REF NO.

SUBMITTING EVIDENCE TO A SCOTTISH PARLIAMENT COMMITTEE

DATA PROTECTION FORM

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Date:	**29 May 2019**
Organisation: (if required)	**Scottish Property Federation**
Topic of submission:	**Non-Domestic Rates (Scotland) Bill**

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LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

CALL FOR VIEWS ON THE NON-DOMESTIC RATES (SCOTLAND) BILL

SUBMISSION FROM

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

1. We believe the Bill is a crucial step towards the programme of reform of the Non-domestic rates system. NDR are a hugely significant tax, with some £2.7bn expected to be collected over 2019-20 by local authorities. This makes NDR second only to Scottish Income Tax in terms of devolved taxes. Our key principles in relation to the Bill, and the wider process of Non-domestic rates reform include:

   - Simplification – the NDR system ought to be a relatively straightforward tax, yet it has become plagued by supplements and uncertainty
   - Transparency – as a valuation-based tax, NDR requires a stronger partnership between the government's valuers, the Assessors, Billing authorities, Ratepayers and Rating professionals
   - The tax base is too small – the NDR tax base needs to be supported to grow and broaden appropriately. The business growth accelerator should help to grow the tax base. But also, too much dependency on a small number of taxpayers paying large amounts of rates will make the tax inherently risky
   - Closer alignment - There needs to be a closer alignment to the economy and the commercial property markets upon which NDR is mostly based.

2. We believe that the NDR system will not be sustained if it continues to be dependent on relatively few, large ratepayers, or indeed sectors of ratepayer. The example of the retail sector is a major case in point. This sector is a major contributor to the NDR revenue, particularly through the large business supplement, but the sector is now under severe business pressure. The recent increase of Compulsory Voluntary Arrangements has led to significant rental reductions for many large retailers, and this is now leading to pressure to reduce the relevant rateable values for affected businesses.

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

3. In our view, the Scottish Government has responded positively to the recommendations of the Barclay review. Most recommendations were accepted, with some exceptions that we will refer to. The Finance Secretary also went further than the recommendations of the business growth accelerator with a view to supporting economic growth through development. Some recommendations were not taken forward. For example, the proposal to remove rate relief from ALEOs and the decision not to implement a pilot of out of town or predominantly online business non-domestic rates supplements.

4. Our members are uncertain about the direction of policy on vacant listed buildings. The Barclay Review had recommended restricting 100% relief to two years where it is currently unlimited. Our understanding of the policy intention is that the Review believed that this left too little incentive for landlords of vacant listed empty properties to act to bring the property back into use.

5. The SPF has a number of members who will invest in vacant older buildings to bring them into use. A number of such buildings do present significant challenges that need to be overcome before the building

is in a position to apply for planning consents. The danger is that if additional and significant business rate demands make uncertain projects look too costly to undertake, then we will lose significant re-investment in our older buildings. For this reason, we suggested that the complexities involved with re-developing older buildings required a longer period of potential vacancy before empty rates became liable. We welcomed the decision of Scottish Ministers to extend this period of vacant relief for up to five years, with the policy coming into force from 1 April 2022. This recent decision is now uncertain, however, due to the agreement to devolve empty property rates policy to local government. **We would welcome clarification of the proposed treatment of vacant listed buildings as soon as possible**.

Specific proposals in the Bill

The Committee welcomes views on:

Question 3. Section 2 of the Bill which provides that revaluation of properties subject to non-domestic rates would be carried out every 3 years rather than every 5 years.

6. **We welcome and strongly support this measure**. A property value-based tax is of no use if the values become wildly out of date. The recent seven-year gap between revaluations and the subsequent measures required by the Scottish Government are examples of why it is important not to fall so far behind with revaluations. While there is a right to make an Appeal based on a Material Change of Circumstances (MCC), the case law surrounding this area is regarded as very restrictive.

Question 4. Section 3 of the Bill, which (together with section 9) makes provision in relation to new or improved properties. These delay the point at which non-domestic rates are increased because a property has been expanded or improved, or at which a new build property begins to incur liability to non-domestic rates. The underlying aim is to incentivise development and investment in business properties.

7. This is a key measure designed to support commercial property development to create economic development. In 2018, the SPF asked the Fraser of Allander Institute to research the economic benefits of commercial development for the Scottish economy. The findings identified both the current contribution of construction and related activities to the commercial property sector, but also the value of additional commercial property output, which showed for every £100m of demand a further £73m was added to the economy. In terms of jobs, for every 100 jobs created from further commercial property output an additional 85 were created in the wider economy.

8. This added economic value and widespread job creation, from skilled construction jobs to professional advisers, administrative, financial and other business services. New development also improves the quality of the commercial sector as, by definition, it is required to comply with modern building and environmental standards, where practicable.

9. The details of this Section will largely fall to detailed Regulations. It is important that these details cater for not just new buildings but the more difficult issue of 'improved' properties. Issues which will require detailed consideration include:

- Extent and definition of improvement that is eligible for relief
- Treatment of land for the purposes of the relief
- Ability for ratepayers to challenge Assessors on new build or improvements.

10. The Regulations must be clear on how they define the extent of improvements to properties for the purposes of relief. In our view, the policy principle must be to encourage re-investment in properties to improve their value, occupation, and economic impact. The opportunity to return older buildings to effective use brings several benefits. For example, there is a cultural value of the retention of key buildings, support for traditional skills, and savings in terms of maintenance that would otherwise be incurred by either private or, often, public owners.

11. Improvements may not always refer to occupied buildings. They can also include the land area under assessment. Small improvements to land, for example an improved access point or preparation for development, should not, in our view, impede a genuine re-development or new development from eligibility for relief under this Section. We are also concerned that there must be a means for a ratepayer to challenge an Assessor over the definition of a new or improved property.

12. We estimate, based on anecdotal returns from our members, that over £1bn of development or investment projects, are currently supported or have been supported, by the business growth accelerator policy.

Question 5. Section 4, which aims to increase the degree to which parks are subject to non-domestic rates, in recognition of the commercial activities that take place in some parks (e.g. the running of a café).

13. **We believe the valuation roll should be as complete as possible**; therefore, these properties ought to be included. In essence, we believe that the matter of how much should be charged is a matter of political judgement, while the maintenance and integrity of the valuation roll should be a matter of administration informed by a professional valuation assessment.

Question 6. Section 5, intended as a measure to address a perceived “loophole” that enables owners of holiday homes to avoid both council tax and non-domestic rates by making it more difficult to enter a home on the roll (and, through this, to then claim relief under the small business bonus scheme).

14. Our view is that everyone should make their appropriate contribution to either business rates or council tax. We have no criticism of these measures.

Question 7. Sections 6-9, which aim to reduce the current high rate of valuation appeals, which the Scottish Government perceives as speculative. (Increasing the frequency of ratings revaluations in section 2 is also seen as a component of this reform.)

15. The increase in the frequency of Appeals and the closer relationship to the Tone date should help to reduce the number of Rating Appeals. This is because the Rating assessments should be more in line with their respective commercial property rental value markets. We believe that the phrase ‘speculative’ is unfortunate as ratepayers and their representatives are often facing timescales and complexities that force them to be protective in their approaches to lodging Rating Appeals. If your Appeal is not lodged then, no matter the facts of the case, you will not be able to repair your assessment for five or, as has occurred recently, seven years. We would not support fees for Appeals at this stage as we do not think it appropriate for a taxpayer to be charged for querying their tax assessment and, would wish to see the effect of the three yearly revaluations on Appeal numbers.

Question 8. Section 10, which removes eligibility to claim charitable relief from non-domestic rates from mainstream independent schools, and section 11 which gives the Scottish Ministers the power to issue guidance to local authorities on the appropriate way to use their powers to grant sports club relief.

16. We have no comments on these proposals.

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

17. Where regulations are intentionally misused for the purpose of avoiding rates, we have no issue with those regulations being tightened. However, where there is misunderstanding or genuine error, we would hope the Billing Authority will be pragmatic and show discretion.

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

18. Again, we recognise it is important that ratepayers meet their obligations, but the Billing Authority should implement these new powers with responsibility and discretion.

Question 11. Sections 14, 18, 19 and 22, which together aim to strengthen the power of assessors to obtain the information they need to carry out their role, and sections 15, 16, 17, 20, 21 and 22 which give local authorities increased powers to obtain information from ratepayers, in order to ensure that the information they have is accurate, and to reduce the risk of fraud.

19. We agree that there must be better sharing of information and transparency between ratepayers, their representatives and the Assessors. The recent experience of the revaluation of licensed subjects in 2015-17 demonstrated how a paucity of information for the Assessors can lead to unrealistic assessments, hence ratepayers being penalised with high rates Bills. We recognise that Scottish Ministers did respond by capping the increases in rates for licensed sector ratepayers, but this would not have been needed if the revaluation had worked effectively.

20. We are concerned, however, by provisions relating to penalties and to requirements for information from unspecified sources beyond the current occupier, tenant, or owner. On penalties, there is a danger that the system becomes a revenue earner, which may lead to significant unfairness. The Financial memorandum suggests a major increase in penalty income, to £25.8m over the period of five years from 2020-21. This is a significant amount that may well catch many unsuspecting ratepayers.

21. The request for information may appear to be straightforward but in reality it is not always easy to comply with, particularly for representatives of ratepayers. Rating assessment is not always based on commercial property rental data. Licensed premises may be partly determined by turnover-based approaches and, indeed, certain lease contracts include incentives to attract tenants. The point is, these matters may be deemed as commercially sensitive by ratepayers in competition for trade and they, or their representatives, may be reluctant to see such information published or as too easily identified in the public valuation roll. We are concerned that the power to force ratepayers or their representatives to disclose what their clients deem to be confidential commercial information needs to be handled delicately, in order to avoid putting businesses at a disadvantage to their competitors.

Question 12. Part 4 of the Bill, which give the Scottish Ministers the power to make anti-avoidance regulations to prevent ratepayers gaining an advantage from avoidance arrangements that are considered artificial, and sets out definitions of “advantage” and “artificial”.

22. The definitions laid out under Part 4 of the Bill are very broad and, potentially, highly subjective. We are unsure how the concept of a GAAR will work in practice for the NDR system. A GAAR has been introduced in other devolved Scottish taxes but not yet used. Therefore, at this stage we would argue that the concept is unproven even with established devolved taxes.

23. This Part of the Bill should, however, be able to act as a basis for the more efficient management of ‘avoidance schemes’ that may not yet be in operation but may warrant a response in the future. For example, this Bill is taking steps to legislate in relation to second homes/small business bonus schemes and the periods of occupancy before empty property rates relief may be triggered. If passed, Part 4 of this Bill should offer a quicker and more efficient means to address these concerns through the provisions of the GAAR.

Other

Question 13. Do you have any other comments about the Bill? In particular, is there anything not in the Bill concerning non-domestic rates that should be in the Bill?

24. We are concerned that the dependence on the large business supplement to provide such a significant element of revenue must be a concern for the sustainability of the tax base. We believe it is important that a plan is set out whereby the LBS is brought back into line with England, or that the overall poundage, including LBS, is brought into line with English taxpayers. We are aware that there can be significant differences in property valuations between parts of the South East of England and Scotland; however, there are also higher commercial property valuations in, for example, some prime office locations in Edinburgh than in significant parts of Northern England.

25. The Bill changes the regulations relating to information notices to support revaluations. It will be critical that as we move towards a three-year system to ensure information is sought and obtained at a much earlier stage than has traditionally been the case. This makes it important that draft valuations are provided to ratepayers as early as possible before the new revaluation year, and that information to support these summary (re)valuations is secured in good time. Ratepayers and their representatives should have at least six months to decide whether to submit a Proposal, but this does not have to wait until the new revaluation year if they have good notice of their proposed revaluations ahead of the revaluation point (1 April).

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