Published 4 October 2019
SP Paper 596
9th Report 2019 (Session 5)

The Scottish Parliament
Pàrlamaid na h-Alba

Local Government and Communities Committee
Comataidh Riaghaltas Ionadail is Coimhearsnachdan

Stage 1 Report on the Non-Domestic Rates (Scotland) Bill

Published in Scotland by the Scottish Parliamentary Corporate Body.

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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.[i] Shortly after introduction, the Scottish Parliament agreed to refer the Bill to the Local Government and Communities Committee for Stage 1 consideration. This means that it fell to this Committee to gather evidence and views on the Bill, and to report to the Parliament on whether its general principles should be agreed to.

2. Non-domestic rates (also sometimes known informally as business rates) are collected by local authorities to help pay for local services. Rates are levied on non-domestic properties. All properties potentially subject to rates are entered into the Valuation Roll for the relevant area, which is a public document. Properties are valued by assessors, who are local government officers but who exercise their professional judgement as valuers independently. (A quasi-judicial appeals process provides a check on their decision-making.) Ordinarily this takes place every five years. The Scottish Government sets an annual “poundage” rate: a multiplier, that together with the rateable value, determines the amount to be paid on each property. The poundage rate applies uniformly across Scotland. Thus, while it is a "local" tax in that it is used for council services, it also has characteristics of a national levy.[ii]

3. Overlaying this basic structure are number of potential reliefs and exemptions, which may be available depending on the type of the property or the activity being carried out.[iii] These include the small business bonus scheme, the practical effect of which is to reduce or in many cases eliminate any liability to pay rates on the part of small businesses. On the other hand, larger businesses must pay a rates supplement. Whilst these reliefs, exemptions and supplements all exist for a reason, they do add complexity to the system. It was also the view of some ratepayers, and indeed administrators, during our Stage 1 scrutiny that the administration of the system is sometimes more bureaucratic than it need be.[iv]

4. In terms of revenues raised, non-domestic rates are the second largest devolved tax in Scotland (after income tax)[v] and, overall, the second largest source of revenue for Scottish local authorities, just ahead of council tax, with government grant being comfortably the largest. There is significant variation in per capita income from rates across Scottish councils, mainly because there is more commercial activity in some than others. At the end of each year, balances between what local authorities have collected and the Scottish Government have notionally distributed are settled. The Scottish Government sets an annual "distributable amount" based on forecast collected revenue and on policy choice. Since 2018-19, the collectable amounts have been set by the Scottish Fiscal Commission. The

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i Bill and accompanying documents available here
ii Cosla, written submission
iii There is a list of these (as of August 2017) on pages 23-24 of the Barclay Review (discussed later)

iv Scottish Property Federation, written submission; Note of Committee visit to Stirling

overall effect is to smooth out the financial consequences of some councils collecting more per capita from rates than others.

5. Assessors value properties and are involved in the appeals process. For the purposes of this Bill, councils' role in the process relates mainly to administration, collection and enforcement.

6. The above is only a very brief outline. The Bill makes some important technical changes but leaves the overall rates infrastructure intact. The Scottish Parliament Information Centre (SPICe) has published briefings discussing rates in more detail and providing relevant recent data.[vi]

v Available here
vi Available here, here and here

Background to the Bill: Barclay Commission and Scottish Government response

7. The last time there was new primary legislation on Scottish non-domestic rates was in 1992. An important change came in 2008 with the introduction of the small business bonus scheme but this did not require primary legislation and was not the subject of extensive Parliamentary scrutiny at the time. During the 2011-2016 Parliamentary session, the Scottish Government postponed ratings revaluation. This was in order to avoid business uncertainty during the post-recession recovery period but also meant that businesses were being charged on the basis of increasingly outdated valuations. The Scottish National Party's manifesto for the 2016 Scottish Parliament election included a commitment to review the non-domestic rates system. Following that election and the SNP's return to government, it set up a four-person independent review group ("the Barclay Review"), chaired by Kenneth Barclay, former Chair of RBS Scotland. It had this remit:

> *To make recommendations that seek to enhance and reform the non-domestic rates (also sometimes referred to as business 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.*

8. The Barclay Review was given a year to report. It held various meetings with stakeholders across Scotland, as well as launching a consultation, at which it posed just this one question:

> How would you re-design the business rates system to better support businesses and incentivise investment?

It produced its report in August 2017.[vii] The report set out 30 recommendations cumulatively intended to make the ratings system fairer, to make the ratepayer experience better, and to better enable economic growth.

9. The Review's interpretation of its remit was that its recommendations should strive to be revenue neutral in the round.[viii] When we came to discussing the general principles of the Bill at Stage 1, we heard evidence from the business community that aspects of the ratings system are uncompetitive and continue to deter growth. For instance, we heard that the poundage rate has been allowed to get too high to the point where entrepreneurialism is being discouraged.[ix] A more specific complaint was that the current ratings methodology over-prices the hospitality sector.[x] There were also views that contemporary rateable values do not always reflect contemporary realities;[xi] for instance, the consumer's increasing preference for out of town shopping.[xii] The decline of many high streets in recent decades cannot have escaped anyone's attention, and was a talking point on our visits.

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vii Report of the Barclay Review of Non-Domestic Rates. Available here
viii Barclay Review, paragraph 18

10. Ultimately, valuation is a matter for assessors and valuation appeals committees. As regards other points raised by the business sector, we do not think these are all issues the Bill could be expected to address, but it is important to put these comments on the record. We expect that dialogue between the business sector and the Scottish Government about the competitiveness and fairness of rates will continue.

11. The Barclay Review did not interpret its remit as excluding it from asking some fundamental questions, such as whether a property-based levy remained the best way of taxing businesses for local services, but in the end its focus was pragmatic and most of its recommendations could be described as technical. The basic architecture of the rates system was left intact. This does not mean that its recommendations were unimportant or that none were controversial.

12. The Scottish Government welcomed the report of the Barclay Review, indicating that it welcomed the direction of travel it outlined.[xiii] The Scottish Government's Barclay Review Implementation Plan was published in December 2017.[xiv] In it, the Government stated that it proposed to accept 26 of the Review's recommendations in full and one in part. After a Scottish Government consultation, another proposal arising from Review recommendations was rejected.[xv]

13. The purpose of the Bill, as introduced, was to make all the legislative changes that are necessary to bring into effect the Barclay Review's recommendations that the Scottish Government has accepted, and no more than this. In some cases, "acceptance" has in practice involved a degree of departure from the original recommendation. In some other cases, the Barclay recommendation had been of a

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ix E.g. Scottish Property Federation, written submission; British Land, written submission; Scottish Retail Consortium, written submission.

x E.g. Scottish Tourism Alliance, written submission; Scottish Beer and Pub Federation, written submission; Scottish Council for Development and Industry, written submission; Aberdeen and Grampian Chamber of Commerce, written submission.

xi E.g. Byres Road and Lanes Business Improvement District, written submission; Scottish Council for Development and Industry, written submission; Scottish Chambers of Commerce Network, written submission; Note of Committee's meeting with Celebrate Kilmarnock.

xii Renfrewshire Council, written submission.

xiii Scottish Parliament, Official Report, Chamber, 12 September 2017

xiv Available here

xv The two rejected recommendations were: (28) that all property should be entered on the roll (except public infrastructure such as roads, bridges, sewers or domestic use) with current exemptions replaced by a 100% relief to improve transparency; and (29) that large scale commercial processing on agricultural land should pay the same level of rates as similar activity elsewhere so as to ensure fairness. The Scottish Government's reasons for rejecting these recommendations are set out at paragraph 22 of its Policy Memorandum. The Government also subsequently decided not to proceed with introducing an out-of-town levy, as Barclay had proposed

fairly general nature, leaving leeway for the Government to shape policy in the light of further reflection and consultation. Some Barclay recommendations are being taken forward in different ways, because primary legislation is not necessary. For instance, the Review decided that there was a need to fundamentally re-examine the effectiveness of the small business bonus scheme, but considered that this would be beyond its own scope. The Fraser of Allander Institute is now taking this work forward as an independent review.[xvi]

14. The Barclay Review considered but did not discuss at length the question whether there was scope to reconfigure non-domestic rates as a more genuinely "local" tax; for instance, to give individual councils more control over reliefs, exemptions or supplements, or even to vary the poundage rate. There are views that increased devolution of local tax could energise and empower councils or stimulate competition.[xvii] It could also create new revenue streams at a time when council finances are under strain. Issues that devolution of rates (or aspects of business) would raise are complex and require careful consideration; for example, they bring into question how the central pooling and reallocation of rates would work in this changed context and whether a lack of consistency across councils reduces business certainty.[xviii] There is also a question of whether devolution of the rates system can be dealt with in isolation or whether doing so raises the need to discuss the whole issue of local government funding and revenue-raising.

15. A "local governance review" jointly between the Scottish Government and the Convention of Scottish Local Authorities (Cosla) is ongoing and it is the Committee's understanding that questions about the devolution of fiscal levers to councils are amongst those on the table. A long-term interest of the Committee, and our theme for pre-budget scrutiny this year (evidence-taking is ongoing as this report is being published), is *the long-term sustainability of local government finance.* The aim is to provide a forum to discuss some of the big questions about the future of local government financing whilst this joint work continues, with no clear sign of when it might conclude.

16. One concrete proposal for fiscal devolution to have emerged during Stage 1 consideration is the Scottish Government's plan to devolve empty property relief to local authorities. We understand that, following discussions with Cosla, this proposal will now proceed.[xix] The economic impact of devolving this power would be fairly modest but inasmuch as it may indicate a future direction of travel it has symbolic significance. The Committee looks forward to considering the relevant amendments at Stage 2.

17. The Barclay Review had included a "roadmap": i.e. a timeline for implementation of all of its significant recommendations. The most important aspect of this is a "reset"

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xvi No formal remit of the review appears, as of publication of this report to have been published, but a specification for the review tender is available here. It states simply that the purpose is to review the scheme.

xvii Cosla, written submission; Reform Scotland, written submission;

xviii Local Government and Communities Committee, Official Report, 11 September 2019, col 11 (Minister for Public Finance and Digital Economy)

xix Local Government and Communities Committee, Official Report, 11 September 2019, col 11 (Minister for Public Finance and Digital Economy)

of the revaluation cycle (as described below), starting on 1 April 2022, which the Scottish Government has committed to meeting. The Scottish Government has also committed to introducing revised appeals provisions at the same time. The Minister for Public Finance and Digital Economy told us that the Scottish Government had an open mind on the timetable for implementing some other provisions set out in the Bill:[xx] we return to this, where relevant, in the discussion that follows.

xx Local Government and Communities Committee, Official Report, 11 September 2019, col 30

Parliamentary scrutiny at Stage 1 of the Bill

18. The Committee's interest in non-domestic rates reform predates this Bill. We took evidence from Kenneth Barclay on 26 April 2017, when we questioned him on his group's ongoing work and next steps. We separately took evidence from various stakeholders on the small business bonus scheme on 21 February 2018 and went on to press the Scottish Government to set up an independent review of the scheme.

19. Following the Bill's introduction and our designation as lead Committee, we issued a call for evidence, which closed on 30 May 2019. We received 367 submissions, most of these from individuals or families. This is more than is usual for a consultation on a Bill on largely technical issues. All submissions accepted as evidence have been published [xxi] The vast majority were from respondents concerned by the provision in the Bill on ending rates relief for independent schools.

20. We took formal evidence[xxii] at five meetings:

- On 22 May, we took evidence from Fife Council, Cosla, the Institute of Revenue Rating and Valuation and the Society of Local Authority Chief Executives.
- On 29 May we heard from the Scottish Assessors' Association. The focus at these first two sessions was on the administration and enforcement side of the ratings system.
- On 19 June, we took formal evidence from two independent schools (Hutcheson's Grammar, Glasgow and St Mary's Melrose), the Scottish Council of Independent Schools and the Scottish Charity Regulator. The focus of this session was on section 10, which removes the right to charitable relief from most independent schools.
- At the same meeting, we heard from representatives of the City of Edinburgh Council, West Lothian Council and Highland Council. This was in order to obtain a more"grassroots" view on the administration of the tax from a mix of councils.
- On 26 June, we heard from a panel of ratepayers: the Charity Retail Association, the Federation of Small Businesses Scotland, the Scottish Retail Consortium, and the Scottish Tourism Alliance.
- At the same meeting, we heard from Kenneth Barclay.
- Finally, on 11 September, the Committee took evidence from Kate Forbes, Minister for Public Finance and Digital Economy and Scottish Government officials.

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xxi Available here
xxii Available via the Committee's Non-Domestic Rates webpage here

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

- On 12 June Members visited George Watson's College, Edinburgh. We toured the campus and held a discussion with representatives of a diverse cross-section of Scotland's independent schools sector. The visit and discussion was organised with the assistance of the Scottish Council of Independent Schools, as well as George Watson's;
- 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 discussion was hosted by Celebrate Kilmarnock, a local group dedicated to promoting the town;
- We made another high street on 10 September, this time to Stirling. Stirling Council and Forth Valley Chamber of Commerce assisted us in arranging the visit and the discussion.

Notes of information gathered on those visits have been published.[xxiii]

22. As ever, the Committee is very grateful to all who took the time to contribute to our Stage 1 scrutiny and assist in our understanding of the Bill.[xxiv]

23. The Delegated Powers and Law Reform Committee reported to us on delegated powers set out in the Bill.[xxv] The Finance and Constitution Committee solicited written evidence on the Financial Memorandum to the Bill. It received 186 responses. As was the case with this Committee, most of these were from respondents concerned by provisions on independent schools. The Convener of the Finance and Constitution Committee wrote to the Convener of this Committee, enclosing a helpful summary of written evidence on the Memorandum, which was of assistance in our scrutiny of the financial implications of the Bill.[xxvi]

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xxiii Available via the Committee's Non-Domestic Rates webpage here

xxiv Alex Rowley MSP left the Committee on 4 September 2019 and was replaced as Deputy Convener by Sarah Boyack MSP

xxv Report on the Non-Domestic Rates (Scotland) Bill: Stage 1, available here

xxvi Available here

Outline of the Bill

24. The Bill is an amending Bill, meaning that most of its substantive provisions are not free-standing but reform existing Acts. Non-domestic rates have a long provenance in Scotland: one of the Acts the Bill amends dates from 1854. As the Scottish Government itself has noted, parts of the current law that are being amended are not always easy to comprehend.[xxvii] The Policy Memorandum and Explanatory Notes that accompany the Bill have helped in providing some context and explaining what particular provisions actually do. Almost all the discussion that follows in the report is about policy, unless an issue of drafting or legal meaning was expressly raised in Stage 1 evidence. In other words, the assumption is that the Policy Memorandum and Explanatory Notes accurately state what the legal effect of the Bill will be.

25. In that the purpose of the Bill is limited to giving effect to those recommendations in an independent report that happen to need primary legislation,[xxviii] it is inevitably piecemeal. However,the Policy Memorandum states[xxix] that all substantive provisions in the Bill go back to one or more of three policy aims (which were also the three key drivers of reform identified by the Barclay Review):

    - 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.

26. The Bill is organised in five Parts. Part 1 contains only definitions used in the Bill and is not discussed further. Part 5 contains standard and technical provisions. The most important reforms contained in the Bill are found in Parts 2 to 4. They 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;
    - a power to issue guidance to councils to encourage greater consistency in determining whether to grant relief to sports clubs;

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xxvii Local Government and Communities Committee, Official Report, 11 September 2019, col 13 (Minister for Public Finance and Digital Economy)

xxviii Local Government and Communities Committee, Official Report, 11 September 2019, col 5 (Minister for Public Finance and Digital Economy)

xxix At paragaph 5

- measures to address general rates avoidance, as well as to close two known loopholes concerning holiday homes and empty properties;

- measures to empower assessors to obtain the information they need more easily and to enable more effective debt recovery by local councils.

27. It is another feature of the Bill that much of it is a framework; it gives the Scottish Ministers powers to make new laws in various designated areas. The detail of policy will therefore be framed by subordinate legislation at a later date if and when the Bill is passed. The Delegated Powers and Law Reform Committee had observations on the scope of some of these powers, as discussed at relevant parts below. The DPLR Committee also commented on a more general tendency in the Bill to give wider scope to ancillary powers, including the general regulation making-power in Part 5,[xxx] than is standard in legislation. The DPLR Committee's concern was that, if the Bill is agreed to in its current form, the Parliament may have agreed to give the Scottish Government delegated powers that are uncertain in scope and wider than intended. (It is important to underline that these powers would still be subject to Parliamentary scrutiny in the normal way.) The DPLR Committee did not consider adequate the Scottish Government's explanation that this drafting was necessary to take account of the complexity and inter-dependency of provisions in business rates statute law. Because we do not comment further on Part 5 in this report, we take the opportunity to note the DPLR Committee's concerns here.

28. The Committee invites the Scottish Government to respond to the Delegated Power and Law Reform Committee's views that ancillary powers in sections 3, 6, 7, 9 18, 19, 20 and 29 of the Bill are of uncertain and possibly too broad scope, and that the Government should revisit the drafting at Stage 2.

29. Noting that the Bill amends a number of existing Acts, the earliest from 1854, the Committee believes that where, over the course of Parliamentary consideration of this Bill, there are opportunities for the Scottish Government to modernise drafting aspects in those Acts, these should be taken.

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xxx At paragraphs 12-16 of its report. The DPLR Committee's report explains that ancillary powers in a Bill are powers used "for the purposes of or to give effect to the Bill as enacted. ... Often, but not in all cases, the ancillary powers are powers to make incidental, supplementary, consequential, transitional, transitory or saving provisions. Supplementary provision, as a type of ancillary provision, may add to the provisions in the Act, to fill in details that the terms of the Act do not provide, to implement the Act and make it work."

Provisions on revaluations and on appeals

30. Section 2 of the Bill changes the ratings revaluation cycle from every five to every three years and sets the start of the 2022-23 financial year as the point at which this reset will occur. This meets a key recommendation of the Barclay Review. Ratings are currently based on the market value of the property as assessed two years before the date on which revaluation for ratings purposes actually occurs. The date of assessment is known as the "tone date". The Barclay Review recommended that henceforth the tone date should fall just one year before revaluation comes into effect. This too was accepted. The Policy Memorandum states that:

> Moving to a three-yearly revaluation with a “tone date” brought forward from two years to one year before the revaluation takes effect, will help ensure that the rating system in Scotland is more flexible to the changing economic circumstances that the owner, tenant or occupier of a non-domestic property will face. This approach should, as far as can reasonably be expected, reduce the likelihood of ratepayers facing significant increases in their rates Bills at the time of a revaluation. Changes to the “tone date” can be dealt with through subordinate legislation.[xxxi]

31. This part of the Bill was warmly welcomed by the business community. The Scottish Retail Consortium awarded section 2 a "big thumbs up" as one of the most business-friendly measures in the Bill. The Scottish Tourism Alliance and Federation of Small Businesses were amongst others to agree.[xxxii] The reform was seen as a key part of the programme to make business rates more market-friendly by making them more responsive to actual market conditions and smoothing out fluctuations from one revaluation to another.[xxxiii] A few submissions called for even more frequent revaluations, arguing amongst other things that, on the basis of international comparisons, this correlated to very low numbers of appeals against revaluation.[xxxiv]

32. The last revaluation was in 2017 and followed a two-year delay. The Scottish Government's position is that 2022-23, and no sooner, is the right time for the next revaluation, and for the resetting of the rates cycle, as this should allow enough time to bed in the other changes that are necessary for an effective system based on three-year revaluations.[xxxv] This includes new provisions on appeals against revaluations. There was almost unanimous agreement from stakeholders that reform of the appeals process would be key to making three-year cycles work.[xxxvi]

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xxxi Policy Memorandum, paragraph 40
xxxii Local Government and Communities Committee, Official Report, 26 June 2019, cols 2-4

xxxiii e.g. British Land, written submission; Scottish Council for Development and Industry, written submission

xxxiv E.g. Association of Accounting Technicians, written submission; UK Petroleum Industry Industry Association, written submission
xxxv Policy Memorandum, paragraph 42

33. Appeals are widely perceived as one of the main problems with the current non-domestic rates system and our Stage 1 evidence-taking underlined this. The problem is that there are too many of them. A letter of 17 April 2019 to the Committee from the Minister for Public Finance and Digital Economy indicated that 73,868 appeals had been lodged against the 2017 revaluation, equivalent to 31.7% of all non-domestic properties in Scotland.[xxxvii] Given that the number of appeals against favourable or neutral revaluations is presumably low, this seems a high proportion. The letter continued that 41% of appeals had been resolved by December 2018 and that over 75% of these had led to no change in rateable value. With 59% of appeals unresolved by the end of 2018, the Minister explained in the letter that it was the Scottish Government's working assumption that there would still be outstanding appeals by the 2022 revaluation.

34. Evidence at Stage 1 indicates that many ratepayers see an appeal as merely another step in the valuation process, or "a matter of course", as the Barclay Review described it.[xxxviii] Comments from a ratepayer on one of our visits that the speaker's key closing message at a seminar on revaluation they had attended was "always appeal your revaluation" sum this up. [xxxix]

35. It was confirmed in evidence-taking that there are some aspects of the current system that incentivise appeal-making. As the Policy Memorandum notes, there is no fee for an appeal, and appeals can be initiated by way of a brief email. There is also no intermediate step between a decision on revaluation and an appeal, meaning that ratepayers who want to challenge a decision are funnelled straight into the appeals process.[xl] As the revaluations process is not always well-understood, this means that, alongside the genuinely aggrieved, appellants may include those who simply do not know why a particular value was reached and, at the very least, want to challenge assessors to "show their working" more clearly.[xli] There is also no equivalent of a "class action" in the current system: if an appeal against the revaluation of one property is successful, this does not mean that any other properties will be automatically revalued. There must be a separate appeal for each. [xlii]

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xxxvi e.g. Scottish Property Federation, written submission; Scottish Council for Development and Industry, written submission, Argyll and Bute Council, written submission; Business for Scotland, written submission

xxxvii Available here

xxxviii At paragraph 4.91

xxxix Note of visit to Stirling. A number of written submissions accepted the proposition that there were too many speculative appeals, e.g The Institute of Revenues Rating and Valuation. Cosla, the IRRV and Society of Local Authority Chief Executives were amongst those to agree in oral evidence that there were too many speculative appeals. (Local Government and Communities Committee, Official Report, 22 May, cols 3 and 9. Evidence from the business sector generally acknowledged that there were too many appeals, whether or not they agreed that many of these were "speculative" (e.g Scottish Retail Consortium, written submission, Federation of Small Businesses, written submission; Scottish Tourism Alliance, Local Government and Communities Committee, Official Report, 26 June 2019, col 23)

36. The Barclay Review recommended (recommendation 19) that "Reform of the appeals system is needed to modernise the approach, reduce appeal volume and ensure greater transparency and fairness", but expressed no specific views on how to achieve this, noting that more work would be required. The Scottish Government accepted this recommendation, agreeing that cutting down on appeals should be a priority, and in her evidence to the Committee the Minister for Public Finance and Digital Economy indicated that provisions on appeals were the most critical aspect of the Bill and the most important to get right.[xliii] The Government's view is that more frequent revaluations and the change in the tone date will help, as ratepayers will feel more assured that revaluations more accurately reflect contemporary, real-life market conditions. This is an interesting observation, given other evidence at Stage 1, noted below, that the best way of ensuring that the switch to three-year revaluations will work in practice will be to cut sharply the number of appeals. Other reforms that the Scottish Government saw as important were giving assessors stronger powers to gather information (discussed later in the report), as these would help assessors base revaluations on robust data.

37. Reform of the appeals system is set out in sections 6 to 8 of the Bill. The Government describes these provisions as "framework": they set out principles to be fleshed out subsequently by the use of delegated powers.[xliv] Instruments that the Parliament agreed to under these provisions would replace the current appeals system. The main elements are that:

- any ratepayer wishing to appeal a revaluation must first lodge a "proposal" with the assessor, along with any supporting information;
- there must be a built-in period to allow the assessor to consider the proposal and decide whether to accept it, reject it, or make a counter-proposal;
- the tribunal (the Valuation Appeal Committee) would be empowered to *increase* the rateable value of the property if evidence emerges to support this during the appeals process. At the same, it would be made harder for the appellant to drop the appeal. In other words, an element of additional risk (from the perspective of the ratepayer) is introduced into the process;
- there is also a power enabling Ministers to levy a fee for making an appeal, as well as to set out circumstances where a fee could be refunded.

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xl There can be a "pre-appeal stage" but this is entirely informal and at the discretion of the assessor. (Local Government and Communities Committee, Official Report, 26 June 2019, col 23. (Federation of Small Businesses, Scottish Tourism Alliance))

xli A number of submissions noted a perceived lack of transparency in revaluations, eg CBI Scotland, written submission

xlii Policy Memorandum, paragraph 73

xliii Local Government and Communities Committee, Official Report, 11 September 2019, col 4

xliv Policy Memorandum, paragraph 76. On 3 September, the Committee received a letter from the Scottish Government (available here) indicating that, in order to be as prepared as possible in advance of provision on appeals coming into force, it proposed to consult on draft appeal rules whilst the Bill was still proceeding through Parliament. Whilst this is not a typical approach, the Committee puts on record that it accepts the Scottish Government's reasons for proceeding in this way on this occasion.

38. The provisions on appeal were welcomed in most evidence to express a view on them, inasmuch as there was almost universal agreement that the present system is not sustainable.[xlv] This is with the important exception of the Scottish Assessor's Association, whose views are set out later in this section. Evidence from the Valuations Appeal Committees Forum[xlvi] noted that much of its time is currently wasted dealing with "purely formal motions" in relation to the 98% of cases that have been settled or abandoned without a hearing. It welcomed the two-stage approach outlined in the Bill as a sound basis for a revised appeals system, whilst querying aspects of drafting that, in its view, created a new risk of pointless appeals coming before the Tribunal.

39. Business gave the provisions a more cautious welcome, with ratepayers querying whether it would be fair to charge them for making an appeal or to raise rates as a result of an appeal made by a ratepayer arguing that they are too high.[xlvii] A few submissions from business queried the premise that speculative appeals were rife or that the process was too easy to access, arguing that the process was lengthy and potentially complex and not entered into lightly. They said appeals were often made because the valuations process was not always transparent.[xlviii] There were calls for more clarity on the face of the Bill about key elements of the appeals process, including the information assessors have to provide ratepayers as part of the process.[xlix]

40. The other main reason the Scottish Government put forward in its Policy Memorandum for not bringing revaluation forward is that a lot of data remains to be gathered. The implication is that a full five years is still needed for there to be an effective revaluation. This raises the question of how assessors and council officers will handle increased demand in future. The Scottish Government asked the Scottish Assessor's Association to help it quantify the costs of three-year cycles for inclusion in the Financial Memorandum to the Bill. The Memorandum does so, noting that costs are contingent and quoting the SAA's view that that the resource implications are "both considerable and extremely difficult to quantify".[l]

41. The Memorandum also set out views from the SAA that, as an effect of section 2 will be to take Scotland out of sync with other UK jurisdictions in terms of revaluation cycles, this will come with a cost in terms of cross-border expertise and knowledge-sharing.[li] Some in the business community did not welcome this either, arguing that it was likely to impact negatively on Scottish businesses operating in other parts of the UK.[lii] The next revaluation date south of the border is 1 April 2021.The Minister told us that the Scottish Government had no objection in principle

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xlv e.g. Chartered Institute of Taxation, written submission; Argyll and Bute Council, written submission

xlvi Scottish Valuation Appeals Committee Forum, written submission

xlvii eg Scottish Retail Consortium, written submission; Eric Young and Co, written submission; Association of Convenience Stores, written submission

xlviii e.g. British Independent Retailers Association, written submission; Federation of Small Businesses, written submission; UK Petroleum Industry Association, written submission

xlix e.g. Eric Young and Co.

l At paragraph 90

to harmonising revaluation across the UK, but that what businesses wanted most is certainty, which would be best achieved by sticking to current plans.[liii]

42. SAA representatives told us that the move to three-year cycles was "an excellent move forward" for similar reasons given by stakeholders in the business community.[liv] However, they queried whether they would have the information gathering powers they needed (discussed further below). A more fundamental problem they raised was one of personnel: the number of assessors in Scotland is in long-term decline, and it appears to be getting harder to recruit and retain them in local government. The SAA told us this was a "real and serious challenge".[lv] One challenge was increased competition from the private sector. Another was fewer graduates coming through. It was unclear from the evidence whether this was because of a decrease in demand, a running down of courses and departments, or a combination of the two. SAA representatives told us the profession was actively looking for solutions, such as seeking to increase the number of recruits straight from school. They welcomed the extra resource the Scottish Government had provided to prepare for the Bill. But they said it was going to be "a real challenge" to make a success of the 2022 revaluation and the pattern of three-yearly cycles that would follow.[lvi]

43. Evidence from councils and the business sector backed up these views. Cosla outlined three necessary conditions for the switch to be successful: there needed to be increased resources and support for assessors through the current revaluation; this needed to continue in the longer term; and reform of the appeals system had to work, and lead to a drop in numbers.[lvii] The reforms in section 2 and sections 6 to 8 will increase the administrative burden on Cosla too. Cosla confirmed that that they were responsible for the relevant costings in the Financial Memorandum and unsurprisingly endorsed them as a best estimate. They also confirmed that the Scottish Government had undertaken to meet these costs in the immediate future and said it would be their expectation that this should continue. [lviii]

44. When we asked the President of the SAA if he was confident proposals in the Bill would reduce the number of appeals, he replied no. SAA witnesses elaborated that their concerns were that the Bill created a more complex appeals process, with an additional stage and that it appeared likely that the assessor would be heavily involved in the "proposal" stage. If tens of thousands of proposals were made, this

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li At paragraphs 90-91

lii e.g. Food and Drink Federation, written submission; Aberdeen and Grampian Chamber of Commerce, written submission; British Land, written submission

liii Local Government and Communities Committee, Official Report, 11 September 2019, col 29

liv Local Government and Communities Committee, Official Report, 26 June 2019, col 5

lv Local Government and Communities Committee, Official Report, 29 May 2019, col 13

lvi Local Government and Communities Committee, Official Report, 29 May 2019, cols 12-13

lvii Local Government and Communities Committee, Official Report, 22 May 2019, cols 2-3

lviii Local Government and Communities Committee, Official Report, 22 May 2019, cols 24-25

would be onerous. Assessors told us they anticipated a strong risk of the proposal stage becoming an "automatic" step in the revised process. The SAA also said it was not possible to know at this stage what proportion of proposals could be expected to go on to become full appeals. It was suggested that rules enabling appeals on relatively minor matters to be refused at an early stage should be considered.[lix]

45. The SAA confirmed, as did Cosla, that dialogue about the financial consequences of reforming rates had started well before the Bill had been introduced and was still going on. The SAA also told us that preparations within the profession for the new regime were already well advanced. It was reassuring to hear this. However, the SAA in particular cautioned us that costs remained uncertain and contingent. The scale of additional demand created by the Bill would only really be known once it was law.[lx]

46. In her evidence to the Committee, the Minister for Public Finance and the Digital Economy re-emphasised that Scottish Government viewed provisions on resetting the cycle and on appeals as inter-dependent. Both needed to work. The Minister acknowledged concerns over the recruitment of assessors. She told us that an additional £2.5 million had been allocated directly to assessors in this year's budget to help prepare for the 2022 revaluation. Regarding the appeals backlog, the Minister said that she "would not want us to be in a position" where there are still outstanding appeals by the time of the next revaluation but that she had to respect the independence of assessors and the courts process. (A very small number of appeals end up in the Lands Tribunal for Scotland.) The Minister and officials clarified that there are a very small number of appeals still outstanding from the 2010 revaluation.[lxi]

47. The Minister also clarified that it was concerns about the need to prioritise assessors' work that was the main reasons the Scottish Government had chosen not to accept Barclay's recommendations that all non-domestic property should be entered into the Roll (whether or not it would pay rates).[lxii]

48. We asked the Minister if she was minded to use the new power to introduce fees as one way to cut down on the number of appeals. She did not commit to this, indicating that she was concerned about the importance of access to justice. She said a working group was still deliberating on this and other issues concerning appeals.[lxiii]

49. A number of submissions at Stage 1 noted that there was much scope to modernise the administration of the entire ratings system, and to move it online, particularly in relation to revaluation and appeals.[lxiv] The Committee does not know the extent to

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lix Local Government and Communities Committee, Official Report, 29 May 2019, cols 15-16

lx Local Government and Communities Committee, Official Report, 29 May 2019, col 24 and 32-33

lxi Local Government and Communities Committee, Official Report, 11 September 2019, cols 9-10

lxii Local Government and Communities Committee, Official Report, 11 September 2019, col 12

lxiii Local Government and Communities Committee, Official Report, 11 September 2019, cols 8-9

which this would require an audit of existing legislation to identify provisions that would need to change (as opposed to purely administrative changes) but if any tweaks are required, amending stages of the Bill would present a clear opportunity. Such changes could for the time being be enabling rather than prescriptive, i.e. whenever possible giving administrators and ratepayers a choice between digital and non-digital means of information-sharing or notification.

50. It seems relevant to allude to this evidence in this part of the report, as it may be one way of reducing some of the administrative burden on assessors and making the challenge of future revaluations more manageable. The Minister agreed with this, remarking that the Government's aspiration was for "a digital process with the occasional bit of paper". It was encouraging to hear the Minister also confirm that the Scottish Government are considering amendments to reduce the need for valuation notices to be sent by post, following stakeholder feedback.[lxv]

51. The Committee welcomes section 2 of the Bill which, together with changes being made elsewhere, will change the revaluation cycle from five to three years and reduce the lag between the date at which market value was calculated and real-time market conditions for business premises. This is a business-friendly change that, if implemented effectively, may also lead to a reduction in the number of speculative appeals against revaluation.

52. Proposals to reform the appeals process in sections 6 to 8 are also a step in the right direction. The present system is unsustainable: there are far too many speculative appeals, leading to lengthy and resource-sapping backlogs that are not in the interests of ratepayers or administrators. Evidence at Stage 1 has raised a number of important questions and concerns about the detail of any new process. The Committee notes that provisions in the Bill are a framework and that it will be important to get the detail of the appeals process right. We encourage the Scottish Government to continue to consult widely with assessors, councils, ratepayers and other stakeholders.

53. We also note widely shared views that the more transparent and intelligible the revaluations process is, the fewer appeals there will be, and invite the Scottish Government to confirm whether it sees opportunities, as the Bill continues through the Parliament, to ensure that the process will be more transparent in future.

54. 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

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lxiv e.g. Royal Institute of Chartered Surveyors, written submission; Scottish Beer and Pubs Federation, written submission; Federation of Small Businesses, written submission, Scottish Renewables, written submission.

lxv Local Government and Communities Committee, Official Report, 11 September 2019, col 22-23

could include mechanisms to return fees in appropriate cases, or not to charge fees in certain categories of cases.

55. The Committee has heard concerns about pressures a switch to three-yearly revaluation will place on assessors, under current staffing levels. We also note the profession's views that meeting the 1 April 2022 revaluation target, and subsequent three-year cycles, will be a "challenge". We ask the Scottish Government whether it has a plan to address problems of recruitment and retention in the assessors' profession.

56. The Committee notes stakeholders' views that a move to a predominantly digital system for administering revaluations and appeals is overdue. We welcome the small steps taken so far in the Bill but urge the Scottish Government to seize the opportunity to consider further ways to streamline and modernise the process.

New or improved properties (the "business growth accelerator")

57. As non-domestic rates are a property-based tax, and as it is characteristic of an expanding business to want to improve or extend its premises, this can mean that, if it does so, its rates bill will go up. The basic principle that firms which can afford more expensive premises should contribute a bit more is sound. But the Barclay Review noted evidence that this feature of the tax could be a brake on expansion and dissuade owners from taking decisions that would be good in the long-term because of the costs. It described the current system[lxvi] as, at times-

> ... a disincentive and barrier to investment - and penalises ratepayers who make environmental improvements (*e.g.* solar panels), face requirements to improve their properties as a result of regulation (*e.g.* the addition of sprinklers) or invest in plant and machinery.

58. The Review recommended (recommendation 1) the introduction of a "business growth accelerator". It said that "to boost business growth, a 12 month delay should be introduced before rates are increased when an existing property is expanded or improved and also before rates apply to a new build property." The Scottish Government accepted this recommendation, and has already taken steps to implement it in part by way of subordinate legislation. The Policy Memorandum[lxvii] explains that the Scottish Government chose to make provision for the accelerator on the face of the Bill to increase business certainty. This is done in section 9, creating a new order-making power, We take this to mean that the Scottish Government wants business to know that it is committed to the accelerator and that it is here to stay. However, most of the detail of the new relief will be set out in subordinate legislation made under section 9. These include the length of the period of grace until the full relief must be paid. The Scottish Government has stated that this will be 12 months, in line with the recommendation.[lxviii]

59. Going slightly further than the Review, the Scottish Government has also legislated in the Bill to provide that entirely new properties entered into the Roll will only become liable to rates after 12 months (section 3, read with section 9). However, splits or mergers of properties will not qualify for the accelerator because, as the Minister said in evidence, the Scottish Government does not consider that these are likely to count as "improvements" or "expansions" to premises carried out by an expanding business.[lxix]

60. This reform was welcomed by almost all the ratepayers we took evidence from or met on visits, and by all sectors of the business community. It was seen as a measure that would give practical help to expanding businesses.[lxx] A number of

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lxvi At paragraph 4.2
lxvii At paragraph 49

lxviii Policy Memorandum, paragraph 47
lxix Local Government and Communities Committee, Official Report, 11 September 2019, col 14

submissions said that, whilst overall policy may be clear, more could be done to provide clarity about the circumstances in which the new relief is to apply.[lxxi] They also said that there were already signs of significant divergence in how councils dealt with the accelerator, which reduced business certainty, and questions were beginning to arise over how councils interpreted key terms in the new legislation, such as "improvement" or "refurbishment". Accordingly, a number of submissions called for the Scottish Government to issue guidance to enable a more consistent approach, as and which could also outline the specific policy outcomes the specific policy outcomes the Scottish Government hoped the accelerator could help achieve (e.g. high street regeneration).[lxxii]

61. Councils, which would have the role of awarding the relief, generally welcomed the approach taken in the Bill, in particular provisions in section 3 about the marking of new-build entries in the Roll. They said this would make it easier for councils to determine issues of eligibility, as it would be a more automatic process. This was some ratepayers' view as well. [lxxiii] The Scottish Assessor's Association acknowledged its expanded responsibilities under section 3 , saying it "welcomed the opportunity to assist" in making a success of the accelerator. The SAA was amongst bodies to raise some technical and drafting points about the operation of the provision, which we expect the Scottish Government will be considering.[lxxiv]

62. Growing businesses whose growth is reflected in premises that expand or improve more than once can expect to continue to have to pay higher rates over the longer term. To that extent, the accelerator does not change, and was not intended to change, the underlying character of rates, which are "progressive" in the broad sense that, any reliefs aside, bigger and more expensive premises will tend to pay more than smaller ones. The accelerator's purpose, as we understand it, is to help overcome a "baked in" tendency of the ratings system that it sometimes deters business owners from taking decisions that are good for growth and right in the long term.

63. The Committee found that when we discussed the accelerator, and the idea behind it, with ratepayers, the discussion sometimes moved on to other barriers to rational business decision-making "baked in" to the ratings system. One of these related to the small business bonus scheme. Small business owners welcomed the intent behind the scheme, but mentioned the "cliff edge" that appears at the point where the 100% relief available under the scheme reduces to 25%, and rates liability

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lxx e.g. British Independent Retail Association, written submission; Business for Scotland, written submission; Association of Convenience Stores, written submission

lxxi e. g. Scottish Chambers of Commerce Network; Royal Institute of Chartered Surveyors, written submission

lxxii e.g. Aberdeen and Grampian Chamber of Commerce, written submission; Scottish Property Federation, written submission; Scottish Beer and Pub Federation, written submission

lxxiii e.g Cosla, written submission; North Ayrshire Council, written submission, Scottish Retail Consortium, written submission

lxxiv SAA written submission; Royal Institute of Chartered Surveyors, written submission; Ratings Surveyors Association, written submission

suddenly escalates. This is currently where the property has a rateable value above £15,000. There is another spike at above £18,000, where remaining relief falls from 25% to zero. Some business owners told us that what this means in practice is that they cannot afford to grow the business. (And on one visit, we heard it may have contributed to a slight over-heating of the rental market for smaller premises.[lxxv]) We were also told that these current arrangements incentivised growing small businesses to take their business away from the high street, where square footage costs are usually higher: this at a time when high streets are already under threat from long-term changes in consumer behaviour, for instance online and out of town shopping.[lxxvi]

64. When the Committee raised this point with the Minister, she acknowledged there may be an issue, but said that this illustrated the need for a review of the small business bonus scheme, and that she expected the point raised within the remit of the current Fraser of Allander inquiry into the small business bonus scheme, which would report in Spring 2020.[lxxvii]

65. The Committee welcomes the introduction, in this Bill and in recent subordinate legislation, of the business growth accelerator, which reduces the rates bills of firms that have invested in their growing business's premises. The Committee also welcomes associated provisions in the Bill to exempt newbuild properties from rates in the first year. In view of evidence that divergences in council practice in applying the accelerator have already emerged, and that there is uncertainty over the interpretation of some key terms, we invite the Scottish Government to consider issuing guidance on the accelerator to councils and ratepayers.

66. The Committee puts on record that it welcomes the independent review of the small business bonus scheme that is now underway, and hopes that its remit will allow it to consider whether current aspects of the scheme discourage entrepreneurialism or effective longer-term decision-making. Whilst fully respecting the independence of the review, we ask the Scottish Government to pass on to the review our observations based on Stage 1 evidence and information-gathering that there are "cliff edges" in the current set-up, which can adversely affect enterprises' planning and decision-taking.

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lxxv Note of visit to Stirling

lxxvi Note of discussion with Celebrate Kilmarnock

lxxvii Local Government and Communities Committee, Official Report, 11 September cols 5-6

Parks

67. The Barclay Review noted a perceived anomaly in current legislation: commercial properties in most public parks are not liable to rates. This is because parks are not entered in the Valuation Roll and thus, for the purposes of the ratings system, do not "exist" (as opposed to having 100% relief). The reasons for this are not entirely clear but appear to be historical. The Policy Memorandum suggests they rest on outdated assumptions about public parks being spaces where there is no commercial activity.[lxxviii] The Barclay Review said it could not see how current arrangements could be justified, citing the case of a cafe in a park.[lxxix] It would not pay rates but one just outside the gates would. The Scottish Government accepted this recommendation, stating that it was "right and proper that such commercial activity should be rated in the same way as commercial activity that is undertaken elsewhere."[lxxx]

68. This recommendation is brought into effect in section 4 of the Bill. The section additionally provides that, where a park charges for entry, this too should lead to an entry being put in the Roll.The Barclay Review estimated, speculatively, that the change could secure local authorities an additional £1.5m per annum in rates, a figure that the Scottish Government has adopted, adjusting for uprating, in its Financial Memorandum.[lxxxi] On the other hand, where a local authority runs any commercial ventures in parks, they might in future see their rates rise because of this. (There is a discussion of the specific case of ALEOs; arms length external organisations, later in the report, in the discussion on sections 10 and 11.)

69. This proposal was generally welcomed with a number of caveats. The Barclay Review's view that the current situation was anomalous and that the change was necessary to level the playing field was not generally challenged. But questions arose as to what the effect of the provision would turn out to be.[lxxxii]

70. Questions were raised as to whether introducing a rates liability in this area risked sending a mixed message about encouraging people to use public parks more and (for instance for public health initiatives.).[lxxxiii] Other evidence touched on concerns, about the treatment of not-for-profit or community bodies running enterprises in parks, and whether, if they became liable to rates, there would be any recognition of their status. (We note that this had been a strong concern when the Scottish Government initially consulted on this proposal.[lxxxiv]) There was strong agreement in many submissions about the need for more clarity about the policy intention behind this part of the Bill.[lxxxv]

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lxxviii Paragraph 56

lxxix Paragraph 4.152

lxxx Policy Memorandum, paragraph 56

lxxxi At paragraph 35

lxxxii e.g. Business for Scotland, written submission

lxxxiii Cosla, written submission; Community Leisure UK, written submission

lxxxiv Policy Memorandum, paragraphs 56-57

71. The Policy Memorandum states that the Scottish Government's intention is for "commercial activity" in parks to become liable to rates, but that term is not used in section 4. A number of submissions stated that they did not know whether bodies like not-for-profits or community-run unregistered charities would be caught by section 4 and, if so, whether they would be able to access reliefs to mitigate their liability.[lxxxvi] These included Cosla who said they did not know whether the change would be lead to arms-length external bodies (ALEOs: discussed in the next section) becoming fully liable.

72. Overall, the view was that more work needed to be done to make the underlying policy intention in respect of “commercial” and “non-commercial” park activity more clear.[lxxxvii] Similar views were expressed in relation to paid access to public parks.[lxxxviii] The Committee notes that charging to access a public space appears to be a rising trend, often relating to festivals or other one-off events. Some evidence queried what rates liability, if any, was envisaged for these sorts of events, and who would pay it, in the light of section 4 becoming law.

73. Some evidence queried whether, in the end, this would be a change worth making: there would be a new administrative burden on assessors and council officers (and ratepayers), but many newly enrolled properties could turn out to be eligible for charitable relief or under the small business bonus scheme. This was the view of most of the council officers who gave evidence at our 19 June meeting. They queried whether, once administrative costs and potential reliefs are factored in, councils would meaningfully benefit from the change.

74. The Scottish Assessors Association estimated that section 4 would result in a "significant number" of new properties on the Roll. They agreed that many of these might end up claiming relief, but said that there would be benefit from the change increasing the integrity and transparency of the Valuation Roll. The SAA also called for key terms used in relation to section 4 (eg "commercial activity", "free and unrestricted access") to be defined; if not in the Bill, then in guidance.[lxxxix]

75. The Committee accepts that there is no good reason in principle why businesses in most public parks should continue to enjoy automatic exemption from the business rates regime. We therefore support the principle of, and intention behind, section 4 of the Bill, which contributes to an overall policy of ensuring that everyone contributes their fair share of rates for local services. We note views at Stage 1 that increased revenue as a result of section 4 might be relatively modest but, if so, this is not a reason it itself, for not proceeding.

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lxxxv e.g. City of Glasgow Council, written submission; Argyll and Bute Council, written submission

lxxxvi e.g. Fife Council, written submission

lxxxvii e.g. Scottish Ratings Surveyors Association, written submission; Royal Institute of Chartered Surveyors, written submission; Scottish Beer and Pub Federation, written submission

lxxxviii UK Music, written submission

lxxxix written submission

76. 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.

Charitable relief and the Bill: ALEOs, independent schools and sports clubs

77. The Barclay Review included a short survey of the different forms of relief available to ratepayers. Charitable relief is by some margin now the largest of these, its value having grown by a steady rate of around 6% in the preceding decade. As of the Review's publication, the value of charitable relief stood at just over £200m per annum. The Review considered that this was not sustainable, making the general recommendation (recommendation 24) that "Charity relief should be reformed/ restricted for a small number of recipients". It identified three categories where savings could be made; ALEOs (arms-length external organisations); sports clubs, and independent schools, each discussed in turn below. The recommendation was one of several clustered under the heading "measures to increase fairness and ensure a level playing field" in the Review.

78. The Barclay Review refers to the value of charitable relief as a "cost", which is understandable. This is revenue not collected by local authorities, and which therefore cannot be used to help pay for local services. On the other hand, the Committee notes that reliefs - like taxes in general - can change behaviour. For instance, the availability of charitable relief might be the difference between an enterprise setting up or not setting up business. Charitable relief might mean an enterprise can provide a service more effectively, or more cheaply, thus making it more accessible, which might be of indirect benefit to the local authority, depending on what service is being provided.

ALEOs

79. Noting that the rules on charitable relief had not changed, the Review described the reasons for the rising trend as "uncertain" but attributed it in large part to an increase in the number of ALEOs.[xc] These are bodies set up by, or by arrangement with, councils to provide services of a type that the councils might have provided (e.g. sports facilities) and which are, in practice, under the control or influence of the local authority. They have become more common in recent years, in part as a response to pressure on council finances. ALEOs that meet the necessary criteria may become registered charities. The Review considered that the proliferation of ALEOs had created unfairness between councils - some use ALEOS more than others - and between ALEOs providing commercial services and private competitors. More fundamentally, the Review said that ALEOs has become a vehicle for significant tax avoidance, and proposed that charitable relief for premises used by ALEOs should cease.[xci]

80. Recommendation 24 was the only Barclay recommendation the Scottish Government accepted in part. It did not accept that ALEOs currently in operation and that are charities should lose the right to claim relief. It did not see this as consistent with a commitment to encourage healthy and active lifestyles as it might

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[xc] At paragraph 4.112

[xci] At paragraph 4.117

limit affordable access to cultural and sporting facilities. However, in order to "mitigate against future ALEO expansion" the Government committed to "offset" any further relief benefit to councils from ALEO's.[xcii] As the Committee understands it, this means a sum equivalent to the money the council saves in rates from setting up a new ALEO will be held back from its annual Scottish Government grant. The Committee notes that this policy would crystalise the relative advantage, in terms of rates relief, of councils that have made more use of the ALEO model than others.

81. The new policy does not require legislation and, accordingly is not in the Bill. Because of this, it was not extensively discussed at Stage 1. Cosla told us it welcomed the Scottish Government's response to recommendation 24 as it pertains to ALEOs.[xciii]

Sports clubs

82. Another category of bodies the Barclay Review discussed was sports clubs. The Review considered that not all sports clubs receiving relief should do so. Recommendation 27 of the Review was that "Sports Club relief should be reviewed to ensure it supports affordable community-based facilities, rather than members clubs with significant assets which do not require relief." The Review cited the case[xciv] of "two of the most prestigious golf clubs in the country which were awarded over £144,000 and £75,000 worth of relief respectively in 2015 by the council concerned".

83. The Scottish Government accepted this recommendation, and has accordingly set out in the Bill, at section 11, a power to issue guidance to local authorities on sports relief. However, the way this power has been framed in the Bill indicates that the Government may not have accepted the recommendation in full. Explaining this requires a detour into issues of definitions and nomenclature which may, between the Barclay Review and the Bill, have become slightly confused.

84. For a sports club, there are potentially three routes to relief, all set out in section 4 of the Local Government (Financial Provisions etc.) (Scotland) Act ("the 1962 Act").

1. Sporting bodies registered as charities with the Office of the Scottish Charities Regulator (OSCR) are entitled to 80% mandatory rates relief. They may receive further relief all the way to 100% at the discretion of the council;

2. Bodies registered with HMRC as "community amateur sports clubs" are treated the same way;

3. Finally, councils have discretion to grant relief of anything up to 100% to premises used by "a club, society or other organisation not established or conducted for profit, and which are wholly or mainly used for purposes of recreation".

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xcii Barclay Report Implementation Plan, paragraph 102 available here
xciii Written submission
xciv At paragraph 4.139

So there are two categories of mandatory relief of 80% (with a further 20% discretionary relief), and a third one of purely discretionary relief. As to which recreational clubs might be intended to benefit from the third category, the Committee notes that smaller and less "formal" not-for-profits are, in general, less likely to go through the relatively onerous process of formally registering with OSCR, even if their aims could be considered "charitable".

85. In a section of its report[xcv] outlining the different types of rates relief, the Barclay Review defines "Sports Club relief" as:

> 80% mandatory relief for sporting premises including community amateur sports clubs. Councils have discretion to top this up to 100%.

As noted, it then goes on to call for a review of "Sports Club relief".

86. However, in the Policy Memorandum accompanying the Bill, the Scottish Government states[xcvi] that:

> Sports club relief is not a mandatory rate relief. Local authorities grant this relief using the discretion available to them under section 4 of the 1962 Act.

In the discussion that follows, the Policy Memorandum does not expressly indicate that the Scottish Government no longer accepts Barclay recommendation 27 in full. But it does indicate that it does not propose to review mandatory relief for sports clubs (ie categories 1 and 2 in the .list).

87. The Policy Memorandum continues:[xcvii]

> The Scottish Government however agrees with the Barclay Review recommendation that the current arrangements relating to the granting of discretionary relief (often 100% relief which results in no rates being paid) might not give due consideration to matters such as the size of the club and the type and degree of openness of membership amongst other matters.

88. Turning for clarification to the drafting of section 11 itself, the Committee notes from it that the power to issue guidance attaches to the purely discretionary power only (i.e., the third of the three categories of relief available under the 1962 Act, as outlined above).[xcviii] This makes clear that any guidance issued under this section will have no relevance in relation to councils' exercise of their power to "top up" 80% mandatory relief to as far as 100%.

89. To conclude this part of this discussion, it is relevant to add that the neither of the two golf clubs the Review alludes to is named, so it is not possible to determine from publicly available information which of the three statutory routes to relief outlined above the clubs must have taken. If either club was a recipient of 80% mandatory relief then section 11 of the Bill will not affect its future rates liability, and the same goes for any other sports club in a similar situation.

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xcv At page 24
xcvi At paragraph 93
xcvii Paragraph 94
xcviii i.e. subsection 4(5)(c) of the 1962 Act

90. Returning to the terms of section 11, local authorities must "have regard" to guidance issued. It is also provided that the Scottish Ministers must consult local authorities and other appropriate persons before issuing the guidance. In the Policy Memorandum, the Scottish Government states that the sports club sector would be involved in any consultation. It is not clear from the terms of section 11 itself or from the Policy Memorandum whether the guidance could permit councils to continue to have distinct policies on discretionary sports relief or whether the aim would be to ensure that there is, in effect, a national policy applied by councils. The Committee notes views that any guidance under this section should continue to allow councils to reflect local priorities in their decision-making.[xcix]

91. Not many points were raised in connection with section 11 during stage 1. This may be because any financial or practical consequence of this provision is at this stage relatively indirect. The Delegated Powers and Law Reform Committee reported to this Committee[c] that there was a strong case for treating guidance issued under section 11 as if it were a negative instrument, i.e., that there should be in-built Parliamentary scrutiny of the guidance, including the power to reject it. (This would require an amendment to the Bill.) It came to this view because it thought that guidance under section 11 could materially affect a body's future liability to rates. This underlines that section 11 may be more legally significant than it appears and has the potential to significantly impact the amateur sporting community. It also underlines the importance of effective and wide consultation with the sporting grassroots before any guidance is finalised.

92. Witnesses told this Committee that it was important that guidance should not constrain councils from supporting local and community-based sporting associations. Large golf clubs were again cited as an example of the sort of sporting body that may not need relief.[ci] Other stakeholders told us that that, in preparing any guidance, any presumptions about "elitist" sports should be carefully vetted: the focus should be on whether the club is rooted in the community, is accessible, and has a positive social impact, rather than on which sport is played.[cii]

93. Representations from the National Trust for Scotland and the cultural sector queried whether guidance under section 11 could apply, respectively, to recreational land or to premises used by bodies dedicated to artistic, theatrical or musical aims.[ciii] They said that, if so, this would seem an instance of the Bill having a wider purpose than was intended, as they considered that it had never been the intention for section 11 to apply to anything other than sporting bodies. Referencing terms used in the 1962 Act, the Minister for Public Finance and Digital Economy said it was her view that guidance under section 11 could only be used for sports clubs.[civ]

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xcix Scottish Council for Development and Industry, written submission

c At paragraph 35 of its Stage 1 report into the Bill

ci Local Government and Communities Committee, Official Report, 22 May 2019, col 6 (Institute of Revenues Rating and Valuation)

cii Note of visit to Stirling

ciii National Trust for Scotland, written submission; letter to Committee from Culture Counts, available here

civ Local Government and Communities Committee, Official Report, 11 September 2019, col 30

94. The Committee welcomes section 11 of the Bill, which empowers the Scottish Government to issue guidance to local authorities on the exercise of their discretionary power to grant relief to sports clubs. We suggest that the underlying aim of any guidance should be to ensure that recognition is given to sports clubs which are rooted in, and accessible to, the local community; which improve community well-being and local pride; and which contribute to better physical and mental health in the local area. Good guidance should not "punish" clubs that are financially well-managed and live within their means, but equally it should enable councils to prioritise those clubs meeting these suggested criteria who need relief the most. We welcome the Scottish Government's commitment to consult sporting bodies about the guidance.

95. The Committee notes that the guidance issued under section 11 has no relevance or application in relation to councils' discretion to "top up" the 80% mandatory relief to which that sports clubs registered as charities or with HMRC are entitled. We ask the Scottish Government to explain what reason it has for not making the guidance apply in these circumstances as well. We also ask the Scottish Government to clarify whether it agrees with the Barclay Review that the award of mandatory relief to sports clubs is not, in all cases, an effective use of public money and, if so, to explain why it has not legislated to address this in the Bill.

96. 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.

Independent schools

97. Continuing its discussion on reliefs, the Barclay Review considered independent schools[cv]:

> Independent (private) schools that are charities also benefit from reduced or zero rates bills, whereas council (state) schools do not qualify and generally will pay rates. This is unfair and that inequality should end by removing eligibility for charity relief from all independent schools. They will of course still retain charitable status and other benefits will continue to flow to them from that status. And Independent special schools will be eligible for disability rates relief where they qualify for this.

This was not a recommendation in its own right but part of the discussion under the general recommendation (number 24) on restricting charity relief, with which this part of the report began. The Barclay "roadmap" proposed that that this change should be in place by 2020.

98. Following reforms agreed by this Parliament in 2005, [cvi] independent schools lost their entitlement to relief unless they registered as charities with the Office of the

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cv At paragraph 4.120

Scottish Charity Regulator. Various criteria have to be met for a school, or any other body, to be registered as a charity. We were informed at Stage 1 that practically all independent schools in Scotland are now registered with OSCR and accordingly claim rates relief.[cvii] This means they receive mandatory relief at 80% Whilst local authorities have the power to waive any or all of the remainder, we understand from the independent sector that none do so.[cviii]

99. In its Barclay Implementation Plan, the Scottish Government said that it had decided to accept the proposal on independent schools, but for one matter (independent specialist schools) on which policy was still undecided. Given the level of response and strength of feeling this has aroused, the relevant text is set out in full:[cix]

> We propose to implement in part Barclay's recommendation to end charity relief for independent schools. Having listened carefully to views from the sector, we are unconvinced about the principle or the substance of the current arrangements, and wish to take this opportunity to make improvements. To be clear, many types of organisations undertake commendable and worthwhile activity but do not receive rates relief, and all reliefs must be focused in line with priorities and kept under review in the context of wider budget pressures. It is our assessment that without this relief non-domestic rates will be fair and sustainable for the independent schools sector, as they are for other types of organisation occupying non-domestic property. Accordingly we propose to retain this relief eligibility for special schools, given their particular circumstances, but end it for other independent schools – subject to giving further consideration to how we ensure those independent schools which are not special schools but nonetheless have exceptional circumstances, such as specialist music schools, are also able to retain this relief. We will continue to engage with the sector as we finalise the detail of our proposals, subject to which we intend to bring forward primary legislation to deliver this change by 2020 (this being a change to non-domestic rating provision, rather than to charity law). This notice will allow time for those schools affected to plan ahead.

100. Relevant changes are set out at section 10 of the Bill. It amends section 4 of the 1962 Act to add land and buildings belonging to independent schools to the category of properties ineligible for charitable relief under that section. This new provision is disapplied for special or music schools. An independent music school is defined as a school where pupils "are selected on the basis of musical ability or potential" and the school also follows "a curriculum which includes classes aimed at developing musical excellence." It is the Scottish Government's view[cx] that the only school currently caught by this definition is St Mary's Music School, Edinburgh and this interpretation of the provision was not seriously challenged during Stage 1 scrutiny.

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cvi Charities and Trustee Investment (Scotland) Act 2005

cvii The director of the Scottish Council of Independent Schools told us that "all of our [i.e. SCIS's] mainstream schools are registered charities. Local Government and Communities Committee, Official Report, 19 June 2019, col. 2

cviii Local Government and Communities Committee, Official Report, 19 June, col 13 (SCIS)

cix Para 103

101. The Bill does not state when section 10 will come into effect, this being left to the discretion of the Scottish Ministers, which is not an unusual drafting approach in Scottish Government legislation. The Policy Memorandum does not state whether the Scottish Government agrees with the Barclay Review that the power should come into effect in April 2020. The Minister for Public Finance and Digital Economy told the Committee that she had not come to a concluded view on the commencement of any provisions whose commencement date is not set out on the face of the Bill.[cxi]

102. This provision attracted a far greater response at Stage 1 than any other in the Bill. Out of a total of 367 submissions, over 300 concerned section 10 only. Most of these came from parents, teachers and, occasionally, pupils at independent schools and were opposed to section 10. Likewise, most of the large number of submissions received by the Finance and Constitution Committee concerning the Financial Memorandum to the Bill were from concerned teachers and parents.

103. Of the submissions the Committee received from professional or representative organisations outside of the education sector, few commented on section 10. The most substantive body of collective opinion in favour of section 10 came from the local government sector.[cxii] This evidence was of a broadly similar character. The main points made were that

- the change will mean increased revenue for councils, which can be put to use for the benefit of all ratepayers and families in the council area;
- charging state schools fully for rates but not independent schools does not seem fair or defensible; particularly so, some evidence argued, in a time of increased pressure on council finances;
- the change will not be especially difficult to administer, and therefore will be a relatively efficient gain for councils and citizens. (Independent mainstream schools are already entered into the Valuation Roll and, as already noted, most if not all already pay some rates).

104. When Kenneth Barclay gave evidence, he was asked whether he stood by the Review's conclusions on independent schools. He said that he did, as the reasons set out in the Review were still valid. The only alternative, in his view, would be to extend rates relief to state schools and he did not consider this realistic. Citing the example of prisons (both private and state-owned prisons have the same rates liability), Mr Barclay said that the more the Review had examined the public sector landscape, the more anomalous the situation of state and independent schools had seemed.[cxiii]

105. It may be helpful to add that very little evidence, if any, supporting section 10 did so on the basis of questioning the validity of, or the continuing need for, an

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cx At paragraph 86 of the Policy Memorandum

cxi Local Government and Communities Committee, Official Report, 11 sept col 30

cxii Most councils who provided written submissions evidence expressed support for section 10, as did Cosla and the IRRV in oral evidence. The Association of Accounting Technicians also supported section 10, for similar reasons used by the local government sector.

cxiii Local Government and Communities Committee, Official Report, 26 June, cols 31- 32

independent schools sector. The Minister for Public Finance and Digital Economy told us that she recognised "the important role the independent schools play in our education system".[cxiv] The Committee recognises that there are some who think that the effect of section 10 will be to damage the sector, whether that was the intention behind it or not, and that this concerns them. We received many submissions from families concerned about section 10 and some of these were of a personal and sometimes sensitive character (for this reason, some were anonymised). Some praised not only the high quality of the teaching at their school, but also its caring ethos, and referred to the positive impact the school had had on their lives. Some submissions stressed personal sacrifices made to send children to an independent school. Some explained that difficult and traumatic life experiences had led families to choose a particular independent school for their children, and that they strongly felt this had been the right choice. They wanted this choice to remain open to others in future. The Committee assures all those who provided submissions on section 10 that their views have been carefully considered.[cxv]

106. Those opposed to section 10 put forward a number of points. They first argued that, whilst the Barclay Review had engaged with the sector - it had taken evidence from SCIS (the Scottish Council for Independent Schools) at one meeting and received written evidence from them - the change the Review had proposed had the character of an afterthought. SCIS and others in the independent schools sector said the Barclay proposal did not arise from meaningful engagement with the independent sector, analysis of relevant data, or consideration of the consequences.[cxvi] They said they did not see evidence that either the Review or the Scottish Government had considered the impact the change would have on the integrity or consistency of charity law, on the state education sector, or on independent schools themselves. It is a matter of fact that the Financial Memorandum does not discuss any potential negative impacts of section 10, but the Minister for Public Finance and Digital Economy told the Committee that a Business and Regulatory Impact Assessment prepared before the Bill was introduced had sought to assess the likely impact of the Barclay proposal on independent schools.[cxvii] The Committee believes that it would have been helpful if data or views arising from the BRIA had been included in the Memorandum.

107. The Officer of the Scottish Charity Regulator (OSCR) did not give evidence to the Barclay Review on the consequences of treating independent schools, or other charities, differently for rates purposes. (Kenneth Barclay told the Committee it was his recollection that OSCR had been invited to make a written submission to the Review but did not respond.[cxviii]) SCIS told us it was "a matter of public record", thanks to an FOI request, that both OSCR and some Scottish Government departments had had doubts about the wisdom of a policy that would create what SCIS called an "anomalous" class of charities, subject to different legal rules than others.[cxix] OSCR told us that it was its position of long standing that treating any group of charities differently from others creates the potential for public confusion as

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cxiv Local Government and Communities Committee, Official Report, 11 September, col 15

cxv All of the many submissions on section 10 received and considered by the Committee can be seen (alongside other submissions) here

cxvi e.g, SCIS, written submission; Catriona Gambles, written submission

cxvii Local Government and Communities Committee, Official Report, 11 sept col 15

to what it means to be a charity and that this gave it concerns about section 10. Others in the charity law sector expressed similar views.[cxx] The Scottish Government's view is that nothing in the Bill fundamentally alters the charitable status of independent schools.[cxxi] OSCR also said it was foreseeable that, if section 10 became law, some schools might cease to be charities with an attendant loss of associated public benefit. [cxxii] However, SCIS told us that charitable status had become important for independent schools and most would not want to de-register.[cxxiii]

108. The independent schools sector also argued that the concept of the Bill creating a more level playing field with the state sector was misconceived. They said that the state sector is VAT-exempted and the independent sector is not. They also argued that state schools did not pay rates in any meaningful way: it is recirculated public money that goes from the council to the school and back again without any effect on the everyday running of the school.[cxxiv] There was some support for this from council officers when we took evidence from them, with Highland Council's representative characterising school rates payment as a "central process", with the money taken from the top line of the budget. He told us that "many headteachers will not even be aware that they pay rates for the school building". Edinburgh Council's representative disagreed with the characterisation of school rates bills as "recycled" money on the ground that, in Edinburgh, rates paid by schools do not go straight back into the education budget.[cxxv]

109. Opponents of section 10 also said it was inconsistent of the Barclay Review to advocate a level playing field between state and independent schools whilst recommending a new relief for nursery schools, including for-profit nursery schools. As nurseries run on independent school premises would not benefit from this relief, it was argued that this penalised the independent sector.[cxxvi] The Minister for Public Finance and Digital Economy told the Committee that, under current policy, no distinction is made between public and private nurseries for the purpose of relief, and that the Bill would not change this.[cxxvii]

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cxviii Local Government and Communities Committee, Official Report, 26 June, col 33

cxix SCIS, written submission. See also Local Government and Communities Committee, Official Report,19 June, col 8 (SCIS)

cxx Local Government and Communities Committee, Official Report, 19 June, col 11; BPD Pitmans, written submission; Charity Law Association, wrritten submission

cxxi Local Government and Communities Committee, Official Report, 11 sept col 15-16

cxxii Written submission. See also Charity Law Association, written submission

cxxiii Local Government and Communities Committee, Official Report,, 19 June 2019, col 10

cxxiv e.g. SCIS, written submission; Erskine Stewarts Melville School, written submission; Melvyn Roffe (George Watson's College), written submission. See also Local Government and Communities Committee, Official Report, 19 June col 12-13, per SCIS and head teachers of Hutcheson Grammar and St Mary's Melrose

cxxv Local Government and Communities Committee, Official Report, 19 June, col 29

110. Another theme of evidence, and a topic raised when Committee Members met sector representatives in June, was the likely effect of section 10 on individual schools and the sector as a whole.[cxxviii] The Committee was told that the sector was an important national and international asset. We were also told that the loss of charitable relief would come at a bad time when the sector is financially challenged, as it would coincide with having to find resources for a new teachers pay deal and pension reforms. Amongst points made were that:

- in order to meet increased rates bills costs, fees may have to go up. But schools also know that if fees go up too much, school rolls start to go down and revenue can be lost that way;[cxxix]
- alternatively or additionally, budgets for scholarships, bursaries and other forms of assistance, currently valued by SCIS at about £40m per annum across the sector, may have to be cut.[cxxx] OSCR told us that the availability of bursaries is a material consideration in its role determining whether a school may be registered as a charity;[cxxxi]
- schools may have to cut costs on non-core activities and services that they make available to the wider community. This might include not making schools facilities available outside school hours, cutting back on free tuition in certain subjects offered to pupils at other schools, or scaling back charity work; [cxxxii]
- one submission indicated that some independent schools might withdraw authorisation for teachers to carry out quality assurance work on behalf of the Scottish Qualifications Authority through an absence of spare resource.[cxxxiii] The SQA told the Committee that, if this happened, it could have a significant and negative impact on this aspect of its work;[cxxxiv]
- finally a small number of schools may not be able to afford full rates. The view was that these schools might have to go out of business.[cxxxv]

111. Written evidence from OSCR confirmed that a number of independent schools registered as charities are in a "marginal" financial state.[cxxxvi] OSCR elaborated that the overall picture was of "a sector that is managing, but which does not have a lot of cushion to deal with additional costs." .[cxxxvii] It is important to note that

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cxxvi SCIS, written submission; Local Government and Communities Committee, Official Report, 19 June, col 23

cxxvii col 19

cxxviii Note of visit to George Watson's College

cxxix Local Government and Communities Committee, Official Report, 19 June, col 20, 27

cxxx Local Government and Communities Committee, Official Report, 19 June, col 15

cxxxi Local Government and Communities Committee, Official Report, 19 June, col 9 and 22

cxxxii 19 june, col 3-5

cxxxiii Melvyn Roffe (George Watson's College), written

cxxxiv SQA, written submission

cxxxv Note of visit to George Watson's College; Local Government and Communities Committee, Official Report,19 June, cols 18-19

independent schools have always been financial concerns as well as charities and that, from time to time, one may go out of business

112. Independent schools' valuations are a matter of public record and the Committee has noted that the "rates-to-pupil" ratio varies quite widely. The limited evidence we have seen indicates that it correlates loosely to size of roll, with bigger schools perhaps better insulated from the effect of section 10. [cxxxviii] We heard that most schools are, for a variety of reasons, constrained from making economies in the way more conventional businesses can. SCIS told us that selling off parts of the school estate, where this is possible, is viewed by schools as a last resort.[cxxxix]

113. The Scottish Government's view is that the financial impact of section 10 on schools is equivalent to about 1.3% of average fees per annum.[cxl] The Minister told the Committee that, in view of this, it seemed unlikely that this would lead to a "mass exodus" of pupils from the independent sector, but she acknowledged concerns about some schools, especially smaller schools with lower fees. In relation to section 10, she said that the Scottish Government was ready to "support ratepayers through the transition process" and would listen to what the Committee might recommend. [cxli]

114. One point underlined during Stage 1 is that the independent sector is varied. Schools are diverse not only in their roll, fee levels or estate, but also in their ethos and specialisms. During our informal meeting with school representatives in June, it was clear that no one wanted any independent school to be worse off as a result of the Bill, but other schools said that they too were in their own way "specialist" and had something distinctive to provide to society. To some, separating out schools with a music specialism seemed subjective.[cxlii] The Committee notes that St Mary's differs from other independent schools not only in its curriculum. It is much smaller than most other urban secondary schools and most of its pupils are fully funded by the Scottish Government under the Aided Places scheme, with fees set by the Scottish Government and approved by way of regulations laid in the Scottish Parliament.[cxliii] (Most remaining pupils are in receipt of full bursaries.)

115. The Minister told the Committee that the Government had been persuaded by the evidence before it that St Mary's was a special case because of its specialist musical curriculum and its cultural contribution over the years, and that this was why distinct provision was made for it in the Bill. She said it would be possible to widen the net to include other schools on the basis that they made a distinct

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cxxxvi OSCR, written submission

cxxxvii Local Government and Communities Committee, Official Report, 19 June, col 18
cxxxviii Local Government and Communities Committee, Official Report, 19 June,, col 25

cxxxix Local Government and Communities Committee, Official Report, 19 June, col 27
cxl Local Government and Communities Committee, Official Report, 11 September, col 16,

cxli Local Government and Communities Committee, Official Report, 11 September, cols 14-17
cxlii e.g. Oakwood Christian Schools, written submission; Edinburgh Steiner School, written submission

cxliii Currently, the St Mary’s Music School (Aided Places) (Scotland) Regulations 2015

contribution, but had concerns that this risked complicating the rates system. She said a line had to be drawn somewhere.[cxliv]

116. A majority of the Committee supports section 10 of the Bill, by virtue of which mainstream independent schools will no longer be able to claim charitable relief. The Committee agrees that this change is necessary to create a "level playing field" between the state and independent sectors. It will also generate more revenue for councils to spend on services for citizens. The majority accepts that there will be a financial impact on independent schools, but notes the Scottish Government's view that on average the additional cost would equate to about 1.3% of annual fees. A minority of the Committee does not support section 10, considering the case that this would be fairer is not clearly supported by the evidence. It also has concerns about the potential negative impact of this change on the independent sector.[cxlv]

117. The Committee accepts the case for excepting independent special schools from the new general provision laid down in section 10. We are not persuaded that the case for treating independent specialist music schools (in practice, one school at present) any differently from any other independent schools has been clearly made. There are a number of independent and state schools that could be said to make a distinctive contribution to musical culture or in other areas, such as Scotland's National Centres for Excellence.

118. 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.

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cxliv Local Government and Communities Committee, Official Report, 11 September, cols 19-20

cxlv Graham Simpson MSP additionally proposed the inclusion of the following text: "The Committee recommends that section 10 should not be implemented until the 2022 revaluation, to give schools more time to prepare for the change." This was disagreed to by division: For 2 (Graham Simpson MSP, Alexander Stewart MSP); Against 5 (Sarah Boyack MSP, James Dornan MSP, Annabelle Ewing MSP, Kenneth Gibson MSP, Andy Wightman MSP).

Debt recovery

119. Recommendation 18 of the Barclay Review was that "councils should be able to initiate debt recovery at an earlier stage." The Review stated[cxlvi] that:

> Just as ratepayers should receive prompt payments from councils, councils should expect the same from ratepayers. Currently councils cannot take enforcement action for non-payment of rates until after 30 September in any year. This is in contrast to council tax whereby enforcement action against citizens commences if the first planned instalment is missed.

120. The Scottish Government accepted this recommendation. This is implemented by section 13 of the Bill, which makes a number of detailed changes to current legislation on debt recovery. Overall, the aim is to broadly align the debt recovery procedure for both council tax and rates. Councils will no longer have to wait until after 30 September to initiate recovery proceedings. Proceedings can be triggered when one instalment is not paid. As with council tax, there is an initial requirement to issue a reminder notice for a missed instalment to give the ratepayer an opportunity to rectify the situation. A failure to respond timeously leads to the ratepayer losing the right to pay by instalments and may ultimately lead to debt recovery procedures.

121. This provision did not provoke extensive discussion in evidence but was broadly welcomed. As might be expected, the reform was welcomed by councils,[cxlvii] but there were no objections from the business community to the principle of reform. Some evidence noted that cash flow could be a concern for business,[cxlviii] and there were suggestions of lengthening the 7 and 14 day deadlines set out in section 13 to around a month. The Federation of Small Businesses argued that, where a delay in repayment was for a "legitimate reason" (late payment from a third party was given as an example), councils should show flexibility.[cxlix] The Committee notes that the language of section 13 concerning local authorities' enforcement role appears non-discretionary: i.e. "must" and not "may", but that the inference to be drawn from the relevant discussion[cl] in the Policy Memorandum seems to be that councils will retain a discretion not to enforce payment within particular statutory timelines.

122. Several submissions underlined the importance of this reform, and the change in payment culture that it will create, being communicated to ratepayers before it comes into force, to ensure they are aware of their new responsibilities.[cli]

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cxlvi at paragraph 4.87

cxlvii e.g Cosla, written submission; West Dunbartonshire Council, written submission

cxlviii e.g. Association of Accounting Technicians

cxlix Written submission

cl At paragraphs 110-113

cli Cosla

123. The Committee welcomes section 13, which will modernise debt recovery procedures for rates by bringing them largely into alignment with those for council tax. We ask the Scottish Government to note views about the importance of publicising the change in advance.

124. We ask the Scottish Government to clarify whether, under the new rules, councils will have discretion not to enforce payment within particular time periods.

Measures to secure information from ratepayers

125. Sections 14 to 22 implement Barclay Recommendations 13 and 16. Recommendation 13 is 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 Review said that, in order for the ratings system to work optimally, as much correct and relevant information had to be made available from the start and that current legal rules required modernisation and strengthening. This in turn would increase the likelihood of as many valuations as possible being accurate, meaning fewer appeals. The Minister for Public Finance and Digital Economy said that these provisions in the Bill were important for similar reasons when she gave evidence to the Committee. [clii] The Review said[cliii] that:

> Considerable evidence was presented to us to indicate that the provision of information by ratepayers to Assessors to enable Assessors accurately to calculate rateable values was often poor and that this happened for various reasons, including where ratepayers were advised to do so by a professional rates advisor (who stood to gain a portion of any reduction in rates paid following a successful appeal).

126. The Review went on to note[cliv] that it did not help that assessors were sometimes viewed as remote figures and that it was not always well understood why it was important for them to have access to particular information. It said that, alongside any statutory reforms, there should be measures to ensure that there is better understanding of the assessor's role and that the assessor is a more accessible figure during the process.

127. The Review also recommended (recommendation 16) that "A new civil penalty for non-provision of information to councils by ratepayers should be created.". It stated:[clv]

> In a small number of cases, ratepayers may fail to inform a council about a change of circumstances (such as a change in the occupier of a property) or may provide false declarations when applying for relief. An example of where this could apply could be where a property is a self-catering let but the owner/ tenant receives bills for council tax, rather than non-domestic rates. New civil penalties should be available to councils in such cases with both the owner and tenant of any property held liable. There should be consultation with interested parties before the level(s) of these penalties are set. It is not the intention that this penalty is used to raise new revenue, but rather that it acts as a deterrent for withholding information.

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clii Local Government and Communities Committee, Official Report, 11 September 2019, col 8

cliii At paragraph 4.67
cliv At paragraph 4.68
clv paragraph 4.82-83

128. The Scottish Government accepted recommendations 13 and 16. The recommendations, and the provisions in the Bill that have followed, have been treated as complementary: both are about the right of officials in the system to obtain the information they need for the system to actually work. The provisions also raised in evidence similar questions about the limits of officials' rights. As such, we treat them as one topic in this report. In outline, and paraphrasing:

- section 14 empowers an assessor to issue an "assessor information notice": a notice in writing to a person who is or seems to be a proprietor of a property, or to any other person who may be able to provide information that would assist in valuing the property;
- section 15 empowers a council officer to issue a "local authority information notice". The purpose of such a notice is to request from person who is or appears to be a proprietor of a property the information a local authority needs in order to know who to send a rates demand to;
- section 16 imposes a duty on a person liable to pay rates to notify the council of any "relevant change of circumstances" ("relevant" in terms of its potential effect on rates liability), and section 17 provides that it is an offence to provide false information under section 16;
- section 18 provides that it is a civil penalty for failing to comply with an assessor information notice, whilst section 19 sets out appeals and enforcement provisions. This replaces the current criminal penalty, which is being abolished;[clvi]
- sections 20 and 21 set out parallel, but not quite identical provision in respect of non-compliance with a local authority information notice as for non-compliance with an assessor information notice;
- section 22 makes purely consequential changes.

This is a substantial paraphrase of sometimes detailed provisions. Some key points of detail raised during Stage 1 are discussed below.

129. Views on these provisions was mixed but on the whole they were seen as a step forward. There was support for the principle of modernising the way information is shared. As noted in an earlier section, some submissions said that, here and elsewhere in the Bill, the opportunity for modernisation had not been fully taken. Ratepayers welcomed the reforms overall, recognising that assessors needed information to do their job.[clvii] There were concerns that some provisions went too far in terms of what they would require of ratepayers and third parties. For example, in relation to the new offence in section 16, it was queried whether all ratepayers would know what a "relevant change of circumstances" was.[clviii] On the other hand, there were views that the category of people to whom notices should be sent should be widened, for instance to expressly include company directors.[clix]

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clvi It is repealed in section 14 (5)

clvii e.g. Scottish Retail Consortium, written submission; Scottish Tourism Alliance, written submission; Business for Scotland; written submission Scottish Property Federation, written submission

130. The Scottish Assessors Association said that this part of the Bill did not go far enough, and Cosla expressed similar views.[clx] In evidence, SAA representatives told us that it was a fact of their working lives that requests for information tended to get low returns, making their role much harder than it needed to be. The felt they would need stronger information-gathering powers than are currently in the Bill to be sure of meeting future three-year revaluation cycles.[clxi] They had concerns that section 14 had not been drawn widely enough and that it would not permit them to obtain the information they needed. There were particular concerns about a provision entitling recipients of a notice to claim legal confidentiality being over-relied upon, and ratepayers using it to withhold information necessary to make an accurate valuation.[clxii] This was not the view of some ratepayers who instead said that there was a risk the new provisions might compel owners or occupiers to share commercially confidential information.[clxiii]

131. The Bill gives a person 56 days to comply with an assessor information notice. The SAA considered this too long a time, and some others agreed.[clxiv] However, some ratepayers said the challenge of finding and presenting the technical information requested for revaluations should not be under-estimated.[clxv]

132. The Bill sets out various levels of penalty for non-compliance. Penalties are flat, in that all ratepayers are equally liable, but are also cumulative, increasing in value the longer an infringement occurs. The maximum sums payable for a single infringement are £500 in the case of assessor information notices and £370 for a local authority information notice. In either case, there is the potential for non-compliance to be escalated to the criminal courts, in which case the penalty rises to £1000. Some ratepayer evidence referred to the danger of the these provisions becoming a "revenue earner" for local authorities.[clxvi] Conversely, representatives of the local government sector said they were concerned the sums provided for in the Bill would barely be a deterrent to large businesses and would be unlikely to incentivise them to be more cooperative.[clxvii] For its part, the SAA welcomed the new powers to levy civil penalties but said the criminal penalty should not be abolished but retained as a deterrent.[clxviii]

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clviii e.g. Chartered Institute of Taxation, written submission

clix e.g. IRRV, written submission

clx Written submissions

clxi Local Government and Communities Committee, Official Report, 26 May 2019, cols 6-8

clxii SAA, written submission

clxiii e.g Scottish Property Federation, written submission

clxiv e.g, Scottish Council for Development and Industry, written submission

clxv e.g Scottish Property Federation, written submission

clxvi e.g Scottish Property Federation, written submission

clxvii Local Government and Communities Committee, Official Report, 22 May 2019 cols 19-20 (IRRV and Cosla)

133. The Scottish Government's view is that the penalties in the Bill strike an appropriate balance, and are equivalent to those in England and Wales.[clxix] The Government told us that the criminal sanction, which dates from 1854, and sets out a monetary penalty, has "rarely if ever been used".[clxx]

134. The Committee supports the overall direction of travel set out in sections 14 to 22 of the Bill, which seek to strengthen and modernise the powers of assessors and councils to obtain the information they need to carry out their crucial roles within the ratings system of valuation, administration, and enforcement.

135. 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.

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clxviii Local Government and Communities Committee, Official Report, 29 May 2019, col 6

clxix Local Government and Communities Committee, Official Report, 11 September 2019, col 20

clxx Local Government and Communities Committee, Official Report, 11 September 2019, cols 21

Addressing rates avoidance

136. The Barclay Review discussed "known avoidance measures" and proposed ways to deal with these, which the Scottish Government went on largely to accept. The Bill contains two specific measures to counter these set out at sections 5 and 12, and a general anti-avoidance provisions at sections 23-27, which are discussed in turn below.

Holiday homes

137. Section 5 aims to address a loophole that enables the owner of a holiday home to avoid paying either non-domestic rates or council tax. This implements Barclay recommendation 22: "to counter a known avoidance tactic for second homes, owners or occupiers of self-catering properties must prove an intention to let for 140 days in the year and evidence of actual letting for 70 days."

138. Self-catering holiday accommodation is subject to non-domestic rates if it is not the owner's sole or main residence and is made available for let for at least 140 days per financial year. If not, it is, or ought to be, subject to council tax. The Scottish Government explains[clxxi] that:

> An avoidance tactic used by some property owners is to avoid payment of council tax on second homes by claiming the property has moved from domestic use (liable for council tax) to non-domestic use as a self-catering property (and liable for non-domestic rates). A subsequent application is then made for relief under the small business bonus scheme and no rates are payable. Thus the contribution to the cost of local services is nil. The current criteria to switch from the domestic to the non-domestic use is fairly loose – i.e. an intention to let for 140 days.[clxxii]

139. Section 5 amends an existing regulation-making power (in section 72 of the Local Government Finance Act 1992), which allows the Scottish Ministers to set out classes of property which are not to be regarded as “dwellings” (i.e. a property ordinarily subject to council tax.) It provides that where such regulations prescribe a class of property, the regulations may confer discretion on a local authority to determine whether particular properties fall within that class. Section 5 also provides that the Scottish Ministers may set out in regulations the circumstances in which the local authority is to exercise that discretion.

140. This is therefore another case of the Bill creating a framework power, meaning that Stage 1 scrutiny was more focussed on the Scottish Government's stated plans than what is in the Bill. The Policy Memorandum explains[clxxiii] that the Scottish Government's approach will be to use this modified order-making power to require property owners to demonstrate that a property has been actually let for 70 days in any financial year and also is actually available to let for 140 days in order to be treated as a non-domestic property. If the owner of the property is unable to evidence this activity then the property will be treated as liable for council tax.

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clxxi Policy Memorandum, paragraph 61
clxxii Policy Memorandum, paragraph 61

141. The Memorandum[clxxiv] also anticipates the regulations giving councils discretion to waive the 70-day requirement in response to particular circumstances that have made this unrealistic through no fault of the owner. Examples giving in the Memorandum relate to transport problems cutting off a community. The Committee notes other suggestions made at Stage 1: for instance, an outbreak of foot-and-mouth disease or a fire. [clxxv]

142. At Stage 1, there was a consensus that the Bill sought to address a legitimate concern about avoidance. This view was shared by representatives of the tourist and lettings industry.[clxxvi] The intent behind section 5 was accordingly welcomed.[clxxvii] Further comment tended to fall into three main areas:

- Concerns were raised about the need to ensure that the right cases were caught and that the reform should not "punish" owners with no genuine intent to avoid rates liability;[clxxviii]
- Questions were also raised about the evidential burden that could be placed on councils, whose role would be to apply and enforce the new rules. One view was that the sole criterion for councils to determine should be number of days actually let, as ascertaining whether there was a "genuine" effort to make a property available for let for a particular number of days in a year could be practically difficult;[clxxix]
- There were questions as to the degree of both power and discretion the measure gave councils in determining what should and should not be in the Valuation Roll. Questions were raised as to how well this married up with existing ways of working. The Scottish Assessors Association said it was unprecedented to give councils this type of responsibility in relation to the Roll. They indicated that this could give rise to administrative problems unless the power was exercised carefully, and that councils were given clear criteria on its use. Some councils and professional bodies also expressed some misgivings about whether councils were best equipped for this role.[clxxx]

143. The proposal to give councils the power to waive the 70-day requirement in special circumstances was generally welcomed. There were suggestions that guidance to accompany any regulations and to clarify what relevant considerations should apply would be welcomed by ratepayers and councils. The Committee heard views that, in parts of the country with a short holiday season, the 70-day requirement might be

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clxxiii At paragraph 62
clxxiv At paragraph 63

clxxv Association of Scotland's Self-Caterers, written submission; North Ayrshire Council, written submission
clxxvi e.g Association of Scotland's Self-Caterers, written submission

clxxvii Practically all councils to provide a written submission expressed support in principle for this section
clxxviii e.g. Ratings Surveyors Association, written submission; RICS written submission
clxxix e.g. oral evidence of IRRV, Local Government and Communities Committee, Official Report, 22 May 2019, col 5
clxxx e.g Argyll and Bute Council, written submission; IRRV, written submission

hard to meet and that a genuine intent to let should be recognised as an extenuating circumstance. [clxxxi] Conversely, there were views that, if anything, the general rule of a minimum of only 70 days letting being required was generous.[clxxxii]

144. Finally, some evidence questioned whether the Government's plans, as outlined in the Policy Memorandum, were the best direction to approach the problem from. It was argued that amending the qualifying criteria for the small business bonus scheme to prevent its misuse in the case of holiday lets could be a more effective approach.[clxxxiii] If such an approach were successful, it would presumably remove the incentive to have a property entered on the Valuation Roll rather than the council tax Valuation List. This would in turn reduce any need for councils to "police" the Roll, as currently envisaged under section 5.

145. The Committee welcomes the intention behind section 5: to close the loophole that enables some second home owners to effectively avoid both council tax and rates. The approach outlined in the Policy Memorandum has been broadly welcomed at Stage 1, with some questions raised over the detail of policy. Consultation and awareness raising are important next steps in developing policy in this area before any binding regulations are issued.

146. We ask the Scottish Government to note views that the core test should be whether the the property was, in fact, let for a minimum number of days. We agree with the Scottish Government that it is appropriate that councils should be able to waive this requirement where there are extenuating circumstances, but are aware of the risk of new loopholes being created if the criteria for granting waivers are not robust. It appears to the Committee that the key criterion should be whether there were external factors outwith the owner's control that made letting difficult or impossible for an extended period during the year, especially where this fell during the high season. Guidance to councils and ratepayers could be helpful.

147. 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.

148. Consideration of section 5 overlaps to some extent with the much wider question of how government at all level should treat the short-term letting industry. The Committee is aware that a Scottish Government consultation on short-term lets is ongoing. Whilst it is right in this Bill to treat closing the holiday let loophole as a

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clxxxi e.g SAA, written submission

clxxxii e.g, Association of Accounting Technicians, written submission

clxxxiii e.g. written submissions of the Ratings Surveyors Association; RICS; Aberdeen and Grampian Chamber of Commerce

priority, the Committee counsels the Scottish Government to ensure that any new initiatives that affect short-term lets are aligned with each other and that, overall, there is joined up thinking about the issue. The Committee looks forward to being part of future discussions about the Scottish Government's short-term letting policy.

Empty properties

149. The second known avoidance tactic discussed in the Barclay Review concerns empty properties. Owners or occupiers of empty premises are entitled to reduced rates. There is more than one level of relief, depending on the type of property, but in most cases the level of relief reduces after a set period. The Barclay Review found that some proprietors were re-occupying empty property for essentially artificial reasons (e.g. using a part of it for storage and then emptying it again) in order to "reset" their entitlement to maximum empty property relief. The solution proposed by the Review (recommendation 21) was to require that the minimum reset period run for at least 6 months rather than the current 42 days. This was accepted by the Scottish Government and is being taken forward by subordinate legislation. Whilst this appears to have been generally welcomed, we note views expressed at Stage 1 from some in the business community that a period as long as 6 months may catch legitimate business activity, such as an owner who enters into frequent "pop-up" business letting arrangements with tenants.[clxxxiv]

150. In the discussion under recommendation 21, the Barclay Review noted that, rather than presenting an essentially empty property as being occupied in order to benefit from relief, a proprietor might conversely seek to benefit from relief by presenting the property as occupied when, for all intents and purposes, it is empty. The reason for doing so would be because the property might be entitled to more generous relief under a different scheme. An example given in the Policy Memorandum is of a proprietor who purports to have a charity operating on their premises so as to qualify for charitable relief, whilst the property in fact remains substantially empty with little if any activity carried on.[clxxxv] The Committee notes that the Memorandum does not express a view on whether others, beside the owner or occupier, might collude in such schemes, which are not in themselves illegal.

151. Addressing this type of avoidance tactic is considered to require primary legislation, which is set out in section 11 of the Bill. The Policy Memorandum explains:[clxxxvi]

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clxxxiv e.g. Aberdeen and Grampian Chamber of Commerce, written submission
clxxxv At paragraph 101
clxxxvi Paragraph 102

> The policy objective is to empower local authorities to address this tax avoidance activity by putting the onus on the ratepayer to provide evidence to demonstrate that they are in receipt of the correct rate relief. To achieve this, the Bill provides that a local authority can serve a notice on a ratepayer who is in receipt of a relief other than unoccupied property relief in two circumstances: where a local authority considers that the property is not being used, thus suggesting that unoccupied property relief ought to apply instead of whatever relief is being received; and where the local authority is of the opinion that the property is significantly underused, thus suggesting the amount of relief being received is greater than would be received if unoccupied property applied, and the ratepayer's reason for not leaving the property empty is to benefit from the greater amount of relief.

152. Ratepayers have 28 days to respond. If a response is received, the council must (paraphrasing somewhat) consider the information provided and take a decision on whether to remove the relief.

153. There was a general if qualified welcome for this provision at Stage 1. Councils and others involved in the administrative side of the rates system generally welcomed the provision.[clxxxvii] Councils also welcomed the evidential onus being put on the ratepayer.[clxxxviii] On the other hand, there were views that the provision would be administratively burdensome and that it would be difficult in practice to identify instances of the behaviour it seeks to address.[clxxxix] Evidence from both the local government and business sector suggested that the term "active occupancy" used in section 12 needed to be defined, to help set clearer parameters about what activity or arrangements the provision was meant to catch.[cxc]

154. Some concern was expressed from the business sector as to the risk of the change affecting legitimate business behaviour. [cxci] It was also suggested that the 28-day response period was too short.[cxcii] Questions were also raised as to whether and how ratepayers would appeal a council decision.[cxciii] There is no mention of an appeals or challenge process in section 12.

155. Although this is not an issue addressed in the Bill itself, some submissions took the opportunity to comment on policy in relation to empty listed commercial buildings. Rates are not paid on empty listed buildings. The Barclay Review considered that this had become a disincentive to getting such properties back in use, as well as

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clxxxvii e.g, written submissions of the Association of Accounting Technicians and Argyll and Bute Council

clxxxviii e.g Renfrewshire Council, written submission

clxxxix e.g. IRRV, written submission

cxc e.g. Argyll and Bute Council, written submission;, Aberdeen and Grampian Chamber of Commerce, written submission

cxci e.g Scottish Chamber of Commerce Network, written submission

cxcii e.g. RICS, written submission

cxciii e.g. Ratings Surveyors Association, written submission.; Cosla, written submission

being potentially an opportunity for rates avoidance. It proposed that rates should begin to be paid after two years. The Scottish Government accepted the principle but, after consultation, determined that the period should be five years, in recognition of the extra resources and effort often required to restore a listed building. This is not considered to require primary legislation and is being taken forward elsewhere. The Committee notes some views considering the approach the Scottish Government has taken on listed buildings to be fair compromise[cxciv] but others arguing that it will continue to incentivise inaction and will not help councils in work to regenerate town centres, where commercial listed buildings tend to be clustered.[cxcv]

156. The Committee supports section 12 of the Bill, which seeks to address instances where an empty property is purportedly being used for a particular purpose in order to claim relief. We ask the Scottish Government to consider points raised in evidence at Stage 1, as outlined above, in particular:

- uncertainty over the appeal process (if any) where a council decides, under this section, to cease providing relief;
- views that a definition of, or guidance on, the meaning of "active occupancy" would be helpful both to councils and proprietors.

General anti-avoidance provisions

157. The third anti-avoidance measure in the Bill is a general anti-avoidance measure, at section 23. Barclay recommendation 20 was for a "general anti-avoidance rule". The Review estimated that savings from such a provision could be in the region of £21 million per annum, whilst making clear that this estimate was highly contingent. This recommendation was accepted by the Scottish Ministers. The Financial Memorandum to the Bill notes, but does not express a view on, the Barclay Review's savings estimate.[cxcvi]

158. General anti-avoidance measures are a relatively modern feature of the UK legislative landscape, with the first dating from 2013.[cxcvii] This Bill is the first time a general anti-avoidance measure has been introduced for a local tax in Scotland. It is a long-established principle of Scots law that a taxpayer is entitled to arrange their business affairs however they like in order to pay as little tax as possible, provided these arrangements are not unlawful, and when tax disputes have reached courts, they have tended not to apply a purposive interpretation that favours the tax collector over the taxpayer, even if the conduct looks like avoidance.[cxcviii]

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cxciv e.g. written submissions of Historic Houses; Historic Environment Scotland

cxcv e.g Renfewshire Council written submission

cxcvi At paragraph 54

cxcvii The first, in the UK Finance Act 2013, addressing avoidance in relation to some centrally collected taxes, such as income tax.

159. Perceived advantages of general anti-avoidance provisions are that they provide courts with the means to tackle elements of tax statute that have been interpreted "creatively" (i.e. exploiting perceived loopholes so as to avoid or reduce liability), without having to wait for Parliament to produce a bespoke drafting solution. Potential disadvantages are, potentially, an absence of legal certainty, which is seen as a cornerstone of common law and human rights jurisprudence.[cxcix] Evidence has noted the importance of any general anti-avoidance provision striking the right balance between the rights of the state and the taxpayer.[cc]

160. The version of the power set in the Bill is a framework provision. Section 23 empowers the Scottish Ministers to make regulations "with a view to preventing or minimising advantages ... arising from non-domestic rates avoidance arrangements that are artificial". Sections 24 to 26 are definitional sections. "Advantage" is defined as including avoidance, remission, relief, repayment or deferral of a payment. The meaning of "artificial avoidance arrangements" is (paraphrasing slightly): that the arrangement must be for the purposes of obtaining a financial benefit (in terms of rates paid, delayed, or not paid), with the arrangement considered artificial if it is "not a reasonable course of action" or if it "lacks economic or commercial substance".

161. Section 27 states that regulations must be laid under the affirmative procedure and that, before doing so, the Scottish Ministers must consult councils, assessors and representatives of ratepayers.

162. This provision was welcomed by the local government sector at Stage 1. [cci] The Association of Accounting Technicians said that the inclusion in the Bill of a general anti-avoidance measure for rates rectified an "obvious shortcoming" on non-domestic rates law.[ccii] The Chartered Institute of Taxation also welcomed the provision.[cciii] It proposed a revision to make clear that the intent is to target conduct where *the sole or main* aim is to avoid liability, rather than *a main aim*. It said that it would be important for ratepayers to have guidance on what behaviour or arrangements section 23 is targeted at, and for the guidance to be updated regularly. Some submissions from the business sector expressed concern that the scope of the provision appeared broad and subjective and could reduce certainty in some business contexts.[cciv] In this connection, we note views of the Delegated Powers and Law Reform Committee that the provision is of uncertain scope. That Committee recommended[ccv] that the Scottish Government consider providing further specification on the face of the Bill at amending stages.

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cxcviii Ayrshire Pullman Motor Services v Inland Revenue [1929] 14 Tax Case 754

cxcix More information here

cc e.g Chartered Institute of Taxation, written submission

cci e.g, written submissions of Cosla and North Ayrshire Council

ccii Written submission

cciii Written submission

cciv e.g, Scottish Property Federation, written submission

163. Witnesses at Stage 1 raised the issue of "phoenix" companies: instances where the same individual or group stand behind a succession of sometimes short-lived companies, which legally vanish when rates or other bills are due.[ccvi] In extreme cases, the same individual might be the controlling interest behind an enterprise operating more or less continuously out of the same premises and carrying out the same line of business. Representatives of local authorities spoke of their frustration at lacking effective remedies.[ccvii] Part of this might be to do with councils' powers to obtain information (discussed elsewhere) and whether this includes company directors. The Scottish Government told us that it recognises the problem but takes the view that this is predominantly an issue of company law, which is a reserved matter. It has held discussions on the matter with other UK counterparts. [ccviii]

164. The Committee welcomes sections 23 to 27 of the Bill, which empower the Scottish Ministers to introduce general anti-avoidance provisions for non-domestic rates. We do note that anti-avoidance provisions are relatively new in UK legislation and await a full "stress test" in the courts system, but if their existence alone serves as a deterrent to some avoidance that is a good starting point.

165. 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.

166. Tax avoidance corrode public confidence in the tax system and the shared sense that everyone plays by the same rules, especially when it is carried out openly and blatantly. 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.

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ccv At paragraph 43 of its Stage 1 report on the Bill

ccvi Local Government and Communities Committee, Official Report, 22 May 2019, col 21

ccvii Local Government and Communities Committee, Official Report, 19 June 2019 col 35

ccviii Local Government and Communities Committee, Official Report, 11 September 2019, col 24

General principles of the Bill

167. A clear majority of evidence the Committee has received from local government, from business, from the third sector and from professional bodies has supported the direction of travel signalled in the Bill towards a more modern and fair ratings system. The move to a three-year revaluation cycle has been almost universally welcomed as have moves to reform the appeals system. There is also support for reforms that should make it less easy to game aspects of the current system.

168. A recurring theme in evidence has been the need for clarity on next steps, especially in relation to the "framework" powers created by the Bill, where getting the detail of regulations right will be crucial. The Scottish Government must consult widely before regulations are introduced and take note of some of the concerns on key aspects of policy highlighted in Stage 1 evidence. This applies in various areas but we would single out appeals provisions and information-gathering powers as meriting particular consideration.

169. The verdict on whether the Bill will enable a more business-friendly ratings system has been more mixed. The business community has welcomed the business rates accelerator, but otherwise generally thinks there is more to be done. Evidence that the poundage rate is too high or that current methodology is not equitable towards some sectors was noted earlier. It was beyond the scope of our Stage 1 scrutiny to explore such claims in detail, but we agree that an effective ratings system should avoid inhibiting organic business growth and that it should have a broad ratepayer base so that there is a collective sense of investment in it, even if some might pay relatively little. We hope that these issues are on the radar during the current review of the small business bonus scheme and in any Government action taken in light of it.

170. Whilst much of the focus in evidence has, rightly, been on the Bill's likely effect on business, promoting business growth is not, and never has been, the sole aim of ratings policy. "Add-ons" to the basic architecture of the ratings system, such as the small business bonus scheme and the various forms of relief, are to a large extent a statement about priorities, and about the sort of activities the government of the day wishes to promote (or at least not discourage) via the ratings system. The Barclay Review carried out some useful work in assessing the reliefs landscape but it was not an exhaustive audit. In any case, the landscape is always changing. The Committee considers that there is further scope to explore the extent to which reliefs and other rates-related schemes are delivering desired policy outcomes. For instance, are they fit for purpose in addressing the climate emergency or promoting climate change mitigation measures?

171. Another priority should be town centres. Many of Scotland's high streets are struggling. This is not just an issue of economics: it is a matter of morale and community pride. It is not realistic to think that this Bill, with its relatively narrow focus could deliver a step change. A more pertinent question is whether the totality of the Barclay Review recommendations accepted by the Scottish Government will make a difference, alongside other high street regeneration policies.

172. One Barclay recommendation not taken forward was for the entry of practically all non-domestic property and land into the Valuation Roll. The reasons given by the

Scottish Government: that this was not an effective use of assessors' time, when meeting new targets set by the Bill will already be challenging, is understood and accepted. However, we think this proposal should remain on the table as an aspirational target for the longer-term. There are wider benefits in having as complete a Roll as possible, such as enabling access to more reliable economics data and, with that, policy-making that is robust and evidence-based.

173. Finally, the Committee recognises that for the majority of people who chose to contribute to our Stage 1 scrutiny, the Bill is important for one reason only; the provision removing charitable relief from most independent schools. We recognise and respect their views, and the strength of feeling behind them. But for reasons set out earlier in this report, the majority of the Committee considers the proposed change to be fair under the circumstances.

174. The Committee recommends to the Parliament that it supports the general principles of the Non-Domestic Rates (Scotland) Bill