

To: Finance, Resources & Customer Services Policy Board

On: 5 September 2018

Report by: Director of Finance & Resources

Heading: Barclay Implementation – Response to Scottish Government Consultation

1. **Summary**

1.1 The report of the Barclay Review of Non-Domestic rates (NDR) was published in August 2017, which included a number of recommendations for the Scottish Government to consider in relation to the reform of the business rates system. Some of these recommendations have been accepted and implemented, however some recommendations require changes to primary legislation and the Scottish Government has issued a consultation seeking views on the details on how that legislation will operate. The full consultation is attached at Appendix 1 to this report.

1.2 Responses have been developed for those questions relevant to the Council which are attached in Appendix 2. The consultation closes on 17 September 2018.

2. **Recommendations**

2.1 Agree the response to the consultation questions outlined in Appendix 2 and agree the Director of Finance & Resource submit these responses to the Scottish Government on behalf of the Council.

3. **Background**

3.1 Over the period from July 2016 to August 2017, Ken Barclay led a review into the business rates system in Scotland under the following remit -

“To make recommendations that seek to enhance and reform the non-domestic rates system in Scotland to better support business growth and long term investment and reflect changing marketplaces, whilst still retaining the same level of income to deliver local services upon which businesses rely.”

3.2 The Barclay review published its final report on 22 August 2017 and made 30 recommendations to The Scottish Government. In a statement to Parliament and accompanying publication on 12 September 2017, the Cabinet Secretary for Finance and the Constitution responded to 25 of the recommendations, accepting the majority, and noting that the remaining five required further engagement and consideration. Following that engagement, a further response was confirmed on 28 November 2017 in respect of council arm’s-length external organisations (ALEOs).

3.3 On 14 December an implementation plan including substantive responses to all 30 recommendations together with the Government’s implementation actions was published. To inform delivery of the Barclay response, the Scottish Government convened an Implementation Advisory Group to advise on the details of a number of Barclay recommendations. The group has met several times and their views have informed the consultation paper. They will continue to meet to progress administrative reforms and discuss progress of primary legislation.

3.4 Several Barclay recommendations can be, and have been, implemented administratively but others require the Government to bring forward legislation. The Scottish Government has therefore published a consultation paper which seeks views on those Barclay recommendations which require primary legislation. The full consultation is attached at Appendix 1 to this report.

- 3.5 Council officers from finance, economic development and NDR administration services have developed responses to the questions relevant to the Council which are attached in Appendix 2 (Council responses shown in italics). The consultation closes on 17 September 2018.
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Implications of the Report

1. **Financial** – there may potentially be costs incurred by the Council from the implementation of the Barclay recommendations both directly through a more regular revaluation cycle which requires information to be gathered and additional responsibilities in terms of debt recovery; and indirectly through increased demands on the Assessor which require additional funding.
2. **HR & Organisational Development** - none
3. **Community/Council Planning** –
 - *Reshaping our place, our economy and our future* – the recommendations in the Barclay review may increase NDR income collected.
 - *Working together to improve outcomes* – implementing the recommendations of the Barclay review will require close cooperation between different council services and the Assessor.
4. **Legal** - none
5. **Property/Assets** – none
6. **Information Technology** – the Barclay recommendations may have an impact on the ICT systems operated by the Assessor, which could require to be upgraded or revised in order to meet revised requirements.
7. **Equality & Human Rights** -The Recommendations contained within this report have been assessed in relation to their impact on equalities and human rights. No negative impacts on equality groups or potential for infringement of individuals' human rights have been identified arising from the recommendations contained in the report.

If required following implementation, the actual impact of the recommendations and the mitigating actions will be reviewed and monitored, and the results of the assessment will be published on the Council's website.

8. **Health & Safety** - none
9. **Procurement** – none
10. **Risk** - none
11. **Privacy Impact** - none
12. **Cosla Policy Position** – none

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Barclay Implementation

**A consultation on
non-domestic rates reform**

June 2018

Ministerial Foreword



As Cabinet Secretary for Finance, I am always seeking opportunities to make Scotland a better place to do business.

That is why when the *Report of the Barclay Review of Non-Domestic Rates* was published, I not only responded quickly but also built on some of the recommendations to create a competitive advantage for Scottish ratepayers. I believe those measures along with others in the Budget strike the right balance between offering a competitive and sustainable taxation environment while delivering sufficient resources to fund the public service upon which we all rely.

On 1 April this year I introduced a number of measures to underpin that competitive advantage. The growth accelerator and 100% relief for new build properties until first occupied will support speculative development and encourage improvements to our building stock. And our new targeted nursery relief will support a sector that is vital to ensuring an inclusive workforce. These measures are unique in the UK and apply equally to the public, private and third sectors.

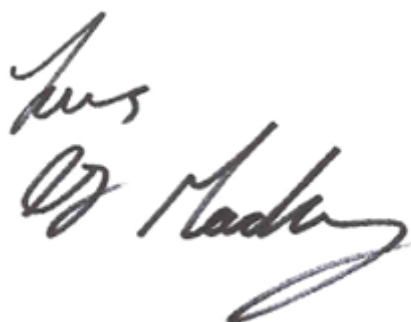
I am confident that these measures will not only attract new investment into Scotland, but also incentivise new developments and support employment.

Rates reform is a multi-faceted and multi-disciplinary piece of work, and to inform the implementation of the Barclay Review recommendations, I have convened an Implementation Advisory Group. I wish to thank the organisations represented on that Group for their work informing the drafting of this paper and their on-going work in progressing other non-legislative reforms.

Several of the Barclay recommendations require primary legislation and it is my intention to introduce a Bill during the current term of Parliament.

While the strategic direction of the reforms has been set by the Barclay Review, this consultation document seeks views on the specific details of how that legislation will work in a number of areas. This, along with the continued work of the Implementation Advisory Group and the targeted stakeholder engagement I plan to take forward over the Summer, will ensure the legislation I intend to bring forward in early 2019 not only delivers the recommendations of the Barclay Review swiftly but also efficiently and effectively.

No final decisions have yet been taken on the legislation ahead of the consultation or the final report of the Implementation Advisory Group and I would encourage all stakeholders to engage fully with this consultation process and I look forward to hearing your views.

A handwritten signature in black ink, appearing to read 'Derek Mackay', written in a cursive style.

Derek Mackay MSP

Cabinet Secretary for Finance and the Constitution

Background

1. Over the period from July 2016 to August 2017, Ken Barclay led a review into the business rates system in Scotland under the following remit -

“To make recommendations that seek to enhance and reform the non-domestic rates system in Scotland to better support business growth and long term investment and reflect changing marketplaces, whilst still retaining the same level of income to deliver local services upon which businesses rely.”
2. The Barclay review published its final report on 22 August 2017 and made 30 recommendations to The Scottish Government.
3. In a statement to Parliament¹ and accompanying publication² on 12 September 2017, the Cabinet Secretary for Finance and the Constitution responded to 25 of the recommendations, accepting the vast majority, and noting that the remaining five required further engagement and consideration. Following that engagement, a further response was confirmed on 28 November 2017 in respect of council arm’s-length external organisations (ALEOs)³.
4. On 14 December an implementation plan including substantive responses to all 30 recommendations together with the Government’s implementation actions was published⁴. That included measures which went beyond what Barclay recommended, including several that are unique within the UK.
5. The overall response, ensures that Scotland offers the most competitive package of non-domestic rates reliefs in the UK.
6. To inform delivery of our Barclay response, Scottish Government convened an Implementation Advisory Group to advise on the details of a number of Barclay recommendations. The group has met several times so far and their views have informed this consultation paper. They will continue to meet to progress administrative reforms and discuss progress of primary legislation.
7. Several Barclay recommendations can be implemented administratively but others require the Government to bring forward legislation. The detail for each recommendation is set out in the table below.

¹ <https://news.gov.scot/speeches-and-briefings/response-to-the-report-of-the-barclay-review-of-non-domestic-rates>

² www.gov.scot/Topics/Government/local-government/17999/11199/NDRministerialstatement120917

³ <https://news.gov.scot/news/sports-arts-and-community-centres-to-keep-rates-relief>

⁴ <https://beta.gov.scot/publications/barclay-review-of-non-domestic-tax-rates-implementation-plan/Barclay%20review%20of%20non-domestic%20rates%20-%20implementation%20plan.pdf?inline=true>

Summary of Barclay recommendations

Table 1: Barclay recommendations - summary

Number	Description	Status	Legislation needed
1	Business growth accelerator	Accepted -implemented 1 April 2018	Secondary legislation (completed April 2018). Option for primary legislation-informed by this consultation paper
2	Three yearly revaluations	Accepted	Primary legislation needed. Informed by this consultation paper
3	Reduction in large business supplement	Accepted	Will be implemented by secondary legislation when affordable
4	New relief for day nurseries	Accepted – implemented 1 April 2018	Secondary legislation (completed April 2018)
5 a	Expanding fresh start relief to benefit town centres	Accepted – implemented 1 April 2018	Secondary legislation (completed April 2018)
5 b	Pilot scheme to increase rates out of town	Accepted	Primary legislation needed. Informed by this consultation paper
6	Review of plant and machinery valuation	Accepted	None. Administrative change
7	Review of Small Business Bonus Scheme	Accepted	None. Administrative change
8	'Road map' for future rates changes	Accepted	None. Administrative change
9	Provision of better information	Accepted	None. Administrative change
10	Relief recipients to be published	Accepted	None. Administrative change
11	Employ rateable value finder product	Accepted	None. Administrative change
12	More transparency & consistency from Assessors	Accepted	None. Administrative change
13	Greater information gathering power for Assessors	Accepted	Primary legislation needed. Informed by this consultation paper
14	Standardised rates bills across Scotland	Accepted	None. Administrative change
15	Incentivise online billing	Accepted	None. Administrative change
16	Penalty for non-provision of information to councils	Accepted	Primary legislation needed. Informed by this consultation paper
17	Councils to make refund payments faster	Accepted	Administrative change
18	Enable quicker debt recovery from ratepayers	Accepted	Primary legislation needed. Informed by this consultation paper
19	Reform of the appeals system	Accepted	Primary legislation needed. Informed by this consultation paper
20	General Anti-Avoidance Rule (GAAR)	Accepted	Primary legislation needed. Informed by this consultation paper
21	Close empty property relief loophole	Accepted	Primary legislation needed. Informed by this consultation paper
22	Close SBBS second homes loophole	Accepted	Primary legislation needed. Informed by this consultation paper
23	All relief awards to be checked for errors	Accepted	None. Administrative change
24	Reform charity relief	Partially accepted	Primary legislation needed for part of this recommendation. Informed by this consultation paper
25	Relief restricted to properties in active occupation	Accepted	Primary legislation needed. Informed by this consultation paper
26	Reform empty property relief	Accepted	Primary legislation needed. Informed by this consultation paper
27	Sports relief for affordable community facilities	Accepted	Primary legislation needed. Informed by this consultation paper
28	All property should be on valuation roll	Will not be progressed	N/A
29	Commercial agricultural processing	Will not be progressed	N/A
30	Commercial activity on parks etc.	Accepted	Primary legislation needed. Informed by this consultation paper

Introduction and how to get involved

8. The Scottish Government continues to engage with stakeholders on the implementation of Barclay, and this consultation paper seeks your views on those Barclay recommendations (highlighted in Table 1) which require primary legislation. A glossary explaining some rating terminology is at **Annex A**.
9. The recommendations requiring primary legislation appear in the following pages set out using Barclay's numberings and respective groupings of measures to support growth, to improve administration and to increase fairness.
10. The drafting of this consultation paper has been informed by the Implementation Planning Group, the membership of which is found at **Annex B**.
11. A partial Business and Regulatory Impact Assessment (BRIA) has been produced to accompany this consultation paper.
12. All correspondence should be addressed to NDR@gov.scot

Process

13. There will be a 12 week consultation period, which will run from 25 June to 17 September 2018. All responses will be published where consent is given shortly thereafter and each response will be considered fully.
14. It is our intention to introduce primary legislation following analysis of responses to this consultation.

CONSULTATION ON BARCLAY IMPLEMENTATION

MEASURES TO SUPPORT GROWTH

Barclay recommendation 1

A Business Growth Accelerator – 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.

15. Secondary legislation has delivered these policies with effect from 1 April 2018 and similar secondary legislation will be laid in all future years to which this policy applies.
16. To simplify the current application based relief, an alternative would be to create a time delay in primary legislation to ensure that increases in rateable value due to a new property being built and occupied or improvements to an existing property do not take effect for a set period. To allow future flexibility, this could include a power to enable Ministers to vary the time delay by Regulations (either increasing or decreasing the current 12 months delay period depending on prevailing circumstances and affordability). This would also have the benefit of removing the need for ratepayers to apply for relief, ensure consistency in the approach across Scotland and reduce administration of relief applications by Councils.
17. Currently, secondary legislation has delivered these policies with effect from 1 April 2018 and similar secondary legislation will be laid in all future years to which this policy applies. However, the legislation is complex and primary legislation could simplify this.
18. In addition to recommendation 1, the Scottish Government went beyond Barclay and introduced a further measure which, from 1 April 2018, will see new-build properties receive 100% relief until first occupied.
19. To remove the need for the current application based relief for new build unoccupied property primary legislation could alternatively adjust the duties of the Assessor in relation to entries in the valuation roll. This would ensure a new build property would be entered on the roll only on the date of occupation. Again, this would simplify the process for ratepayers by removing the need for applications.
20. Alternatively annual secondary legislation could have the same effect.

Question 1 – What are your views on how the growth accelerator and new unoccupied build should be treated in legislation?

Barclay recommendation 2

There should be three yearly revaluations from 2022 with valuations based on market conditions on a date one year prior (the 'Tone date').

21. In order to reflect changes that occur over time, property valuations for rates are reassessed at regular intervals as part of a process known as Revaluation. At each revaluation, the Assessors have to determine the rateable value of each property at a fixed point in time, known as the Tone date. Currently legislation sets Non-Domestic Rates revaluations at five yearly intervals with the Tone date two years prior. We will legislate to change the revaluation cycle to allow three yearly revaluations with a one year Tone date from 2022 onwards. Barclay was clear that more frequent revaluations ahead of 2022 was not possible.
22. More frequent revaluations mean the timetable for dealing with the resulting appeals is reduced by two years. As such, the Implementation Advisory Group advise that delivery of this recommendation is heavily reliant on reforms to the appeals system (Recommendation 19) to ensure appeals are dealt with timeously and the vast majority are cleared before the start of the next revaluation cycle.

Question 2 – Do you have any comments on three yearly revaluations?

Barclay recommendations 3, 4 and 5 (a) do not require primary legislation and are outwith the scope of this consultation.

Recommendation 3 is for the large business supplement to be reduced when affordable, recommendation 4 is for a new day nursery relief, which was introduced in April 2018 and 5 a) is for an expansion of Fresh Start, which came into force on April 2018.

Barclay recommendation 5 b)

A new power to enable councils to impose an additional levy on rates in certain circumstances.

23. Barclay suggested a new discretionary power for councils to apply modest rates supplements in certain circumstances from 2020 for out-of-town ratepayers or predominantly online ratepayers. The proceeds would be used to support ratepayers in town centres. This should be a pilot scheme (involving no more than three towns) and must be subject to a formal evaluation to determine whether those pilots were successful prior to any further rollout.

24. The Implementation Advisory Group acknowledges that the Scottish Government has already committed to implement these pilots, but recommend that this measure include a number of safeguards.

25. It was suggested that those safeguards could include one or more of the following:

a) A cap on the level of supplement set in legislation determined by Scottish Ministers. As an example, this could be linked to the prevailing poundage rate (e.g. no more than a set percentage of the annual poundage rate).

b) A requirement for Ministerial and/ or Parliamentary approval for each scheme. If parliamentary scrutiny is considered appropriate this could be achieved by laying of Regulations for each pilot scheme.

c) A requirement for the local Council to consult on the scheme, including with local ratepayers and to publish analysis of this consultation prior to any approach being made to the Scottish Government to take part in a pilot scheme.

d) A requirement for local ratepayers to have a say on how proceeds from the supplement are spent (similar to the Business Improvement District model).

The Implementation Advisory Group also strongly supported Barclay's view that this should only be a pilot scheme and must be formally assessed prior to any wider rollout.

Question 3 – From 2020 a small number of pilot councils will have a new power to increase rates paid by out of town or predominantly online businesses.

a) Do you agree or disagree with putting in place safeguards?

b) Please explain your response to (a) including what the safeguards should be if you agree they are required.

Question 4 - Do you have any comments on the criteria and process which should be used to assess the pilot scheme(s)?

Barclay recommendation 6 is for a review of plant and machinery valuations. This has commenced by a separate process reviewing hydro valuations. This review is currently underway and is outwith the scope of this consultation.

Barclay recommendation 7 is for an review of the Small Business Bonus Scheme (SBBS). The Scottish Government are committed to implementing this recommendation, which will commence in 2018, and findings will be available in time to inform the 2022 revaluation. This recommendation is subject to separate process and is outwith the scope of this consultation.

MEASURES TO IMPROVE ADMINISTRATION

Barclay recommendations 8 - 12 are administrative and are outwith the scope of this consultation

8 - The Scottish Government should provide a 'road map' to explain changes to the rating system and should consult whenever possible on those changes, prior to implementation.

9 - There should be better information on rates made available to ratepayers – co-ordinated by Scottish Government.

10 - A full list of recipients of rates relief should be published to improve transparency.

11 - A "rateable value finder" product should be used – to identify properties that are not currently on the valuation roll, so as to share the burden of rates more fairly.

12 - Assessors should provide more transparency and consistency of approach. If this is not achieved voluntarily, a new Scotland wide Statutory Body should be created which would be accountable to Ministers.

Barclay recommendation 13

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.

26. At each revaluation, the Assessors have to determine the rateable value of each property at a fixed point in time, known as the Tone date. Generally this involves information such as rent paid and details of rental agreements, but in certain cases may involve additional information such as construction costs or turnover.
27. Currently for certain areas or types of property the level and quality of information provided is low, meaning valuations may not be as accurate as they would otherwise be. This can result in the appeals system being used as the mechanism to correct valuations, putting undue burden on the appeal system and means the appeal process takes longer than it would otherwise.
28. The Scottish Government have committed to change primary legislation to remove the current criminal penalty for non-provision of information, which is rarely, if ever, used and replace this with a civil penalty, which will be simply to apply and enforce. This should incentivise higher information return rates and

ensure more accurate valuations. If valuations are more accurate, then fewer ratepayers should appeal resulting in less burden on the appeals system.

29. Any new penalty created will have to have a designated body that is responsible for administration and suitable provision for appeals against the penalty notice.
30. The penalty is not intended as a revenue raising measure, but rather an incentive to ensure better information from the outset and remove the need to rely on the appeal system to set valuations at the correct level.
31. The range of organisations/ individuals that the Assessors can request information from to inform valuations will also be considered for expansion.

Question 5 - What level(s) should this civil penalty be set at?

Question 6 - How should the penalty be set? Should it be a fixed penalty or proportionate to/ banded by rateable value?

Question 7 - Do you have any views on who is responsible for administering the penalty and the process for appeals against the penalty notice?

Question 8 - Which organisations/ individuals should be required to supply necessary information to the Assessors, where applicable?

Barclay recommendations 14 and 15 are administrative and will be taken forward without primary legislation and are outwith the scope of this consultation.

14 - Standardised rates bills should be introduced across Scotland.

15 - Ratepayers should be incentivised to sign up for online billing where available except in exceptional circumstances.

Barclay recommendation 16

A new civil penalty for non-provision of information to Councils by ratepayers should be created.

32. Barclay noted that it is important that Councils have up to date information on occupiers of non-domestic property to ensure that bills are accurate and relief is correctly applied.

33. This is required to prevent fraud, but also ensures the correct ratepayer is billed for the correct amount. The Scottish Government have committed to change primary legislation to create this penalty. This should ensure better information and more accurate bills issued to the correct ratepayers.
34. It is not intended to be a revenue raising exercise but penalties are intended to deter fraud and ensure information is kept up to date.
35. This runs in tandem with separate recommendations to ensure that Councils improve their services to ratepayers e.g. through faster repayment of any overpayments and better provision of information.
36. The Implementation Advisory Group believe there should be a duty for a ratepayer to inform the local council within 28 days of when they move in and move out of a non-domestic property and to provide any information on request by the Council within the same timeframe. This could include, but is not limited to, evidence of relief entitlement. The penalty could be an automatic fixed amount applied to bills or one which the Council has discretion over e.g. if there are extenuating circumstances the Council can waive the penalty.
37. Any new penalty created will have to have a designated body that is responsible for administration and suitable provision for appeals against the penalty notice.
38. The penalty is not intended as a revenue raising measure, but rather an incentive to ensure better information.

Question 9 - What level(s) should this penalty be set at?

Question 10 - How should the penalty be set? Should it be a fixed penalty or proportionate to / banded by rateable value?

Question 11 - Do you have any views on who is responsible for administering the penalty and the process for appeals against any penalty notice?

Question 12 - Should this be a mandatory penalty or one that the Council has discretion over (please indicate your preference and add any comments)?

Barclay recommendation 17 does not require primary legislation and is outwith the scope of this consultation.

17- Councils should refund overpayments to ratepayers more quickly.

Barclay recommendation 18

Councils should be able to initiate debt recovery at an earlier stage.

39. Currently debt recovery Council tax takes place earlier in the financial year than it does for rates. From 2020 the Scottish Government will bring debt recovery for both kinds of local taxation (non-domestic rates and Council tax) into line. This means a council will be able to initiate enforcement action for non-payment of rates earlier in the year to ensure fairness among all tax payers (both citizens and businesses). This may also reduce avoidance. It would also be an option to allow Councils some discretion over exceptional circumstances.
40. This runs in tandem with separate recommendations to ensure that Councils improve their services to ratepayers e.g. through faster repayment of any overpayments and better provision of information to ratepayers.
41. Ratepayers will also need to be aware that payments still need to be made regardless of whether a bill is in dispute, for example whilst an appeal is progressing. This could be achieved by including this information prominently on bills if it is not already included.

Question 13 - How should the debt recovery changes be communicated to ratepayers?

Question 14 - What are your views on whether Councils should retain a discretion over debt recovery to allow for any extenuating circumstances?

Barclay recommendation 19

Reform of the appeals system is needed to modernise the approach, reduce appeal volume and ensure greater transparency and fairness.

42. In the longer term, the functions of the current Valuation Appeal Committees (VACs) are expected to transfer to the Scottish Tribunals in 2022, noting that the functions of the VAC extend beyond those related to non-domestic valuation. Those reforms will be made under separate legislation, however one recommendation made by Barclay was that the outcome of an appeal should be to increase as well as decrease the rateable value of a property.
43. Currently the valuation appeals system is risk free for ratepayers in that the valuation may only decrease or remain the same. Whilst the majority of appeals result in no change for the ratepayer, and an appeal cannot increase the valuation even if there is new evidence to support such an outcome.

44. As noted in Recommendation 2, it is considered critical by the Implementation Advisory Group that the appeals system is reformed in order to deliver a more effective system and to support the move to three yearly revaluations.

45. It is not anticipated that this will impact on significant numbers of ratepayers, nor that it will raise significant amounts of revenue, but if during the course of an appeal it becomes apparent that a valuation is too low, this could be corrected to ensure fairness with other ratepayers.

Question 15 - How should this change be communicated to ratepayers?

Question 16 - Do you have any points about the change to allow valuation appeals to increase?

Barclay recommendation 20

A General Anti-Avoidance Rule (GAAR) should be created to reduce avoidance and make it harder.

46. There will always be those who try to avoid paying taxes to create a competitive advantage for themselves to the detriment of others.

47. Where possible, known loopholes will be closed (see recommendations 21 and 22). However, even as loopholes are closed, there will be those who look to new ways to exploit the system to create an unfair advantage.

48. The Implementation Advisory Group agrees that action should be taken to tackle those who deliberately avoid payment of taxation. A General Anti Avoidance Rule (GAAR), as used in other taxes, will also go some way to future proofing the system and allow Councils to act swiftly to tackle new avoidance tactics as they arise.

Question 17 - When the General Anti Avoidance Rule is introduced, do you have any recommendations or principles that this should encompass?

Barclay recommendation 21- *To counter a known avoidance tactic, the current 42 days reset period for empty property should be increased to 6 months in any Financial year.*

49. Currently, after a 42-day period of occupation a property can be eligible for empty property relief (e.g. 100% relief for six months for industrial property). This is open to abuse through patterns of occupation aimed at obtaining successive periods of empty relief.

50. The Scottish Government will change the rules around the eligibility for empty property relief to reduce this known avoidance tactic from 2020. This will increase the period a property must be occupied before a new period of empty property relief may be claimed from 42 days to 6 months. Barclay advised that the 6 month period should be discontinuous so as not to inhibit pop-up uses of empty premises.

51. Additional reforms to empty property relief are addressed under Recommendation 26.

Question 18 – How do we raise awareness of this change among ratepayers?

Question 19 – Do you have any further comments around the 6 month reset period for empty property relief?

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.

52. Currently, for self-catering holiday accommodation to be entered in the valuation roll (and thereby be liable to non-domestic rates, rather than council tax), it must be made available for letting for a total of at least 140 days in the year in question. However, it need not actually be let for any period.

53. This is open to abuse, such as by owners of second homes who wish to avoid council tax, who claim a property is available to let with no actual intention of letting it. Such properties can then be eligible for 100% rates relief under the Small Business Bonus Scheme, with the outcome that no local tax is paid by the property (either non-domestic rates or council tax).

54. The requirement will be changed so that actual let for 70 days and intended let for 140 days must be evidenced by the ratepayer to allow the property to be able to be classed as a non-domestic property.

55. This could be either a mandatory requirement or one with local discretion to allow flexibility e.g. for small numbers of genuine self-catering properties where the individual property is incapable of being let for 70 days due to circumstances outwith the owners control. An example of this could be due to poor access to the property following a landslide or in the event of periods of prolonged adverse weather.

Question 20 - Should there be any local discretion in the application of this policy?

Question 21 - If your answer to question 18 is yes, under what circumstances should this discretion apply?

Barclay recommendation 23 is for the Scottish Government to check relief awarded and does not require primary legislation and is outwith the scope of this consultation.

Barclay recommendation 24

Charity relief should be reformed/restricted for a small number of recipients.

56. The Scottish Government will remove charity relief for most independent schools from April 2020 to bring independent schools into line with Council schools. However, the Scottish Government has committed that schools for children and young people with additional support needs that are in receipt of disabled persons relief or charitable relief will be able to retain that relief.

57. There may be a small number of independent schools with exceptional circumstances, such as specialist music schools that require further consideration.

58. Additional separate engagement will be undertaken with the sector.

The separate strand of this recommendation for ALEO (Arms Length External Organisations) properties is being taken forward administratively.

59. **Question 22** - How should independent schools with exceptional circumstances such as specialist music schools be treated?

Barclay recommendation 25

To focus relief on economically active properties, only properties in active occupation should be entitled.

60. This change will primarily impact on empty properties either previously occupied by charities which receive charity relief (not empty property relief) or empty properties that claim the more generous SBBS instead of empty property relief.
61. Active occupation must be defined in a way which does not give rise to avoidance so for example could include floor space used, accessibility to the public and/ or council, demonstration of accounts for a business in operation at the property. A combination of these or any other criteria could form the basis of a definition. An alternative could be for the General Anti Avoidance Rule to be utilised in cases where a property is not in active use, but claims a relief other than empty property relief.

Question 23 - How should active occupation be defined?

Barclay recommendation 26

To encourage bringing empty property back into economic use, relief should be reformed to restrict relief for listed buildings to a maximum of 2 years and the rates liability for property that has been empty for significant periods should be increased.

62. From 2020 empty listed property will receive 2 years 100% relief and thereafter receive 10% relief in line with other types of empty property. Additionally, any type of property that is empty for over 5 years, with the exception of listed property, will pay a 10% bill surcharge after 5 years. This will create incentives to bring all types of empty non-domestic property back into economic use.
63. It has been suggested by the Implementation Advisory Group that property in the planning process could be excluded from reforms, but this could have consequences if the planning system were abused with properties “parked” in the system to avoid payment of local taxation. An alternative may be to allow local discretion.
64. Additional separate engagement will be undertaken with the sector and the impact of this policy on the public sector will be considered.

Question 24 - What are your views on whether Councils should have discretion in the application of this measure for properties, so that local circumstances can be accounted for?

Barclay recommendation 27

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.

65. This relief is currently offered to affordable, community sports clubs and it is anticipated that 95% of current recipients of this relief will be unaffected.
66. However, a small number of clubs with very high fees and/ or membership policies which specifically exclude certain parts of the local community may lose relief as a result of reforms.
67. Options for reform could include incorporating a requirement for all beneficiaries to have inclusive and transparent membership policies, membership fees below a certain threshold, availability of the facilities to the local community or other criteria.
68. Additional separate engagement will be undertaken with the sector.

Question 25 - How should affordable/ community sports facilities be defined?

Barclay recommendations 28 and 29 will not be progressed by The Scottish Government and are outwith the scope of this consultation.

Barclay recommendation 30

Commercial activity on current exempt parks and Local Authority (council) land vested in recreation should pay the same level of rates as similar activity elsewhere so as to ensure fairness.

69. Currently public parks and land vested by the local authority in recreational purposes are exempt from entry in the valuation roll and hence commercial activity taking place on these pay no rates. From 2020 the Scottish Government will remove those exemptions and rates will become payable on the property or land within the park undertaking that activity.
70. Additional separate engagement will be undertaken with the sector.

Question 26 – How should commercial activity on parks be defined?

ANNEX A

Glossary

Appeal - The valuation appeals system allows a ratepayer to challenge the Assessors rateable value for their property. This has various stages, but initial appeals are heard by local panels.

Assessor - An independent public official who determines the rateable value of all properties entered on the valuation roll, along with other functions. Assessors must be members of the Royal Institution of Chartered Surveyors and work under a non-Statutory umbrella body called the Scottish Assessors Association.

Council Tax - a property tax levied on domestic property and used to fund local services.

Non-domestic rates - A property based tax, also known as business rates, levied on non-domestic property that is used to fund local services provided by the council, including those provided to businesses. The rating system is administered by councils.

Rateable value (RV) - For most property this is the Assessor's determination of one year's annual rent on the open market. This is determined by looking at rents for similar or nearby properties.

Ratepayer - Anyone who is liable for rates on a non-domestic property. Ratepayers include businesses, public sector, third sector and citizens.

Relief - A discount/ reduction applied to the rates bill of eligible properties. Most reliefs are funded by the Scottish Government, although councils do have discretion to create their own reliefs.

Revaluation - All properties are reassessed by the Assessors at a revaluation, the purpose of which is to redistribute the tax based on more recent market conditions. The last revaluation was in 2017, the next planned revaluation will be in 2022.

Tone date - The date at which all properties are valued by the Assessor. Currently this is 2 years before the revaluation date. Using a single date for all properties ensures fairness and allows the Assessor sufficient time to collect evidence from ratepayers. The Tone date for the 2017 revaluation was 1 April 2015.

Valuation Roll - A record of all non-domestic (business) premises valued by the Assessor, including their address, rateable value and other related data. Valuation rolls are searchable online at www.saa.gov.uk

ANNEX B

Membership of Implementation Advisory Group

The following organisations were represented on the group -

CBI Scotland

CoSLA

Federation of Small Business

Institute Revenue Rating and Valuation

Rating Surveyors Association / RICS

Scottish Assessors Association

Scottish Chambers of Commerce

Scottish Property Federation

Scottish Retail Consortium

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W W W . G O V . S C O T

Barclay recommendation 1

A Business Growth Accelerator – 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.

Question 1 – What are your views on how the growth accelerator and new unoccupied build should be treated in legislation?

Question 1- It is noted that this recommendation has already been delivered by means of annually laid secondary legislation and that SG intends to simplify this process by introducing primary legislation. This would be preferable to the Council.

In a similar way it would be preferable for new unoccupied buildings to be entered in the roll from the date of occupation which would mean the Council were not required to consider empty relief. This would however be dependent on the practicalities of the Assessor keeping up to date with regards occupancy, in particular where companies' failure to advise on occupancy results in rates avoidance.

Barclay Recommendation 2

There should be three yearly revaluations from 2022 with valuations based on market conditions on a date one year prior (the 'Tone date').

Question 2 – Do you have any comments on three yearly revaluations?

A 3 year review cycle should result in the Assessor determining a rateable level which is more reflective of the current market conditions and may assist in reducing major movements valuations, which is to be welcomed.

However, in the absence of any change to the appeals process, it is likely to have resources issue for not only the Assessor, who will require to resolve appeals in a more diligent manner, but also for landlords/owners who own more than one property, (including local authorities) who have a large operational portfolio.

With a 3 year cycle, as opposed to a 5 year cycle, there will be less time available for both the appellant and the Assessor to determine whether the rateable value proposed is fair and reasonable. This could result in an increased number of appeals being taken to the VAC/Scottish Tribunals. In such circumstances, the Scottish Government will require to provide adequate resource to Assessors to enable them to meet the workload demands of an increasingly regular revaluation cycle.

Barclay recommendation 5 b)

A new power to enable councils to impose an additional levy on rates in certain circumstances.

Question 3 – From 2020 a small number of pilot councils will have a new power to increase rates paid by out of town or predominantly online businesses.

a) Do you agree or disagree with putting in place safeguards?

b) Please explain your response to (a) including what the safeguards should be if you agree they are required.

Question 4 - Do you have any comments on the criteria and process which should be used to assess the pilot scheme(s)?

Question 3 – The safeguards proposed seem reasonable but the impact of large online businesses predominantly affects national, not local businesses. For instance, the presence of an Amazon warehouse in Inverclyde will not impact on the shopping mall in Greenock any differently from the High Streets of Paisley or Inverness. To that end it would appear the proposal is potentially disjointed in putting in place a local solution to a national problem. The Council would agree there should be a supplement but it should be written in legislation, imposed by the Councils, paid to the Scottish Government and then redistributed fairly across all areas. We do not believe this should follow a Business Improvement District model, but the additional income should be controlled by Council for investment in regeneration initiatives. The criteria should be linked to global turnover, with a maximum cap and should be written into legislation.

It is essential that safeguards for on-line business keep business rates at below the level whereby they could act as a disincentive for investment in Scotland.

Question 4 – this would be best responded by those councils who are best placed to be pilot areas.

Barclay recommendation 13

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.

Question 5 - What level(s) should this civil penalty be set at?

Question 6 - How should the penalty be set? Should it be a fixed penalty or proportionate to/ banded by rateable value?

Question 7 - Do you have any views on who is responsible for administering the penalty and the process for appeals against the penalty notice?

Question 8 - Which organisations/ individuals should be required to supply necessary information to the Assessors, where applicable?

Questions 5-8 require to be addressed by the Assessor.

A new civil penalty for non-provision of information to Councils by ratepayers should be created.

Question 9 - What level(s) should this penalty be set at?

Question 10 - How should the penalty be set? Should it be a fixed penalty or proportionate to / banded by rateable value?

Question 11 - Do you have any views on who is responsible for administering the penalty and the process for appeals against any penalty notice?

Question 12 - Should this be a mandatory penalty or one that the Council has discretion over (please indicate your preference and add any comments)?

Questions 9 and 10 – The penalty should be set after a defined period and pre-agreed activity by Councils to obtain information. The penalty should be proportionate to/banded by rateable value depending on the system that is in place to calculate the penalty. If this is not the current rates system it would most definitely need to be within a banding. Rules would also need to be in place where RV reductions and increases follow the penalty but relate to the period prior to the penalty being imposed.

Question 11 – Councils should be responsible on the basis that the penalty is incurred when information is not provided to the Council. The appeal process should follow the normal Council appeal process.

Question 12 – The Council must have discretion if there is an appeal process however the mechanism would need to follow mandatory rules to allow systems to impose and bill the penalty.

Barclay recommendation 18

Councils should be able to initiate debt recovery at an earlier stage.

Question 13 - How should the debt recovery changes be communicated to ratepayers?

Question 14 - What are your views on whether Councils should retain a discretion over debt recovery to allow for any extenuating circumstances?

Question 13 – Councils should include with annual bills in 2019 information advising ratepayers of changes the following year. The leaflet should provide full details on the new payment terms and follow-up and links to the Scottish Government legislation. It is suggested the Scottish Government should also run a national campaign of adverts in the months prior the annual billing when the change will take effect.

Question 14 – The Council believes there is sufficient flexibility within the current regulations to allow the effective management of NDR debt recovery, and the timescales over which it is reasonable to allow a debt to be repaid.

Barclay recommendation 19

Reform of the appeals system is needed to modernise the approach, reduce appeal volume and ensure greater transparency and fairness.

Question 15 - How should this change be communicated to ratepayers?

Question 16 - Do you have any points about the change to allow valuation appeals to increase?

Question 15 – Information could be included with Annual Bills, however the additional costs of this would require to be funded by the Scottish Government. Information could also be included within the Assessors literature and website.

Question 16 – this is principally an issue for the Assessor to respond to, however the risk of a valuation appeal increasing a valuation would place a greater obligation on those appealing to consider the merits of launching an appeal and is likely to assist in reducing overall volumes and appeals that have little or no merit entering the system.

Barclay recommendation 20

A General Anti-Avoidance Rule (GAAR) should be created to reduce avoidance and make it harder.

Question 17 - When the General Anti Avoidance Rule is introduced, do you have any recommendations or principles that this should encompass?

Question 17 – The loopholes that are covered in recommendations 21 and 22 refer to empty properties and SBBS. There are companies in existence who derive much of their business in exposing loopholes to reduce the rates burden for their clients. This is done through constant reinvention of scenarios; eg pop up art galleries when a building is clearly not accessible for the purpose of the business and is backed by continuous appeals to the Council which are resource intensive. The Council believes appeal findings in such cases should be applicable nationally ie one decision is applied across all council areas.

Another avoidance tactic is the use of phoenix companies. This activity can be fraudulent and legislation should be passed to make those who avoid rates in this manner accountable through the courts.

Barclay recommendation 21- *To counter a known avoidance tactic, the current 42 days reset period for empty property should be increased to 6 months in any Financial year.*

Question 18 – How do we raise awareness of this change among ratepayers?

Question 19 – Do you have any further comments around the 6 month reset period for empty property relief?

Question 18 – Care should be taken to avoid the event that raising awareness of particular avoidance tactics simply adds to the problem. However, any change to reliefs in general should be communicated in the normal way, either by a Scottish Government communication or with annual bills.

Question 19 – The Council would welcome this change.

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.

Question 20 - Should there be any local discretion in the application of this policy?

Question 21 - If your answer to question 18 is yes, under what circumstances should this discretion apply?

Questions 20 and 21 – This is not a particularly relevant issue within Renfrewshire, however the principle of owners requiring to demonstrate evidence of letting or some other evidence of business operations is supported.

Barclay recommendation 24

Charity relief should be reformed/restricted for a small number of recipients.

59. Question 22 - How should independent schools with exceptional circumstances such as specialist music schools be treated?

Question 22 – The Council does not believe specialist schools should be treated exceptionally. Schools that provide dance, drama, or music are accessed through parent choice, and are often fee paying.

Barclay recommendation 25

To focus relief on economically active properties, only properties in active occupation should be entitled.

Question 23 - How should active occupation be defined?

Question 23 – Active occupation could be defined in a number of ways, for example:

- *Where the majority of available floor space is actively used*
- *The building is accessible to the public and opening hours are proportionate and appropriate for a business which is undertaking commercial activities*
- *Inventories of sale stock which is reasonable for the space and is consistent with the generation of a commercial return. The availability of audited accounts demonstrating appropriate levels of commercial activity may help.*

Barclay recommendation 26

To encourage bringing empty property back into economic use, relief should be reformed to restrict relief for listed buildings to a maximum of 2 years and the rates liability for property that has been empty for significant periods should be increased.

Question 24 - What are your views on whether Councils should have discretion in the application of this measure for properties, so that local circumstances can be accounted for?

Question 24 – The Council is supportive of this proposal. There are particular circumstances within Paisley for example, which has a high number of listed buildings in the town centre, where there is little incentive for investment in these buildings or to bring them into economic use given the rates relief they enjoy. Limiting this relief would support initiatives to bring these buildings back into use and regenerate the town centre.

Barclay recommendation 27

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.

Question 25 - How should affordable/ community sports facilities be defined?

Question 25 – The Council does not agree that membership fees below a threshold is workable on the basis that if the club is non profit making but has large overheads i.e. occupies a listed building, then the membership fees will be high as a consequence to cover the overheads. If a sports club is required to make facilities available to the local community, the regulations need to define what charges are allowed to be imposed by the sports club i.e. hall and bar rental or whether the sports club are expected to offer free use of facilities to non members. It seems appropriate that any sports club should be able to cover their own costs including depreciation of their assets by others.

Barclay recommendation 30

Commercial activity on current exempt parks and Local Authority (council) land vested in recreation should pay the same level of rates as similar activity elsewhere so as to ensure fairness.

Question 26 – How should commercial activity on parks be defined?

Question 26 – The Council believes that there needs to be reflection of permanence in the definition ie a fixed building from which a commercial activity is delivered on a permanent basis. Where commercial activity is delivered from a park on a temporary or occasional basis then this is potentially more appropriate to be incorporated into a local charging regime rather than the NDR system.