The Scottish Parliament
Pàrlamaid na h-Alba

LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

AGENDA

29th Meeting, 2020 (Session 5)

Wednesday 18 November 2020

The Committee will meet at 9.30 am in External 04.

1. **Decision on taking business in private:** The Committee will decide whether to take items 6 and 7 in private.

2. **Subordinate legislation:** The Committee will take evidence on the Valuation (Postponement of Revaluation) (Coronavirus) (Scotland) Order 2020 [draft] from—

   Ben Macpherson, Minister for Public Finance and Migration, Ian Storrie, Head of Non-Domestic Rates Policy, and Anouk Berthier, Non-Domestic Rates Team Leader, Scottish Government.

3. **Subordinate legislation:** The Minister for Public Finance & Migration to move—S5M-23058—That the Local Government and Communities Committee recommends that the Valuation (Postponement of Revaluation) (Coronavirus) (Scotland) Order 2020 [draft] be approved.

4. **European Charter of Local Self-Government (Incorporation) (Scotland) Bill:** The Committee will take evidence from—

   Professor Chris Himsworth, Emeritus Professor of Administrative Law, The University of Edinburgh;

   Professor Richard Kerley, Professor of Management, Queen Margaret University;

   Alison Payne, Research Director, Reform Scotland;

   and then from—

   Councillor Malcolm Bell, Convener, Shetland Islands Council;

Councillor Alison Evison, President, COSLA;

Andrew Fraser, Former President of SOLAR, North Ayrshire Council, representing Society of Local Authority Lawyers and Administrators (SOLAR).

5. **Public petitions:** The Committee will consider the following petitions—

PE1778: Review the Scottish Landlords Register scheme
PE1743: Amend the law to protect the rights of pre-1989 Scottish Secure Tenant

6. **European Charter of Local Self-Government (Incorporation) (Scotland) Bill:** The Committee will consider the evidence heard earlier in the meeting.

7. **Common Frameworks:**

The Committee will consider its approach to scrutiny of the Common Framework on Hazardous Substances Planning.

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The papers for this meeting are as follows—

Agenda item 2

Note by the Clerk	LGC/S5/20/29/1

Agenda item 4

Note by the Clerk	LGC/S5/20/29/2
PRIVATE PAPER	LGC/S5/20/29/3 (P)

Agenda item 5

Note by the Clerk	LGC/S5/20/29/4

Agenda item 7

PRIVATE PAPER	LGC/S5/20/29/5 (P)

Local Government and Communities Committee

28th Meeting, 2020 (Session 5), Wednesday 18 November 2020

Subordinate Legislation

Overview of instrument

1. The following instrument, subject to the affirmative procedure, is being considered at today's meeting:

   - Valuation (Postponement of Revaluation) (Coronavirus) (Scotland) Order 2020

Background

2. The policy note accompanying this Order explains that The Scottish Government announced in its Programme for Government 2020, published on 1 September 2020, that it would make legislation to delay the non-domestic rates revaluation to 2023, with a oneyear tone date (1 April 2022). The decision to delay the revaluation and move to a one year tone date is to allow for market conditions to adjust to any post-Covid-19 or Brexit effects, thereby reducing any shocks and providing stability and certainty on rates bills in the recovery period to businesses and other non-domestic properties. An earlier tone date than 1 April 2022 could lead to a lack of certainty for business and create significant risks to public finances and therefore public services.

3. The note further explains that previous revaluations have had tone dates of two years prior to the revaluation date. The independent Barclay Review of non-domestic rates recommended a move to a one-year tone date. The Scottish Government accepted this, and originally planned for this to happen from the revaluation then scheduled in 2025. This will however now be brought forward two years to the 2023 revaluation and will apply to all revaluations after that year.

4. The policy note for the instrument provides further detail and is attached at **Annexe A**.

5. The Local Government and Communities Committee agreed to seek views from interested bodies on the proposals set out in the instrument. The Committee received 12 responses and these are set out at **Annexe B**.

6. An electronic copy of the instrument is available at:

   https://www.legislation.gov.uk/sdsi/2020/9780111046821/contents

7. The Committee is required to report on this instrument by 3 December 2020.

Delegated Powers and Law Reform Committee consideration

8. The Delegated Powers and Law Reform Committee considered this instrument at its meeting on 27 October 2020 and determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

Procedure

9. Under Rule 10.6.1 (a), an affirmative instrument is subject to affirmative resolution before it can be 'made' (signed by a Minister and become law). It is for the Local Government and Communities Committee to recommend to the Parliament whether the draft instrument should be approved. It then must be approved by a vote in Parliament.

10. This is a made instrument, which comes into force immediately after it is laid. Made Affirmatives are only available to Ministers when the laying power allows it, such as in recent coronavirus legislation. They are intended to deal with emergency situations and still require a vote by Parliament to stay in force before 28 days.

11. The Minister for Public Finance & Migration has, by motion **S5M-23058** (set out in the agenda) proposed that the Committee should recommend the approval of this statutory instrument. The Minister for Public Finance & Migration will attend in order to speak to and move the motion. Ahead of the formal debate (as part of an earlier agenda item), there will be an opportunity for members to ask questions of the Minister on the background to and purpose of this instrument.

12. At the end of the debate, the Committee must decide whether or not to agree the motion, and then report to Parliament accordingly. Such a report need only be a short statement of the Committee's recommendations.

ANNEXE A

POLICY NOTE

The following Order will be made in exercise of the powers conferred by sections 13(1) and 42(2) of the Valuation and Rating (Scotland) Act 1956; by sections 35(2), 35(3) and 37(3) of the Local Government (Scotland) Act 1975, and by all other powers enabling them to do so. This instrument is subject to affirmative procedure, by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010.

The purpose of these Regulations is to postpone the next non-domestic rates revaluation to the financial year 2023-24, and to move to a tone date of one year prior to the revaluation.

Purpose of instrument

The purpose of this instrument is two-fold. The first purpose is intended to exercise the powers conferred by sections 35(2), 35(3) and 37(3) of the Local Government (Scotland) Act 1975, and all other enabling powers, to postpone the next non-domestic rates revaluation to the financial year 2023-24.
The second purpose is intended to exercise the powers conferred by sections 13(1) and 42(2) of the the Valuation and Rating (Scotland) Act 1956, and all other enabling powers, to change the tone date (which is the market reference date on which all rateable values are revalued periodically), from 1 April falling **two years before** the start of the revaluation year, to 1 April falling **one year before** the start of the revaluation year.

Policy Objective

Non-domestic rates are a property tax based on the “rateable value” of a non-domestic property. The rateable values of properties are assessed by the local independent Scottish Assessor and are entered on the valuation roll. They are all periodically reviewed at revaluation to ensure that they reflect updated market values. Revaluations are intended to redistribute the tax base and are not intended as revenue-raising exercises.

The process by which revaluations take place requires assessors to seek new evidence on annual rent or proxies of rent from all non-domestic properties across the country, which inform the valuations. The reason why this takes place at a fixed date is so that all the evidence upon which rateable values are based is from the same point in time. This ensures consistency and fairness across ratepayers.
The Scottish Government announced in its Programme for Government 2020, published on 1 September 2020, that it would make legislation to delay the non-

domestic rates revaluation to 2023, with a one-year tone date (1 April 2022). The decision to delay the revaluation and move to a one-year tone date is to allow for market conditions to adjust to any post-Covid-19 or Brexit effects, thereby reducing any shocks and providing stability and certainty on rates bills in the recovery period to businesses and other non-domestic properties. An earlier tone date than 1 April 2022 could lead to a lack of certainty for business and create significant risks to public finances and therefore public services.

Without the intervention of this instrument, the tone date for the next revaluation would fall on 1 April 2020, just three weeks after the World Health Organisation declared Covid-19 to be a global pandemic and during a period when many businesses had temporarily stopped trading. Based on data at this date, it may not be possible to determine a sufficiently robust level of value upon which to base rateable values for the next revaluation.

The non-domestic property market will likely continue to be impacted into 2021-22 due to Covid-19 and likely EU Exit. On this basis, a 1 April 2021 tone date is considered similarly unreliable to 1 April 2020 as it would lead to a lack of certainty to businesses and introduce significant risks to public finances and therefore public services.

A tone date of 1 April 2022 will ensure that the economy and commercial property market has had more time to stabilise, making this the first suitable date at which to set the tone date.

Previous revaluations have had tone dates of two years prior to the revaluation date. The independent Barclay Review of non-domestic rates recommended a move to a one-year tone date. The Scottish Government accepted this, and originally planned for this to happen from the revaluation then scheduled in 2025. This will however now be brought forward two years to the 2023 revaluation, and will apply to all revaluations after that year (which will be every three years).

Reducing the time between the tone date and the implementation date of revaluation should ensure that rateable values more accurately reflect true market values.

Consultation

The Scottish Ministers have powers conferred by section 37(3) of the Local Government (Scotland) Act 1975 to vary the year of a revaluation. There is no formal consultation required.However, the draft Order is subject to Parliamentary scrutiny, and affirmative procedure.

The Scottish Ministers have powers conferred by section 13(4) of the the Valuation and Rating (Scotland) Act 1956, and there is no formal consultation required. While the exercising of these powers is not required to be subject to an affirmative

procedure, the full instrument will be affirmative because part of the instrument is required to be subject to Parliamentary scrutiny.

Impact Assessments

It is not possible to provide a full impact assessment of the likely impacts of a revaluation, as to do so would require a revaluation to take place. A partial Business and Regulatory Impact Assessment has been conducted.

Financial Implications

This instrument has no additional financial effects on the Scottish Government, local government or business in aggregate as revaluations are intended to resdistribute the tax base and not as revenue-raising exercises.

Financial Effects

This instrument has no direct financial implications.

Scottish Government
Local Government and Communities Directorate
October 2020

ANNEXE B

Submission from Scottish Government

1. The Scottish Government welcomes the opportunity to set out in writing the reasons why the Programme for Government, published on 1 September 2020, proposed a one-year delay to the next Non-Domestic Rates (NDR) revaluation (2023 instead of 2022), based on rental values one year prior to revaluation (the 'Tone date') as opposed to two years currently.

2. There is no political or fiscal incentive to delay the revaluation, but self-evidently, to proceed with a Tone date of 1 April 2020, weeks after COVID-19 was declared a pandemic, and likely before market conditions had had time to impact rental values, would have a profoundly negative impact on businesses in light of the uncertainty at that point.

3. There are only two options in front of the Committee. If the Committee decides that The Valuation (Postponement of Revaluation) (Coronavirus) (Scotland) Order 2020 should be passed, the next revaluation will take place on 1 April 2023 with a Tone date of 1 April 2022. If it decides that it should not, the next revaluation is statutorily scheduled to take place on 1 April 2022 with a two-year Tone date of 1 April 2020.

Background

4. Currently non-domestic property revaluations normally take place every 5 years, although the last revaluation was in 2017 and prior to that in 2010. Revaluations come into force on the revaluation date, which is 1 April of the revaluation year.

5. At each revaluation independent Scottish Assessors seek new evidence on annual rents from non-domestic properties and use this to calculate rateable values on which non-domestic rates are based. For fairness, all evidence is benchmarked against a fixed date known as the 'Tone date'. Currently the Tone date is two years prior to the revaluation date so for the 2017 revaluation, which came into force on 1 April 2017, the Tone date reflected property rents on 1 April 2015.

6. The independent Barclay Review of Non-Domestic Rates was concerned with the impact that economic shocks can have on the process of revaluation, as happened in both the 2010 and 2017 revaluations. In order to significantly reduce the likelihood and impact of shocks that might otherwise take place between revaluations in future, the Review called for more regular revaluations (three yearly instead of five) based on rents prevailing as at 1 April one year prior to revaluation. The Government agreed to both elements

of this recommendation and the Non-Domestic Rates (Scotland) Act 2020[1] provides for three yearly revaluations from the next revaluation. The Tone date is set out in subordinate legislation and is still currently set at two years.[2]

7. The Scottish Government retains the power to change the date of revaluation by Order. This power was last used in 2013 when the 2015 revaluation was delayed to 2017[3] in order to align with a similar delay in England and Wales and to ensure that the business poundage rate in Scotland would not rise above the English rate during the lifetime of the 2011-16 Parliament.[4]

The impact of COVID-19

8. Following the outbreak of COVID-19, the UK Government announced on 6 May that it would delay revaluation from 2021 to 2022, and on 21 July it confirmed that it would delay it further to 2023, with a two-year Tone date. The Welsh Government followed suit and on 2 June announced a delay in revaluation from 2022 to 2023. The Non-Domestic Rating (Lists) (No.2) Bill applying to England and Wales was passed in the House of Commons in a move described by UK Local Government Minister Luke Hall as "important" and "common sense". In the same debate, Kate Hollern MP (Labour) said "Labour thinks this Bill [to delay revaluation to 2023] is a common-sense response to the virus…. For those reasons, we will be supporting the Bill." This move has been welcomed across England and Wales with the British Independent Retailers Association's CEO Andrew Goodacre noting for instance that the association is "delighted with this common sense decision."[5] James Lowman, CEO of the Association of Convenience Stores further stated: "We welcome the one-year postponement of the revaluation which will give local shops more time to recover from the impact of coronavirus, and provide retailers with much-needed certainty of tax liabilities in the coming months."[6]

9. The Scottish Government's proposal is not politically motivated but is instead one of fiscal prudence and concern for the accuracy and stability of NDR liabilities at the next revaluation. The risks associated with the Tone date were key to our decision.

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[1] The Non-Domestic Rates (Scotland) Act 2020 (Commencement No. 2, Transitional and Saving Provisions) Regulations 2020 came into force on 5 November 2020 and can be accessed at: https://www.legislation.gov.uk/ssi/2020/327/contents/made

[2] The Valuation Timetable (Scotland) Order 1995 can be accessed at: https://www.legislation.gov.uk/uksi/1995/164/made

[3] The Valuation (Postponement of Revaluation) (Scotland) Order 2013 can be accessed at: https://www.legislation.gov.uk/sdsi/2013/9780111019405

[4] Partial Business and Regulatory Impact Assessment to The Valuation (Postponement of Revaluation) (Scotland) Order 2013, which can be accessed here: https://www.legislation.gov.uk/sdsi/2013/9780111019405/pdfs/sdsifia_9780111019405_en.pdf

[5] https://www.housewaresnews.net/bira-welcomes-welsh-postponement-of-business-rates-revaluation/

[6] https://forecourttrader.co.uk/latest-news/parliament-postpones-business-rates-revaluation-for-extra-year-until-2023/649596.article

10. The Barclay Review's calls for more frequent revaluations with a shorter Tone date were intended to deliver the outcome of greater stability for the NDR system and reduce the reliance on the appeals process. They were not desired outcomes in their own right. The Scottish Government shares the Review's desire to minimise the impact of economic shocks and therefore believes the proposal to delay the revaluation is not only in the spirit of the Review, but was also unavoidable.

Why we do not consider a 1 April 2020 Tone date to be a suitable benchmark for the next revaluation

11. Revaluations in and of themselves are revenue-neutral by design and therefore inevitably create winners and losers. The winners and losers are not a matter of political influence but are determined by Assessors on the basis of regional and sectoral rental evidence on the Tone date.

12. From ratepayers' perspective, it would be challenging to derive rateable values based on rental values as at 1 April 2020 and this would likely deliver rateable values that are not reflective of the post-COVID rental market.

13. Firstly, the rental evidence is likely to be poor. The property market had effectively closed down by 1 April, with professional bodies such as RICS issuing guidance on Valuation Uncertainty clauses to be inserted into valuations on the basis it was impossible to say with certainty if and how the market had changed from pre-COVID values.

14. Secondly, these rental values are likely to be an unsuitable base in any case for the next revaluation given how different the rental market is likely to be before and after the pandemic. Even now it is unclear in what manner different sectors will emerge post-COVID. Evidence is likely to have fluctuated wildly across and within sectors and geographic locations since COVID-19 struck. As a result, the evidence that Assessors would be statutorily required to use to set rateable values would not accurately reflect what we are already seeing in term of the impact of COVID-19.

15. All else being equal, this would significantly increase the risks that rateable values do not reflect market reality, which would have devastating impacts for the business community, particularly in those sectors most directly affected by COVID-19. These risks apply equally to all sectors and regions of Scotland. This would likely lead to a great number of appeals, potentially with very limited suitable comparable evidence available to guide surveyors or appeal bodies.

16. Therefore a 1 April 2020 Tone date could provide unrepresentative or anomalous rateable values for a large number of sectors and geographies. If government were required to offer reliefs to one or more sectors in order to alleviate this, in a revenue-neutral context, the burden would have to borne by every other sector and would likely require a significantly higher poundage as

we would expect to see a wide effect caused by pre-COVID values at the next revaluation.

Why we do not consider a 1 April 2021 Tone date to be a suitable benchmark for the next revaluation

17. We take the view that this structural deficit between economic reality and market rental evidence will persist into 2021-22, particularly with the number of COVID-19 cases still rising and the continued uncertainty around the future relationship between the UK and the EU. This means that evidenced rental values as at 1 April 2021 are also highly unlikely to be representative of true market conditions at the next revaluation, be that in 2022 or 2023.

18. The view that evidence in the commercial property market has yet to fully respond to COVID-19 is supported by some surveyors as well as Assessors and business organisations alike. This may be in part an unintended consequence of policies intended to protect businesses such as anti-irritancy, but in light of the economic uncertainty, businesses appear reluctant to sign new leases, while many landlords and tenants are restructuring existing leases following the Code of Practice including rental holidays and deferments.

Why we consider a 1 April 2022 Tone date to be the first suitable benchmark for the next revaluation

19. In our view this makes 1 April 2022 the first suitable date at which to set the Tone date in order to provide the economy and commercial property market with more time to stabilise. In their written response to the UK Government's Review of Business Rates, the Rating Surveyors' Association stated, in relation to the proposed 2023 revaluation with a 2021 Tone date in England, that:

> "The move in Scotland has the added benefit that the COVID-19 pandemic will hopefully have receded by 1st April 2022 enabling the Scottish Assessors to draw on market evidence driven by the anticipated recovery."

20. Our proposal will bring certainty to business in their rates bills for an extra year, 2022-23, and will ensure that rateable values at the next revaluation are more representative of market rents at that time.

21. At a time when the business community are aspiring to certainty and stability, the only sector guaranteed to benefit from a 2022 revaluation is that whose work may partly depend on the instability that an unsuitable Tone date inevitably creates. In this regard, we note the Federation of Small Businesses (FSB) National Chairman Mike Cherry's response to the UK Government's decision not to hold a revaluation in 2021 (meaning it would have fallen in 2022 with a 2019 Tone date) – shortly before the UK Government then delayed it again to 2023:[7]

> "Any near-future revaluation must recognise the turmoil we've been through.
>
> We also have concerns that this move could benefit cowboy rating surveyors who take a cut out of any 'savings' businesses get – meaning another year of profits without any additional work."

Operational concerns

22. As explained above, if the Valuation (Postponement of Revaluation) (Coronavirus) (Scotland) Order 2020 is not agreed to, the revaluation will remain scheduled to take place in 2022 based on rental values as at 1 April 2020, only weeks after COVID-19 was declared a pandemic.

23. From an operational perspective, this would put Assessors in an extremely challenging position as they would have to proceed with a 2022 revaluation based on a 1 April 2020 Tone date, with only around 15 months to do so and facing structural obstacles to their evidence gathering processes due to ongoing COVID-19 restrictions, continued furlough and high levels of home working. In light of this, both Tone date scenarios for a 2022 revaluation would significantly compromise the accuracy of the next revaluation exercise.

24. This, compounded with the probable 'high' values that a 1 April 2020 Tone date would deliver in many sectors relative to market rents in 2022 (e.g. in hospitality), we anticipate will result in widespread frustration and volatility in rates bills across a large number of sectors. This will inevitably lead to a substantial upsurge in the number of revaluation appeals, bearing in mind that 30% of properties already appeal as a matter of course.

25. To conclude, the proposal to delay revaluation to 2023 with a one-year Tone date is the most prudent course of action and one that will ensure that rateable values at the next revaluation reflect a post-Covid reality.

[7] https://www.fsb.org.uk/resources-page/pausing-of-business-rates-revaluation-brings-relief-to-small-firms.html

Submission from COSLA

We have spoken with Council Directors of Finance and Revenue Managers and, based on their responses, COSLA does not have any specific comments on the delay to the Non-Domestic Rates Valuation. COSLA Leaders did however note the Scottish Government's intention to delay the Revaluation and they acknowledged the reasons for this, that this should take place when market conditions have stabilised post the Covid-19 emergency.

The Committee will be aware that the Non-Domestic Rates (Scotland) Act 2020, provides for Regulations to be made to repeal NDR Empty Property Relief, following which this will be devolved to Local Government. For the same reasons as the delay to the Revaluation, Leaders agreed to delay the devolving of NDR Empty Property Relief to Local Government.

Submission from the CBI Scotland

- The CBI is an independent, Royal Charter, membership organisation that speaks on behalf of businesses of all sizes and from all sectors. The CBI's members directly employ at least 500,000 people in Scotland, which represents a quarter of the private sector workforce, including firms headquartered in Scotland and those that have operations and employ people in Scotland.
- As CBI Scotland represents business across all sectors of the economy, there will be a range of views on the merit or otherwise of the postponement of revaluation.
- CBI Scotland understands the practical arguments in favour of postponing the non-domestic rates revaluation to 2023-24, in light of the impact the pandemic and its associated restrictions have had and is still having on individuals, businesses and the Scottish economy as a whole.
- The key focus right now is making sure businesses impacted by the pandemic and the restrictions receive the necessary support from the Scottish government, including through business rates relief and government grants, in the forthcoming year.
    - This includes avoiding a reinstatement of business rates in full in April 2021 for those currently exempt, as there is considerable uncertainty attached to the state of the economy and whether businesses are able to resume trade as normal by then.
    - The government should also consider how rates relief can be used to support businesses of any sector that have seen considerable negative impact on their turnover as a result of the pandemic.
- Since the 2016 Barclay Review, CBI Scotland continues to support more frequent revaluations to better reflect market conditions and further reforms to improve the business rates system. It would complement the overall objectives of simplifying the system for ratepayers and making it more focused on attracting investment.
- CBI Scotland has also been supportive of alignment of revaluations across the UK to address costs incurred by businesses with properties in more than one jurisdiction, so the alignment with 2023 postponements in England and Wales is in that sense welcome.
- Meaningful consultation with business is vital in any area affecting business and the economy, especially in light of the vast and differing impact the pandemic and restrictions are having on firms in many sectors. CBI Scotland continues to work with members to identify to government what kind of support is needed by business to get through the coming year.
- In light of plans for a postponed revaluation, it will be important that the Scottish Government do not lose focus of the other changes committed to in response to the Barclay Review – alongside more frequent revaluations – such as the administrative simplification promised to businesses and a broader review of plant and machinery, which will have an important role to play in the green recovery. These commitments should be concluded ahead of the postponed revaluation.

Submission from the Federation of Small Businesses

A spokesman for the FSB in Scotland said: “FSB absolutely wants to see a more frequent business rate revaluation cycle, but if the Scottish Government proceeded with their original rates revaluation timetable there was a risk that firms would be stuck with tax bills that didn’t reflect the coronavirus crisis. In addition, the rates authorities highlight the practical difficulties they would have had gathering rental data in the midst of a pandemic. We therefore broadly support the Scottish Government’s decision to change their approach to the revaluation cycle, as they’ve done in Wales and England.

“However that doesn’t mean that there’s not work to be done to ensure that the system doesn’t penalise firms hit by this year’s events. We’re making the case to Ministers for measures to ensure that firms that adapt their premises to comply with public health guidance don’t get hit with higher rates bills.”

Submission from Gerald Eve LLP

Gerald Eve LLP refer to your email of 4th November 2020 inviting response and feedback on the draft legislation noted above. Our comments are founded from extensive knowledge and experience of Rating practice, representing a diverse portfolio of ratepayers from a wide range of sectors, over multiple revaluations.

The draft statutory instrument, we understand, seeks to implement the Scottish Government proposals in relation to the next rating revaluation in Scotland following previous consultation on this and associated matters such as the extension to the 2017 Revaluation appeals timetable undertaken earlier this year. We welcome the opportunity for Gerald Eve's response to be represented and views recognised as part of this consultation stage. We now outline for your consideration our observations, comments and proposals; and we respectfully refer to previous responses and associated matters considered relevant in the context of the draft legislation and the inescapable evolving wider issues linked to the Covid-19 pandemic.

The principal and relevant proposals contained within the draft statutory instrument under consideration which we have identified for comment are:

(i) The intended postponement of the next rating revaluation in Scotland from 1st April 2022 to 1st April 2023;
(ii) The proposed statutory valuation date of 1st April 2022;
(iii) Albeit not expressly covered, the proposal to introduce revaluations every 3 years after 2023.

It is recognised that Government revenue raising power has to be balanced and we hope to outline a balanced view. If the current and established system of NDR continues as a means of raising public finance it must be transparent, equitable, accountable, workable and affordable. As, with very recent news, we hopefully move towards recovery mode from the pandemic and address what ramifications emerge from Brexit implementation, the business rates landscape in Scotland must be fair and promote as competitive a platform as possible for all sectors.

We also acknowledge that the occurrence of rating revaluations has hitherto delivered a revenue neutral (in real terms) outcome whereby the NDR system is not intended to increase aggregate property tax take. It is recognised that in a scenario where broadly all RVs reduce, the UBR multiplier will increase correspondingly to deliver the same real NDR income. In such circumstances ratepayers would in general be in the same position. That could be a consideration in terms of the timing of the next revaluation.

We refer to the four principal options outlined by the Scottish Government in earlier consultation on this matter, namely:

1. No change: a 2022 Revaluation with a "Tone" date of April 2020;

2. A 2022 Revaluation with a “Tone” date of April 2021;
3. A 2023 Revaluation with a “Tone” date of April 2021;
4. A 2023 Revaluation with a “Tone” date of April 2022, the proposal now under consideration.

The following points merit reflection in the debate and consideration of the matters in hand.

(a) There is a reasonable proposition that many sectors will still be very much in recovery mode through 2021 and most likely into 2022/23.
(b) It is indisputable that business-as-usual has been annihilated since early March 2020 with many businesses being forced to close through government intervention due to the Covid pandemic
(c) In rating, 2021 could be a year overwhelmed by the “Covid MCC” appeals.
(d) In England and Wales the respective governments have announced that revaluations will take place in 2023, albeit only Wales has stated the intention of a “Tone” date of April 2021.
(e) The Barclay Review recommendations on more frequent revaluations with Tone dates one year prior to revaluations should continue to be the aim.

We therefore promote the following for the Scottish Government to consider:

A. Against the background of general recovery, ongoing MCC appeals, continued restrictions on working practices, movement and public uncertainty, the challenging logistics draw into question whether a revaluation in 2022 is a realistic proposition unless one or all of the following occurs:
    - Government intervention in the “Covid” MCC appeals
    - Extension of rates relief, particularly to sectors hit the hardest
    - Subsidising of Local Authorities whose rates revenues are impacted upon
    - Introduction of (tapered) relief – whether by sector, location and/or RV – across the remaining years of the 2017 revaluation.

B. Should England align with Wales with setting a 2021 Tone date, if Scotland’s next revaluation refers to a Tone date of April 2022, one could reasonably anticipate higher RVs (and therefore rates liability) than their English (and Welsh) equivalents from 2023. That would be contrary to the aspiration of Scotland being the most competitive part of the UK to do business. However, if 2023 is settled upon as the next revaluation year in Scotland, then two years to “get it right” could be seen as a reasonable outcome, with the original Barclay Review recommendation of more frequent (3 yearly) revaluations beginning from 2026, and one year antecedent Tone in 2025, a more realistic aspiration.

C. Whilst the Governments in England and Wales have announced their intentions to align with revaluations in 2023, legislation has not passed in either

jurisdiction. Wales has confirmed a 2021 Tone date and it is generally anticipated that England will follow suit. Therefore, the datum point of reference for future assessments in Scotland would not align with the rest of mainland UK should the Tone date in Scotland be anything other than April 2021.

D. A one-year antecedent "Tone" date is to be supported and is a cornerstone recommendation of the Barclay Review given the right circumstances. Alternatively a two year "Tone" window would offer additional time for the SAA to engage with ratepayers and their representatives and to form more accurate RVs on which Government policy – including UBR projections and continued SBBS relief and other mechanisms – can be more fully considered, accurately costed and implemented with fuller consultation.

E. More frequent revaluations, which we would prefer to have been enacted as part of the proposed legislation, to at least secure/confirm 2025 or 2026 as the subsequent year of revaluation is strongly proposed. This is also one of the overarching recommendations of the Barclay Review.

F. No one, least of all any responsible government, wishes a disproportionate burden falling on those who can least afford it, for any period of time. To provide businesses most in need of the breathing space to fully recover, we urge you to minimise the impact of future rates. If a 2022 revaluation is contemplated it must include certainty that rates overheads will be minimised in the interim.

Following full consideration of the above, Gerald Eve's recommendation would be to propose either a Revaluation in 2022 with a Tone date in 2021, or a Revaluation in 2023 with a Tone date in 2022. This meets the core recommendations from the Barclay Review whilst recognising some of the practical issues.

In addition to the core proposals under consideration we would promote associated matters, such as the "Covid" MCC appeals, which need to attract priority at Government level. There needs to be speedy resolution of these MCC appeals, with Scottish Government intervention if required to circumvent the unwieldy appeals process. The statutory deadline for determining 2017 revaluation appeals and the "Covid" MCC appeals has been extended to 31st December 2021 however over the period beginning "lockdown" very few appeal cases have concluded. Therefore there remains significant challenge and risk of continued backlog. We are in unprecedented times and if Government hopes to rely on the continued certainty of revenue generation which the NDR system delivers then it must be prepared to implement/intervene/support and subsidise if necessary the machinery to arrive at the next revaluation.

Government is encouraged to provide swift direction – legislative if necessary – on MCC appeals and relief measures to provide a bridge of certainty until the next revaluation on which all businesses can plan ahead. This would provide a stronger foundation for all stakeholders to deliver the next revaluation with credibility and confidence. In short, an acceptable resolution of the Covid MCC appeals, with a commitment to remain in place revised RVs for the remaining term of the 2017 Revaluation would in our view allow more flexibility to the timings of the next revaluation.

We also invite consideration of the new requirements and penalties relating to questionnaires and returns. Whilst not a core feature of the legislation under consideration we strongly encourage the Government to review the practicalities of the new penalty regimes being introduced from December this year, which were with the original intention of supporting the 2022 revaluation in Scotland. Specifically, the SAA should refrain from issuing any questionnaires relating to financial performance, costs, or raising penalty notices until at least the end of 2021, more so if a delay to the 2022 revaluation is confirmed.

Questions relating to ownership and occupation could be promoted, if only to maintain the accuracy of the Valuation Roll and billing authority records. These are/were the databases relied upon and referred to in administering grant aid during the pandemic and unfortunately inaccuracies and inconsistencies delayed or prevented much needed financial aid being granted to eligible parties.

Bringing the themes of MCC appeals and questionnaires together, it is worth noting that circa 50,000 MCC appeals relating to the impact of Covid-19 have been lodged to date, compared with approximately 74,000 following the 2017 revaluation. Accordingly, we would suggest that the Assessors Association and appellants' representatives have ample opportunity to address pertinent information during MCC appeal discussions. The first MCC appeals are cited in January and February of next year; and these provide an opportunity for information gathering and exchange to take place without the distraction of unnecessary form filling and the threat of, in our view, wholly disproportionate penalties at a time when business is struggling to rebuild into 2021 and beyond.

We trust the enclosed response clearly sets out our position and will be fully and appropriately considered by the Local Government and Communities Committee, as part of the next phase of consultation and scrutiny on this matter. Should you require additional information, clarification or further discussion or submissions please do not hesitate to contact the undersigned.

Submission from Royal Institution of Chartered Surveyors (RICS)

RICS welcomes the opportunity to respond to the proposed Regulations

As the professional body that represents rating practitioners from both Assessors and private practice, RICS are well placed to advise on the feasibility and impact of the proposed changes.

To assist the Committee's deliberations over the revaluation, RICS has engaged with rating professionals to provide a picture of the current situation of the NDR regime in Scotland.

Whilst RICS made previous representations to the Scottish Government outlining the potential impacts of various revaluation options, we believe there should there have been wider, public consultation on the Government's plans to postpone the revaluation.

The proposed changes to the Revaluation were announced by the Scottish Government in the Programme for Government 2020-21 published on 1 September, and will delay the next non-domestic rates revaluation in Scotland by one year, aligning with England and Wales.

The proposed postponement to the revaluation has brought a split opinion within the profession. As such, this submission will provide an overview of the impact of keeping the revaluation as is, or advancing the proposed delay.

No Change: Revaluation in 2022, based on a tone date of April 2020

RICS professionals were in agreement that due to current circumstances, the status quo i.e. the revaluation in Scotland of 1 April 2022, based on a Tone date as at 1 April 2020, was not practical.

Primarily because the property market was in a very different position on 1 April than it was even a matter of weeks prior (lockdown commenced on 23 March), but it would also prove problematic due to the number of pre-covid cases that were postponed, and new cases arising as a result of covid-19.

Whilst delays and extensions are a practical response to the situation, the Assessors advised that they were on target to facilitate the 2017 Revaluation appeal disposals by 31 December 2020 and deliver 2022 Revaluation as at 1 March 2020. However, due to capacity, systems, resource issues and the lack of available Chartered Surveyors, it would be difficult for the Assessors to meet the existing appeal disposal deadlines and the 2022 revaluation timetable given current circumstances.

Proposed change: Revaluation in 2023, based on a tone date of 2022

The draft regulations propose changing the tone date to April 2022. Whilst there will, potentially, be more rental evidence to support the proposed tone date, the postponement is somewhat out of kilter with the sector-accepted Barclay Review recommendation to more regular revaluations. It does, however, fulfil the one year tone recommendation.

Postponing the revaluation would undermine the five-year public debate that started with the Barclay Review, and ended in the passing of the Non-Domestic Rates (Scotland) Act 2020 which only recently legislated for the next Revaluation taking place in 2022.

Indeed, the main reason for having a Revaluation, as highlighted by the Barclay Review on business rates, is for a redistribution of the tax burden. The Review called for frequent and regular revaluations to take place with the valuation (tone) date to be as close as possible to the date the Revaluation takes effect from. It was agreed that three-yearly Revaluations, as strongly advocated by RICS, would be the best way to take this policy forward, effective from 1 April 2022.

That said, the proposal introduces a one year tone date which is welcome, as is the postponement's outcome of Scotland's revaluation date aligning with England and Wales; this parity will be welcomed by cross-border businesses and agents.

Postponement of the Revaluation in Scotland leaves all ratepayers facing an extended period of paying rates based on rental values in 2015. Indeed, the Scottish Government have advised previously that the key purpose of the Revaluation is to update Rateable Values to reflect more up to date rental levels. A delay to the 2022 Revaluation would see ratepayers paying rates based on out of date rental levels for a longer period and defeats the key purpose of Revaluation. The postponement of the 2015 Revaluation to 2017 caused a degree scepticism of the system and dissatisfaction. We would not want this sentiment to be re-emerge.

However, RICS appreciates that the Covid-19 pandemic and subsequent lockdown measures have impacted circumstances that may be seen to hinder the feasibility of this revaluation.

Undoubtedly, some businesses and organisations will demand that the 2022 Revaluation goes ahead as scheduled on the grounds that any delay could mean a 6+ year period between Revaluation. This could lead to the same issues that developed due to the two-year delay in the 2015 Revaluation to re-emerge; for example, Rateable Values being out of line with the more up to date rental market in 2020 than that in 2015. This would be the case for any delay to the 2022 Revaluation, and this is undesirable.

It should be acknowledged that if the postponement goes ahead, Scotland would only have had one revaluation in 13 years, and there are concerns of a creeping

delay setting in. By that, we mean if further, unanticipated global (or national) circumstances arise, could the revaluation be postponed again?

This can be negated by the Scottish Government giving resolute assurances that the revaluation of 2023 will go ahead.

Alternative Proposal: Revaluation in 2022, based on a tone date of 1 April 2021

RICS appreciates that this proposal has been mooted by other sectoral participants and representatives groups, and we considered it in our own deliberations.

This option would likely capture market conditions outwith Covid-19 circumstances; close the tone date to revaluation period which would align better with the outcomes of Barclay Review; but at the same time, it would make Scotland's revaluation date out of kilter England and Wales.

Furthermore. there would be issues around Assessors' resource and capacity here that would need to be avoided to tackle the required "quick turnaround". There is also a significant number of Covid-19 Material Change of Circumstance (MCC) appeals that have a disposal date of no later than 31 December 2021.

Indeed, the Scottish Government should ensure that Scotland's Assessors are adequately resourced (time, capacity and personnel power) to ensure delivery of the revaluation – as planned or postponed – to ensure the forthcoming revaluation, and those in the future, can be undertaken effectively and efficiently.

Submission from the Scottish Assessors' Association

On behalf of the Scottish Assessors' Association I thank the Committee for its consideration of the Valuation (Postponement of Revaluation) (Scotland) Order 2020.

The Committee will no doubt be aware of the role that Scottish Assessors play in delivering revaluations, and the resolution of appeals in relation to those revaluations, in accordance with the requirements of the Valuation Acts for all non-domestic subjects. Scottish Assessors have successfully delivered these services for over a century. The Scottish Assessors Association (SAA) draws together the cumulative experience of Assessors and their staff in order to promote consistency in the operation of the Valuation Roll, and to act as a consultative and advisory body in these matters.

The SAA is unequivocal in its view that, for the reasons noted below, the proposed delay of the revaluation from 1 April 2022 until 1 April 2023 (and the associated change of the revaluation "tone" date from 1 April 2020 until 1 April 2022) is the most logical and pragmatic solution to the issues that have arisen in relation to the covid-19 pandemic. There are two main reasons why this appears to be a necessary course of action, namely uncertainty in property markets and an unprecedented appeal workload. Both of these are a direct result of the pandemic. I have noted some aspects of these below:

Firstly, when considering uncertainly in the property markets, the Committee will of course be aware that the country went into a nationwide lockdown to counteract the effects of the pandemic in late March 2020. A phased easing of restrictions occurred over the summer and into Autumn, although some areas, particularly the Aberdeen area and the Greater Glasgow area, endured further spells of increased lockdown restrictions over this period. Restrictions were largely re-introduced throughout the central belt in early October 2020 with much of the country moving to level 3 of the Government's five tier strategic framework on 23 October. At the time of writing the outlook over the winter months of 2020/21, whilst uncertain, appears likely to see the continuation of restrictions for much of the country for a significant period of time.2

Whilst the SAA is clear that members of the Committee will be all too familiar with the details of the different lockdown restrictions, and their impact upon society and citizens generally, the SAA would wish to highlight the uncertainty that these conditions have brought to the property rental market. The property rental market is of course the foundation stone of non-domestic rating. Each General Revaluation is based upon the rental value that each property is assessed to have at the relevant "tone" date. The tone date for the currently scheduled revaluation in 2022 is 1st April 2020.

It is apparent that the property rental market entered a period of great uncertainty from the point when the country first went into a national lockdown in March 2020. The widespread closure of the vast majority of business premises, the restrictions on when and how these business premises may be re-opened, and the general

restrictions on the movement of people, may be expected to have impacted on the rental values of non-domestic properties. These impacts may potentially have had two distinct types of effect:-

(i) those effects which are the direct result of restrictions preventing the use, or seriously limiting the use that could be made of individual properties or the manner in which trade could be conducted within the premises, are likely to have had an impact upon property rental values, and

(ii) there may be a general effect on the economy arising from the pandemic which could impact upon property rental values in a similar fashion to the market conditions that impacted on property rental values in 2008.

It will no doubt take some time for the effects of the pandemic on property rental levels to stabilise and become clear. There are a number of difficulties to overcome:

- There appears to be little rental evidence available as yet to indicate what levels of rental value have been since the pandemic arrived. Amended rents and new rents will require to be agreed between landlords and tenants. There has been considerable uncertainty over the length of time that the various lockdown restrictions will last and of course restrictions have been imposed, lifted, and in many cases re-imposed in one form or another. There has also been considerable uncertainty in terms of how long the various business support schemes that have been initiated by government will last - most notably the furlough scheme. In order to arrive at any agreement as to what impact these circumstances will have on the rental value of the property concerned, both the landlord and the tenant will each require to form their own opinion of the impact of these circumstances and how long these circumstances are likely to last. They will then require to negotiate some form of agreement and of course each will be intent on preserving their own interests as best they can. As such, it is anticipated that some time will be taken before property markets properly reflect the impact of the health emergency and the attendant economic conditions.

- The restrictions have clearly impacted on different types of business occupier differently. The rating hypothesis assumes that a shop is a shop without distinctions being made as to whether it is a book-shop or a butcher's shop. However, in the current circumstances one type of shop may have been required to close whilst another type of shop may have been permitted to remain open. This may give rise to different levels of rental value within the same general category of subject.

- Once new rental agreements have been struck, Assessors will require to ingather and analyse that information which in itself will take some time. It is anticipated that any agreements struck will be specific to the financial circumstances of the particular landlord and the particular tenant concerned, possibly reflecting the presence or absence of support mechanisms. As such it may well be the case that there is little or no consistency between the levels

of rents struck, even for similar properties in the same location, making comparison between properties difficult.

- In the particular case of the hospitality sector there may be significant difficulties encountered in seeking to establish any pattern of relationship between rents and business activity given that most properties have been closed for significant periods of time.

The second key point is that across Scotland, circa. 50,000 appeals have been lodged on the basis that the covid-19 pandemic has caused a material change of circumstances. These appeals require to be resolved by the amended statutory disposal date of 31 December 2021. For the reasons given above this will be a challenging deadline, particularly if litigation is required through the appeals system. For the sake of comparison, some 80,000 appeals were lodged following the general revaluation in 2017. Circa 71,500 of those appeals have been resolved in the 36 month period since the appeals were lodged.

The SAA's position is that it is right and proper that these factors should be taken into account in resolving the appeals that have been lodged, notwithstanding the difficulties and generally unsatisfactory nature of the rental evidence that may be available to do so. Assessors will make every possible effort to reach an equitable assessment of the rateable value in each case within the required timeframe.

However, the SAA's position is that the current conditions outlined above would be highly prejudicial to the delivery of a suitably robust and reliable General Revaluation if the date of the revaluation, and the tone date, are not amended as set out in the Valuation (Postponement of Revaluation) (Scotland) Order 2020.

As highlighted above, there are likely to be real difficulties caused by the very limited amount of rental information that is available to base a revaluation on which reflects the post-covid situation. Such evidence as is available is likely to be inconsistent and unreliable. Rental evidence from before the pandemic is likely to be of limited use and would be open to significant legal challenge. If the limited post pandemic evidence alone is adopted as the basis for a revaluation then the valuations that are based upon that information may not be robust and reliable. This could place the circa £2.9Bn of income generated by non-domestic rates at significant risk.

A further consequence of basing the revaluation on very limited and potentially unreliable information could be to undermine ratepayer's confidence in the levels of value applied. This could potentially increase the volume of appeals that are made against valuations, which could, in turn, undermine the viability of the three yearly revaluation cycle that has been introduced through the Barclay reforms. Ultimately basing a revaluation on limited and potentially unreliable information could undermine general confidence in the system of non-domestic rates to deliver a robust and reliable tax base.

The SAA also has a fundamental concern over the distribution of the rating burden that could arise if the revaluation is undertaken on the limited and potentially unreliable information that is currently available. The overall purpose of a revaluation is to spread the rating burden amongst ratepayers according to the rental value that each property had at the tone date. In general terms this is readily achieved as property rental markets tend to adjust relatively slowly over time, with some sectors gradually increasing in relative terms and other sectors gradually reducing in relative terms. A revenue neutral revaluation redistributes the rating burden according to the passing levels of rental values at the tone date - and that pattern is "baked in" until the next revaluation comes into force. However, the current situation is quite abnormal. The impact of basing a revaluation on the levels of value available at this point in time may be to lock non-domestic ratepayers into a commitment to pay non-domestic rates at levels that may prove to be a very transient and inconsistent basis. Ratepayers will be committed to pay rates charges for a period of three years - until the next revaluation comes into effect, when in fact the picture may change quite radically over the coming months and years.

The SAA is aware of suggestions that the revaluation should not be delayed until 2023 but rather should proceed on 1 April 2022 with a tone date of 1 April 2021. However, the SAA firmly believes that the situation with covid-19 is clearly ongoing and is likely to last through the winter of 2020/21. We are already almost three quarters of the way through the financial year 20/21, which would be the basis for values passing at a tone date of 1 April 2021. The availability of reliable rental, cost and turnover information in the current financial year is already very limited and it seems extremely unlikely that there is any prospect that sufficient information will become available to deliver a reliable and robust revaluation using the suggested tone date of 1 April 2021.

Finally I should highlight that the largest part of Assessors resources in the period until 31 December 2021 will require to be directed towards resolving the circa. 50,000 material change of circumstance appeals that have been lodged. As time progresses the prospect of effectively completing a suitably robust and reliable revaluation for 1 April 2022 becomes increasingly remote.

For the above reasons the SAA has come to the strong view that the interests of ratepayers and of the rating system generally will be best served if the dates of the revaluation and tone date are amended as proposed in the draft legislation.

I hope that these thoughts are of some assistance to the Committee in considering this draft legislation. However, if I can be of any further assistance please do not hesitate to contact me.

Submission from Scottish Chambers of Commerce

PLEASE REJECT the Valuation (Postponement of Revaluation) (Coronavirus) (Scotland) Order 2020.

We are writing to you to voice our alarm and concern over the above draft statutory instrument which we understand the Local Government and Communities Committee, on which you sit, will be scrutinising on 18th November. The draft statutory instrument looks to implement recently announced Scottish Government plans to delay the 2022 Non-Domestic Rates Revaluation as detailed in the recent Programme for Government.

Our organisation is profoundly concerned that a delay of Revaluation from 1st April 2022 to 1st April 2023 will be damaging for many businesses across Scotland and will detract from efforts to reboot our economy in the coming years. The whole rationale of the recent Barclay Review was to design a rates system that responds to changing market conditions and therefore the announcement of a delay to the Revaluation in 2022 runs counter to its flagship recommendation for more not less frequent Revaluations.

We believe the impact of the recent Scottish Government legislation imposing restrictions to MCC appeal rights for Ratepayers, which was predicated on having more regular revaluations, combined with this plan to delay the next Revaluation could cause untold devastation to many businesses. This is because Rateable Values could for a further 2 and half years fail to reflect the full impact of Covid 19 and recent restrictions if the Revaluation Delay Order is approved by Parliament.

We believe this is unacceptable and we therefore call on you to reject the Revaluation Delay Order.

Our simple, fair and sensible solution, considering the most recent Covid-19 restrictions, would be to carry on with the 2022 Revaluation, and introduce a Valuation tone date of 1st April 2021, which will ensure Rateable Values from April 2022 reflect the full impact of Covid-19 and these most recent restrictions.

This will ensure that businesses worst impacted by Covid-19 and these most recent restrictions will receive further assistance when they need it most in the form of reduced Rateable Values. Whilst the Government have introduced welcome reliefs to certain sectors, which we hope can be continued ,there is clear risk of these reliefs not being able to be carried on into 2021/22 and with potential state aid limits being imposed going forward these reliefs cannot be used to justify delay of the widely accepted rationale of Regular revaluations. Revaluing properties as early as possible to align Rateable Values with current rental market conditions in light of Covid-19 and the most recent restrictions is essential for economic recovery, as well as regaining confidence of the business community.
Therefore, the 2022 Revaluation should not be delayed, and we ask you to vote against the Revaluation Delay Order and support our solution, which is option 2 in the draft impact assessment and is the option that our organisation believes is the

fairest option to support economic recovery and ensure the burden of Non-Domestic Rates is redistributed fairly and as soon as possible.
If the Revaluation is delayed, then the burden of the tax will rest on those who can least afford to carry it for a year longer than necessary.
We also believe the Draft Business Impact Assessment that accompanies the Order is severely flawed as it fails to properly present to you

1) The true purpose of a revaluation
2) Any business scenarios of the impact of the delay
3) Any confirmation that businesses were adequately consulted in drafting it.

We therefore attach the following Appendices to this letter for your consideration and would of course be pleased to speak to you further before you vote on the Order.

Appendix 1: the true purpose of revaluation
Appendix 2: business scenarios of why revaluation in 2022 is needed
Appendix 3: lack of proper consultation

Appendix 1: the true purpose of revaluation

The purpose of Revaluation is to recalibrate Rateable Values to take account of changes in market conditions affecting the rental values of properties in differing sectors and locations from the time of the last Revaluation. The true purpose and logic in a Revaluation is fair redistribution of the tax burden as those that have seen rental value of their property increase since the last revaluation carry more of the burden of the tax than those that have seen their rental values decrease.

Revaluing more regularly ensures more frequent recalibration and importantly fair distribution of the tax burden quicker. It is a very simple and fair principle and one that was widely accepted by all stakeholders and the members of the Local Government and Communities Committee when they accepted and voted through the move to 3 yearly Revaluations as part of the Non-Domestic Rates Bill only 8 months ago.

As we have said it is a very straightforward principle but if no Revaluation happens then for those who have witnessed rental value decline in the period since last revaluation they will continue to carry a larger proportionate burden of the tax compared to the contemporary value of their taxable asset as against those who have witnessed rental value increases.

Although Covid-19 has impacted most industries it has hit some industries and locations harder than others. It is therefore essential to carry out a Revaluation as soon as possible so the burden is equalised to the greatest possible extent by being proportionate to varying sectors and locations rental value changes since the last Revaluation. In times of crisis, more not less frequent Revaluations are needed to ensure Rateable Values are recalibrated and those that are suffering the most benefit from the Revaluation.

The notion of a Revaluation creating “winners” and “losers” is misleading, and, in our view, a phrase used incorrectly and deployed in political coinage to support a flawed view that has no basis in objectivity. This is because a Revaluation, in the reality of its context as part of the NDR tax system, does not create “winners” or “losers” but creates a fairer equalisation of taxpayers proportionality of their ability to pay the overall burden relative to one another by sector and location.

If the Committee believes there will be “winners” and “losers” at a Revaluation then they will also accept the concept that there will be “winners” and “losers” by delaying a Revaluation and it will be those that need help the most that are the “losers” thus crippling those already struggling sectors such as Retail, Leisure, Hospitality and those in the North East of Scotland suffering an economic tsunami in the form of a double whammy from the impact of the pandemic and oil price collapse.

Appendix 2: business scenario of why revaluation in 2022 is needed

We now provide a scenario to demonstrate the point.

Since the last Revaluation in 2017 the leisure industry in the North East has been hit hard not only by the Pandemic but also the impact of the earlier recession in the oil and gas sector as the economic success of businesses in the region is closely linked to the price of oil and success of that sector.

In Central Belt however, whilst Covid has undoubtedly had an impact, the market conditions for Grade A office headquarters remains more resilient comparatively to the North East leisure market.

Therefore, the below example shows what delay of 2022 Revaluation means for respective properties in these sectors Rateable Values in the following scenarios.

				2022	
PROPERTY	2015 RENTAL VALUE	CURRENT RENTAL VALUE	CURRENT RV (as based on 2015 rents)	RV if REVAL IN 2022	RV if no REVAL in 2022
NORTH EAST BAR	£140,000	£70,000	£140,000	£70,000	£140,000
CENTRAL BELT CORPORATE HQ	£140,000	£210,000	£140,000	£210,000	£140,000
TOTAL	£280,000	£280,000	£280,000	£280,000	£280,000

Figure 1 table

Whilst the properties have been anonymised these scenarios are based on real-world examples and show the flawed logic and inherent unfairness in the Government's rationale for delaying the 2022 Revaluation.

As you will see from the above both properties had the same rental value in 2015 (the tone date of the last Revaluation) but the current rental value of the Central Belt HQ is now 3 times that of the Bar in the North East but their Rateable Values are currently the same.

A revaluation will recalibrate that situation so the Rateable Values align with the real-world situation i.e. the Corporate HQ will have a RV that is 3 times that of the Bar just likes its rental value is.

If there is no Revaluation in 2022 then both the bar and the HQ will continue for another year to have the same Rateable Value and will be ultimately assessed for not just Rates but Water rates and other costs based on RV that don't reflect their proportionality to each other.

We would be pleased to discuss this further and be invited to the Committee to discuss this issue as we do not believe the Government's rationale contained in the draft Business Impact Assessment that accompanies the Order stands up to proper scrutiny by an informed business advisor.

We believe the Government should **continue with a Revaluation in 2022 and move the tone date to 2021** and we see there can be no justification for a delay from any business taking an objective view on the matter.

Appendix 3: the lack of proper consultation

The decision to delay the Revaluation is not an objective one and if Government truly wanted to do a business impact assessment a formal consultation then an expert advisory group could be set up.

It is our clear understanding having sat on the Barclay Implementation Advisory Specialist Sub Group that no business organisation member on the group supported the option the Government have chosen. This can be seen clearly form the Note of the Minute of the Barclay Appeal Sub Group in May1 where it is clear from that note that the Government's own Specialist Advisory Group have recommended that under no circumstances should the Revaluation be delayed and that was in the midst of the Pandemic.

"The bulk of the group members expressed no firm view on the question, with only those representing ratepayers stating unanimously that under no circumstances should the 2022 revaluation be delayed, even if that meant that we ended up with a tone date that was more difficult to deal with."

It is important to remember here who the Group consists of and the members representing ratepayers on the Scottish Governments Barclay Implementation Appeal Subgroup are professionals from

- The Scottish Property Federation
- The Scottish Chambers of Commerce
- The Scottish Business Ratepayers Group and
- The Royal Institution of Chartered Surveyors

The only other members on the Group who are not from the private sector are Scottish Assessors Association and Scottish Valuation Appeal Committee, who are not representing the voice of business or ratepayers as they do not represent them.

Therefore, the Government's decision is clearly against the clear and unanimous advice it received from Expert Professional Advisors which importantly represent ratepayers/businesses. Taking a decision against clear and unanimous expert professional advice is not sensible and akin to the Government not taking advice of medical experts in dealing with clinical policy issue relating to Covid-19.

For the above reasons this Revaluation Delay Order needs to be rejected and Option 2 pursued, with detailed and quality private sector and business engagement.

1 https://www.gov.scot/binaries/content/documents/govscot/publications/factsheet/2019/01/barclay-implementation-appeals-sub-group/documents/barclay-implementation-appeals-sub-group-meeting-note---may-2020/barclay-implementation-appeals-sub-group-meeting-note---may-2020/govscot%3Adocument/Barclay%2BImplementation%2BAppeals%2BSub-Group%2Bmeeting%2Bnote%2B%2BMay%2B2020.pdf?forceDownload=true

Submission from the Scottish Grocers Federation

Scottish Grocers Federation are generally supportive with plans to postpone the revaluation until 2023-24 with the tone date moving to the prior financial year. We would ask that the process takes into account the uncertain economic environment that a post-COVID-19 scenario may create, and which businesses will require to adapt to.

We would also highlight that earlier this year to help businesses during coronavirus, the Scottish Government also announced that extra reliefs would be available to non-domestic properties from 1 April 2020 to 31 March 2021. This included the decision that retail, hospitality and leisure businesses would get 100% rates relief during this period. This support is very welcome; however we believe that the 100% rates relief should be extended at the least into the first quarter of the new financial year in 2021 and thereafter any reintroduction tapered so to avoid any sudden (and substantial) increase to costs.

Submission from the Scottish Property Federation

Background

1. The Scottish Property Federation (SPF) is the voice for the property industry in Scotland. We include among our members: property investors, including major institutional pension and life funds; developers; landlords of commercial and residential property; and professional property consultants and advisers.

Key Points

- We regret the decision by the Scottish Government to delay the 2022 NDR revaluation. This will perpetuate unfair RVs for many ratepayers across Scotland.
- We warmly welcome the decision to carry forward the Barclay review recommendation of a one-year gap between the tone date and the revaluation taking effect
- We agree with the Scottish Government that a tone date as planned, of 1 April 2020, would be wrong in the circumstances of the Covid-19 crisis that emerged in mid-March 2020
- We would also agree that there is still likely to be a reduced level of new transactional evidence currently available in the market, and this may well continue to be the case for a significant period – it would also be true to say there are relatively few leases reported via Revenue Scotland's LBTT system (less than 5,000 in the year before COVID-19)
- Evidence has also begun to be collated about the outcome of existing rent renegotiations, where we are aware of reports of 50-60% reductions in rent– therefore we feel Assessors may yet be in receipt of more evidence than it currently anticipates from renegotiated existing leases, as opposed to new leases where we expect transactions will remain limited in number.

Overview

2. The first purpose of these important Regulations is to postpone the redistribution of the tax base for Non-domestic rates in Scotland. This means that by the end of March 2023, just before the next revaluation date intended by these regulations, Scottish ratepayers will have endured the current out of date rateable values for nearly six years, and the values themselves will be based on the market of 1 April 2015 – a gap of eight years minus one day. We believe this goes against the recommendations of the Barclay review of Business Rates and is unfair to many ratepayers in Scotland who will continue to pay rates based on outdated assessments.

3. The second purpose of the regulations is to follow a recommendation of the Barclay report by replacing a two-year gap between the valuation date – the Tone date – and the revaluation taking effect. Thus, rather than rateable values being based on 1 April 2015 only coming into effect on 1 April 2017, the new system is

intended for rateable values to be applied one year on from the Tone date. We have always supported this recommendation and therefore we welcome this move.

4. The government has argued, and we agree, that the previous tone date of 1 April 2020 would not have been an appropriate date given the economic shock of lockdown that took place in mid-March. On balance however, we feel that the unfairness and financial distress caused by perpetuating a valuation roll based on the market as at 1 April 2015, at this stage outweighs the concerns raised by the government in its policy note regarding lack of market evidence to inform a revaluation.

5. We urge the Committee therefore to agree with the change to a one-year gap between the tone date and the revaluation coming into effect. This would therefore mean inviting the government to consider new regulations to seek a Tone date of 1 April 2021 and retaining a revaluation of 1 April 2022. We explain below that while we do accept the government is right to be concerned at a lack of new transactional evidence in the commercial property market, there is also a growing amount of evidence in respect of renegotiated rents due to the economic downturn caused by COVID-19. We explain our thoughts in greater detail below.

Market Evidence

6. The government argue that the delay is necessary to allow time for evidence of market activity as the economy recovers. We agree that it is likely that there will be a low level of rental transactions given the wider economic challenges. The government is therefore right to be concerned at the lack of rental transactions and what this means for the revaluation. But there is evidence emerging that is being fed through to the Scottish Assessors Association which we expand on in paragraph 7. More broadly, we question whether reduced evidence of transactions outweighs the concerns we hear from our members about the current unfairness of rateable values. And what happens if market activity remains at low levels and has not improved by 1 April 2022 – would there be a further delay?

7. We are aware of evidence from our members that the renegotiation of rents, has led to rental reductions of between 50-60% to reflect the impact of COVID-19. This would appear to chime with earlier examples of renegotiation of leases that occurred around the first Scottish Quarter day affected by COVID-19 in May. We understand this information will become available to the Assessors if it has not already been communicated to them.

8. Our preferred tone date of 1 April 2021 arises some 13 months after the first COVID-19 lockdown. Depending on the size of business and their relevant financial reporting requirements that apply, landlords and investors will simply not

be able to avoid updating the valuations of their properties and related rental information. This means that evidence on existing rental agreements should in many instances be available to Assessors that could support 1 April 2021 as a tone date. Not only this, but the recent legislation enacted by the Scottish Parliament has greatly increased the powers of assessors to request information from any person deemed relevant to the assessment of a particular property.

9. It should also be noted that there is some basic rental evidence regularly collected by the Scottish Government in the form of lease returns for LBTT. These are not valuation assessments, but on a lease return a non-domestic occupier is required to submit details of actual annual rent agreed. So, the government is already in receipt of more than 1600 such lease returns since April. For the whole of 2019-20, Scottish lease returns totalled less than 5,000 in number so with a further six months to receive LBTT lease returns, the government could well receive some 60 to 70% of basic rental evidence based on these returns. This could provide a useful indication if analysed by sector and could aid assessors to highlight key sectors and locations.

10. There is also evidence within the market on the proportion of rent that is being paid under the current restrictions. This is often broken down by market sector and again would inform perspectives of where the commercial property market is really at currently.

Material Changes in Circumstances

11. Earlier this year the right to make a rating appeal based on a Material Change of Circumstances was restricted. One of the reasons the government gave for restricting the grounds for lodging appeals based on MCCs is that more frequent revaluations should reduce the need for rating appeals, because the tax-base will be more regularly updated. MCCs are based on the ability of a ratepayer to have beneficial occupation of their properties. The COVID-19 experience therefore makes a stark example of why this right to appeal is important. It is therefore ironic that with MCCs restricted there is now a proposal to delay the revaluation, thus retaining the current unfairness of the RV base for a further year and at the same time removing rights to appeal based on MCCs.

12. We are aware that the Scottish Assessors received close to 50,000 MC applications ahead of their 31 March 2020 deadline, based on the COVID-19 crisis. It is our understanding that the SAA have very recently begun discussions with commercial property firms to look at the detail of these applications, with considerations of these some cases expected we believe in mid-January. These discussions and hearings will also offer evidence that could be used to inform a tone date of 1 April 2021.

Future implications for Revaluations

13. The government also observes that revaluations are intended to redistribute the tax base. We agree, but this decision to postpone the revolution therefore, by definition, is seeking to ensure that there will not be a redistribution of the tax base and therefore maintain an unfair distribution of tax liability. The Scottish Parliament has voted to establish more frequent revaluations to keep the tax base up to date and we have supported this policy.

14. Few revaluations are fiscally neutral and the SPF has supported the Scottish Government's long standing policy of not applying 'downwards' phasing at revaluations, whereby those ratepayers whose businesses are valued to be in lower value properties are not artificially maintained in higher value areas (as was the policy for the retail sector in England at the 2017 revaluation). We would hope the Scottish Parliament would not be tempted to return to this policy which it has avoided since 2010. Neither, we hope, will the government be tempted to re-distribute the tax burden to other sectors beyond their actual market evidence. This approach would again fail the test of fairness.

Concluding remarks

15. The SPF is acutely aware that the Scottish Parliament has only just brought into being its first Non-Domestic Rates Act for many years. We feel it is clear, however, that the use and occupation of non-domestic property has been fundamentally changed by the experience of COVID-19. For example, the high level of occupation and use of office space, the footfall for retail locations and hospitality could be permanently altered by societal and consumer change accelerated by COVID-19. Certain key industries that support hospitality such as our leading airports, already see little possibility of a return to previous levels of business for a number of years. COVID-19 is not wholly responsible for all of these changes, the reality of administration or CVAs (Company Voluntary Administration) has been hitting retail in particular for several years unfortunately and we do not see this changing as a result of the delayed revaluation, which merely puts off addressing the issue for a year.

16. We do not feel that the Impact Assessment which accompanied the draft Regulations also correctly reflected the impact on businesses. Rates are a real and absolute liability that must be considered by businesses. However, postponing this non-domestic property rates revaluation will therefore simply maintain an unfair distribution of the tax base and penalise ratepayers accordingly. For ratepayers who were still to see recovery from the financial crisis, for those in the north-east still on rateable values dated to before the major oil price cash, a further delay to the revaluation will be a significant blow.

17. The Scottish Government has introduced unprecedented rates relief measures to business rates in response to COVID-19. The 100% relief for retail, hospitality and leisure was a vital support and, we expect that there will be a need for further

relief as we near 1 April 2021. However, relief does not change the tax base it simply alleviates those in relief with a benefit for a period of time. While we do urge the government to continue its relief for ratepayers significantly impacted by COVID-19 measures, we believe the more sustainable approach is to rebase the tax base properly.

18. We would be pleased to answer any further questions regarding our comments at the Committee's convenience.

Submission from the Scottish Retail Consortium

Having had the opportunity to consult with our membership through our Property Community I am now in a position to give the following response:

- SRC continues to strongly support 3-yearly revaluations, as this better reflects trading conditions and structural changes in the economy and decreases the likelihood of major fluctuations in values between valuations.
- In our conversations and correspondence with Ministers in the summer we expressed the hope that the revaluation could continue in 2022, and supported a postponement to the 2020 tone date so that future valuations (after the next revaluation) take account of the post-Covid economic situation.
- Since then the revaluations in Scotland and England/Wales have both been postponed, until 2023. Whilst it is regrettable the revaluation has been delayed, we accept the government will have practical reasons for this change.
- As indicated in our submissions to the Barclay Rates Review (2018) and to the Local Government Committee during consideration of the then Non-Domestic Rates Bill (2019), our preference was for an aligned timetable between Scotland and the other home nations on revaluation, in order to make the system simpler and easier for firms operating across Scotland and other parts of the UK. We understand this was echoed by other trade bodies at the time, and indeed Assessors (see SPICe briefing and the financial memorandum). SRC believes the benefits of alignment across GB are important and should be weighed alongside any arguments in favour of a more immediate revaluation.
- Much of the retail industry had to cease trading for the first 4 months of the pandemic, to aid the national effort to combat Covid. With retailers' revenues continuing to fall short and with shops unable to trade at capacity due to physical distancing restrictions and with caps on numbers allowed in stores, the re-imposition of 100% rates next April is unsustainable, as is returning to a poundage at a 21-year high. The retail industry in Scotland has lost £2.4 billion in retail sales since the onset of the pandemic, shopper footfall is down by a third, and the shop vacancy rate is at a 5-year high.
- Our over-riding issue is avoiding the reverse cliff edge next April of full 100% re-instatement of business rates. Instead we want to see rates phased back in over the next 2 years leading up to the 2023 revaluation.

Joint submission from UKHospitality Scotland, Scottish Beer and Pub Association and Scottish Licensed Trade Association

Responding jointly on behalf of UKHospitality Scotland, the Scottish Beer and Pub Association and the Scottish Licensed Trade Association, we refer to your email of 4th November 2020 inviting response and feedback on the draft legislation noted above. Our combined sector organisations provide representation for collectively the largest grouping of hospitality and drinks industry bodies in Scotland, from operators of public houses, licensed restaurants, licensed retail, hotels to owner investors such as pubcos, and brewers.

The draft statutory instrument, we understand, seeks to implement the Scottish Government proposals in relation to the next rating revaluation in Scotland following previous consultation on this and associated matters such as the extension to the 2017 Revaluation appeals timetable undertaken earlier this year.

We welcome the opportunity for our collective bodies' memberships to be represented and views recognised as part of this consultation stage. We now outline for your consideration our observations, comments and proposals; and we respectfully refer to previous responses and associated matters considered relevant in the context of the draft legislation and the inescapable evolving wider issues linked to the Covid-19 pandemic.

The principal and relevant proposals contained within the draft statutory instrument under consideration which we have identified for comment are:

(iv) The intended postponement of the next rating revaluation in Scotland from 1st April 2022 to 1st April 2023;
(v) The proposed statutory valuation date of 1st April 2022;
(vi) Albeit not expressly covered, the proposal to introduce revaluations every 3 years after 2023.

It is recognised that Government revenue raising power has to be balanced and we hope to outline a balanced view. If the current and established system of NDR continues as a means of raising public finance it must be transparent, equitable, accountable, workable and affordable. As, with very recent news, we hopefully move towards recovery mode from the pandemic and address what ramifications emerge from Brexit implementation, the business rates landscape in Scotland must be fair and promote as competitive a platform as possible for hospitality sectors.

We also acknowledge that the occurrence of rating revaluations has hitherto delivered a revenue neutral (in real terms) outcome whereby the NDR system is not intended to increase aggregate property tax take. It is recognised that in a scenario where broadly all RVs reduce, the UBR multiplier will increase correspondingly to deliver the same

real NDR income. In such circumstances ratepayers would in general be in the same position. That could be a consideration in terms of the timing of the next revaluation.

We refer to the four principal options outlined by the Scottish Government in earlier consultation on this matter, namely:

5. No change: a 2022 Revaluation with a "Tone" date of April 2020;
6. A 2022 Revaluation with a "Tone" date of April 2021;
7. A 2023 Revaluation with a "Tone" date of April 2021;
8. A 2023 Revaluation with a "Tone" date of April 2022, the proposal now under consideration.

The following points merit reflection in the debate and consideration of the matters in hand.

(f) There is a reasonable proposition that our hospitality sector will still be very much in recovery mode through 2021 and most likely into 2022/23.
(g) It is indisputable that turnovers in hospitality subjects have been annihilated since early March 2020 and the basis of rating assessments of properties in the hospitality sector is by reference largely to turnover.
(h) In rating, 2021 could be a year overwhelmed by the "COVID-19 MCC" appeals.
(i) In England and Wales, the respective governments have announced that revaluations will take place in 2023, albeit only Wales has stated the intention of a "Tone" date of April 2021.
(j) The Barclay Review recommendations on more frequent revaluations with Tone dates one year prior to revaluations should continue to be the aim.

We therefore promote the following for the Scottish Government to consider:

G. Against the background of general recovery, ongoing MCC appeals, continued restrictions on working practices, movement and public uncertainty, the challenging logistics draw into question whether a revaluation in 2022 is a realistic proposition unless one or all of the following occurs:
    - Government intervention in the "COVID-19" MCC appeals
    - Extension of rates relief, particularly to the hospitality sector
    - Subsidising of Local Authorities whose rates revenues are impacted upon
    - Introduction of (tapered) relief – whether by sector, location and/or RV – across the remaining years of the 2017 revaluation.

H. Hotels and public houses saw increases of approximately 40% and 20% respectively at the 2017 revaluation. This was the main catalyst for the Government's intervention with transitional arrangements for the sector. Additional time – and an appropriate Tone date – would provide comfort to the sector of a more equitable redistribution of the rates burden. On this basis a Tone date of April 2021 would be favoured.

I. Should England align with Wales with setting a 2021 Tone date, were Scotland's next revaluation refer to a Tone date of April 2022, Scotland's hospitality sector could reasonably anticipate higher RVs (and therefore rates liability) than their English (and Welsh) equivalents from 2023. That would be contrary to the aspiration of Scotland being the most competitive part of the UK to do business. Accordingly, renewed consideration to revisit a Tone date of April 2021 in Scotland is strongly encouraged. Even if 2023 is settled upon as the next revaluation year in Scotland, then two years to "get it right" is a better outcome, with the original Barclay Review recommendation of more frequent (3 yearly) revaluations beginning from 2026, and one year antecedent Tone in 2025, a more realistic aspiration.

J. Whilst the Governments in England and Wales have announced their intentions to align with revaluations in 2023, legislation has not passed in either jurisdiction. Wales has confirmed a 2021 Tone date and it is generally anticipated that England will follow suit. Therefore, the datum point of reference for future assessments in Scotland would not align with the rest of mainland UK should the Tone date in Scotland be anything other than April 2021. Such a lack of harmonisation could be a risk to Scottish business if it were to result in proportionately higher rates compared with UK competitors; in the hospitality sector this is of significant relevance.

K. A one-year antecedent "Tone" date is to be supported and is a cornerstone recommendation of the Barclay Review given the right circumstances. Alternatively, a two year "Tone" window would offer additional time for the SAA to engage with ratepayers and their representatives and to form more accurate RVs on which Government policy – including UBR projections and continued SBBS relief and other mechanisms – can be more fully considered, accurately costed and implemented with fuller consultation.

L. More frequent revaluations, which we would prefer to have been enacted as part of the proposed legislation, to at least secure/confirm 2025 or 2026 as the subsequent year of revaluation is strongly proposed. This is also one of the overarching recommendations of the Barclay Review.

M. No one, least of all any responsible government, wishes a disproportionate burden falling on those who can least afford it, for any period of time. To provide hospitality sectors the breathing space to fully recover we urge you to minimise the impact of future rates. If a 2022 revaluation is contemplated it must include certainty that rates overheads will be minimised in the interim. If continued to be assessed slavishly by reference to Tone year turnover then our sector should reasonably expect minimal rateable values and/or significant recalibration of the rates burden from hospitality occupiers/properties to other sectors. As more frequent revaluations are a stated aim, if the status quo of a 2022 Revaluation with 2020 Tone remains then it must deliver this outcome.

N. In a business context hospitality sectors have borne the brunt of the fallout from the pandemic. Reliefs must be part of the discussion and proposal regardless of when the next revaluation in Scotland takes place, more so in the event that it is postponed until 2023.

Following full consideration of the above, our joint recommendation would be to propose a Revaluation in 2022 with a Tone date in 2021. This meets the core recommendations from the Barclay Review whilst recognising some of the practical issues.

In addition to the core proposals under consideration we would promote associated matters, such as the "COVID-19" MCC appeals, which need to attract priority at Government level. There needs to be speedy resolution of these MCC appeals, with Scottish Government intervention if required to circumvent the unwieldy appeals process. We are aware that the statutory deadline for determining 2017 revaluation appeals and the "COVID-19" MCC appeals has been extended to 31st December 2021 however we are also aware that over the period beginning "lockdown" appeal cases across Scotland have backed up, with a negligible number of appeals (nil in most Valuation Joint Board areas) being heard at VAC. Therefore, there remains significant challenge, risk of continued backlog, systemic delays and reluctance on the part of many involved in the appeals process to clear appeals and implement reasonable outcomes, regardless of what technical rating valuation opinions or standpoints on case law precedent may prevail.

We are in unprecedented times and if Government hopes to rely on the continued certainty of revenue generation which the NDR system delivers then it must be prepared to implement/intervene/support and subsidise if necessary, the machinery to arrive at the next revaluation.

Government is encouraged to provide swift direction – legislative if necessary – on MCC appeals and relief measures to provide a bridge of certainty until the next revaluation on which business, particularly hospitality, can plan ahead. This would provide a stronger foundation for all stakeholders to deliver the next revaluation with credibility and confidence. In short, an acceptable resolution of the COVID-19 MCC appeals, with a commitment to remain in place revised RVs for the remaining term of the 2017 Revaluation would in our view allow more flexibility to the timings of the next revaluation.

We also invite consideration of the new requirements and penalties relating to questionnaires and returns. Whilst not a core feature of the legislation under consideration we strongly encourage the Government to review the practicalities of the new penalty regimes being introduced from December this year, which were with the original intention of supporting the 2022 revaluation in Scotland. Specifically, the SAA should refrain from issuing any questionnaires relating to financial performance,

costs, or raising penalty notices until at least the end of 2021, more so if a delay to the 2022 revaluation is confirmed.

Questions relating to ownership and occupation could be promoted, if only to maintain the accuracy of the Valuation Roll and billing authority records. These are/were the databases relied upon and referred to in administering grant aid during the pandemic and unfortunately inaccuracies and inconsistencies delayed or prevented much needed financial aid being granted to eligible parties.

Bringing the themes of MCC appeals and questionnaires together, we understand that circa 50,000 MCC appeals relating to the impact of Covid-19 have been lodged to date, compared with approximately 74,000 following the 2017 revaluation. Accordingly, we would suggest that the Assessors Association and appellants' representatives have ample opportunity to address pertinent information during MCC appeal discussions.

The first MCC appeals are cited in January and February of next year; and these provide an opportunity for information gathering and exchange to take place without the distraction of unnecessary form filling and the threat of, in our view, wholly disproportionate penalties at a time when business is struggling to rebuild into 2021 and beyond.

We trust the enclosed response clearly sets out our position and will be fully and appropriately considered by the Local Government and Communities Committee, as part of the next phase of consultation and scrutiny on this matter. Should you require additional information, clarification or further discussion or submissions please do not hesitate to contact the undersigned.

Local Government and Communities Committee

28th Meeting, 2020 (Session 5), Wednesday 18 November 2020

Stage 1 scrutiny of the European Charter of Local Self-Government (Incorporation) (Scotland) Bill

Note by the Clerk

1. The European Charter of Local Self-Government (Incorporation) (Scotland) Bill is a Member's Bill (ie a Bill introduced by an individual MSP who is not a Minister) introduced by Andy Wightman MSP on 5 May 2020. The Bill would incorporate the European Charter of Local Self-Government into Scots law.

The European Charter of Local Self-Government

2. The Charter was drawn up in 1985 by the Council of Europe, an international organisation that promotes democracy and protects human rights and the rule of law across the European continent. The UK is a member of the Council of Europe and this has not been affected by leaving the European Union. The Charter sets out 10 principles to protect the fundamental powers and their political, administrative and financial autonomy. The Charter was ratified by the UK Government in 1997.

The Bill

3. The Bill aims to strengthen local government by incorporating the Charter into Scots law. Andy Wightman MSP says in the Policy Memorandum accompanying the Bill that, the Charter is part of the UK's international legal commitments but it cannot be directly relied upon to settle cases in the Scottish courts. He wants people and organisations to be able to challenge the Scottish Government in court if its laws or decisions are not compatible with the Charter. The Bill sets out a legal mechanism that aims to achieve this.

4. The Bill also has a section that puts a general duty to promote local government on the Scottish Government.

Local Government and Communities Committee's call for views on the Bill

5. The Committee was referred the Bill at Stage 1, meaning that its role is now to consider and report to the rest of the Parliament on the general principles of the Bill. After a pause owing to the coronavirus crisis, the Committee issued a call for views over the summer, posing five questions:

1. *The main aim of the Bill is to make the European Charter of Local Self-Government directly enforceable in Scots law and to require the Scottish Government to act in a way that agrees with the Charter [section 1 and 2]. Do you agree with this?*
2. *Section 3 of the Bill puts a general duty on the Scottish Government to support local government. The Scottish Government must also report to the Scottish Parliament about what it has done to support local government at least once every 5 years. Do you support section 3?*
3. *Section 4 of the Bill says all legislation must be interpreted in line with the Charter whenever possible. Section 5 allows a court to make a "declaration of incompatibility". This is a statement that a provision in a piece of legislation is not in line with the Charter. Where this declaration has been made, section 6 gives the Scottish Government power to take action to fix this provision so that it is line with the Charter (section 6). Do you agree with these sections?*
4. *Section 7 allows a court to limit the consequences of a ruling that the Scottish Government has not complied with a duty set out elsewhere in the Bill. For instance, the court could provide that the effects of the ruling don't reach back in time. It can also give the Scottish Government some time to take corrective action to address the ruling. Do you agree with section 7?*
5. *Do you have thoughts on anything else about the Bill, for example:*
    - *how quickly it should become law after it's passed (section 10 says this should happen almost immediately)*
    - *what financial impact it will have if it becomes law*
    - *if it will have any positive or negative impact on equality or human rights.*

6. Twenty responses were received and published.

Evidence session on 18 November and next steps

7. On 18 November, the Committee will hold its first evidence session on the Bill hearing from two panels, comprising representatives of local government, experts in law and in public services management and a think-tank. Written evidence received from these witnesses is annexed to this paper.

8. The Committee will discuss the evidence later in the meeting, in a discussion it is likely to agree to hold in private. The Committee expects to take further evidence from the Scottish Government and from the Member in Charge later this year, and to report to Parliament on the general principles of the Bill early in 2021. The Parliamentary Bureau is likely to propose a Chamber debate on whether to agree to the general principles shortly after the report's publication.

Annexe

Submission from Professor Chris Himsworth

The main aim of the Bill is to make the European Charter of Local Self-Government directly enforceable in Scots law and to require the Scottish Government to act in a way that agrees with the Charter [section 1 and 2]. Do you agree with this?

"Incorporation" by the scheduling (by s 1) of the Articles of the Charter seems (in line with the Human Rights Act 1998) a good route to ensuring their direct enforceability. So too is the imposition of duties to comply, by acting compatibly. on the Scottish Ministers.

I would, though, ask three questions:

a. Might not the scope of the Bill be appropriately extended to make other public bodies subject to the obligation? I do understand that the paramount Charter concern is the curtailment of "central government" authorities and that the Scottish Ministers are, therefore, most involved but why should such other public bodies (which might even include UK ministers, especially if they were to use new (UK Internal Market) funding powers in addition to City Deal powers?) not also be required to act compatibly?

b. Is it appropriate to confine the duty imposed on the Scottish Ministers to "functions" defined as "within devolved competence" by s 54 of the Scotland Act 1998? Why should not ANY of the Scottish Ministers' functions be included, eg those conferred by Orders under s 63 of the Act? Para 67 of the Policy Memorandum simply acknowledges that those other powers are excluded by the current formula. But why? Are not ministers, in the exercise of all their functions, required to adhere to the general law of Scotland, unless, of course, constrained by other relevant legislation? The other powers, I think I would acknowledge, are unlikely to be very significant (for Charter purposes) in practice. (As in para a above, I may be stretching legislative competence issues here a little. Advice could be taken.)

c. As a technical matter, I think there may be a drafting flaw in relation to s 2(2) in relation to "act"? It defines (twice) a noun, whereas in subs (1) "act" is used as a verb. So "failing" (twice) rather than "a failure" might cure it. Although I do worry a little about the idea of Ministers being obliged to "fail to act" compatibly with the Charter!

Section 3 of the Bill puts a general duty on the Scottish Government to support local government. The Scottish Government must also report to the Scottish Parliament about what it has done to support local government at least once every 5 years. Do you support section 3?

This general duty seems entirely appropriate. Two narrow questions:

a. The principal terminology in the section is not "local government" but, as in the Charter, "local self-government". Does that term, which is unfamiliar in existing Scottish local government statutes, require definition in the Bill? The same might be asked of "autonomy". Local authorities are also mentioned in the section but should they not (as democratically elected bodies) be included in the (new) definition of "local self-government"?

b. Is the reversion to the terminology of "local government" in subsection (4) deliberate? Does that risk confusion?

c. Might the obligations in subs (4), be improved by the insert of "the Convention of Scottish Local Authorities and other" after "consult"?

Section 4 of the Bill says all legislation must be interpreted in line with the Charter whenever possible. Section 5 allows a court to make a "declaration of incompatibility". This is a statement that a provision in a piece of legislation is not in line with the Charter. Where this declaration has been made, section 6 gives the Scottish Government power to take action to fix this provision so that it is line with the Charter (section 6). Do you agree with these sections?

I think that the general approach here (via the interpretative duty, incompatibility and remedial action) seems appropriate. Questions:

d. For reasons explained in relation to Question 1(b) above, is it appropriate to confine incompatibility to provisions (including those in subordinate legislation) within the competence of the Parliament?

e. Could one have a "*declarator* of incompatibility"? Paras 83 and 83 of the Policy Memorandum appear to fluctuate between "declarator" and "declaration"?

f. In the light of sections 5(3),(4), does one not need something more explicit in the Bill about what a court may order in the case of provisions of subordinate legislation NOT caught by s 5(4)(b)? And also other acts, decisions etc held to be incompatible with the Charter Articles? Does it not have to be made clearer that these can be struck down (as invalid/unlawful) or subject to other sanction, if, as I assume, that is the intention? Para 77 of the Policy Memorandum explains why certain orders may be inappropriate in relation to Acts of the Scottish Parliament but does that not imply that powers to strike down etc *are* appropriate in other cases? This also affects s 7. Paras 83 and 84 (and para 87) of the Policy Memorandum appear to assume those additional court powers (by assuming illegality/invalidity and their general effects in judicial

review) but should they not be reinforced in the new Act? It might help to overcome doubts expressed about the justiciability of the Charter Articles.

g. Does "Supreme Court" in s 5(5) require definition or further spelling out? I think it might.

Section 7 allows a court to limit the consequences of a ruling that the Scottish Government has not complied with a duty set out elsewhere in the Bill. For instance, the court could provide that the effects of the ruling don't reach back in time. It can also give the Scottish Government some time to take corrective action to address the ruling. Do you agree with section 7?

h. I agree with the point of section 7. Based on my comments under Question 3 above, however, I repeat my concern that, in addition to dealing with the "consequences of a ruling", one might need to specify what rulings (in section 7, "decisions") are available to a court.

i. Does it need to be clear in section 7 to which "courts" it applies? Presumably one of the reasons why s 7 (1)(b)(ii) might apply is that the court is not the Court of Session or the Supreme Court?

j. After "a duty" might one insert "or may be about to breach a duty"? Or such words.

Do you have thoughts on anything else about the Bill, for example:

- **how quickly it should become law after it's passed (section 10 says this should happen almost immediately)**
- **what financial impact it will have if it becomes law**
- **if it will have any positive or negative impact on equality or human rights.**

Beyond reiterating my (very strong) welcome for the Bill, I believe I have no further thoughts.

Submission from Professor Richard Kerley

Summary

I support the Bill as submitted, and my short answers to the first 4 questions are as follows:
1. Yes
2. Yes
3. Yes
4. Yes

My observations below cover question 5.

Background

The Council of Europe [CoE] has 47 member states and has a wider reach than the EU in its impact on 'European' government and civil society, but in a much softer form . The UK will remain a member of the CoE. The European Charter of Local -Self Government ('The Charter ') was created and opened for signature by member states in 1985. The United Kingdom signed in 1997; the most recent ratification was by San Marino in 2014.

Dilemmas

I would argue the various protracted delays in signature are attributable to the difficulty of defining specific institutional arrangements that reconcile national differences in forms of 'intra-state' governments, consistent with the admirable general aims of 'The Charter', which are as follows.

"The Charter commits the parties to applying basic rules guaranteeing the political, administrative and financial independence of local authorities."
It is clear the text is therefore heavily reliant on qualifying phrases [italicised by RK] such as:

"…*As far as possible*, grants to local authorities …"
"…Local authorities shall be entitled, *within national economic policy*, to adequate financial resources of their own."

The text of 'The Charter' frequently mentions the extent to which any changes initiated in local government shall be "…within the framework of the law … 'or within '…the limits of the law …'

The consequence of such extensive qualification is that governments can, within the generous boundaries of the 'The Charter', make extensive changes to various institutions of local self-government with some degree of confidence that this can be formally justified - if they are ever challenged.

There is academic work that argues persuasively that those countries where we [from the UK] *assume* there is some form of constitutional protection for local government do not *actually* have such protection. Sweden, for example, has reduced the number of councils over the years from more than 2000, to 800, to

fewer than 300 now. France retains some 36000 municipalities but has recently merged some regional council into fewer, larger groupings. All of these changes were made “within the framework” of the [respective] laws.

So, it seems reasonable to observe that ‘The Charter’ is not some protective wall set up around local government as it is now and ever shall be. If this Bill is agreed, it remains perfectly possible for the Scottish Parliament to reduce the number of local authorities [therefore fewer/larger councils] or increase the number [more and smaller].

So why [and how] to legislate?

Such legislation would be an important prompt and reminder to central governments that local government is constitutionally important –because like Parliament local governments are also democratically elected - and representative democracy demands a more entrenched institutional position than government agencies and quangos. Members may recall that the former 15 territorial health boards were reduced to 14 by regulatory ministerial change and the enthusiastically adopted 2009 pilot exercise in electing some members on 2 health boards did not last long and was not pursued.

If finally agreed in current form and approved as an Act this would require Parliament and Government to act ‘compatibly ‘ with the provisions of ‘The Charter ‘; to ensure that any legislation introduced subsequently into the Parliament is also compatible, and that Ministers have a general duty to promote local self-government.

It is certain there will be technical arguments put forward to challenge this bill, for example, the provision that enables courts to instruct ministers to alter legislation by regulation. Any such challenges to ‘incompatible ‘legislation could also be retrospective, both procedures which some MSPs might question in principle and I oppose retrospection of acts prior to the [possible] passage of the Bill. There may also be weaker arguments. So, when this issue was discussed in relation to the Community Empowerment (Scotland) Act, 2015, the then minister for local government argued against any such change.

“This Government believes in a written constitution and would wish to see local government covered by it. A mention only in legislation does not carry the same force or have the same effect and could be annulled by future Governments rather more easily.”

Some of the different views expressed in the earlier consultation may well re-surface. Two seem significant: whether the office of a Commissioner should be created, and whether the capacity to approach the courts to encourage a legal challenge should also allow for some form of sanction.

Given the enthusiasm of all MSPs in the early days of the parliament for creating commissioners [and then later debating whether there were too many such offices]

the direct line to the courts may be preferred and remove direct revenue costs. The issue of sanctions is even more complex and appears hard to define in terms of which organisations might be ‘sanctioned’ and to what purpose. Again in terms of the core of the proposed law, a court decision to reverse legislation or executive action if demonstrated to be absent seems the right course to take with no other sanction.

Conclusion

The underlying purpose of the bill is to create a climate and expectation that local self-government is important; to prompt the Government and Parliament to take account of that; and to maintain a fall-back to the courts on what it is hoped will be rare occasions. This Bill appears to offer the mechanism to do that and therefore enhances human rights.
If enacted, this legislation also goes a very long way to creating the ‘parity of esteem ‘ with the Parliament that local government has long sought and that was endorsed by the Mackintosh report .

Submission from Reform Scotland

Reform Scotland is delighted to have the opportunity to respond to the Local Government and Communities Committee's call for evidence on the European Charter of Local Self-Government (Incorporation) (Scotland) Bill. Local government is an issue Reform Scotland has frequently argued is in need of urgent addressing. Therefore, we welcome the aim of the legislation and agree with Andy Wightman, as noted in the Policy Memorandum, that:

"*over the past century the status, powers and freedoms of local government have been slowly eroded and marginalised. Governments of all persuasions have tended to concentrate more executive and fiscal power to the centre.*"

Empowering local authorities will help Scotland on the road to economic recovery. Even before the current pandemic, councils across Scotland faced hugely different challenges. It is therefore unsurprising that the impact of Covid-19 is being felt differently across the country. Local authorities need the tools to respond. The Scottish Government's economic briefing for June looked at regional exposure and resilience in the labour market across Scotland.[1] It highlighted that local authorities that are rural or mainly rural have slightly higher shares of jobs in the most-exposed sectors. However, the number of jobs in the most exposed sectors is highest in Glasgow, Edinburgh and Fife.

While central government can act quickly, reaching large numbers of people directly, local authorities can fine-tune their recovery plans to suit their differing and distinctive strengths and weaknesses. Under the current settlement, councils have both hands tied behind their back. Scotland is far too centralised and this needs to change.
In response to the question of timing of implementation, we agree with the Bill that it should happen almost immediately. Arguably over the 21 years of devolution, one of the biggest areas of disappointment has been local government. Devolution transferred power from Westminster to Holyrood, but it also centralised power in Edinburgh. Reinvigoration of local government is badly needed. There is no need to wait longer.

While we welcome this legislation, we hope the Scottish Government takes this opportunity to recognise the importance of local government and begin devolution of real fiscal powers to local authorities. Centrally directed, one-size-fits-all policy solutions do not and cannot work. Councils need to be able to tailor solutions to local need, and to do so they need actual powers.

Councils should have the ability to introduce policies which are right for each individual area, but that cannot happen without additional finance powers being devolved beyond Holyrood.

Non-domestic rates should be devolved to local authorities in full. This would allow them to vary how and to whom the tax applies based on their own

[1] https://www.gov.scot/publications/monthly-economic-brief-2/pages/5/

circumstances. It would also ensure that non-domestic rates are the genuinely local tax they are supposed to be. An increase in local financial autonomy and accountability is more likely to give councils an incentive to design business taxation policies and broader local economic development strategies to support the growth of local businesses, encourage start-ups and attract businesses to invest, since this will benefit the council directly by increasing its income from business taxes. Passing control of business rates to local authorities would also mean giving them control over business rates relief schemes. As a result, it would be up to each individual local authority how the tax operated within their area.

We are aware that if business rates were simply devolved some councils could be worse off, due to the re-distribution of income that occurs centrally. However, it is possible to re-adjust the block grant to ensure that in Year 1, no council loses out, creating an equivalent of the fiscal framework that could be used for local authorities.

Just like business rates, council tax is a largely a local tax in name only. Although the freeze was lifted, increases were then capped by the Scottish Government. This has hugely tied the hands of local government as well as confusing accountability and obscuring transparency.

We are, however, concerned about the drive to simply replace one centrally controlled tax with an alternative centrally controlled tax.

Reform Scotland believes that local authorities should have complete control over their local tax - including the rates, bands and indeed form of the tax. This would allow individual councils - should they choose - to retain, reform or replace Council Tax with another form of local taxation. Crucially, this would be a decision about a local tax made by a local authority for its local area, taking into account local circumstances and priorities. A true local tax.

While we welcome the European Charter of Local Self-Government (Incorporation) (Scotland) Bill, we hope that it is only the long-awaited first step on the road to renewing local democracy.

Submission from Shetland Islands Council

The main aim of the Bill is to make the European Charter of Local Self-Government directly enforceable in Scots law and to require the Scottish Government to act in a way that agrees with the Charter [section 1 and 2]. Do you agree with this?

Yes. In partnership with Orkney Islands Council and Comhairle nan Eilean Siar, Shetland Islands Council made the case to Scottish Government through the *Our Islands: Our Future* campaign to support incorporation of the Charter into Scots Law. We have also consistently supported COSLA's policy position and see it as making an important contribution to strengthening local democracy.

2. Section 3 of the Bill puts a general duty on the Scottish Government to support local government. The Scottish Government must also report to the Scottish Parliament about what it has done to support local government at least once every 5 years. Do you support section 3?

Yes. We supported the provision in the Islands (Scotland) Act 2018 regarding Scottish Government reporting annually to Parliament on delivery of outcomes identified in the National Islands Plan and compliance with duties in relation to island communities. We feel that this provision would, similarly, be an effective mechanism for Parliamentary scrutiny to be applied to Scottish Government's support for local government and would agree with the statement in the Policy Memorandum that this would "*provide visibility of the issues of local government status and standing and provide an opportunity for debate, providing greater transparency and accountability*".

3. Section 4 of the Bill says all legislation must be interpreted in line with the Charter whenever possible. Section 5 allows a court to make a "declaration of incompatibility". This is a statement that a provision in a piece of legislation is not in line with the Charter. Where this declaration has been made, section 6 gives the Scottish Government power to take action to fix this provision so that it is line with the Charter (section 6). Do you agree with these sections?

We would support the position provided by COSLA in their response to this point.

4. Section 7 allows a court to limit the consequences of a ruling that the Scottish Government has not complied with a duty set out elsewhere in the Bill. For instance, the court could provide that the effects of the ruling don't reach back in time. It can also give the Scottish Government some time to take corrective action to address the ruling. Do you agree with section 7?

We would support the position provided by COSLA in their response to this point.

5. Do you have thoughts on anything else about the Bill, for example:

- **how quickly it should become law after it's passed (section 10 says this should happen almost immediately)**
- **what financial impact it will have if it becomes law**
- **if it will have any positive or negative impact on equality or human rights.**

It is noted that the proposed Bill received support from 26 MSPs representing four political parties. It is hoped that all parties would be supportive of formally acknowledging the important role local government plays in the governance of Scotland and the Charter can be passed before the end of this current Parliamentary term. Scottish Government has, over the years, provided support for local empowerment as a principle, with examples including the First Minister's 'Lerwick Declaration' in 2013, ' Empowering Scotland's Island Communities', Community Empowerment (Scotland) Act 2015, Islands (Scotland) Act 2018, National Islands Plan and the ongoing Local Governance Review.

Shetland Islands Council passed a motion at its meeting on 9 September 2020 whereby we will begin to explore options for achieving financial and political self-determination. This has come from growing frustration at decision making being centralised and funding being consistently reduced, but also a positive aspiration and belief in what can be achieved through appropriate resourcing and meaningful empowerment.

Our view is that local government, as a sector, has been deprioritised over the years, with there being a long-standing trend of reducing funding (SIC suffered the second highest cut in core revenue funding from Scottish Government between 2013/14 and 2018/19) and local discretion on how to spend that funding being ever-more tightly determined by Government (60% of Council budgets are now focused on delivery of national policy initiatives).

We would highlight the apparent contrast between those experiences and the principles that the Scottish Government and local Government signed up to thirteen years ago. The Concordat, signed in November 2007, was to herald "*a fundamental shift in the relationship between the Scottish Government and local government, based on mutual respect*". Scottish Government also committed to "*stand back from micro-managing service delivery, reducing bureaucracy and freeing up local authorities and their partners to meet the varying local needs and circumstances*".

We believe the nation's COVID response is showing the integral role local government plays in the lives of communities. Excellent partnership working and community engagement, making use of local contacts and applying valuable local knowledge, is ensuring that agile solutions are being found and resources allocated to meet needs. In many ways, this is local government at its best.

However, in responding to the Scottish Parliament's COVID-19 Committee's call for evidence, our Council observed that Scottish Government has not involved local authorities in evolving their response to the pandemic. Our Council has

learned of changes to Scottish Government policy from First Minister/Deputy First Minister speeches or guidance at the same time these were issued to the general public. This meant the Government's response has needed adjustments – for instance the
business support schemes were welcomed but had gaps which local authorities were able to identify due to their knowledge of their local economies.
Support for the passing of this Bill could help to reaffirm the status of local government and contribute to efforts to renew local democracy. The 2017 local government election in Shetland saw the first uncontested seat in many years and fielding of two 'paper' candidates effectively resulting in no contest in three out of seven wards. Were this trend to continue, there is a danger that local government could suffer the same fate as many community councils with unfilled seats. We supported the Commission on Strengthening Local Democracy in their 2014 findings and see this Bill as an opportunity to re-establish local government as a properly resourced and valued part of the country's governance structures.
As COSLA has already said in their initial submission to the consultation on the proposed Bill, if the EU Charter is incorporated in Scots law it "*would deliver the unfinished business of the Scottish Parliament by ensuring that for the first time this partnership between national and local government is built into Scotland's system of democratic governance and reflected in its day to day culture and practice.*

Submission from COSLA

The following paragraphs present the COSLA draft response to the Scottish Parliament Local Government and Communities Committee's call for views on the five questions below. The response draws on the detailed response[2] made by COSLA to the initial consultation on the proposal for a Bill to incorporate the European Charter of Local Self-Government into law in Scotland.

This submission is made subject to ongoing detailed examination of the Bill which will add to our understanding of the issues and has the potential for suggested submissions for amendments to the Bill at relevant stages of passage of the Bill through Parliament.

1. **The main aim of the Bill is to make the European Charter of Local Self-Government directly enforceable in Scots law and to require the Scottish Government to act in a way that agrees with the Charter [section 1 and 2]. Do you agree with this?**

   Yes.

   COSLA believes that incorporating the Charter of Local Self Government into law in Scotland can fundamentally strengthen Scotland's overall system of democracy and create the foundations for an enduring and progressive partnership between national government, local government and communities.

   We believe that incorporating the Charter into Scots Law is not just a symbolic step or a matter of democratic principle; we believe that it is key to building on local and national government's joint commitment to improve outcomes and renew democratic participation across Scotland.

   Local democracy in Scotland and the UK is highly unusual because its basic powers and rights are not set out in law in the way that is commonplace internationally. Instead, it is the Scottish Parliament and Ministers that have sole power to set the shape, size, powers and functions of local decision making.

   The key reasons that COSLA believes that the European Charter of Local Self- Government should be incorporated into law in Scotland are listed below:

   - Doing so would strengthen local and national government's ability to work jointly to improve outcomes in communities across Scotland.
   - It would strengthen Scotland's democracy by ensuring that communities enjoy the same local democratic rights that are already commonplace across Europe and beyond.
   - It would deliver the unfinished business of the Scottish Parliament by ensuring that for the first time this partnership between national and local

[2] https://tinyurl.com/yyjgvtb5

government is built into Scotland's system of democratic governance, and reflected in its day to day culture and practice.

- It would ensure that Scotland fully complies with international treaty obligations, and addresses outstanding issues that have previously been identified in this regard.

Each of these points were explored fully in our response to the initial consultation carried out prior to the introduction of this Bill.

The United Kingdom ratified the Charter on 24 April 1998 and it came into force on 1 August 1998. In drafting and bringing forward the Charter, the Council of Europe intended to impose enforceable obligations on ratifying states, not simply a general aspiration or source of guidance; several articles reference this objective explicitly. In particular, Article 2 sets out that "the principle of local self-government shall be recognised in domestic legislation, and where practicable in the constitution."

As we know Scotland and the UK has no written Constitution and although there is plenty of legislation governing specific local government services and systems, the overall *principle* of local self-government is not recognised anywhere in legislation. In view of this COSLA consider that incorporation into Scots Law is a practical and workable option. Having said that we understand that legislation can, of course, always be overturned, but incorporating the Charter would undoubtedly be a very powerful step, and one which any government would not seek to amend without careful consideration and consultation.

2. **Section 3 of the Bill puts a general duty on the Scottish Government to support local government. The Scottish Government must also report to the Scottish Parliament about what it has done to support local government at least once every 5 years. Do you support section 3?**

   Yes.

   COSLA believes it is likely that there would need to be active support for a new way of working to ensure that the policy and legislative landscape upholds the Charter. In this regard a general duty on the Scottish Government to support Local Government could ensure that national and local government work together to scrutinise the compatibility of policy and practice with the law.

   COSLA's view is that clarifying the competencies of national and local government in the ways set out in the Charter, would require both spheres of government to commit to a new level of consensus and partnership working on shared issues, with an associated impact on the outcomes that national and local government can deliver together. We consider it very important to stress our expectation that a key success measure of incorporation would be that there is not routine recourse to the potential for legal challenge it would ultimately create; much like legislation on equalities, public smoking and seat belts, the law would provide a legal back stop, and in doing so deliver its most significant impact in creating and embedding a partnership approach to policy making, political culture and working practices.

International experience suggests where these rights are set out then many of the debates that have taken place in Scotland about how power is used do not take place; national and local government simply get on with the job of using good democratic governance to focus on improving outcomes across the country together. A requirement for a five yearly report to on the steps the Scottish Government have taken, or plan to take to safeguard and reinforce local self-government and increase the autonomy of local authorities would be of significant importance in that regard.

3. **Section 4 of the Bill says all legislation must be interpreted in line with the Charter whenever possible. Section 5 allows a court to make a "declaration of incompatibility". This is a statement that a provision in a piece of legislation is not in line with the Charter. Where this declaration has been made, section 6 gives the Scottish Government power to take action to fix this provision so that it is line with the Charter (section 6). Do you agree with these sections?**

   Yes.

   COSLA consider it very unlikely that there would be regular legal challenge regarding a potential breach of the Charter. The very act of creating this possibility is instead a powerful imperative for all concerned to work productively together.

   We consider it appropriate that the courts would play a role in determining any complaints regarding potential breaches of the Charter and would be required as any meaningful implementation of the Charter and we consider that this route may be sufficient rather than through a dedicated commissioner. Article 11 makes reference to:

   '*legal protection of local self-government' and a 'judicial remedy in order to secure a free exercise of their [local authority] powers and respect for such principles of local self-government as are enshrined in the constitution or domestic legislation'.*

   Currently, the fact that no constitutional or legislative 'right to local self-government' exists mean that this is not possible, and it is this that the prospect of incorporation would address.

   COSLA support for the Bill derives from the opportunity that it provides to strengthen and deepen partnership working in pursuit of outcomes, energise participation, and maximise all of the benefits for efficiency, effectiveness and impact associated with designing and delivering services in ways that fit local communities and circumstances. Our motivation then is not to create the circumstances for legal challenge, although we recognise the possibility for this is an important component of giving the Charter 'bite' in ways that have not previously been possible.

   Therefore, should action be found to be 'incompatible' with the Charter then this action should be capable of being overturned. Simply declaring the action unlawful would not have the effect of upholding the Charter's principles in practice, We welcome the opportunity to have an emphasis on all partners working together to determine suitable improvements or alternatives which then come into line with the intention of the Charter.

4. **Section 7 allows a court to limit the consequences of a ruling that the Scottish Government has not complied with a duty set out elsewhere in the Bill. For instance, the court could provide that the effects of the ruling don't reach back in time. It can also give the Scottish Government some time to take corrective action to address the ruling. Do you agree with section 7?**

   Yes.

   In terms of judicial remedies, the courts should have the power to require executive action to remedy any breaches identified and to strike down any incompatible legislation.

   The extremely complex nature of public policy landscapes with interconnections and dependencies that might not always be immediately apparent points to the need for a needs for flexibility both in the scope and temporal aspects of any court ruling. COSLA understands that corrective action following any ruling will include a consideration of, for example, the time needed to take that action and will need to be proportionate to each individual case.

   As mentioned above we see view the emphasis is on all partners working together to determine suitable improvements or alternatives.

5. **Do you have thoughts on anything else about the Bill, for example:**
   - **how quickly it should become law after it's passed (section 10 says this should happen almost immediately)**

     COSLA would agree that given that 22 years have elapsed since the UK signed the Charter ratification in Scotland through passing this Bill is overdue and we would not wish to see any further delay in adopting this international norm.

   - **what financial impact it will have if it becomes law**

     COSLA believe that there may be some costs associated with introducing or testing the application of the Charter in the aberrant circumstance that a breach is felt to have occurred. However, these need to be considered in context of the wider efficiencies that are achievable by improving outcomes in this way. We would anticipate that any such costs are likely to be incurred during the early period following incorporation.

     Going forward, it is anticipated that once any historic elements are addressed then the policy making and scrutiny process would not require additional resourcing.

     If a Commissioner was created to consider complaints under the Bill there would be moderate costs associated with setting up that post.

     Where the courts did find that an Act of the Scottish Parliament or action of Scottish Ministers constituted a breach of the Charter, there would very likely be costs associated with remedying the breach.

- **if it will have any positive or negative impact on equality or human rights.**

  COSLA do not anticipated that the proposed Bill would have any negative impact on any groups with protected characteristics under the Equality Act 2010.

Submission from Andrew Fraser

In my experience, and that of many (if not all) other municipal engineers, local government “re-organisation” in 1996 was and continues to be an unmitigated disaster. Quite simply, as Professor Coleman O’Flaherty indicated before the 1975 re-organisation, a local authority needs to be of sufficient size to attract and maintain staff of a calibre equal to the task involved. (In his case it was roads engineering, but much the same will go for other areas of work.) Most of Scotland’s 1996 authorities are far too small for the proper running of a roads system, and we have paid dearly for that in many areas, including mine - road safety engineering. My understanding is that a local authority area with population of around 350,000 could just about attract the appropriate people and generate sufficient data for them to support specialist accident investigators. That’s just one example, there will be others in other areas.

If, under the heading:

- **Appropriate administrative structures and resources for the tasks of local authorities (Article 6)**

a genuine, sensible, intelligent re-organisation of Scotland’s local authority structure could be achieved, the Bill would have my most enthusiastic support. The contempt with which politicians treated the 1975 re-organisation (the result of a Royal Commission, no less) was breath-taking. It’s little wonder that so many people now don’t bother to vote.

Perhaps the passage of this Bill will be the start of something better.

Local Government and Communities Committee

29th Meeting, 2020 (Session 5), Wednesday 18th November 2020

Current petitions before the Committee

Note by the Clerk

1. This paper invites the Committee to consider its two current petitions: one ongoing (petition 1743) and one it is considering for the first time (petition 1778).

Petition 1743

Petition summary Calls on the Parliament to urge the Scottish Government to amend the Rent (Scotland) Act 1984 to prevent disproportionate rent increases being set for Scottish Secure Tenants.

Petitioner John Foster (on behalf of Govan Community Council)

Webpage
http://external.parliament.scot/gettinginvolved/petitions/scottishsecuretenants

Prior consideration of petition 1743

2. This petition was lodged on 16 September 2019. On 10 October, the Public Petitions Committee considered the petition for the first time and agreed to write to the Scottish Government, Cosla and the First-tier Tribunal for Scotland, seeking views on issues the petition raised. Responses can be found via this link.[1] On 19 March 2020, it agreed to refer the petition to this Communities Committee, noting that this Committee was at the time considering what impact a new judicial body: the First-tier Housing Tribunal, had had on the consideration of cases involving private landlords and tenants.

3. This Committee took evidence on the Tribunal on 11 March 2020 before the petition was formally referred. Issues relevant to this petition were raised but did not form a significant part of the discussion.[2] The Committee has agreed to revisit issues arising from its scrutiny of the Tribunal at a future work programme discussion.

Issues raised in petition 1743

4. The petitioner belongs to a category of longstanding social housing tenants whose rights under a prior legislative regime on tenancies have been partly retained.[3] As

[1] The request to the Tribunal led to a response from the Judicial Office for Scotland, which sits within the overall Scottish Courts and Tribunal Service
[2] Comments of Pauline McNeill MSP, Official Report, col 27
[3] These are tenants who were secure tenants of a housing association whose tenancy was converted to a Scottish secure tenancy in September 2002. To have been a secure tenant with a housing association the tenancy must have started before 1989.

of November 2019, the Scottish Government stated that there were around 970 such tenancies remaining. Tenants in this category have their rent reviewed by a Rent Officer and may appeal a rent decision, formerly to the Rent Assessment Committee, now the First-tier Housing Tribunal.

5. The petitioner's views are found in his initial submission to the Parliament and in a follow-up submission responding to correspondence solicited by the Public Petitions Committee. He contends that a 2016 rent affecting a number of tenants in this category in the Govan area of Glasgow was unfair. He says it led to large rent increases that caused real hardship to a group of mainly elderly people. The petitioner said that when the Rent Assessment Committee was asked to review the decisions, it used as comparators private rented housing across Glasgow rather than nearby comparable social housing, again leading to rent rises that were higher than they ought to have been.

6. One affected tenant appealed the decision to the Inner House of the Court of Session (the "Wright" case") [4] In August 2017, the court ruled that the methodology used to arrive at the revised rent was "erroneous in law" and "fundamentally flawed" and remitted the case to the Committee. However, the petitioner contends that the Committee then declined to review the other decisions affecting the Govan tenants. The petitioner further states that these decisions are now being used to benchmark fair rents for other tenants in this category, as rents come up for revision, leading to the unfairness of the earlier decisions being amplified.

7. The petitioner's original submission concludes:

> "We believe the legal basis on which the determinations were made is flawed and tenants are being prejudiced as a result. This was rectified for one tenant following the court of session appeal but not for others. The injustice therefore continues.
>
> We propose that the wording in Section 48 subsection (1) [ie of the Rent (Scotland) Act 1984] be amended from "rents of comparable property in the area" to 'rents of comparable social housing in the immediate area'.
>
> We also believe that the small number of tenants whose rents were determined by the method condemned as 'erroneous in law' should be given the right to re-assessment"

Consideration so far of petition 1743 by this Committee

8. This Committee's first formal consideration of the petition was on 21 August 2020. The Committee agreed to write:

   - to the Scottish Government: to seek an update on ongoing work on good practice in rent reviews, and to ask it to clarify its response to the petitioner's view that legislative amendment was needed;
   - to the Scottish Courts and Tribunal Service, seeking relevant statistical information as well as any response it could offer to the petitioner's view that

[4] https://www.scotcourts.gov.uk/search-judgments/judgment?id=65873aa7-8980-69d2-b500-ff0000d74aa7

the decision in the Inner House case had not had the subsequent effect on rent review decisions that it should have;
- to two bodies representing housing associations and a group campaigning for lower rents, for their views on issues raised in the petitions.

9. These Committee's letters can be found on the Committee's webpage for the petition, as can all responses received.[5] In summary:

- The Scottish Government's response indicated that issues raised in the petition had not thus far been identified as a major priority in discussions on good practice in rent reviews with representatives of housing associations but these might be taken up in future discussions. The Scottish Government did not see any need to make any legislative amendment along the lines proposed by the petitioner;
- Data provided by the SCTS indicates (amongst other things) that a majority of cases of "fair rent" cases under section 48 of the 1984 that are determined judicially result in a rent being set that was higher than that determined by the rent officer. Since the Wright case, the proportion of cases decided in this way appears to have decreased, although the numbers are relatively low, with just 9 of these involving a housing association. The SCTS did not consider it appropriate to offer a view on what it perceived as a question about judicial decision-making;
- Living Rent supported the petitioner's viewpoint, saying that loopholes in current legislation made it unfair to tenants;
- The Glasgow and West of Scotland Forum of Housing Associations also expressed sympathy with the petitioner's views on the legislation, describing it as "cumbersome". It agreed that fair rents which are appealed should be compared with rents in the social rented and not private rented sectors.

10. The petitioner wrote to the Committee following receipt of these responses. The response stated:

"a) The body responsible for housing provision for a majority of the tenancies concerned, the Glasgow and West of Scotland Forum of Housing Associations, is in agreement with 'the content of proposed amendment' and that the present situation is 'far from ideal' and that the tenancies concerned 'are likely to continue for many years to come'.

b) The organisation that has been responsible for defending tenants' rights across Scotland in recent years, Living Rent, is strongly supportive of the amendment as remedying a manifest injustice that has caused hardship to a significant number of households.

c) The response from the Scottish Courts and Tribunal Service supplies useful information on the incidence and outcomes of appeals without comment on the proposed amendment itself

d) The letter from the Minister of Local Government Planning does not, in our opinion, show a full appreciation of the problems faced by individual tenants - as

[5] At the time of preparing this paper, no reply has been received from the SFHA.

perceived both by the Housing Associations as landlords and by organisations representing tenants.

We therefore hope that the Committee will support the Petition."

Decision on petition 1743

11. Under Standing Orders, the Committee may take such action as it considers appropriate in relation to any petition. This may include—

(a) referring the petition to the Scottish Ministers, any other committee of the Parliament or any other person or body for them to take such action as they consider appropriate;

(b) reporting to the Parliamentary Bureau or to the Parliament;

(c) taking any other action which the Committee considers appropriate; or

(d) closing the petition. If a petition is closed, the petitioner must be notified of the reasons for this. It is good practice for the Committee to agree in its public discussion of any petition it intends to close, the reason(s) why it is being closed.

12. **The Committee is invited to consider its next steps in relation to the petition in the light of the correspondence received.**

Petition 1778

Petition summary: Calls on the Scottish Parliament to urge the Scottish Government to review the effectiveness of the Scottish Landlords Register scheme.

Petitioner: David Findleton

Webpage: http://external.parliament.scot/gettinginvolved/petitions/PE01778

Prior consideration of petition 1778

13. The petition was lodged on 12 December 2019. On 20 February 2020, the Public Petitions Committee considered it for the first time and agreed to write to the Scottish Government, the Scottish Association of Landlords and COSLA. The Scottish Government's response summarised the petition as raising three main areas of concern:

- *Lack of scrutiny and investigation of individuals in determining whether they are a 'fit and proper' person to hold landlord registration;* the Scottish Government's response was that this was a matter for each local authority to carry out, but it was of the view that the relevant statutory provisions applied an appropriate test and gave local authorities the powers they needed;
- *No checks are carried out by any relevant authority in relation to a landlord's compliance with their legal responsibilities and obligations;* the Scottish

Government said checks are carried out and that the requirements imposed on landlords have recently been strengthened;

- *The emphasis of Scottish Government guidance for local authorities on a 'light touch' approach to implementing landlord registration*: the Scottish Government suggested that this view was outdated and that Scottish Government guidance to local authorities on applying the test now provided a "robust steer".

14. Overall, the Scottish Government did not agree with the petitioner that there was any need for a review of the policy.

15. Cosla and the Scottish Landlords Association did not reply.

16. In his response to these comments sent to the Public Petitions Committee, the petitioner indicated that he found them very disappointing as they did not, in his experience, conform to reality. He said it was his only personal experience that his own council barely policed the "fit and proper person" test and that they had effectively acknowledged this in correspondence with him.

17. On 8 October 2020, the Public Petitions Committee agreed to refer the petition to this Committee. It was suggested that this Committee may wish to examine concerns that there was a "confidence issue" that the register was not being enforced, and that the rules were being effectively applied to meet local needs.

Decision on petition 1778

18. Under Standing Orders, the Committee may take such action as it considers appropriate in relation to any petition. This may include—

    (a) referring the petition to the Scottish Ministers, any other committee of the Parliament or any other person or body for them to take such action as they consider appropriate;

    (b) reporting to the Parliamentary Bureau or to the Parliament;

    (c) taking any other action which the Committee considers appropriate; or

    (d) closing the petition. If a petition is closed, the petitioner must be notified of the reasons for this. It is good practice for the Committee to agree in its public discussion of any petition it intends to close, the reason(s) why it is being closed.

19. A SPICe briefing on the relevant law and policy on landlord registration is set out in the annexe to this paper.

20. The effectiveness of landlord registration was discussed briefly at the Committee's 11 March 2020 evidence session on the First-tier Tribunal, mentioned earlier. The Shelter representative told the Committee

    "The whole system [of landlord registration], when it was envisaged, was grounded in a great deal of good will and an understanding that there would be positive consequences for people who played by the rules. For a good landlord, there

should be a market benefit for complying with the rules. …. that is just not happening, and for a number of reasons.

One issue is that landlord registration in most local authorities is done by one or two people. In some authorities they sit within the licensing team and in others they sit in the housing department. There is no consistency in how landlord registration is administered or dealt with. Also, it is, largely, just a register—there are no checks, enforcement or active regulation."[6]

21. The Committee may wish to note a recently published UK-wide analysis of *Improving compliance and enforcement in the private rented sector*[7]. The Executive Summary notes views in Scotland that the relevant legislation had been "hastily assembled" and that "National systems of registration or licensing require greater clarity of purpose, both on a national level and in their enforcement by local authorities." The main report states (at page 45) that: "Scottish authorities also reported a lack of clear guidelines to inform enforcement decisions, particularly in relation to the application of the "fit and proper person" test."

22. **The Committee is invited to consider its approach to the petition, bearing in mind the options available to it, as set out in paragraph 18 above.**

[6] Official Report, 11 March 2020, col. 15
[7] UK Collaborative Centre for Housing Evidence

Annexe: SPICe briefing for Public Petitions Committee on amendment 1778

Briefing for the Public Petitions Committee

Petition Number: PE1778

Main Petitioner: David Findleton

Subject: Review the Landlords' Register Scheme

Calls on the Parliament to urge the Scottish Government to review the effectiveness of the Scottish Landlords' Register Scheme.

Background

Since 2006, there has been a requirement for all private sector landlords to be registered. Information about this can be found at Landlord Registration Scotland. Additionally, the Letting Agent Registration (Scotland) Regulations 2016 provide information about criteria needing to be met to be on the letting agent register. Registration is therefore a legal requirement for landlords.

Legislation

Part 8 of the Antisocial Behaviour etc. (Scotland) Act 2004 states that private landlords need to register themselves and their properties with the local authority in which a property is situated. Local authorities must ensure that each landlord is a "fit and proper person" before they are approved.

Local authorities must take account of the information prescribed in section 85 of the 2004 Act when carrying out the fit and proper person test. Shelter Scotland advise that local authorities should look for:

- Information showing that the landlord has committed fraud, or violent or drug related offences. •
- Evidence of discrimination in any business activity. •
- Information showing that they have broken any other laws in relation to housing.
- Information showing that they are a bad landlord, or that they have been a bad landlord in the past.
- Antisocial behaviour problems in any properties the landlord rents out or is responsible for. •
- If the landlord has an agreement with a letting agent (or anyone else who's acting on their behalf in letting the property), that the terms of that agreement are adequate. •
- Anything else which is relevant.

A criminal conviction doesn't necessarily mean that a landlord won't pass the test. The council looks at every case individually. It may consider: • what the conviction was for • how long ago it was • whether or not it will affect the person's ability to be a good landlord • the risk of the same thing happening again and whether that would affect the person's duties as a landlord. Section 85(4) allows local authorities to consider material other than

a conviction or tribunal decision to assess whether or not an applicant is fit and proper to be approved for registration A landlord can be de-registered if they do not meet the fit and proper person test. Local authorities consider whether a landlord is ignorant of the legislation or whether they are failing to comply. However, there may be an issue in getting the evidence to prove failure to comply. Existing local authority powers include: • If a local authority becomes aware of poor standards in private letting management they can, and do, draw up Action Plans for private landlords to get properties to reach the required standard. • Rent Penalty Notices (RPNs). Local authorities use these to encourage landlords to make improvements while applying a firm penalty to cases where improvements or actions were not made within an acceptable time-frame.

There may be variable practice amongst local authorities about how they deal with landlord registration applications, and once an applicant is registered, how they evidence landlords' poor practice. Some may have a more "light touch" approach than others. Consequently, Landlord Registration is sometimes criticised as being ineffective. However, the principal aim is to improve standards within the Private Rented Sector rather than punishing poorly performing landlords.

Part 1 of The Private Rented Housing (Scotland) 2011 Act (2011 Act) made several amendments to these provisions with the intention of improving the operation of the scheme. The following summarises the main aspects of the scheme.

• A strengthened 'fit and proper person' test

• The requirement for 'property to let' adverts to include the landlord's registration number

• Powers for local authorities to obtain information about private landlords

• An increase in the maximum fine for landlord registration offences from £5,000 to £50,000

The 2011 Act also gave local authorities new powers to obtain information for the purposes of registration activity and to help identify unregistered landlords.

A local authority can serve a notice on specified persons requiring them to provide: • information on the nature of their interest in the house; • specified information about other people with an interest in the house or who act in relation to a lease or occupancy arrangement; and • such other information about the house or such a person as can be reasonably requested. The Housing (Scotland) Act 2006 identified the Repairing Standard, which governs the condition of properties. Part 3 of the Housing (Scotland) Act 2014 increases the things landlords have to do, including ensuring properties have carbon monoxide detectors and carry out regular electrical safety inspections. The Scottish Government, in 2017, published guidance which requires local authorities to enforce landlord registration criteria. Any failure to comply with the repairing standard should result in action being taken by the local authority under the Environmental Protection Act 1990. Local authorities have enforcement notices that they can service on substandard properties to ensure landlords bring them up to standard. Statutory notices can also be issued under the Building (Scotland) Act 2003.

Scottish Government Action

The Scottish Government published an evaluation of the Landlord Registration Scheme in 2011. The evaluation consisted of: an analysis of the financial and administrative information provided by the Scottish Government by local authorities; an online survey of local authorities and case study analyses. The results suggested that there were more than 175,000 landlords registered, though the report indicated that it was not possible to get an accurate picture of how many landlords had not registered.

The research indicated that the Scheme had gone some way to achieving its goal of raising standards, stating that, "there is evidence that the sector is more aware of its obligations… and there have been some improvements in landlord behaviour."

Deciding on the effectiveness of the legislation to ensure that only "fit and proper" persons become registered landlords is more difficult. The number of landlords that are refused entry to the register and the reasons they failed to meet the criteria for registration could be useful (if the data were made available). However, this does not identify if people are passed as wrongly identified as "fit and proper". The level of the scrutiny and the numbers needed to be processed may mean that some landlords are registered when they perhaps should not be. How robust the process for assessing fit and proper person status is, is unclear.

Consultation with different landlords and landlord groups suggest that landlords support the idea of registration but feel little is done to identify those that operate outside the register or who are registered but should no longer be. The view being that those are the rogue landlords and that they should be prevented from operating outside the legal system.

The Private Landlord Registration (Information) (Scotland) Regulations 2019 amended the regulations from 16 September 2019. This amends the information that needs to be provided by the landlord when they are applying for registration.

Scottish Parliamentary Action

The most recent parliamentary discussion regarding landlord registration was in 2015.

> Question S4W-27427: Alex Johnstone, North East Scotland, Scottish Conservative and Unionist Party, Date Lodged: 10/09/2015
>
> To ask the Scottish Government how many landlords have been (a) convicted and (b) sanctioned under the Landlord Registration Scheme.

Answered by Margaret Burgess (18/09/2015):

Responsibility for administration of the Landlord Registration Scheme rests with local authorities and Information on the number of prosecutions is not held by the Scottish Government. The Scottish Government does monitor local authority Landlord registration enforcement activity. Since January 2011, 25 cases have been reported to the procurator fiscal, prior to this time this figure was not collated centrally.

With reference to other sanctions under Landlord registration legislation, local authorities undertake a range of work to pro-actively enforce Landlord registration and improve standards. For example, since April 2008, there have been 36,637 late application fees applied, and 8,590 rent penalty notices served, 321 action or improvement plans were

instigated, 86 landlords have been deemed to be not “fit and proper” and 139 landlords have been refused registration or had their registration revoked.

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17 December 2019