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Non-Domestic Rates (Scotland) Bill: consideration prior to Stage 3

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This briefing provides a summary of parliamentary scrutiny of the Non-Domestic Rates (Scotland) Bill prior to Stage 3 proceedings, which are scheduled to take place on 4 February 2020. It is designed to provide a summary of the main issues associated with the Bill during its passage so far, and amendments made at Stage 2. It does not provide a comprehensive discussion of all the issues raised in relation to the Bill. SPICe Briefing 19/28 Non-Domestic Rates (Scotland) Bill, available on the SPICe digital hub, provides information on the Bill as introduced.



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Executive Summary

The [Non-Domestic Rates \(Scotland\) Bill](#) ¹ ("the Bill"), was introduced in the Scottish Parliament on 25 March 2019. The policy memorandum ² for the Bill sets out that the policy objectives are to:

- deliver a Non-Domestic Rates system designed to better support business growth and long-term investment and reflect changing marketplaces
- improve ratepayers' experience of the rating system and administration of the system
- increase fairness and ensure a level playing field amongst ratepayers by reforming rate reliefs and tackling known avoidance measures.

The Local Government and Communities Committee considered the Bill at Stage 1. It published its [Stage 1 report](#) on 4 October 2019 ³.

The Delegated Powers and Law Reform Committee [reported on](#) the delegated powers set out in the Bill on 26 June 2019 ⁴.

The [Stage 1 debate](#) on the Non-Domestic Rates (Scotland) Bill took place on 10 October 2019 ⁵. The Minister for Public Finance and Digital Economy outlined the Scottish Government's key priorities in the Bill, and members expressed general support, with some concerns around clarity and regulation-making powers. The Scottish Parliament agreed to the general principles of the Bill, with 97 votes in favour, six abstentions and no votes against.

The Local Government and Communities Committee considered the Bill at Stage 2 On 27 November and 4 December 2019. 100 amendments were discussed, with 63 being agreed to, and an [amended version of the Bill](#) was published on 5 December 2019 ⁶.

Key changes included:

- Clarification on a number of new procedures introduced in the Bill, such as adding a mark in the valuation roll for new and improved properties, the proposals, appeals and complaints procedures, payments, anti-avoidance regulations, and the new information notices procedure.
- Changes to the properties to be entered on to the valuation roll, including clarification on instances where parks and student accommodation may be entered.
- Devolution of Non-Domestic Rates setting to a local level (Amendment 9). This amendment in particular proved controversial and both the Scottish Government and a number of organisations have expressed concerns. This amendment also made changes to existing relief schemes which the member laying the amendment has suggested were unintentional and would be revised in a Stage 3 amendment.
- The addition of new provisions which would aim to reward businesses for sustainable business practices.

- Clarification of the eligibility of certain private independent schools for rates relief on the grounds of the provision of specialist musical education.
- Repealing the powers for Scottish Government to provide relief to unoccupied/empty properties, making this a matter for local authorities to manage in-house.

A number of amendments which sought to add new provisions to the Bill, to take a different approach to the accepted amendments, and to remove the provisions set out in Section 10 on charitable relief for independent schools, were not agreed to.

Stage 3 scrutiny of the Bill is scheduled to take place on 4 February 2020.

Introduction

The [Non-Domestic Rates \(Scotland\) Bill](#) ¹ ("the Bill"), was introduced in the Scottish Parliament on 25 March 2019. The policy memorandum ² for the Bill sets out that the policy objectives are to:

- deliver a Non-Domestic Rates system designed to better support business growth and long-term investment and reflect changing marketplaces
- improve ratepayers' experience of the rating system and administration of the system
- increase fairness and ensure a level playing field amongst ratepayers by reforming rate reliefs and tackling known avoidance measures.

Stage 1

Local Government and Communities Committee

The Local Government and Communities Committee ("the Committee") was designated as the lead Committee in scrutinising the Bill, and issued a [call for evidence](#) which closed on 30 May 2019. It received [367 submissions](#), mostly from individuals or families. The vast majority were from respondents concerned by the provision in the Bill on ending rates relief for independent schools.

The Committee took formal evidence at five meetings between May and September 2019. Full details of the Committee's evidence sessions and witnesses, including links to the Official Report, are available on the [Committee web page](#).

Alongside formal evidence-gathering, Committee Members made three visits in connection with the Bill:

- On 12 June Members visited George Watson's College, Edinburgh.
- On 24 June, Members made a "high street" visit to Kilmarnock to meet representatives of the local business community and third sector, as well as council representatives.
- The Committee made another high street visit, to Stirling, on 10 September.

The Committee went on to consider the draft Stage 1 Report, in private session, on 25 September and 2 October 2019.

Stage 1 report

The Committee published its [Stage 1 report](#) on Friday 4 October 2019³. Although the Bill itself is short, the 'framework' nature of the Bill, coupled with the level of engagement and consultation carried out by the Committee, led to a large number of recommendations being made. These cover both the Bill itself, and the mechanisms the Bill seeks to introduce.

The Committee supported the general principles of the Bill, and in general suggested that the provisions were a "step in the right direction", but it also made a number of recommendations.

Key points made in recommendations

Excluding points purely showing support for aspects of the Bill or noting views of stakeholders, key points from the Committee's report which pertain to the Bill itself included calls for changes to the Bill, and some calls for clarification, which are set out in the next two sections. Full detail of the conclusions and recommendations made can be found [in the Committee's report](#)³.

Calls for further measures/changes to the Bill

“ The Committee understands the Scottish Government's concerns about **access to justice** but also notes concerns at Stage 1 about the risk of the revised system being as clogged with appeals as the current one. In our view, fees could mitigate this risk, and this potentially applies to " proposals" under the new process, as well as to appeals. We ask the Scottish Government to set out what options it is considering in relation to possible fee structures. The Committee notes that these could include mechanisms to return fees in appropriate cases, or not to charge fees in certain categories of cases.”

[Local Government Committee Stage 1 Report: Provisions on revaluations and on appeals](#)

“ The Committee notes views from the Delegated Powers and Law Reform Committee that guidance under **section 11** is sufficiently important to merit making it subject to Parliamentary scrutiny under the negative procedure. We invite the Scottish Government to respond to this.”

[Local Government Committee Stage 1 Report: Sports clubs](#)

“ The Committee notes that businesses like certainty, and asks the Scottish Government to note calls in evidence for guidance on the application of regulations under **section 23**, and for any such guidance to be updated regularly. We also ask the Scottish Government to respond to the Delegated Powers and Law Reform Committee's view that there should be more specification as to the parameters of the section 23 power on the face of the Bill.”

[Local Government Stage 1 Report: General anti-avoidance provisions](#)

Calls for clarification

“ The Committee notes uncertainties about the scope and effect of **section 4**. Councils and ratepayers want to know more clearly what activity the Scottish Government intends to capture and which would be exempt (or partly exempt) from rates, whether that is a result of policy decisions to exclude particular bodies (e.g., not-for-profits) or whether as a result of reliefs being available. The Committee asks the Scottish Government to elucidate its policy more fully.”

[Local Government Committee Stage 1 Report: Parks](#)

“ The Committee invites the Scottish Government to clarify whether a **private nursery's entitlement to relief** is affected by whether or not it forms part of an independent school estate and if so, whether this is how the relief was intended to operate.”

[Local Government Committee Stage 1 Report: Independent Schools](#)

“ On **Section 5**, the Committee asks the Scottish Government whether it gave consideration to amending the qualifying criteria for the small business bonus scheme, as an alternative means of closing the loophole. This approach might address concerns at Stage 1 that councils are not best placed to be gatekeepers of the Valuation Roll, even in the relatively narrow circumstances envisaged under section 5. We consider that the matter that section 5 seeks to address should be within the remit of the independent review of the small business bonus scheme.”

[Local Government Committee Stage 1 Report: Holiday Homes](#)

“ The Committee therefore urges the Scottish Government to continue to explore innovative legislative or policy solutions to the problem of **phoenix companies**. The Committee invites the Scottish Government to clarify whether amendment of reliefs or of the small business bonus scheme to enable benefits to be made unavailable to "repeat offenders" has been considered and, if so, what conclusions were reached. We also ask the Scottish Government to clarify whether it is their view that the section 23 power could be used to frustrate avoidance by phoenix companies.”

[Local Government Stage 1 Report: General anti-avoidance provisions](#)

Scottish Government response

The Minister for Public Finance and Digital Economy [responded](#) to the Committee's Stage 1 Report on 10 October 2019 ⁷ .

A the Scottish Government's response is set out clearly in relation to the Committee's recommendations, with most responses either indicating that the Committees views are welcome or or giving a reminder of ongoing work, it has not been repeated in great detail here. However, of note are the following points -

“ The Scottish Government strongly supports the move towards greater digital paperless interaction between ratepayers, local authorities and the assessor services. The Scottish Government will continue to engage fully with stakeholders including councils, assessors, Digital Office and ratepayer representatives to maximise the opportunities to take this forward and mitigate any risks associated with a transition to a more digitally based system.”

“ The Non-Domestic Rates (Day Nursery Relief) (Scotland) Regulations 2018 provide that premises wholly or mainly used as day nurseries – whether in the private, public or third sector - are exempt from paying rates for the period 1 April 2018 until 31 March 2021. All sectors are therefore treated equitably. Most private & third sector nurseries will be located in premises that are wholly or mainly used as day nurseries, whilst many public sector settings will be part of a premise mainly used as a school and will not be eligible for the relief. Private and third sector providers, including childminders, have an important role to play in delivering the funded ELC entitlement; and will continue to do so beyond August 2020.”

“ On Measures to secure information from ratepayers, The Scottish Government acknowledges that the written and oral Stage 1 evidence submitted to the Committee highlighted a divergence of views on a number of key points. The responses to the Scottish Government 2018 Barclay consultation provided a similar picture. The Minister for Public Finance and Digital Economy will reflect further on these matters and welcomes the opportunity for further discussion at the amending stages of the Bill. ”

Delegated Powers and Law Reform Committee

In May and June 2019 the Delegated Powers and Law Reform Committee ("the DPLR Committee") considered the delegated powers in the Bill.

The DPLR Committee first considered the Bill at its meeting on 14 May 2019. At that meeting, the DPLR Committee determined that it did not need to draw the attention of the Parliament to the delegated powers in the following provisions:

- Section 5 – Discretion of local authority to determine whether lands and heritages are dwellings
- Sections 18(7) and 20(5) – Powers to increase or decrease civil penalty sums
- Section 30 – Commencement.

At the same meeting, the DPLR Committee agreed to [write to the Scottish Government](#) to raise questions on a number of the delegated powers in the Bill.

The Delegated Powers and Law Reform Committee [reported on](#) the delegated powers set out in the Bill on 26 June 2019, which included recommendations around ancillary provisions in Sections 9 and 29, and calls for clarification around Sections 23 and 27. The full recommendations can be found in the report ⁴.

Debate

The Stage 1 debate on the Non-Domestic Rates (Scotland) Bill took place on 10 October 2019 ⁵.

In the debate, the Minister for Public Finance and Digital Economy spoke of the meaningful reform that the Bill, along with other Scottish Government action, had and would bring to the Non-Domestic Rates system on the back of Barclay recommendations. She suggested that the changes the Bill makes to the appeals system are the most important part of the Bill, and confirmed that at that point the Scottish Government were yet to make a decision on how provisions relating to fees might change.

Points made in the debate in support of the Bill included the change the revaluation period from five to three years, changes to the appeals process, and the addition of tax avoidance measures.

Concerns raised about the Bill focussed on the Bill not bringing about wider reform, with a move to a land value-based system, the Scottish Government's decision to not implement the Barclay recommendation of bringing the Large Business Supplement in to line with the English model, the Scottish Government giving itself too much power through regulation-making powers, and the need for further clarification on various measures.

Echoing the Committee's Stage 1 report ³, there was a mixture of support for, and concerns about, the removal of charitable rates relief for mainstream independent schools.

The Scottish Parliament agreed to the general principles of the Bill [by division](#), with 97 members voting in favour, six abstentions, and no votes in opposition.

Stage 2

Stage 2 offers an opportunity for any MSP to propose amendments to a Bill, although only members of the lead committee can vote on any amendments that are lodged. The Minister for Public Finance and Digital Economy ('the Minister') took forward the Scottish Government amendments at Stage 2.

The Local Government and Communities Committee ("the Committee") considered the Bill at Stage 2 in November and December 2019.

- Stage 2 consideration of the Non-Domestic Rates (Scotland) Bill - Day 1
 - [Marshalled list of amendments for Stage 2](#)
 - [Groupings of amendments for Stage 2](#)
 - [Minute of proceedings](#)
 - [Official Report](#)
- Stage 2 consideration of the Non-Domestic Rates (Scotland) Bill - Day 2
 - [2nd Marshalled list of amendments for Stage 2](#)
 - [2nd Groupings of amendments for Stage 2](#)
 - [Minute of proceedings](#)
 - [Official Report](#)

A total of 101 amendments were lodged.

As well as a large number of technical amendments, some amendments related to provisions which were not present in the Bill as drafted, which reflected the wide scope of the evidence heard. Certain amendments were on issues not raised during scrutiny of the Bill to date.

Rather than review all amendments in detail, the following sections will focus on the changes made to the Bill at Stage 2, and to some of the other amendments which were lodged but either not moved, or not agreed to.

Changes to the Bill

The Bill, as amended at Stage 2, was published on 5 December 2019⁶. A summary of changes made to the Bill at Stage 2 follows. Technical drafting amendments have not been included in this summary.

In total there were 101 amendments to the Bill. One was withdrawn and replaced, meaning that 100 amendments were considered at Stage 2. Of these amendments:

- 63 amendments were agreed to, 11 of which by division.
- 23 amendments were disagreed to by division.

- 8 amendments were not moved.
- 6 amendments were withdrawn.

Valuation roll

The following amendments made changes to the valuation roll and process surrounding its use. All were agreed to without division:

- Scottish Government **amendments 16, 17 and 18** clarified the definitions and processes around adding a mark in the valuation roll for new and improved properties.
- Scottish Government **amendments 19 and 20** clarify how and when parks should be entered on the valuation roll.
- **Amendment 8**, in the name of Andy Wightman (and an alternative to rejected Amendment 7), addresses concerns about exempt properties not appearing on the valuation roll. The amendment allows exemptions that are currently set out in primary legislation to be removed in future through secondary legislation.
- **Amendment 85**, in the name of Sarah Boyack, aims to ensure that privately owned, for profit student residences are entered on the valuation roll, but leaves to the Scottish Government the detail on how such entries in the roll would be implemented.

In evidence, the Minister expressed concerns around unintentional consequences that may be detrimental to students. Sarah Boyack noted these concerns and suggested that further refinement at Stage 3 could be made following further analysis of potential consequences.

Agreements, proposals, appeals, and complaints about valuation

Amendments 21, 22, 24, and 27-35 were all lodged by the Scottish Government, and aimed to clarify the process for agreements, proposals, appeals and adjustments to the valuation roll, including the power to impose a fee for fee repayment. All were agreed to without division.

Amendment 36, in the name of Alexander Stewart, places a requirement on Scottish Ministers to consult local authorities, assessors, business sector representatives and such other persons as considered appropriate before making regulations to set fees in connection with appeals. In evidence, the Minister expressed a desire to refine the amendment at Stage 3. The amendment was agreed to without division.

Complaints procedure

Scottish Government **Amendment 37**'s purpose is to ensure that complaints (which are an alternative to appeals as a way of having an entry reviewed) can only be lodged by a person who is not the proprietor, tenant or occupier of the property. If a proprietor, tenant or occupier has an issue with the entry in the valuation roll, the new section 3ZA, which is the proposal system to alter an entry in the valuation roll, is the appropriate route for this to be addressed.

Amendment 37 was agreed to by division (For 5, Against 2, Abstentions 0).

Appropriate assessor

The purpose of these Scottish Government amendments is to ensure that the Bill's provisions work for the designated assessor regime as well as the individual assessors. There are five designated assessors who do not have responsibility for “areas” in a geographical sense but rather they have responsibility for the valuation of “subject” areas – docks and harbours, electricity generation subjects, electricity transmission and distributions subjects, gas subjects, railways and water subjects. So for example once the designated assessor for water subjects determines the value of all the water subjects in Scotland then a single entry will be made in the valuation roll of the Fife assessor.

Amendment 23 provides that a new proprietor, tenant, or occupier can make a proposal to the assessor who valued the property they occupy.

The purpose of **amendment 31** is to provide that appeals against valuations determined by a designated assessor can be lodged with a valuation appeal committee which hears appeals from that assessor, regardless of where the property is situated.

Amendment 52 ensures that a designated assessor can issue assessor information notices for all lands and heritages that they are to value.

All three amendments were agreed to without division.

Ancillary powers and definitions

Scottish Government **amendments 65, 68, 71, and 72**, all agreed to without division, made changes to the proposed ancillary powers of Scottish Ministers as set out in the Bill, and sought to address some of the the concerns of the Delegated Powers and Law Reform Committee.

Amendment 38 amends the definition of a “material change of circumstances” in the Local Government (Scotland) Act 1975. “Material Change of circumstances” (which can currently refer to both physical and economic circumstances) will no longer include economic factors, and specifically a change in rent, or of valuation or the value of the lands and heritages generally. This Scottish Government amendment was agreed to without division.

Levying of rates and charitable relief

National or regional rate - Amendment 9

Amendment 9, lodged by Andy Wightman, makes the following changes (to be implemented by 2024):

- Requires that regulations in relation to non-domestic rates are subject to the affirmative procedure (they are currently subject to negative procedure and therefore would not be scrutinised or debated by Committee or Parliament unless there is a motion to annul the statutory instrument).
- Specifies that if a local authority does not wish to set its own non-domestic rates, then the rate will be determined by Scottish Ministers.

- Returns the power to set non-domestic rates to local authorities (through the repeal of Section 110 of the Local Government Finance Act 1992).
- Ends the operation of any reliefs that were established under Section 153 of the Local Government etc. (Scotland) Act 1994 (which includes the Small Business Bonus Scheme, the Business Growth Accelerator and Nursery relief as well as a number of other reliefs).

The amendment was moved and agreed to by division (For 4, Against 3, Abstentions 0).

During consideration of the Bill at Stage 2 (day one), Members noted that it would be helpful to have more time to consider amendment 9. The Minister [wrote to the Committee](#) in relation to this amendment. In addition, the Committee received 35 submissions from a range of organisations expressing views on the amendment.

The following sections discuss some of the issues raised in written evidence.

Devolution of Non-Domestic Rates

Amendment 9 would transfer the power to decide on the level of non-domestic rates to individual local authorities. This would be a return to the position pre-1990 when local authorities had the power to decide on non-domestic rates. Scottish Ministers would also set a national rate which would apply in any council areas where the local authority did not want to use the power to set its own local rate. During consideration of amendment 9, Andy Wightman noted that, in consultation with local authorities, some had indicated that they did not want to set their own rates.

Opinions expressed in submission vary on whether scrapping the uniform business rate would be a positive move. COSLA has said that it supports the idea in principle, but would see this as a longer-term aspiration. In evidence at Stage 1 of the Bill consideration, COSLA said:

“ It is important to stress that, although we might aspire to returning non-domestic rates to local government, a huge amount of thinking is required before we can even consider whether that would be possible. That includes a whole range of issues such as how local government financing would work and how the return of non-domestic rates would bring back accountability and proper local democracy to those who pay them. There is a long road to travel to get anywhere near that happening.”

[COSLA evidence at Stage 1 of the Bill consideration](#)

In bringing forward the amendment on day one of the Stage 2 proceedings, Andy Wightman stressed that the 2024 date specified in the amendment could be negotiated, but that it was important not to miss the opportunity to start the discussion:

A number of business representative groups have expressed concern about the proposal. FSB Scotland, Scottish Retail Consortium (SRC) and UKHospitality met with Finance Secretary Derek Mackay MSP on 4 December 2019. A [news release](#) issued following this meeting stated:

“ The meeting with the Finance Secretary was a useful opportunity to highlight our profound concerns after last week’s vote in Parliament to scrap the uniform business rate. Taking business rates out of the hands of Ministers and handing control over this £2.8 billion tax to councils places a big question mark over existing Scotland-wide rates reliefs, such as the Small Business Bonus scheme. Firms fear this move could lead to higher business rates bills for both large and small organisations, at a time when the poundage rate is at a 20-year high. It remains unclear too what this change would mean for the finances of rural and less well-off local authorities and therefore ultimately for rates bills in these areas. ”

The [Scottish Tourism Alliance](#) felt there was potential for increased rates and local supplements/levies:

“ Not only could this mean higher rates bills for businesses, it is also likely to open the door to local rates supplements and levies and is very much a step backwards from the actions and recommendations of the Barclay Review which aimed to ensure greater competitiveness, transparency and simplicity.”

[CBI Scotland](#) considered that amendment 9 went against the Bill’s objective of improving the experience of ratepayers, saying:

“ A key objective of the Bill is improving the ratepayers’ experience of the system. The introduction of 32 different approaches to setting non-domestic rates does not appear to comply with that objective. Instead, it risks achieving the exact opposite from a business and ratepayer’s perspective and make ratepayers’ experience of the NDR system more complicated.”

Additional concerns raised included:

- Concerns around a move away from uniform business rates, and resulting "local distortions" ([Fife Licensed Trade Association](#)).
- The impact of inconsistent business rates on rural employment and investment ([Scottish Land and Estates](#)).
- Uncertainty caused by increased complexity in the NDR system ([Association of Convenience Stores and Scottish Grocers’ Federation](#)).
- A lack of clarity around the amendment creating challenges for long-term business and investment planning, and how these changes might interact with the current changes to the NDR system that are underway ([CBI Scotland](#)).
- A number of organisations, including the [Booksellers Association](#) highlighted that in Northern Ireland, where local authorities set business rates, rates bills are typically 20% higher than those in Scotland.

Lack of consultation

In written submissions relating to amendment 9, many organisations noted concerns over the lack of consultation or impact assessment for such a major change.

Those raising concerns along these lines included, but not limited to, [FSB Scotland](#), [Scottish Retail Consortium](#), [UKHospitality](#), [the Scottish Tourism Alliance](#), [CBI Scotland](#), [the](#)

[Scottish Chamber of Commerce \(SCC\)](#), [the Association of Convenience Stores](#), and [the Scottish Grocers' Federation](#) and [Scottish Land and Estates](#).

The Association of Convenience Stores and the Scottish Grocers' Federation noted that the Barclay Review, the recommendations of which the NDR Bill is intended to address, advised against the localisation of NDR. The Barclay Review commented on the value placed by ratepayers on consistency in the NDR system and said:

“ One way in which such consistency would be lost would be by allowing each council in Scotland to set a local poundage rate for its area.”

Impact on Scottish Government funding guarantee

The Scottish Government noted in its [letter following the Stage 2 vote](#) on amendment 9 that the current system of a guaranteed level of funding for local authorities would not be retained if NDR decisions were devolved:

“ NDR plays an integrated role in the wider local government finance arrangements. As it stands, Scottish Government guarantees the total level of income to councils through the combined contribution of NDR and General Revenue Grant. Where a council's NDR receipts are lower than forecast, Scottish Government compensates the council with an increase in General Revenue Grant. Local Government welcome the certainty and protection this framework provides for councils' budget management with Scottish Government retaining the risks associated with NDR volatility which are linked to national decisions on the poundage along with other variations in budget estimates (e.g. appeals loss, bad debt, cost of reliefs, etc.). As is the case with Council Tax, where rate setting is determined locally, there is no reason for national government to be responsible for the risks of volatility and Scottish Government would no longer offer guaranteed local government funding. ”

The implication would be that, if NDR setting was devolved to local authorities, then local authorities would also bear the risk of any volatility in NDR revenues. The Scottish Government letter went on to note that such volatility can be significant. Highlighting instances where NDR receipts had been lower than forecast, and the Scottish Government had covered the shortfall, the letter noted that:

“ In 2018-19, 23 councils benefited from Scottish Government funding protection. In 2017-18, the equivalent figure was 27. Since the last revaluation, the City of Edinburgh, Aberdeen City and Highland councils have benefited to the tune of £27.6 million, £28 million and £6.8 million respectively. In percentage terms, annual volatility in the range of 5-10% is not uncommon.”

The [CBI](#) also raised concerns about the impact across different areas and the implications for the funding guarantee:

“ The potential of 32 different poundage rates across Scotland would need to be considered in terms of its impact on the local economies, where there would be a risk of winners and losers across different localities depending on its make-up of ratepayers. Large city conurbations such as Edinburgh or Glasgow and local authorities with utilities would for example have an advantage. Currently, the central government poundage rate not only ensures consistency and predictability, but also provides a funding guarantee for all local authorities.”

Impact on reliefs

By repealing s.153 of the Local Government etc. (Scotland) Act 1994, amendment 9, as drafted, would remove the Scottish Government's ability to provide a range of national reliefs that have been established under that Act. These include the Small Business Bonus Scheme, Business Growth Accelerator and Nursery relief. In total, the reliefs that would be abolished are currently worth £307 million.

However, on the [second day of Stage 2 consideration](#), Andy Wightman confirmed that abolishing reliefs had not been the intention of the amendment and noted that this would be revisited at Stage 3. With the results of the division being close (For 4, Against 3) it is unclear what further changes may be made to the Bill at Stage 3, or indeed if it may be removed entirely.

Reduction or remission of rates based on business practice

Amendment 92, in the name of Sarah Boyack, uses an existing power to enable Scottish Ministers to make different provision (this could include setting a different poundage, or introducing a relief) for properties whose contribution to the net-zero emissions target, including through investment in district heating, falls into different categories. These terms are not defined in the amendment.

Amendment 92 was agreed to by division (For 4, Against 3, Abstentions 0).

Rates relief for Schools of Musical Excellence

Amendment 15, in the name of Andy Wightman, extends eligibility for relief to public sector music schools which select pupils on the basis of musical ability, follow a curriculum including classes with a purpose of developing musical excellence and are wholly and mainly used for that purpose. There are currently four Schools of Musical Excellence in Scotland - Broughton High School, Douglas Academy, Plockton High and Dyce Academy. In addition, Mr Wightman suggested that there is anecdotal evidence that at least one primary school, Flora Stevenson, acts in part as a feeder school to Broughton High School and there may be an unspecified number of other equivalent schools across the country.

Despite being Schools of Musical Excellence, it is likely that none of the four schools would meet the criteria set out in the amendment since:

- None of them are wholly or mainly used for the purpose of developing musical excellence, the specialist musical provision is subsumed within the broader comprehensive school.
- Few, if any, pupils are selected to attend the schools purely on the basis of musical ability, they are typically selected from within the school for particularly opportunities offered by musical tuition.

Amendment 15 was agreed to by division (For 4, Against 2, Abstentions 0).

Power to reduce or remit rates for certain organisations: guidance

Amendment 94, in the name of Sarah Boyack, requires that at the same time the Scottish Ministers are consulting local authorities and other persons on draft guidance prior to its issue, the Scottish Ministers must lay a draft copy of the guidance before the Parliament. Additionally, **amendment 95** provides that the Scottish Ministers may not issue guidance under sub-section (7A) until after a period of 40 days beginning on the day the draft guidance was laid before Parliament. In calculating the 40 days no account is to be taken of any time during which the Parliament is dissolved or is in recess for more than 4 days. If the Parliament resolves within the 40 days that the guidance proposed should not be issued, Ministers must not issue it.

Both amendments 94 and 95 were agreed to by division with the same voting results (For 4, Against 2, Abstentions 0).

Unoccupied properties

Scottish Government **amendment 42** repeals the powers for Scottish Government to provide relief to unoccupied/empty properties. The effect is to leave any reliefs to local authorities to provide under their Community Empowerment Act powers.

Amendment 43 is a technical amendment to support the inclusion of amendment 42.

Both amendments were agreed to without division.

Payments

The following Scottish Government amendments were all agreed to without division.

Amendments 44, 45, 47, 48 and 49 clarify the process for recovery of payments as well as setting out a clearer outline of who is liable to make payments, and the point at which ratepayers may become liable.

Information notices

Electronic communication of information

Amendment 50 provides Scottish Ministers with the power to make regulations specifying that certain notices may be sent by electronic means. These notices could include valuation notices issued to the proprietor, tenant and occupier; assessor information notices issued to any person; notices from the local authority to the ratepayer as well as from the ratepayer to the local authority; notices from the Valuation Appeal Committee to the parties (the appellant and assessor), or from the parties to each other and to the Committee.

Amendment 51 specifies that these regulations are subject to the affirmative procedure, and makes consultation and notification requirements of Scottish Ministers developing these regulations.

Both of these Scottish Government amendments were agreed to without division.

Procedure for power to prescribe amount of non-domestic rates

Currently changes to the poundage or reliefs under section 153 of the Local Government etc. (Scotland) Act 1994 are subject to the negative procedure. **Amendment 4**, in the name of Andy Wightman, substitutes an affirmative procedure. Section 153 is used to set the majority of rates relief through subordinate legislation, but is not used for the poundage order which is set under section 7B(1) of the Local Government (Scotland) Act 1975 (see The Non-Domestic Rate (Scotland) Order 2019 for instance).

Amendment 4 agreed to by division (For 4, Against 2, Abstentions 0).

Civil penalties for failure to comply

Recommendation 13 of the Barclay Reviews sets out that "the current criminal penalty for non-provision of information to Assessors should become a civil penalty and Assessors should be able to collect information from a wider range of bodies". The Scottish Government accepted this recommendation, and sought to reflect the recommendation in the Bill.

It is currently set in Bill at £100 (amount A) if the assessor information notice is not complied with after 56 days (or 28 as per Amendment 53), with a further penalty of £100 (Amount B) after 21 days if the failure to provide the information continues, and £20 each day after the failure continues after the those 21 days (Amount C).

During evidence, the Committee found that views on these provisions were mixed, but that on the whole they were seen as a step forward. In particular, views on the level of fine and the timeframes were varied. The Committee supported the aims of these provisions, and concluded:

“ Whilst there was broad support for the thrust of these reforms, there was a divergence of views on some key points, such as levels of penalty, time limits for compliance, and whether powers to request information were framed too broadly or, conversely, too narrowly. On these and other points, there have been points made on both sides throughout Stage 1. This may indicate that the Bill has got the balance about right, or that some important points of policy might benefit from more discussion at amending stages of the Bill.”

[Stage 1 Report on the Non-Domestic Rates \(Scotland\) Bill: Measures to secure information from ratepayers.](#)

The effect of Scottish Government **amendments 54 and 56 to 60** is that if an information notice is served and the person fails to comply, they are liable after 28 days to a penalty equal to 1% of the rateable value (or £200, whichever is greater); to a penalty equal to 20% of the rateable value (or £1,000, whichever is greater) 28 days after the penalty notice is served, and the full rateable value 56 days after the penalty notice was served.

Amendments 54, 55, 57 and 60-66 were agreed to without division. The following amendments were agreed to by division.

Amendment 53 decreases the time frame - from 56 to 28 days - within which a person receiving an assessor information notice must comply with the notice. (For 4, Against 2, Abstentions 0).

Amendment 56 (in conjunction with amendment 54) replaces amount A with the greater of £200, and 1% of the rateable value of the lands and heritages concerned for the day on which the penalty notice is given; and £1,000 where the lands and heritages not yet entered in the Valuation Roll. (For 4, Against 2, Abstentions 0).

Amendment 58 replaces Amount B and the structure and amounts under Amount C with the greater of £1,000, and 20% of the rateable value of the lands and heritages concerned for the day on which the penalty notice is given, and £10,000 where the lands and heritages concerned are not entered on the Valuation Roll yet. (For 4, Against 2, Abstentions 0).

Amendment 59 specifies that if the person fails to comply with the original information notice within 56 days of receiving a penalty for non-provision of information, they become liable to a further penalty equal to the rateable value of the lands and heritages concerned for the day on which the penalty notice was given, or £50,000 where the lands and heritages are not yet entered on the Valuation Roll. (For 4, Against 2, Abstentions 0).

Enforcement

The following Scottish Government amendments agreed to without division.

Amendment 69 specifies that a penalty under section 20 (civil penalties for failure to comply with local authority information notices and for failure to notify changes in circumstances) is recoverable as a civil debt due to the local authority. The amendment provides in subsection (3) that Scottish Ministers may make provision by regulations about the collection of penalties imposed under section 20, and details on how.

These regulations are to be subject to the affirmative procedure, if they add to, replace or omit any part of the text of an Act, otherwise they are to be subject to the negative procedure.

Amendment 67 repeals section 21(5) of the Bill which specifies that a penalty is recoverable as a civil debt due to the local authority. This is consequential on the provision made by amendment 69.

Timescales

Amendment 96, in the name of Sarah Boyack, increases the timeframe - from 21 to 42 days - within which a ratepayer must tell the local authority of a relevant change in circumstances occurring. A change is relevant if the person knows, or might reasonably be expected to know, that it would affect rates liability.

Amendment 96 was agreed to without division.

Anti-avoidance regulations

The purpose of Scottish Government **amendment 70** is to clarify when the Scottish Ministers must notify the Scottish Parliament "as soon as reasonably practicable" that a consultation on draft anti-avoidance regulations has commenced.

Amendment 70 agreed to without division.

Other Amendments discussed

There were a number of amendments which sought to achieve the aims of the Bill in a different way, to add further provisions or definitions to the Bill, or to remove provisions in the Bill, which were not agreed to. These are summarised below.

Liability of owners for rates

The following three amendments were lodged by Andy Wightman.

Amendment 1 aimed to transfer rates liability from the occupier of a property to the owner. The amendment was disagreed to by division (For 1, Against 6, Abstentions 0).

Amendment 5 and **amendment 84** both, in different ways, aimed to tackle the problems the Committee heard about phoenix companies (see [Key points made in recommendations](#)). Andy Wightman did not move amendment 5, which was based on changes to existing guidance, in favour of pressing amendment 84, which would make owners liable in the event that debts could not be recovered from occupiers. Members objected to the amendment on the grounds that it did not arise from a Barclay recommendation, and the Minister expressed a preference for a consultative route on tackling this form of avoidance. Amendment 84 was disagreed to by division (For 2, Against 5, Abstentions 0).

Valuation roll

Amendment 6, in the name of Andy Wightman, aimed to alter the basis of valuation from being based on rental value to being based on a combination of the valuation of the unimproved site (i.e. the land), and a valuation of "improvements" (i.e. buildings). The Minister expressed concerns about making such a fundamental change to NDR without consultation, as well as about the impact on assessors, and the knock-on impacts on other legislation. The amendment was disagreed to by division (For 1, Against 6, Abstentions 0).

Amendment 7, also lodged by Andy Wightman, would have the effect of bringing almost all properties on to the valuation roll that are currently exempt. This was an alternative way of achieving the same aims of . Amendment 7 was disagreed to by division (For 1, Against 6, Abstentions 0) with members opting instead to pass amendment 8 without division.

Ancillary powers

Sarah Boyack laid a number of amendments which sought to limit the extent of the powers that can be exercised by Scottish ministers, and were designed to reflect the findings of the [Delegated Powers and Law Reform Committee](#). The Scottish Government also lodged a [series of amendments](#) to this effect which the Minister suggested achieved the same aims in an alternative way (by removing provisions elsewhere, rather than adding them). These were agreed without division. Of the amendments laid by Sarah Boyack:

- Amendment 86 was withdrawn.
- Amendment 87 was not moved.
- Amendment 97 was disagreed to by division (For 2, Against 4, Abstentions 0).
- Amendment 98 was disagreed to by division (For 1, Against 5, Abstentions 0).
- Amendment 99 was disagreed to by division (For 1, Against 5, Abstentions 0).
- Amendment 100 was not moved.

Rate setting

Amendment 14, in the name of Andy Wightman, proposed a progressive rate for Non-Domestic Rates, over which ministers would have rate-setting control. This replaced Amendment 2, which was lodged and then withdrawn due to an error. The Minister, referencing the figures given in the amendment, spoke of the loss of revenue, the impact this would have on council funding, and concerns about fairness. She explained that:

“ Non-domestic rates is a property tax. We endeavour to make it as progressive as possible, with the small business bonus scheme protecting businesses that occupy the smallest properties and the large business supplement applying to those that occupy the largest ones.”

Local Government and Communities Committee 27 November 2019 [Draft], Kate Forbes, contrib. 161⁸

Amendment 14 was disagreed to by division (For 1, Against 6, Abstentions 0).

Amendment 13, in the name of Graham Simpson, follows on from the suggestion in the Barclay Review that the Large Business Supplement should be set at the same rate in Scotland as it is in England. Members felt that this would, in effect, be the rejection of a devolved power, and expressed concerns that the current level of scrutiny of the Large Business Supplement would be lost if this change were made in primary legislation. Following debate, amendment 13 was withdrawn.

Reporting on valuations

Both **amendment 39**, in the name of Alexander Stewart, and **amendment 88**, in the name of Sarah Boyack, sought to introduce measures for greater parliamentary scrutiny of the assessors and valuation process. Amendment 39 called for an annual review of the valuation process, and amendment 88 called for a review of the number of assessors in

post every three years. Both the Committee and Minister expressed that, with work, amendments along such lines had merit, with some preference towards amendment 88. The Minister made a commitment to discuss with both members potentially bringing refined amendments forward at Stage 3.

Amendment 39 was withdrawn, and amendment 88 was not moved.

Mandatory minimum payment

Amendment 3, laid by Andy Wightman, was developed as a response to a Barclay recommendation, which was considered but not brought forward, around the notion that all ratepayers should pay something. The amendment would introduce a mandatory minimum payment. Although Mr Wightman said there would be no impact on relief schemes, there were some concerns around this, particularly the Small Business Bonus Scheme. The amendment was disagreed to by division (For 1, Against 6, Abstentions 0).

Rates relief, reduction and recovery

Unless specified, all amendments in this section were lodged by Sarah Boyack.

Amendment 89, in the name of Sarah Boyack, sought to create some clarity about and increase awareness of the Business Growth Accelerator relief. The Minister suggested that whilst she would not support the motion, there was an opportunity for further discussion around statutory guidance. The amendment was withdrawn with the potential of a revised amendment being laid at Stage 3.

Amendments 90 and 91 were, grouped with amendment 92, intended to address issues around the climate emergency and the challenge of encouraging businesses to adopt more sustainable business practices by introducing rates relief for sustainable and positive business practices. Members were sympathetic to the aims of these amendments, but expressed some concerns around the specified positive business practices in amendment 91. It was also felt that more consultation might be needed. The Minister reminded members that it could introduce reliefs at any time without the need for legislation, and spoke of other incentives it had in place to promote positive business practices. Both amendments were disagreed to by division (90: For 3, Against 4, Abstentions 0; 91: For 1, Against 6, Abstentions 0)

Amendment 93 sought to make changes to the conditions of charitable relief for arms-length external bodies (ALEOs), namely to ensure that councils were not penalised in funding from central government for using ALEOs, which get charitable relief, to deliver services. The Minister argued that it would remove a financial disincentive for councils considering using ALEOs at a time when the Scottish Government has taken measures to limit their use. The amendment was withdrawn.

Amendments 40 and 41, in the name of the Minister, specified that guidance on granting rates relief to sports clubs should be laid before the Scottish Parliament. These were similar in aim to Sarah Boyack's [amendments 94 and 95](#). The Committee voted in favour of Amendments 94 and 95, and against amendments 40 and 41, with both receiving the same voting result (For 2, Against 4, Abstentions).

Amendment 101, sought to prevent people from deliberately avoiding paying tax by providing local authorities with the legal tools to pursue any party for non-payment of Non-Domestic Rates when it can be shown that it was involved in evasion. This is similar in nature to Andy Wightman's [amendment 84](#) (which was disagreed to). The Minister, again, suggested that a consultative approach would be preferable. The amendment was withdrawn.

Independent schools

Amendments 73-79 and 81-83, in the name of Liz Smith MSP (the only member to lodge amendments who is not a Committee member, or the Minister), sought to change the provisions in the Bill which would remove charitable rates relief from independent schools. As these amendments, for the most part, were in contradiction to the Committees conclusions and recommendations at Stage 1, detail on the debate, which fell along similar lines, has not been included.

All of these amendments were disagreed to by division. As one member was not present for votes on this group, the Convener exercised his casting vote where votes were tied.

Amendment 73 specified that any body entered in the Scottish Charity Register is eligible for remission or reduction of rates.

- Amendment 73: (For 2, Against 4, Abstentions 0).

Amendments 74, 75 and 78 aimed to ensure that nurseries within independent schools would remain eligible for rates relief.

- Amendment 74: (For 3, Against 3, Abstentions 0; amendment disagreed to on casting vote).
- Amendment 75: (For 3, Against 3, Abstentions 0; amendment disagreed to on casting vote)
- Amendment 78: (For 3, Against 3, Abstentions 0; amendment disagreed to on casting vote)

Amendments 76 and 77 made the provision for rates relief to still be available to mainstream independent schools in certain situations where they delivered education to children with additional support needs.

- Amendment 76: (For 2, Against 4, Abstentions 0).
- Amendment 77: not moved.

Amendment 79 would remove section 10 in its entirety.

- Amendment 79: (For 2, Against 4, Abstentions 0).

Amendments 81-83 changed the timing of the commencement of Section 10, with a delay until 2022.

- Amendment 81: (For 2, Against 4, Abstentions 0).

- Amendment 82: (For 2, Against 4, Abstentions 0).
- Amendment 83: (For 2, Against 4, Abstentions 0).

Amendment 80, in the name of Graham Simpson, gave an alternative timeline for the commencement of Section 10, with a delay until August 2021.

- Amendment 80: (For 2, Against 3, Abstentions 1).

Abbreviations

ALEO - Arms Length External Organisation

ATM - Auto-Telling Machine

CBI - Confederation of British Industry

COSLA - Convention of Scottish Local Authorities

DPLR - Delegated Powers and Law Reform

FSB - Federation of Small Businesses

NDR - Non-Domestic Rates

RV - Rateable Values

SCC - Scottish Chambers of Commerce

SRC - Scottish Retail Consortium

SSI - Scottish Statutory Instrument

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