cafes etc.) and have their own rateable values, it is difficult to see what would be captured here. Presumably, it would apply to those activities where permits are issued by the authority such as golf courses, boating ponds, putting greens and the like. As many of these are seasonal, do not bring in large amounts of revenue, and do not provide large amounts of net revenue, it is difficult to see how the costs of entering such activities in the Valuation Roll would be an effective or efficient use of scarce resources.

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).

West Lothian Council supports the proposed change for self-catering accommodation, but on the basis that there shall be an element of discretion to cover extenuating circumstances. e.g. family bereavement and executry issues.

The council is also of the view that a national guidance framework should be developed by the Scottish Government in order to ensure that there is consistency in the application of any discretionary powers across local authorities.

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.)

West Lothian Council supports in principle measures to reduce the number of speculative appeals lodged, especially where these unnecessarily tie up scarce resources in Assessors' departments. Notwithstanding this, the proposals in Section 3 of the Bill appear to provide a framework to try and achieve this.

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.

West Lothian Council believes that there should be no exceptions in relief for independent schools. If the occupier is a charity, then the relief should be based around that fact and that fact only, rather than seek to create any exemptions due to specific circumstances.

It is worth noting in this respect, that the Scottish Government took the view when dealing with the issue of charitable relief for council ALEOs that there should be no exceptions to the cut-off date for relief, despite the fact that some councils had a very strong case that exceptional circumstances should apply in their own individual circumstances.

On this basis, the council is of the view that the actions of the Scottish Government should be consistent in this area, and is of the view that any exemptions granted in this area should not be to the financial detriment of the local authority concerned.

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

West Lothian Council is of the view that due to the complexities of arriving at a practical and effective definition of "active occupation", the proposed change should be covered through the application of the proposed "anti-avoidance" rules.

The Council is supportive of the general principle being introduced to encourage economic use of listed buildings. However, unlike other buildings these tend to be much more complex, both in terms of their history, construction, community association and planning and listed building restrictions. All of these factors affect the

development or redevelopment of the building involved, its end use and its marketability for sale and lease.

Other individual factors such as former schools which are covered by the School Sites Acts provide further complications which are time consuming to resolve. This makes the period of 2 years proposed seem unreasonable, and it is suggested that a more reasonable period would be 5 years. In the event that the 2 year period is retained, then it is considered important that local authorities should have the power to exercise discretion.

The council supports a proposed change to the reset period in principle, however, it does not support the 6 months period as proposed. Many commercial landlords, both public and private, provide leases of commercial and industrial properties for shorter periods than 6 months. In many cases, this can be on a month to month basis. West Lothian Council is of the view that a reset period of 3 months or 90 days is a more reasonable period to apply so as not to unfairly disadvantage those landlords who are supporting local economic development objectives through the use of short term easy in, easy out style tenancies.

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

West Lothian Council generally supports early debt recovery action. However, it is important to retain an element of discretion to cover extenuating circumstances e.g. the recent issues with IT systems at TSB resulting in non-payments of business rates accounts. This does not appear to be recognised in the Bill.

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.

West Lothian Council is generally supportive of these provisions. The responses to each are the same as those lodged with the original consultation by the Council in autumn 2018.

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”.

West Lothian Council is generally supportive of these provisions. The responses to each are the same as those lodged with the original consultation by the Council in autumn 2018.

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?**

West Lothian Council believes that The Non-Domestic Rates (Day Nursery Relief) (Scotland) Regulations 2018, and the reliefs which they provide, whilst being very welcome in general terms are much more favourable to the private sector, and some local authorities than others. In essence, many local authorities, including West Lothian, have chosen to streamline their educational estate through creating small individual campuses containing both primary schools and nurseries on the same site in order to achieve management and other efficiencies. One effect of this has been that the Assessor, when valuing these for rating purposes has entered them in the Valuation Roll as a “unum quid”, notwithstanding the fact that in many cases the nursery and primary elements are separate buildings.

It appears that currently, there are no legitimate grounds of appeal against this situation. This is not reflected in the 2018 Regulations, meaning that local authorities are unable to take advantage of this valuable relief. The Non-Domestic Rates (Scotland) Bill currently under scrutiny would be an ideal vehicle through which to remedy this unintended consequence arising from the Regulations, and redress the balance whereby councils are able to obtain the nursery reliefs which were surely intended to benefit all nursery schools and early educational establishments, rather than a selective number. In this context, it is worth bearing in mind that in this council, is responsible for in excess of 90% of nursery and early years' education and child care provision in the area.

Local Government and Communities Committee

18th Meeting, 2019 (Session 5), Wednesday 19 June 2019

Subordinate Legislation

Overview of instruments

1. The following instrument, subject to negative procedure, is being considered at today's meeting:
 - The Licensing (Personal Licences: Supplemental and Transitional Provision) (Scotland) Order 2019 (SSI 2019/177).

Background

2. The purpose of this Order is to ease the administrative burden falling on Licensing Boards arising from the demands of processing applications from the first cohort of personal licence holders (i.e. all personal licence holders who have held a personal licence since the introduction of the current system on 1 September 2009) seeking to renew their licences ten years on from that introduction date.
3. It aims to do so by extending the expiry date of relevant licences, provided that a renewal application has been made in respect of a relevant licence by the statutory deadline of 31 May 2019. This is with a view to reducing the chance of a relevant licence (in respect of which a valid renewal application has been made) expiring before the Licensing Board has had a chance to determine whether or not the licence should be renewed. The policy note for the instrument is attached at **Annexe A**.
4. An electronic copy of the instrument is available at:
http://www.legislation.gov.uk/ssi/2019/177/pdfs/ssi_20190177_en.pdf
5. No motion to annul this instrument has been lodged.

Delegated Powers and Law Reform Committee consideration

6. The Delegated Powers and Law Reform Committee (DPLRC) considered the instrument at its meeting on [4 June 2019](#) and determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

Committee Consideration

7. The Committee is not required to report on negative instruments, but should it wish to do so, the deadline for reporting on the instrument is 24 June 2019.

Procedure

8. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. This means they become law unless they are annulled by the Parliament. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds).
9. Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument.
10. If the motion is agreed to by the lead committee, the Parliamentary Bureau must then lodge a motion to annul the instrument to be considered by the Parliament as a whole. If that motion is also agreed to, the Scottish Ministers must revoke the instrument.
11. Each negative instrument appears on the Local Government and Communities Committee’s agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow the Committee to gather more information or to invite a Minister to give evidence on the instrument. Members should however note that, for scheduling reasons, it is not always possible to continue an instrument to the following week. For this reason, if any Member has significant concerns about a negative instrument, they are encouraged to make this known to the clerks in advance of the meeting.
12. In many cases, the Committee may be content simply to note the instrument and agree to make no recommendations on it.

POLICY NOTE**THE LICENSING (PERSONAL LICENCES: SUPPLEMENTAL AND
TRANSITIONAL PROVISION) (SCOTLAND) ORDER 2019
SSI 2019/177**

The above instrument was made in exercise of the powers conferred by section 145 of the Licensing (Scotland) Act 2005 (“the 2005 Act”) and all other relevant enabling powers. The instrument is subject to negative procedure.

The purpose of this Order is to ease the administrative burden falling on Licensing Boards arising from the demands of processing applications from the first cohort of personal licence holders (i.e. all personal licence holders who have held a personal licence since the introduction of the current system on 1 September 2009) seeking to renew their licences ten years on from that introduction date. This is with a view to reducing the chance of a relevant licence (in respect of which a valid renewal application has been made) expiring before the Licensing Board has had a chance to determine whether or not the licence should be renewed.

Policy Objectives

Personal licences are issued under the 2005 Act and have effect for a period of 10 years, beginning with the date on which the licence is issued. Premises require to have at least one personal licence holder to supervise or authorise the sale of alcohol.

Prior to the 2005 Act coming fully into force on 1 September 2009, it was possible for personal licences to be issued during the “transitional period” (that is, 00:01 on 1 February 2009 until 05:00 on 1 September 2009). Personal licences issued during the transitional period are deemed to have been issued on 1 September 2009 (article 23 of the Licensing (Transitional and Saving Provisions) (Scotland) Order 2007 (S.S.I. 2007/454)). The effect of this transitional provision is that all licences issued during the transitional period, as well as those actually issued on 1 September 2009, all expire on 31 August 2019. This note refers to this cohort of personal licences as “relevant licences”.

A personal licence can be renewed, on application, for a further period of 10 years and it is the responsibility of Licensing Boards to consider and determine such applications. In respect of relevant licences, the deadline for submission of a renewal application is 31 May 2019. The cohort of relevant licences is the first cohort of licences to reach the ten year renewal point.

If a Licensing Board does not consider and determine a renewal application before 1 September 2019, the licence would not be renewed and it would cease to have effect. Following consultation with Licensing Boards it is estimated that there are up to 15,000 relevant licences which are still extant and which may be the subject of renewal

applications. There is concern that Licensing Boards will be unable to process all such applications before those licences expire. This concern is due to the administrative burden on Licensing Boards of considering significant numbers of renewal applications (as well as business as usual work).

The Order seeks to achieve the policy goal of easing the administrative burden falling on Licensing Boards by modifying the expiry date of relevant licences, provided that a renewal application has been made in respect of a relevant licence by the statutory deadline of 31 May 2019. Rather than expire on 31 August 2019, a relevant licence will continue to have effect until the earlier of:

- the expiry of the period of 28 days beginning with the day after the day on which the Licensing Board determines the renewal application in respect of the licence, or
- 29 February 2020

A backstop date of 29 February 2020 has been included to ensure that the period of effect of a relevant licence cannot be extended indefinitely. It is considered that the date chosen (29 February 2020) provides sufficient time for Licensing Boards to process renewal applications in respect of relevant licences before the licence expires.

For consideration of renewal of any relevant licence, a Licensing Board will now have a minimum period of 8 months to process their application (this assumes an application being submitted on 31 May 2019 with the backstop date being 29 February 2020). This is 5 months longer than the minimum period of 3 months it otherwise would be and it is considered this should assist Licensing Boards in organising their consideration of renewal applications in respect of relevant licences, alongside business as usual work.

The effect of this Order is in relation to licences that have been held since the introduction of the current licensing system (1 September 2009). The process for renewals of licences issued on or after 2 September 2009 is unaffected.

The licencing system provided for in the 2005 Act is intended to be self-financing through the collection of fees levied in respect of various licensing requirements. A fee of £50 has been set for renewals in this regard. The Scottish Government does not provide nor has any authority to provide direct funding to Licensing Boards.

Consultation

A number of Licensing Boards and other key licensing interests have raised concerns about the administrative burden being placed on Licensing Boards through the initial tranche of renewal applications arising from the ten year renewal point being reached this year.

[This Order is a policy response to those concerns.](#)

Impact Assessments

The Scottish Government has considered the impact of the Order on particular groups of people (whatever their age, race, gender, sexual orientation, religion or whether they are disabled or not). There is no evidence to suggest that any of the equality strands will be affected by this Order.

Financial Effects

The Scottish Government does not consider there will be any financial costs arising from this Order. There may be some administrative savings for Licensing Boards as they will be able to decide whether to spread out consideration of renewal application over a longer period which may avoid the need for, say, additional staff to be employed.

Scottish Government
Justice Directorate
May 2019