

Barclay Implementation – A consultation on non-domestic rates reform

Scottish Land & Estates (SLE) is a membership organisation representing landowners, land managers and rural businesses across Scotland. The majority of these are small to medium sized family businesses. We welcome the opportunity to respond to the Barclay Implementation consultation.

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

SLE welcomes the incorporation of this relief in legislation, which will ensure consistency across local authorities and removes the need for ratepayers to apply annually.

2. Do you have any comments on three yearly valuations?

We had initially supported five yearly valuations but are amenable to three yearly valuations on the basis that the focus requires to be on ensuring business rates are transparent, equitable and predictable as businesses require to know the probable impact of their investment decisions. Enshrining the three-yearly period in legislation is welcome and ideally means that a more equitable share is comparatively paid to other properties and is more accurate. However, the shortened time period will possibly have a knock-on effect on appeals and be more resource intensive, depending upon how the reform of the appeals system works.

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

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

SLE is concerned about this proposed new power and believes that there is a definite need for safeguards. This proposed power will create an element of unpredictability and potentially add further complexity to the rating system, when the overall the opposite is intended. We would be concerned about any adverse consequences and the impact on for instance farm shops. It could also put Scotland at a disadvantage to the rest of the UK, making it more expensive to operate in Scotland.

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

There needs to be absolute clarity as to the types of business which would be liable for this new levy. The definitions of “predominantly online” and “town” need to be precisely set out, as well as the intended operation in practice. There requires to be a full business impact study as to the anticipated generation of revenue, the resource and administration costs for local authorities and significantly the costs to business. It is vital that we have precision as to the ambit of the levy and how it will be implemented.

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

SLE would favour a formal evaluation of the pilots in order to be clear whether the planned goals and impacts were achieved and to set out what lessons could be learned. The timescale for the pilots should also be considered in relation to the wider ratings system, given that it is anticipated Scotland will have a higher large business rates than England until 2021 and part of the premise of Barclay was to ensure competitiveness. On a public level, there needs to be consideration as to what use will be made of any revenues.

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

SLE welcomes the move from criminal to civil penalties and believes the penalty requires to be reasonable, but at a level which incentivises return of the required information.

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

We would suggest the penalty should be fixed. Most taxation penalties start on a fixed amount and only after a second or later failure become tax geared. This allows simple and low level carelessness to be punished without being unduly harsh.

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

SLE has no particular view on this, provided the appeals process is clear and the administration is efficient.

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

Local authorities and central government and essentially any public sector body/department which holds pertinent information for non-domestic ratings purposes regarding valuation of lands and heritage.

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

SLE believes the penalty requires to be reasonable and at a level which incentivises return of the required information.

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

The penalty ought to be fixed for the reasons set out in question 6.

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

SLE has no view on who should administer civil penalties. However, whoever has responsibility will require to be properly resourced and supported to ensure the administration works.

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

SLE would envisage that local authorities ought to have some discretion as there may well be extenuating circumstances to be applied.

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

SLE believes this should be communicated initially by the Scottish Government. It is important that the message is consistent.

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

SLE agree with local authorities retaining some discretion over debt recovery.

15. How should this change be communicated to ratepayers?

Again, Scottish Government ought to take a lead on communication and there should be a national communications strategy. This could be assisted by supplementary information on Assessors notices and non-domestic rate bills.

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

Taxpayers should always have the ability to challenge their rateable value where they feel justified in doing so and there ought to be full disclosure of the valuation methodology used by the Assessor in the interests of transparency. We also believe that where an appeal is brought without reasonable or probable cause, that a committee should have the power to award expenses and this would hopefully reduce vexatious or unmeritorious cases. As equal cases are lost and won between the ratepayer and the SAA this will also help focus all parties to seek an agreement which has to be welcomed by all involved.

SLE does have concerns about permitting a change to allow valuations appeals to increase rateable value. If this additional power is granted any increase awarded by a LVAC decision should only take effect from the date of the Hearing and not before. Only the LVAC has the power to increase an entry resultant from an appeal and not solely the SAA.

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

SLE believes that transparency and consistency of approach is important and that the anti-avoidance rules should therefore take a similar style to those used in relation to other taxes. It is important that the rules are clear, proportionate

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

This should be the responsibility of Scottish Government to have a clear communications plan and for this to be augmented locally by local authorities. It is vital that awareness is effective and unambiguous.

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

SLE believes it is worth noting that holding surplus or unproductive property is costly and that discount rates for empty property have been significantly reduced in recent years. There is therefore already much incentive to sell properties or to sub-let. We are concerned about any adverse and presumably unintended consequence of this reset period in disincentivising short-term lets of empty property, particularly given that the cumulative occupation needs to be in one year as opposed to across contiguous financial years.

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

SLE believes that there ought to be local discretion in relation to this policy to allow for a degree of flexibility.

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

SLE would consider an example to be where the taxpayer was denied access to a property for a period due to flooding or any other issue beyond their control.

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

SLE has no comment to make.

23. How should active occupation be defined?

There are a number of ways in which “active occupation” could be defined. Accessibility to the premises; the percentage of floor space utilised; and exhibition of accounts for a business in operation at the property would all be relevant.

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

SLE is extremely concerned by the prospect of altering the non-domestic rates system for listed buildings. We believe restricting relief and increasing rates liability would have extremely harmful consequences for important and special buildings across Scotland, and we are not convinced that there is evidence supporting the view that the existing position should be changed or that the change recommended would have positive consequences. It has to be recognised that a greater degree of effort and complexity is involved in bringing empty listed properties back into beneficial use compared to other properties, and it is beneficial for listed buildings to obtain relief as at present. We foresee adverse consequences such as demolition, roof removal and fire-raising being the detrimental practical result.

We therefore agree as a ‘least bad’ option if progressing this recommendation that local authorities should have discretion in respect of application of this measure. Regrettably we anticipate many Councils will seek to utilise this measure due to their own budgetary constraints and even at this stage we would urge Scottish Government to re-visit this measure. Any limit on empty property relief for listed buildings could well have damaging consequences, including discouraging investment in reuse and development, contrary to wider policy objectives.

On a practical level given all that can be involved in bringing listed buildings back into use the two years period is far too short a timescale even if there was merit in principle and local authorities should certainly use any discretion to at the very least delay application of this measure well beyond this 2-years period.

It must be borne in mind that alongside an increased rates burden there is a need to provide incentives and support to get an empty property back into use. These are often needed for owner to be in a position to rent, sell or use the property and for a new occupier to develop their business.

25. How should affordable/community sports facilities be defined?

SLE has no comment to make.

26. How should commercial activity on parks be defined?

SLE believes that this needs to be defined in the least ambiguous possible way, failing which there is the potential for further appeals with consequent resource implications. By and large

the activity should be something secondary to the park which does not compliment activity within the park.

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September 2018