

Partial Business and Regulatory Impact Assessment

Non-Domestic Rates (Scotland) Bill 2019

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Scottish Government
Riaghaltas na h-Alba
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Purpose and intended effect

- **Background**

The Non-Domestic rates (Scotland) Bill 2019 (henceforth referred to as 'the Bill') is required to meet the Scottish Government's commitments to implement most of the recommendations contained within the Barclay Review of Non Domestic Rates (published in August 2017). The Scottish Government accepted the majority of the 30 recommendations in its response to the review, 14 of which require primary legislation in order to be implemented and 1 of them (recommendation 1) which has been delivered by secondary legislation but could be introduced as primary legislation to simplify and shorten the process.

- **Objective**

Based on the recommendations as set out in the Barclay review, the Bill introduces a number of changes that are designed to improve the administration and increase the fairness of the Non Domestic Rates system, as well as support economic growth more generally.

- **Rationale for Government intervention**

As Scotland's second largest tax power, the Non-domestic rates system has a key role to play in delivering sustainable economic growth through the direct impact on the operating costs of businesses and on the totality of resources available to fund public services.

The Non-Domestic Rates Bill will contribute to the following national outcomes:

- We live in a Scotland that is the most attractive place for doing business in Europe;
- We realise our full economic potential with more and better employment opportunities for our people; and
- Our public services are high quality, continually improving, efficient and responsive to local people's needs.

Consultation

- **Within Government**

The Barclay Review undertook extensive consultation and the Parliament's Local Government and Communities Committee took evidence from the Chair of the review Group, Ken Barclay.

The terms of the consultation have been agreed by Cabinet Secretaries across Scottish Government.

- **Public Consultation**

The formal consultation process will run for 12 weeks from 25 June to 17 September 2018, and will provide an opportunity for business community/civic engagement and participation ahead of the legislative process later this year. This engagement will be critical to support the passage of the legislation.

In addition, the Cabinet Secretary for Finance and the Constitution has committed to undertake a more focussed consultation with key stakeholder groups including, amongst others, independent schools, sports clubs, councils and built heritage bodies.

- **Business**

The consultation has been developed with input and endorsement from the Barclay Review Implementation Advisory Group which includes representatives from key non-domestic rates stakeholder groups including COSLA, the Scottish Assessors Association, the Federation of Small Businesses, Confederation of British Industry, Scottish Property Federation, RICS, rating Surveyors Association, IRRV, Scottish Chambers and Scottish Retail Consortium. Following the consultation period all responses will be published where consent has been given shortly thereafter. All response will be considered fully and following analysis the Scottish Government will introduce the primary legislation.

Policy Options

This section of the partial BRIA contains an assessment of the costs, benefits and risks of implementing the Barclay recommendations in accordance with the methodological approach as set out in Scottish Government guidance. In line with this approach, an understanding of the 'business as usual', or status quo, provides a basis for evaluating the impact of an intervention (Option 1). It is prudent to assess what the consequences of inaction would be (even if unlikely to be acceptable), as it provides the relevant counterfactual to compare alternative options (Option 2) for delivering the recommendations of the Barclay Review.

Proposals have been numbered according to the numbering order in the Barclay Review.

- **Proposals**

1. A Business Growth Accelerator – to boost business growth, a 12 month delay should be introduced before rates are increased when an existing property is expanded or improved and also before rates apply to a new build property.

Options

Option 1 – Do nothing option – continue to deliver the Business Growth Accelerator and New Unoccupied Build Relief through secondary legislation

Option 2 – A new power is created in primary legislation to deliver the Business Growth Accelerator. New Unoccupied Build Relief is delivered by clarifying the current power of Assessors to enter property on the roll.

Sectors and Groups Affected

- Non-domestic owners and occupiers in Scotland. The occupier of a non-domestic property typically is liable for rates. Where there is no occupier to pay rates, liability for the rates bill would normally fall to the owner of the property.
- Councils - each of the 32 Councils within Scotland is a valuation authority and responsible for appointing an Assessor who must in turn compile and maintain a Valuation Roll.
- Scottish Assessors who are responsible for the valuation of all properties for local taxation purposes within their respective valuation areas. Councils - Each of the 32 local Councils within Scotland is a valuation authority and councils are responsible for appointing and funding Assessors.
- Scottish Government

Context

From the 1st of April 2018 the Business Growth Accelerator (BGA) and New Unoccupied Build Relief were introduced through secondary legislation. The BGA fully meets the Barclay recommendation, whilst the New Unoccupied Build Relief goes further than the original recommendation. Both policies mean that a new build property will not become liable for rates for the first 12 months, regardless of whether a tenant is found.

In the case of a speculative build, this policy will mean the owner would qualify for 100% Unoccupied New Build relief for an indefinite period until an occupier/tenant is found. Once occupied, the Business Growth Accelerator entitles the new ratepayer to a further 12 months of 100% rates relief. The Business Growth Accelerator also applies to certain property improvements which increase rateable value. In these cases, 100% rates relief is applied to any increase in RV following an improvement to a property for a period of 12 months.

The policy intent of the Business Growth Accelerator and New Unoccupied Build Relief is not changing, however, the consultation is seeking views on the best way to implement these policies in future. Currently, secondary legislation has delivered these policies with effect from 1 April 2018 and similar secondary legislation will be laid in all future years to which these policies apply. However both policies could be delivered through changing primary legislation.

Option 2 would mean that the BGA and Unoccupied New Build would be delivered by through changes to primary legislation which in effect would mean the same benefits could be delivered without the need for two separate application based reliefs.

Currently Assessors must enter a property on the valuation roll upon existence or occupation, this means a specific relief has to exist for new unoccupied properties to remove rates liability. However under option 2, Assessors would only be able to enter new property onto the valuation roll once the property both existed and was occupied. Assessors could also delay entry onto the roll for a further 12 months, effectively replicating how BGA operates currently. This would eliminate the need for a specific rates relief to exist via Regulations for the period before property was occupied and the 12 months after the property was occupied. It would also mean ratepayers will not need to apply for relief because their property would not be entered on to the roll until it was occupied. This would also ensure consistency in the approach to unoccupied new build properties.

Option 2 would also mean new regulations would not need to be made each year to renew the relief in future years. It also allows, for example, Ministers to vary the time delay by regulations. This would allow Ministers to either increase or decrease the current 12 months delay period depending on prevailing circumstances and affordability.

Option 1 – Do Nothing (Status Quo) – Benefits

Ratepayers that qualify for the BGA under Option 1 may benefit from increased certainty that the period of relief will be 12 months and the level of relief will be 100%.

Option 1 – Do Nothing (Status Quo) – Costs

Ratepayers will continue to rely on Scottish Government deciding to update regulations each year as the relief will not have a more permanent basis in primary legislation.

Continuing with the status quo will continue to impose an administrative cost on Scottish Government in having to lay regulations each year to implement the BGA and Unoccupied New Build Relief, especially in cases where there are interactions with existing reliefs. Local Authorities will also continue to bear the cost of administering applications for Unoccupied New Build Relief.

Option 2 – Benefits

The Scottish Government and Councils may benefit from option 2 in the sense that it will provide Scottish Ministers with flexibility to review and alter the level of support provided through the BGA should the policy reduce NDR income by more than the current forecasted amount (up to £50 million per year)¹. This could help the Scottish Government aim of achieving a balanced NDR pool position by the end of 2018-19, by mitigating against a downside risk to future NDR income and thus protecting NDR income and the overall impact on the budget.

Councils and ratepayers will also benefit from removing Unoccupied Build New Relief as there will be no requirement for ratepayers to apply for relief and no requirement for Councils to process applications. All ratepayers with new buildings will benefit from 100% rates relief when unoccupied regardless of whether they were aware or not of the existence of Unoccupied New Build Relief, thus addressing the issue of take-up of the new relief.

Scottish Government will also benefit from saving the administrative cost of laying new regulations each year.

Option 2 – Costs

Under option 2, regulations could be introduced by Scottish Ministers to extend or reduce the current 12 month period where 100% relief is applied under the BGA. This could increase uncertainty amongst some ratepayers, particularly those considering property improvements because the period of rate relief may be changed by regulation during the construction of an improvement.

Scottish Assessors may incur increased administrative costs, as they will have to monitor when new properties are built and when new properties are occupied before entering these properties are added on the valuation roll.

There will be a cost to the Scottish Government in communicating the proposed changes in legislation to stakeholders affected. The cost of this information campaign will be determined in due course as part of a wider communication exercise.

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

Options

Option 1 – Do nothing option - Maintain the 5 yearly revaluation cycle with two years between Tone date and revaluation date.

Option 2 - Reduce to a 3 yearly revaluation cycle from 2022 with 1 year between Tone date and revaluation date.

¹ [Scottish Fiscal Commission \(May 2018\)](#)

Sectors and Groups Affected

All of the options have impact for the following sectors and groups:

- Non – domestic (business) ratepayers in Scotland.
- Scottish Assessors
- Scottish Government.

Context

Non-domestic rates are a tax on owners or occupiers of business (non-domestic) property. Currently there are over 252,000 individual premises liable for non-domestic rates in Scotland raising around £2.8 bn a year in NDR income. Unless the property is exempt, the occupier of a non-domestic property is liable for rates. Where there is no occupier to pay rates, liability for the rates bill would normally fall to the owner of the property.

In order to ensure that the distribution of rate bills reflects changing property rental values over time the tax base is revalued periodically. Revaluations are intended to redistribute the tax base to reflect shifts in market values since last revaluation and, in isolation, are not designed to increase or decrease the overall tax burden.

Between revaluations, valuations of properties remain fixed (unless the property physically alters), meaning that the only factors driving an increase in bills in a particular property are the change in the tax rate and the provision of reliefs. While rateable value and therefore bills can increase or decrease for individual properties following a revaluation, the overall effect of revaluation is typically designed to be revenue neutral - over the course of the revaluation cycle any increases in rates bills for some ratepayers should be balanced by reductions in rate bills for others.

Currently non-domestic property revaluation takes place every five years although the most recent revaluation period was seven years. Revaluations come into force on the revaluation date, which is the 1st April of the revaluation year. At each revaluation the Assessor will seek new evidence on annual rents from non-domestic properties and use this to inform valuations. It is important for fairness that all evidence is taken from the same point in time so a fixed date known as the Tone Date is used. At present the Tone date is 2 years prior to the revaluation date.

Scottish Assessors provide individual valuations for around 252,000 non-domestic properties in Scotland. This requires the Scottish Assessors to collect a significant amount of information relating to properties, rents and occupation. Scottish Assessors legal duties also include dealing with appeals throughout the cycle, carrying out assessments when a new building is added to the roll or existing premises are improved and gathering evidence for the next revaluation.

The proposals below overlap significantly with other Barclay Review recommendations intended to reduce the volume of valuation appeals and speed up the appeals process. The costs and benefits below are to some extent contingent on the success of those

other proposals.

Option 1 – Do nothing option (Status Quo) – Benefits

Option 1 proposes to make no changes to the current five year revaluation and two year Tone date periods. The benefits result from the absence of extra burden on the administration side of revaluations by not imposing extra administrative work when providing and gathering information besides that already in place.

Option 1 – Do nothing option (Status Quo) – Costs

The cyclical nature of the rental market and length of the revaluation cycle and lag period between Tone date and Revaluation date can lead to significant changes to rateable values at a revaluation. This creates uncertainty for ratepayers and can also mean that the bills which businesses pay may not necessarily reflect current economic conditions and can create unfairness in the system where it creates 'winners' and 'losers'.

At a revaluation, rateable values are shifted in line with relative movements in property values since the previous revaluation. For those ratepayers whose property rental values have performed relatively better since the previous revaluation - maybe because of their location or business sector is more in demand - will typically get a higher rateable value while those ratepayers whose property has underperformed in the property rental market will generally see a lower rateable value.

The Barclay Review recommended reforms to the appeals system to reduce the volume of appeals and speed up the process. This option could have a spillover effect as it creates an incentive for ratepayers to appeal their rateable value as less frequent revaluations mean that the savings from any successful appeals last for a longer period of time potentially making the appeals process a financially attractive option. This has a negative impact on Assessors workload and Councils ability to plan their finances

There is also a risk to the Scottish Government as the long period of uncertainty over the resolution of appeals and could negatively affect the delivery of fiscal neutral revaluations.

Option 2 – Benefits

Revaluations are designed to maintain fairness in the system by redistributing the total amount payable in business rates to reflect changes in the property rental market. Business rate bills are calculated using specific valuations based on evidence gathered by the Assessors. This means it is important for rateable values to be regularly updated through revaluations to ensure bills stay accurate and fair.

The Barclay Review proposed to introduce three yearly revaluations from 2022 with valuations based on market conditions on a date one year prior. Adopting this option would be expected to improve the fairness of the business rates system by producing rates liabilities that more accurately reflect current rental values and relative changes in rents. It might also reduce volatility and the risk of shocks for ratepayers.

Additionally more frequent revaluations will lead to greater economic efficiency - by

keeping bills in tune with local economic performance thereby aiding business survival and encouraging investment.

An indirect benefit could be accrued by the wider society and government as having a revaluation cycle that is responsive to local rental market conditions could lead to the attraction of investment to underperforming towns and cities aiding the Government's ambition of inclusive economic growth.

This option could also benefit the Assessors as it might reduce the number of appeals logged since the rate bills will reflect market value more accurately for ratepayers.

The introduction of the three yearly revaluation cycle will be accompanied by reforms to the appeals system designed to reduce the volume of appeals and speed up the process.

Option 2 – Costs

Reducing the revaluation period from five years to three years would reduce the total time available for Assessors to collect the relevant information from ratepayers. Reducing the lag period between the Tone date and revaluation date will also compress the time available to gather that information. It might therefore be expected that the valuation process becomes a more continuous process and may lead to increased costs to operate the system.

There could be additional impacts to the Scottish Assessors as more frequent revaluations could significantly increase the workload for Assessors. This in turn could lead to the requirement to recruit skilled Assessors to absorb the additional numbers of inspections, analysis and production of valuations undertaken. The number of skilled staff available for recruitment could present an increased cost and risk for the Scottish Assessors.

The Assessors collect evidence from ratepayers, so an increase in the frequency of revaluations will also have an impact on ratepayers who would need to provide information to the Assessors more frequently.

The Barclay Review recommended reforms to the appeals system designed to reduce the volume of appeals and speed up the process but each revaluation leads to a new right to appeal for ratepayers. Therefore, increasing the frequency of revaluations provides more scope for more frequent rights to appeal. This could create uncertainty and risk for Councils and potentially a rise in the cost of administering non-domestic rates. There might also be an increase in tribunal and court costs if there is an increase in the number of appeals.

There will be a cost to the Scottish Government in communicating the proposed changes in legislation to stakeholders affected. The cost of this information campaign will be determined in due course as part of a wider communication exercise.

5b. New power for Councils to pilot rate supplements on out of town ratepayers.

Options

Option 1 – Do Nothing – Do not introduce pilot schemes.

Option 2 – Introduce a new power so that Councils can apply a rates supplement for out-of-town or predominantly online ratepayers

Groups and Sectors Affected

- Ratepayers who occupy out-of-town properties or predominantly online businesses that pay an additional supplement in pilot scheme areas.
- Ratepayers who occupy property in town centres who are assisted through funding raised by pilot schemes.
- Councils
- Scottish Government

Context

In light of increasing pressure on town centres, the Barclay Review suggested a new discretionary power should be created so that Local Authorities could apply a rates supplement in certain circumstances from 2020 for out-of-town retailers or predominantly online businesses. The proceeds from this supplement would be used to support businesses in town centres.

Councils currently have wide ranging powers to reduce or remove rates from properties within their area under the Community Empowerment (Scotland) Act 2014. However, they do not have the power to increase rates on properties within their area.

The Barclay review recommended that this new power should be tested and evaluated in the context of up to 3 pilot schemes. Each pilot scheme must be subject to a formal assessment to determine whether those pilots were successful prior to any wider rollout.

The Barclay Implementation Group has suggested a number of safeguards that should be met by each pilot project before being implemented. These could include:

1. A cap on the level of supplement set in legislation determined by Scottish Ministers. As an example this could be linked to the prevailing poundage rate (e.g. no more than a set percentage of the annual poundage rate).
2. A requirement for Ministerial and/ or Parliamentary approval for each scheme. If Parliamentary scrutiny is considered appropriate this could be achieved by laying of Regulations for each pilot scheme.
3. A requirement for the Council to consult on the scheme, including with local ratepayers and to publish analysis of this consultation prior to any approach being made to The Scottish Government.

4. A requirement for local businesses to have a say on how proceeds from the supplement are spent.

It should be noted that the primary legislation will create an enabling power so that Ministers could introduce a pilot scheme in future, but does not commit them to do so to any particular timescale. The Barclay Review suggested that a decision would not be made until the expanded Fresh Start relief (recommendation 5a) was in place for a period of at least 2 years.

Option 1 – Do Nothing (Status Quo) – Benefits

If the status quo is maintained, then the possibility that non domestic rates supplements will be applied to some out-of-town retailers across Scotland will be removed in the short term, although a future Government could implement a similar policy. This could have a positive impact on future investment decisions by out of town retailers. However, it is unlikely that the threat of supplements has had a material impact on investment decisions since the Barclay Review.

Option 1 – Do Nothing (Status Quo) – Costs

The continuing decline of town centres vis-à-vis out-of-town retailers is a well-known issue. In this context, the cost of the do nothing option would result in a missed opportunity to test an approach that could have a positive impact on town-centres in Scotland.

Option 2 – Benefits

Any benefits arising under Option 2 will depend on the precise proposal that is put forward by a Council making a bid to become one of the 3 pilot towns. Broadly, ratepayers located in town-centre areas could potentially benefit from support if they are located within a pilot area. The actual financial benefit from this for ratepayers affected will depend on a number of factors that will be specific to each pilot proposal, such as the size of the supplement and the property (or properties) which the supplement is applied to.

The increase in NDR income should have a positive impact on Councils budget. Councils ultimately decide how proceeds from the supplement will be spent. Ratepayers located in town-centre areas may benefit indirectly from spending decisions made by Local Authorities, and this is more likely if safeguard four is adopted.

There could be an indirect benefit resulting from an increase in economic growth in town centres and the spillover social and environmental benefits resulting from a vibrant and attractive experience for residents.

Option 2 – Costs

Option 2 will mean a direct cost to some ratepayers occupying out-of-town properties in pilot areas through the increase in their non-domestic rates bill. The financial impact will of course depend on the precise proposal being put forward by a Council, but will also depend whether or not a cap on the size of the supplement is set in legislation.

Although Councils will benefit from additional revenue, they will incur some administrative costs in developing, implementing, monitoring and enforcing the pilot schemes. There will be costs associated with the running of any consultation with local ratepayers, analysing the

results etc.

Scottish Government will also incur minor administrative costs depending on the amount of scrutiny required for approving each pilot such as consideration of a business case and/or requirements for Regulations to be laid before Parliament.

There will be a cost to the Council in communicating the proposed changes in legislation to stakeholders affected. The cost of this information campaign will be determined in due course as part of a wider communication exercise.

13. The current criminal penalty for non-provision of information to Assessors should become a civil penalty and Assessors should be able to collect information from a wide range of bodies.

Options

Option 1 – Do nothing option - Maintain the current criminal penalty for non-provision of information to Assessors.

Option 2 – To change the current criminal penalty for non-provision of information to Assessors to a civil penalty and give powers to Assessors to be able to collect information from a wide range of bodies.

Sectors and Groups Affected

All of the options have impact for the following sectors and groups:

- Non – domestic (business) ratepayers in Scotland
- Scottish Assessors
- Councils
- Scottish Government and other public sector bodies such as Scottish Court and Tribunal Services.
- Private sector businesses. All for-profit businesses that are not owned or operated by the government.

Context

The Barclay review states that there is evidence to indicate that the provision of information by ratepayers to Assessors to enable them to calculate accurately rateable values was often poor and that this happened for a variety of reasons including lack of awareness.

Currently Assessors only have powers to request information from a limited number of bodies/individuals including the owner and occupier of the property. The Barclay review recommended that in order to facilitate better information provision, the powers of the Assessors should be extended to allow them to request information from a wider range of bodies and individuals to help inform more accurate valuations. This list may include

architects, builders, construction firms etc.

The current penalty for non-provision of information is a criminal penalty. This is very rarely, if ever, utilised. The Barclay review recommended that this penalty should become a civil penalty. It is not the intention that this penalty be used to raise new revenue, but rather that it acts as a deterrent for withholding information.

Costs and Benefits

Option 1 – Do nothing option (Status Quo) – Benefits

The benefits of Status Quo come as a result of not imposing additional costs in terms of either administrative or financial costs to the range of groups affected by this proposal.

Option 1 – Do nothing option (Status Quo) – Costs

The information provided to Assessors under the current system has been identified as inadequate to meet the requirements of the system by Assessors. This limitation results from the information being given on the proprietor, tenant or occupier for the purposes only of valuing the lands and heritages of which that person is the proprietor or tenant or occupier. Moreover, in many cases the necessary information is delayed or simply not provided to the Assessor having a negative impact on the accuracy of the valuation of individual properties, weakening the accuracy and robustness of the taxation system. This also has a knock on effect on the number of appeals recorded and so on Local Authorities and the Scottish Government's ability to plan their finances.

It is a further limitation that existing information provision powers rely on the conviction of a person found guilty of failing to comply with a request for information. As such these provisions provide little deterrent. This acts as an incentive to provide insufficient or incorrect information to Assessors leading to unnecessary additional work for the Assessors and additional appeals being logged with the negative impact mentioned above.

Option 2 – Benefits.

The main benefit of giving Assessors additional powers to access information is that access to appropriate information allows for an accurate assessment of rateable value which, in turn, should lead to less risk of under or over valuation and loss on subsequent appeal.

There will be benefits for Assessors in providing better data to inform an accurate assessment of individual properties' rateable value, thus potentially saving time and resource. Additional saving could come from a reduction in appeals due to the more accurate assessment of rateable value. This should ensure that the appeals system sees a reduction in the number of appeals, and so the appeal system is able to cope with more frequent revaluations.

There will also be benefits for Councils and Scottish Government due to more accurate information regarding tax income and reduced uncertainty from a potential reduction in appeals.

Changing the penalty for non-provision of information to Assessors from a criminal penalty

to a civil penalty should act as a deterrent to withhold information from Assessors and act as an incentive to provide information. Additionally, there might be some financial benefits for Councils resulting from the fines applied to ratepayers who do not comply with the requirement to provide information to Assessors.

Option 2 - Costs

The introduction of additional information gathering powers to Assessor might lead to additional costs in terms of time and resources for Assessors as they expand their network of contacts and information providers.

There could potentially be costs to ratepayers as they will have to provide accurate information in a timely manner, albeit this should be marginal as they should already provide this type of information to Assessors.

There could be costs for some private sector businesses such as architects, builders, etc. if they are approach by Assessors to provide information for the assessment of individual properties' rateable value. This could also apply to public sector bodies.

The move from criminal penalty to civil penalty for failing to provide information to Assessors could lead to additional costs to the responsible collection body as a result of the extra time and resources used in the processing and administration of processing these cases.

The most likely financial costs will be incurred by those ratepayers who have been prosecuted and as a result fined fee - the size of this fee is still to be investigated and agreed. Since this measure is intended to be a deterrent rather than to increase the number of ratepayers being referred to the procurator fiscal, we envisage that the number of ratepayers incurring a cost as a result of this proposal to be small.

There will be a cost to the Council in communicating the proposed changes in legislation to stakeholders affected. The cost of this information campaign will be determined in due course as part of a wider communication exercise.

16. Penalty for non-provision of information to Councils

Option 1 – Do nothing – Councils will continue to not have the power to apply penalties for non-provision of information

Option 2 – A new civil penalty will be introduced against ratepayers who fail to provide information in some circumstances.

Sectors and Groups Affected

- Non – domestic (business) ratepayers in Scotland
- Councils
- Scottish Government

Context

The Barclay Review noted that it is important that Councils have up to date information on occupiers of non-domestic property to ensure bills are accurate and relief is correctly applied. In a small number of cases, ratepayers may fail to inform a Council about a change of circumstances (such as a change in the occupier of a property) or may fail to provide any additional information on request. In these cases, Councils currently have few powers to encourage compliance from ratepayers.

Option 2 would introduce a new civil penalty which Councils can apply to ratepayers in two circumstances. Firstly, when ratepayers fail to inform the local council within 28 days of when they move in and move out of a non-domestic property. And secondly, when ratepayers fail to provide any information on request by the Council within the same timeframe (28 days). This additional information could include, but is not limited to, information on relief entitlement.

The penalty will either be mandatory or one which the Council has some discretion over- for example they may choose not to apply if there is extenuating circumstances. Responses to the consultation will be taken into consideration before a final decision is made. The financial level of penalties is also subject to consultation, for example whether penalties will be a fixed fee or a fee proportionate to rateable value (which could be banded).

It would not be the intention that civil penalties would be revenue raising, but rather an incentive to ensure better information from the outset and remove the need to rely on the appeal system to set valuations at the correct level.

This proposal runs in tandem with separate recommendations being implemented through administrative changes (not part of the NDR Bill) to ensure that Councils improve their services to ratepayers through faster repayment of any overpayments and better provision of information.

Option 1 – Do Nothing (Status Quo) – Benefits

Under the status quo, a minority of ratepayers will benefit as they will have no duty to comply with information requests from Councils in relation to rates.

Option 1 – Do Nothing (Status Quo) – Costs

Under the status quo, some ratepayers may fail to inform the Council about a change of circumstances or may provide false information when applying for relief. This will lead to a cost for the Scottish Government in terms of loss of non-domestic rate income and the overall resources available through the Budget.

Option 2 – Benefits

Under option 2 it is expected that the operation of the rates system will improve, with more accurate billing and more accurate application of reliefs.

Currently, reliefs may be inaccurately applied to non-domestic properties due to inaccurate and/or out-of-date information being held by a Councils.

This could also have a knock-on effect on non-domestic rates income although the impact

of this is expected to be small. The intention of this policy is to act as a deterrent to withholding information rather than as a revenue raising exercise.

There could be benefits for some ratepayers if they become eligible for some type of relief once they have provided the Council with up to date information on occupation.

Option 2 – Costs

The main costs of this will fall on some ratepayers who fail to inform the Council about a change of circumstances or provide false information when applying for relief. This could lead to them losing a relief and/or paying the penalty imposed as a result of this legislation. We expect the number of ratepayers affected by this legislation to be small.

There will also be costs for Councils as a result of the implementation of this legislation. Some of these costs could include the communication of the new legislation to ratepayers, the arrangements for monitoring and enforcement of this legislation, the collection of information, etc. depending on how this legislation is implemented.

There could be a cost to the Tribunal and Courts services as a result of a possible increase in the number of ratepayers taken to court.

There will be a cost to the Scottish Government in communicating the proposed changes in legislation to stakeholders affected. The cost of this information campaign will be determined by the Scottish Government in due course as part of a wider communication exercise.

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

Options

Option 1 – Do nothing – Councils cannot pursue enforcement action for non-payment of rates until 6 months have elapsed since the 1st April each year

Option 2 – Councils can pursue enforcement action for non-payment of rates from the first missed instalment

Sectors and Groups Affected

- Non – domestic (business) ratepayers in Scotland
- Councils

Context

Annual billing for non-domestic rates is carried out by Councils around the 1st of April each year. Ratepayers can negotiate any payment plan, subject to an agreement with the Council. Regardless of the precise arrangements in place, recovery and enforcement action can currently only commence after 30 September against those ratepayers that have failed

to pay sufficient instalments based on their agreement payment plan.

Current legislation prevents councils from taking enforcement action for non-payment of non-domestic rates until after 30 September in any year. Some ratepayers may deliberately delay withhold payment until that point. It is understood that some ratepayers may withhold payment because they are awaiting the outcome of an appeal or a relief award decision by a Council, however this does not constitute sufficient grounds to withhold payment of a rates bill.

The Barclay Review highlighted that for the legislation for debt recovery for Council Tax payers is different. Under Council Tax, enforcement action generally commences after the first planned instalment is missed. The Barclay Review recommended that the arrangements under both taxes should be brought in line. The Scottish Government accepted this.

This proposal runs in tandem with the recommendation to ensure Councils improve their services to ratepayers, for example through faster repayments of any overpayments and better provision of information.

Option 1 – Do nothing option (Status Quo) – Benefits

Option 1 means continuing with the status quo such that Councils will be unable to begin recovery and enforcement actions against ratepayers when they miss an instalment until the 30th of September each year.

This may benefit a small number of ratepayers who either intentionally delay payments as part of an avoidance scheme or in order to use earmarked funds for other purposes or unintentionally delay payments due to unforeseen circumstances which has affected their ability to pay the instalments due.

It is unlikely that any other group or sector will benefit from maintaining the status quo.

Option 1 – Do nothing option (Status Quo) – Costs

Continuing with the status quo may negatively impact Councils. This is because the time period in which Councils are able to enforce collection of rates will continue to be the last 6 months of a financial year. This means Councils only have 6 months to pursue unpaid rates before the beginning of the next financial year. This may put unnecessary administrative pressure on Councils to collect unpaid rates, which could be pursued over a longer time period.

Option 2 – Benefits

Councils are likely to benefit from Option 2. The time period in which they will be able to enforce collection of rates will be extended by up to 6 months. This could allow Councils to better manage resources, potentially reducing costs of non-domestic rates recovery and enforcement.

There will be some indirect benefits resulting from the increased fairness and guarantee of a level playing field amongst ratepayers.

Option 2 – Costs

It is estimated that this proposal will have a relatively small impact on ratepayers. Ratepayers will still have the right to negotiate an appropriate payment plan with their Council.

Dependent on the extent to which Councils will have discretion over enforcement and collection, it may be that Councils will have to put in place new processes to deal with the enforcement of this proposal leading to administrative costs for Council.

This change will need to be communicated to ratepayers, potentially imposing some minor additional administrative costs on Councils.

19. Reform of the appeals system is needed to modernise the approach, reduce appeal volume and ensure greater transparency and fairness – Appeals can lead to an increase in rateable value as well as a decrease.

Options

Option 1 – Do nothing – Ratepayers who submit an appeal will either see their rateable value (RV) remain the same or decrease.

Option 2 – Ratepayers who submit an appeal will either see their RV remain the same, decrease or increase.

Sectors and Groups Affected

- Non-domestic (business) property owners and occupiers in Scotland
- Scottish Assessors
- Scottish Government

Context

In the longer term, valuation appeal panels are planned to transfer into the Tribunals Scotland structure at the next planned revaluation in 2022. Those reforms will be made under separate legislation. However, as part of the consultation, the Scottish Government is seeking specific views on changing one aspect of the revaluation appeals system, which was suggested in recommendation 19 of the Barclay Review.

Currently the appeals system is risk free for ratepayers in that the valuation made on the Tone date can generally only decrease or remain the same after an appeal is submitted. Under Option 2, provision would be made to allow rateable values to increase after an appeal is submitted, if evidence supports this.

Evidence gathered in the Barclay Review, indicates that many ratepayers, tend to log appeals as a matter of course - in the 2010 and 2017 revaluation cycles, over 30% of ratepayers submitted an appeal to Scottish Assessors within 6 months following the revaluation date (1 April).

Whilst everyone should have the right of appeal, the resulting volume of speculative appeals creates delays in the system and the Scottish Government agrees with the recommendation in the Barclay review that measures should be taken to reduce the number of appeals.

The move to more frequent revaluations (Recommendation 3 in the Barclay Review) where valuations more closely reflect current market values is one of a number of measures the Scottish Government is implementing aimed at reducing the number of speculative appeals and speeding up the process.

Option 1 – Do nothing option (Status Quo) – Benefits

Under Option 1, all ratepayers (private and public sector) will continue to benefit from risk free appeals. This clearly benefits those ratepayers appealing their rateable value as they do not need to have good grounds before submitting an appeal.

Option 1 – Do nothing option (Status Quo) – Costs

The fact that ratepayers can submit an appeal at no cost in the status quo adds significantly to the administrative costs of Scottish Assessors who have to process tens of thousands of appeals each year.

It is difficult to quantify the cost of speculative appeals at this stage. However, the opportunity cost of the time and resources dedicated to speculative appeals is that these resources could be better applied to add more value in another area of work carried out by the Scottish Assessors. Getting accurate information into the system at the time of revaluation also frees up time for ratepayers who will have an accurate valuation from the onset and do not need to spend time navigating the appeals system.

Option 2 - Benefits

This proposal is aimed at decreasing the number of speculative appeals. Scottish Assessors could benefit if the number of appeals decreases as a result of this proposal as it will reduce the time and resources engaged in the appeals process. Ratepayers who may make speculative appeals under the current system or who are particularly risk-averse, might decide not to appeal if faced with the possibility of increased bills as the outcome of their appeal. It is not possible to quantify the magnitude of any reduction in appeals at this stage and any estimate would have to consider interactions between this and other proposal within this Bill and other administrative changes to the rates system. Further engagement with stakeholders will try to quantify this impact.

Ratepayers who are not submitting speculative appeals but lodge appeals based on sound evidence might benefit as a result of appeals being resolved quicker than they are currently.

It is not anticipated that this measure will impact on significant numbers of ratepayers, nor that it will lead to a significant rise in revenue. However, this legislation might lead to a small increase in non-domestic rates income if there are a small number of appeals resulting in an increase in rateable value This could have a positive impact on the overall resources to

fund public services available through the Budget.

There could be some savings accrued to the Tribunal system if there is a decrease in the number of appeals going to Tribunal.

Option 2 – Costs

Under Option 2, ratepayers (private and public sector) will lose the ability to submit risk-free appeals, therefore creating the possibility of a negative financial return for ratepayers in some cases. Ratepayers who currently submit speculative appeals knowing that it is unlikely their rateable value (RV) will be reduced may choose not to do so if there is a possibility that their property RV will be increased so the impact on this group is negligible. However, ratepayers who are more risk-averse may be dissuaded from submitting an appeal; even if they feel they have genuine good grounds to do so. This may have a negative impact on their business as they would receive higher non-domestic rate bills than relative to the status quo.

There will be a cost to the Scottish Government in communicating the proposed changes in legislation to stakeholders affected. The cost of this information campaign will be determined in due course as part of a wider communication exercise.

20. A General-Anti-Avoidance Rule should be created to reduce avoidance and make it harder for loopholes to be exploited.

Options

Option 1 – Do nothing

Option 2 – A General-Anti-Avoidance Rule should be created to reduce avoidance and make it harder for loopholes to be exploited.

Sectors and Groups Affected

- Non-domestic owners and occupiers in Scotland. The occupier of a non-domestic property typically appears on the valuation roll and the property.
- Councils
- Scottish Government

Context

The Barclay review recommended the establishment of a General Anti Avoidance Rule (GAAR) to be put in place to deal with those ratepayers who seek to avoid tax and they do so to the detriment of the majority of ratepayers who abide by the rules.

Barclay reflects on the example of other tax legislation which includes a general anti-avoidance rule (GAAR) which gives greater power to billing and collection authorities (which for rates are councils).

Barclay recommends that the power be applied to both those who actively avoid and those

who promote avoidance schemes.

The power should also allow for additional individual measures to be introduced quickly to remove any new avoidance schemes which occur and to create new penalties for avoidance.

Option 1 – Do nothing option (Status Quo) – Benefits

The main benefits of the status quo fall to those ratepayers who actively avoid the payment of non-domestic rates and those who promote avoidance schemes as they will be able to continue avoidance tactics and retain the financial benefits of doing so.

Option 1 – Do nothing option (Status Quo) – Costs

Under the status quo the main costs are for the Councils and the Scottish Government in terms of a loss in NDR income as a result of any avoidance tactics. This will have an impact on the overall resources available through the Budget.

The lack of fairness in resulting from some ratepayers avoiding to pay non-domestic rates will remain.

Option 2 – Benefits

The main benefit of this option will be as a result of the deterrent effect of this legislation which will reduce the incentive to use tax avoidance tactics. This proposal should enhance the effectiveness of the tax system increasing the rates of compliance with the legislation. It might also lead to improved and timelier provision of information from ratepayers.

The main beneficiary of this option will be Councils and Scottish Government which due to the benefits stated above should see an increase in non-domestic rates income having a positive impact on the overall budget.

There will be some indirect benefits resulting from the increased fairness and guarantee of a level playing field amongst rate payers.

The extent and scale of these impacts will be dependent on the specific terms of the GAAR, the guidance and procedures around it and its administration. Through this consultation the Scottish Government will collect views to guide the development of this GAAR.

Option 2 – Costs

The main costs of this legislation will fall on those ratepayers who actively avoid the payment of non-domestic rates and on those who promote avoidance schemes as they will not be able to continue avoidance tactics and retain the financial benefits of doing so.

There will also be costs for Councils and the Scottish Government. Where the set up and running costs fall will depend on how the GAAR is designed and run. There could be increased costs for Councils or the Scottish Government due to investigation, monitoring

and enforcement of the GAAR.

Some other costs could include the communication of the new legislation to ratepayers.

There could also be costs associated with this legislation for all ratepayers if the set-up of the GAAR imposed additional administrative burden to comply with the legislation. The extent and scale of these impacts will be dependent on the specific terms of the GAAR.

There will be a cost to the Scottish Government in communicating the proposed changes in legislation to stakeholders affected. The cost of this information campaign will be determined by the Scottish Government in due course as part of a wider communication exercise.

21. To counter a known avoidance tactic, the current 42-day reset period for empty property should be increased to 6 months in any financial year.

Options

Option 1 – Do nothing – the current period for empty property relief will remain.

Option 2 – the current period for empty property relief should be increased to 6 months in any financial year.

Sectors and Groups Affected

- Non-domestic owners and occupiers in Scotland.
- Scottish Government

Context

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

The Scottish Government proposes to change the rules around eligibility for empty property relief to reduce this known avoidance tactic from 2020. This will increase the period a property must be occupied before a new period of empty property relief may be claimed from the 42 days to 6 months. Following Barclay's recommendation the 6 month period will be discontinuous so as not to inhibit short term lets and pop-up uses of empty property.

This proposal interacts with Barclay review recommendation 20 which recommends the creation of a General Anti Avoidance Rule (GAAR) to make it harder for loopholes to be exploited in the future. The Barclay review estimated the combined savings of recommendations 20, 21 and 22 at £21 million a year.

Option 1 – Do nothing option (Status Quo) – Benefits

The main benefits of the status quo fall on the owners of empty property avoiding payment of non-domestic rates by temporarily bringing a property into economic use for short periods

of time to reset the claim period and receive repeat periods of empty property relief.

Option 1 – Do nothing option (Status Quo) – Costs

Under the status quo ratepayers of empty properties can play the system to temporarily bring the property back into use for a short period – this might include using the property to store a small amount of goods relative to its size and/or signing 42 days leases – to reset the empty relief period again and again and take advantage of the more generous empty property relief entitlement designed for short term empty properties. This leads to a cost for the Scottish Government as a result of the loss in non-domestic rates income and the overall resources available through the Budget.

The status quo could also lead to further indirect costs resulting from the unintended consequence of the short reset period diminishing the financial incentive to bring these properties back into productive economic use. This may have a negative impact on economic growth in the area which could lead to a lack of expansion on the tax base for non-domestic rates in the future.

Option 2 – Benefits

The introduction of a longer period to reset the empty property relief could lead to benefits for those ratepayers who are tenants who will be able to seek to benefit from competitive rents that landlords could offer in order to secure a tenant/occupier.

This option could also lead to a financial benefit for the Scottish Government as the reduction in avoidance of non-domestic rates leads to a gain in non-domestic rate income.

There could also be some indirect benefits as a result of more properties being brought into active occupation as the opportunity cost of empty property rises. It could have a positive impact on the wider local economy as it could act as an incentive to bring empty property back into active economic use by raising the opportunity cost of unused property. Under this option owners of empty property should have a financial incentive to find better uses for occupiers an empty property by allowing pop up or community uses to secure occupation or by redeveloping the site for an alternative use or by selling the property.

This could in turn increase the supply of business property, reducing rents and benefiting occupiers and ratepayers. The resulting indirect impacts might be felt as social and economic benefits resulting from more vibrant town centres and business districts.

There will be some indirect benefits resulting from the increased fairness and a more level playing field amongst rate payers.

Option 2 – Costs

The main costs of this will fall on the owners of vacant commercial and industrial properties who avoid payment of rates through this loophole. As this tax loophole is closed they will lose the empty property relief unless they either put the empty property into commercial use, lease the empty property, carry out redevelopment or sell it.

There is also the low risk of some unintended consequences as owners of properties that no longer qualify for the relief and can see no use for their property may choose to demolish

leading to a shortage of commercial property.

There could also be costs for Councils as a result of the implementation of this legislation. Some of these costs could include the communication of the new legislation to ratepayers and the arrangements for inspection and enforcement of this legislation.

There will be a cost to the Scottish Government in communicating the proposed changes in legislation to stakeholders affected. The cost of this information campaign will be determined by the Scottish Government in due course as part of a wider communication exercise.

22. To counter a known avoidance tactic for second homes, owners and occupiers of self-catering properties must prove an intention to let for 140 days in the year and evidence of actual letting.

Options

Option 1 – Do nothing

Option 2 – To counter a known avoidance tactic for second homes, owners and occupiers of self-catering properties must prove an intention to let for 140 days in the year and evidence of actual letting.

Sectors and Groups Affected

- Non-domestic owners and occupiers in Scotland
- Scottish Government

Context

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

This means that owners of second-homes who want to avoid paying council tax can use this loophole by registering as self-catering accommodation with no intention of letting out their property. Properties can then be eligible for 100% non-domestic rates relief under the Small Business Bonus Scheme. This means that no local tax is paid by the property.

Following Barclay's recommendation, the Scottish Government proposes to change the requirement so that the owner of the property has to demonstrate that the property has been actually let for 70 days in any tax year and is available to let for 140 days in the same tax year before they can be classed as non-domestic properties.

Around 12,000 properties classed as self-catering claimed SBBS at an estimated annual cost of £10m in 2016. While it is anticipated that the vast majority of these are genuine self-catering properties, a small element is believed to be second homes.

This proposal interacts with Barclay review recommendation 20 the creation of a General Anti Avoidance Rule (GAAR) which intends to make it harder for loopholes to be avoided in

the future. The Barclay review estimated the combined savings of recommendations 20, 21 and 22 are £21 million a year.

Option 1 – Do nothing option (Status Quo) – Benefits

The main benefits of the status quo fall on the owners of property receiving SBBS as self-catering accommodation as they will not have to undertake any activity to prove that their property is a genuine self-catering property which is let for at least 70 days per tax year and available to let for 140 days.

Option 1 – Do nothing option (Status Quo) – Costs

Under the status quo owners of second home properties registered as self-catering properties can play the system to avoid paying any local tax. This leads to a cost for Councils as a result of the loss in council tax income which could be used to provide local services. The loss in non-domestic rates income will have an impact on the overall resources available through the Scottish Budget.

The lack of fairness to both genuine self-catering and second home owners who pay council tax and do not use this avoidance will remain.

Option 2 – Benefits

This option means that if the owners of second home properties cannot prove that they have let their property for the minimum period of 70 days with intention to let for 140 in the tax year, then they will no longer qualify for inclusion into the valuation roll as a business and therefore will have to start paying council tax. This will lead to a financial benefit for Councils as the reduction in avoidance of council tax leads to a gain in income which can be used to provide local services supporting local communities.

There will be some indirect benefits resulting from the increased fairness and guarantee of a level playing field amongst rate payers.

There could also be some indirect benefits if the owners of second homes decide to let out the properties as self-catering properties to qualify for the Small Business Bonus Scheme. This could benefit the local economies as they could be an influx of tourism into the area bringing wider economic and social benefits.

There could be an additional indirect benefit if the owners of second homes decide to sell their property as a result of the higher costs of paying council tax on their second home. This could increase the supply of property in the local housing market reducing competition, making prices more affordable and increasing the availability of housing.

Option 2 – Costs

The main costs of this legislation will fall on the owners of second homes which are not let as self-catering, but are currently registered in the valuation roll to avoid payment of council tax. They will no longer receive Small Business Bonus Scheme and will have to pay council tax, let their property or sell their property. There is the small risk of unintended consequences for some owners of genuine self-catering properties, if they are incapable of letting their properties for the minimum number of days required due to unforeseeable circumstances. The Scottish Government is planning to meet with industry representative to

minimise the incidence of these cases.

There will also be costs for Councils as a result of the implementation of this legislation. Some of these costs could include the communication of the new legislation to property owners, the arrangements for inspection and enforcement of this legislation, the collection of information, etc. depending on how this legislation is implemented.

There will be a cost to the Scottish Government in communicating the proposed changes in legislation to stakeholders affected. The cost of this information campaign will be determined by the Scottish Government in due course as part of a wider communication exercise.

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

Options

Option 1 – Do nothing option - Maintain the charity relief in its current status

Option 2 – To reform/restrict charity relief for a small number of recipients

Sectors and Groups Affected

All of the options have impact for the following sectors and groups:

- Non – domestic (business) ratepayers in Scotland.
- Independent schools.
- Councils
- Scottish Government
- OSCR and the Third sector

Context

Under current relief rules charities are awarded an 80 per cent mandatory relief on business rates, with an additional 20 per cent at the discretion of the Council.

Independent schools that are charities benefit from reduced or zero rates bills, whereas council schools generally pay business rates. Going forward mainstream independent schools will be able to retain their charity status and all benefits that confer, but will no longer be able to claim charity rates relief. Many special schools currently receive disabled persons or charity relief and those arrangements will not change. There will be further consideration in respect of independent schools which are not special schools but have exceptional circumstances.

Costs and Benefits

Option 1 – Do nothing option (Status Quo) – Benefits

The benefits of the status quo fall on mainstream independent schools which receive largely reduced businesses rates bills through their charity status.

Option 1 – Do nothing option (Status Quo) – Costs

Mainstream Independent schools that are charities benefit from reduced or zero rates bills, whereas council schools do not qualify and will pay rates. This difference in overheads creates a disadvantage for council schools relative to independent schools whose overheads are lower. This could give independent schools an advantage over state schools if the lower costs allow them to provide better facilities for pupils relative to council schools creating a state funded advantage for private schools. This will result in increased fairness and guarantee of a level playing field amongst ratepayers.

Option 2 - Benefits.

It was estimated for the Barclay review that the reform of charity relief will save around £5 million from independent schools.

Option 2 – Costs

This proposal removes charity relief for independent schools in Scotland. According to the Scottish Council of Independent Schools (SCIS) report there are there were 74 independent schools in Scotland in 2017 with over 30,000 pupils equal to 4.1% of pupils in Scotland. Of these 22 are additional support needs schools which are not covered by this change in legislation.

The loss of rates relief could have different impacts depending on the size of the school's property portfolio, their rateable value and scale of the fees paid by pupils resulting in different scale increases in expenditure for some schools relative to others, the percentage of the costs to overhead expenditure will vary between schools. It is possible that independent school could choose to pass on the increase to parents through higher school fees. To provide an indication of the scale of this impact it has been estimated that the average charity relief for independent schools in 2017/18 per pupil is estimated to be £225 while the average annual day fees charged for independent schools in Scotland is £13,711. Therefore, if the £225 cost of removing charitable rates relief was passed wholly to parents, it would represent an average 1.6% increase in fees. Independent schools are in competition with each other and may choose to keep their fees competitive.

Independent schools will keep their charitable status and therefore this proposal should not have an impact on the students accessing bursary to study in an independent school or the work that independent schools do through their charity status

There will be a cost to the Scottish Government in making sure all stakeholders affected by this proposal are informed of the changes in legislation. The cost of this information campaign will be determined by the Scottish Government in due course.

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

Options

Option 1 – Do nothing option – No active use provision is necessary for properties to qualify for business rates relief.

Option 2 – Properties applying for relief (with the exception of empty or new build unoccupied reliefs) must demonstrate they are in continuous active use throughout a given year.

Sectors and Groups Affected

All of the options have an impact on the following sectors and groups:

- Non-domestic owners and ratepayers in Scotland
- Scottish Assessors
- Councils
- Scottish Government
- Charities
- Other public bodies

Context

Currently, all empty properties, except certain categories, receive 50% relief from business rates for the first three months they're empty. They may then be eligible for a 10% discount beyond three months. Empty industrial properties can get full relief from business rates for the first six months that they're empty. They can be eligible for a 10% discount beyond six months.

Currently a property with a rateable value under £15,000 is empty; the occupier may be entitled to more generous Small Business Bonus Scheme (SBBS), which is 100% of the rates bill, rather than empty property relief at a lower level. In addition, empty properties which are 'occupied' by charities may continue to qualify for charity relief after they become vacant and are no longer used for charitable purposes.

The Barclay review stated that to improve the fairness of the rates system and encourage owners of all properties to bring them back into use, reliefs granted to empty properties should be the same, regardless of whether the property is large or small, and the eligibility for SBBS should be removed. In addition, properties empty properties that were previously

occupied by charities should cease to be eligible for charity relief.

Through its consultation, the Scottish Government is seeking views on the best way to implement this recommendation in practice. As such, the benefits and costs of each option presented in the partial BRIA will be subject to amendment.

Option 1 – Do nothing option (Status Quo) – Benefits

Option 1 represents the status quo and no change to empty property relief entitlement and so vacant properties' owners and ratepayers who are claiming Small Business Bonus Scheme or charity relief would continue to be able to carry on claiming those reliefs. They will continue to benefit from an estimated £12 million in non-domestic rates relief in aggregate.

Option 1 – Do nothing option (Status Quo) – Costs

Option 1 would most likely mean that the cost of empty properties claiming Small Business Bonus Scheme and Charity reliefs will continue into the future costing the Scottish Government an estimated £12 million in forgone non domestic rates income. This estimate was produced for the Barclay Review and may be subject to change in the lead up to publishing the final BRIA as more evidence becomes available.

These costs to Scottish Government could have a knock on effect on the overall funding allocation for Councils as it acts as a financial strain in the budget.

Under the status quo ratepayers of empty properties have less financial incentive to bring these properties back into productive economic use - the empty property relief facilitates the sharing of the risk, between ratepayer and government, of a property not being able to earn a return. This may have a negative impact on economic growth in the area and on the tax base for non-domestic rates in the future.

Option 2 – Benefits

Option 2 will lead to an increase in non-domestic rates income of around £12 million per year, the receipts foregone as a consequence of the current relief. This estimate was produced for the Barclay Review and may be subject to change in the final BRIA as more evidence becomes available through the consultation and Implementation Advisory Group process.

An estimate of the number of properties which were vacant at October 2016 and in receipt of a relief is presented in Table 1 below. It shows that the majority of these (60%) only claim empty property relief, however up to 36% may also be claiming Small Business Bonus.

Table 1 – Vacant Property claiming relief and estimated additional NDRi generated from removing reliefs

	Number of vacant properties*	Potential additional NDRi (£ millions)**
Empty Property Relief only	15,300	-
SBBS	6,300	11
Charity	600	6
SBBS and Charity	10	0
Other relief	200	2
Total	22,410	18

**Property either listed as vacant on the valuation roll at October 2016, and/or claiming Empty Property Relief at that time.*

***As Empty Property Relief will not be removed, no additional NDRi is generated*

The potential forgone non-domestic rate income from these properties amounts to around £18 million per year. It was assumed at the Barclay Review that around 75% of these relief costs could be saved as a result of implementing the active-use rule, resulting an estimated £13.5 million net additional revenue. Some savings may not be realised because occupiers of these properties revert to empty property relief, they might convert their properties into domestic housing (becoming liable for council tax as opposed to non-domestic rates) or in a small number of cases they may demolish their property, therefore avoiding paying rates altogether. This assumption will be kept under review between now and the publication of the final BRIA.

The increase in the overall receipts available from non-domestic would increase the overall level of resources available to Scottish Government to fund public services (or reduce the tax burden elsewhere).

Option 2 could have a positive impact on the wider local economy as it could act as an incentive to bring empty property back into active economic use by raising the opportunity cost of unused property. Under this option owners of empty property will have a financial incentive to find occupiers by, for example, reducing rent, allowing pop up or community

uses, redeveloping the site for an alternative use or by selling the property. This could in turn increase the supply of business property, reducing rents and benefiting occupiers and ratepayers. It could also lead to a fall in property values, which would be a benefit to future purchasers. The resulting indirect impacts might be felt as social and economic benefits resulting from more vibrant town centres and business districts.

There will be some indirect benefits resulting from the increased fairness and guarantee of a level playing field amongst rate payers.

Option 2 - Costs

Option 2 will most likely result in increased non-domestic rates bills for some ratepayers (equivalent to around £12 million) if they are currently claiming the more generous Small Business Bonus Scheme or Charity reliefs on an empty property as opposed to the empty property relief.

Subject to the final decisions on the definition of 'active occupation', this option may lead to some additional administrative costs for Councils and/or ratepayers. The precise magnitude of costs will be dependent on how the active-use rule is implemented in practice and where the burden of proof lies. For example, whether a self-declaration approach is deemed sufficient or evidence of active use would need to be provided.

There will be a cost to the Scottish Government in communicating the proposed changes in legislation to stakeholders affected. The cost of this information campaign will be determined by the Scottish Government in due course as part of a wider communication exercise.

Impacts on charities and Third Sector bodies will be informed by this consultation.

26. Reform empty property relief (listed property and for long-term empty surcharge)

Options

Option 1 – Do nothing option – continue indefinite 100% empty property relief for vacant listed buildings

Option 2 – Reform empty property relief (Listed property and for long-term empty surcharge)

Sectors and Groups Affected

All of the options have an impact on the following sectors and groups:

- Non-domestic (business) ratepayers and owners in Scotland. In particular, those ratepayers/ owners of vacant listed buildings in the public and private sectors.
- Councils
- Scottish Government

- Other Public Bodies

Context

Currently, all empty properties, except specific categories, can get 50% relief from business rates for the first three months they're empty. They then get a 10% discount indefinitely after that. Empty industrial properties can get full relief from business rates for the first six months that they're empty. They can then get an indefinite 10% discount beyond that six month period. For listed properties, they are eligible for 100% per cent relief indefinitely.

The Barclay review recommended that eligibility for empty property relief should be limited to two years of 100% relief and thereafter 10% relief. Additionally, the rates liabilities for properties that have been empty for a significant period should be increased over time with a surcharge of 10% of their gross non domestic rates bill after five years of being empty.

The Scottish Government have accepted the principle of the reduced relief after two years but do not accept the recommendation to apply a surcharge to listed properties.

This recommendation is intended to encourage empty property into active occupation and use or for the owner to consider alternative uses. The table below shows the current and proposed position for Empty Property relief under Option 1 and 2.

Table 2 – Empty Property Relief under Option 1 and 2

Option 1 – Do nothing Option				
Type of property	Relief from 0-3 months		Relief from 3-6 months	Relief after 6 months
Standard property e.g. shops/ office	3 months of 50% relief (i.e. half rates due)		10% (i.e. 90% of bill due)	10 % relief for as long as property is empty (i.e. 90% of bill due)
Industrial property	100% relief		100%	
Listed	100% relief		100%	100%
Other*	100% relief		100%	100%
Option 2				
Type of Property	Relief from 0-3 months	Relief from 3-24 months	Relief after 2 years	After 5 years
Standard property e.g. shops/ office	No Change			Surcharge of 10% (i.e. 110% rates due)
Industrial property				

Listed	100%	100%	10% relief for as long as property is empty (i.e. 90% of bill due)
Other	No change		

Option 1 – Do nothing option (Status Quo) – Benefits

Option 1 is the status quo and therefore means no changes to the empty property relief entitlement and so a continuation of the relief eligibility for ratepayers of vacant non-domestic buildings, regardless of how long the building has been vacant. This will continue to benefit owners and ratepayers of such buildings. This will include Councils, the Scottish Government and other public sector bodies.

Option 1 - Do nothing option (Status Quo) – Costs

The Barclay review estimated that continuing to exempt vacant listed buildings from rates indefinitely will cost the Scottish Government up to £15 million per year in forgone non domestic rates income. Councils

Under the status quo ratepayers and owners of standard and industrial properties have less financial incentive to bring these properties back into productive economic use. The empty property relief facilitates the sharing of the risk, between ratepayer and government, of a property not being able to earn a return. The impact of this is hard to quantify, but it may have a negative impact on economic growth in the area and so in NDR the tax base for non-domestic rates in the future.

The wider costs associated with the status quo could include dis-incentivising owners of vacant listed buildings to bring their buildings back into economic use. With a permanent relief in place, there is less incentive for owners of listed buildings to explore alternative economic uses for their buildings and it reduces the financial costs associated with deliberately allowing buildings fall into disrepair in order to justify demolition and ultimately re-development.

Option 2 - Benefits

The Barclay Review estimated that Option 2 would lead to an increase in non-domestic rates income of up to £15 million. The increase in the overall receipts available from non-domestic would increase the overall level of resources available to Scottish Government to fund public services (or reduce the tax burden elsewhere). This estimate may be subject to change in the final BRIA as more evidence becomes available through the consultation and Implementation Advisory Group processes.

Option 2 would be expected to have a positive impact on the wider local economy as it will act as an incentive to bring empty property back into active economic use by raising the opportunity cost of unused property. Under this option, owners of empty property will have a financial incentive to find occupiers by, for example, reducing rents, redeveloping the site

for an alternative use or by selling the property. This should increase the supply of business property and reduce average rents thereby benefiting occupiers and ratepayers. This could, in turn, lead to indirect social and economic benefits resulting from more vibrant town centres and business districts.

Option 2 - Costs

Option 2 would deliver less generous reliefs for empty properties and thereby increase costs for owners and ratepayers of such properties either through meeting the cost of the surcharge, by converting the property to active occupation and becoming liable for 'standard' rates or by the removal of the 100% relief previously available for listed properties.

These costs will also apply to any listed public sector property that has been empty for more than two years. This is likely to impose a financial cost on Scottish Government, Councils and other public bodies.

There could potentially also be a number of unintended consequences that may result in increased risks.

Firstly, there is a risk that vacant listed property becomes less attractive to developers who will only have 2 years to seek planning permission and carry out works to bring the property back into economic use before they will begin to be liable for rates. Likewise, due to the inherent complexities in the planning system and the risks involved in development, speculative development of standard properties might be deterred placing a heavier weight on securing a letting before developments are completed. Scottish Ministers are alert to these risks and are consulting on potential safeguards, such as allowing discretion for Councils to recognise unavoidable or external obstacles to development.

Secondly, owners of long-term vacant non-domestic properties where no economic use is found may elect to seek demolition of their property to avoid paying rates. All proposals to demolish, or part demolish listed buildings require 'Listed Building Consent'. This permission must be sought from planning authorities (Councils) who are also required to consult Historic Environment Scotland on some listed building consent cases. The demolition of a listed building without consent is a criminal offence under the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and carries with it the potential, upon successful prosecution, of a fine of up to £20,000. However, if owners of vacant buildings would benefit (through avoiding rates) by a value greater than the fine, then there may be an increase in illegal demolitions. Any increase in the number applications for permission to demolish a listed building and/or increase in the number of illegal demolitions of listed buildings is likely to increase administrative costs for both Councils and Historic Environment Scotland.

Finally, the lease terms themselves are likely to be tightened because property owners will perceive the risk of empty property rates and seek to protect themselves from its impact. This could be of particular detriment to small and start-up companies which typically seek flexibility in lease terms.

There will be a cost to the Scottish Government in communicating the proposed changes in legislation to stakeholders affected. The cost of this information campaign will be determined by the Scottish Government in due course as part of a wider communication

exercise.

27. Sports club relief should be reviewed to ensure it supports affordable community-based facilities, rather than members clubs with significant assets which do not require relief.

Option

Option 1 – Do nothing option – continue to award Sports Relief to all sports clubs

Option 2 – Focus sport relief on affordable community-based facilities

Sectors and Groups Affected

- Non-domestic owners and ratepayers in Scotland
- Councils
- Scottish Government

Context

Currently this relief is granted to a range of sports club in Scotland if they meet the definition of Community Amateur Sports Clubs or are similar. It is the intention of this proposal that the vast majority of affordable, community-based sports clubs which are current recipients of this relief will be unaffected. However, a small number of clubs with very high fees and/ or membership which specifically exclude certain parts of the local community may lose relief as a result of reforms.

Feedback from the consultation process will determine how this policy intent will be translated into legislation. Options for reform could include incorporating a requirement for all beneficiaries to have inclusive and transparent membership policies, membership fees below a certain threshold, availability of the facilities to the local community or other criteria suggested by consultees.

Option 1 – Do nothing option (Status Quo) – Benefits

Option 1 proposes to make no changes to the current rules on awarding Sports Club relief. This will benefit a minority of non- community based sports clubs who will continue to receive up to 100% relief in their business rates bill. At this stage, it's not possible to quantify how many clubs or organisations will be affected as the precise details of this policy are still to be defined.

Councils could also benefit from Option 1 as there will be no administrative change to the

way that sports club relief will be awarded and therefore no implementation cost. This benefit is likely to be negligible for at least some Councils, as some already ask for detailed information on, for example, the constitution and rules of the organisation seeking relief as well as the latest audited accounts before making a relief award decision.

Option 1 – Do nothing option (Status Quo) – Costs

The Barclay review calculated that the cost of the status quo to the Scottish Government is around £3 m in non-domestic rates income. Councils

This estimate was produced for the Barclay Review and may be subject to change during the consultation process and in the lead up to publishing the final BRIA as more evidence becomes available and the precise details of Option 2 are finalised.

This cost to Scottish Government could have a knock on effect on the overall funding allocation for Councils as it acts as a financial strain in the budget.

The lack of fairness costs to other ratepayers resulting from the fact that some clubs levy excessive joining or membership fees yet compete with other sports facilities which do pay rates will remain.

Option 2 – Benefits

The Barclay review estimates that option 2 would provide savings to the Scottish Governments of around £3 million in income. This savings will come about through the removal of the sport club relief which Councils allocate to some members clubs which the Scottish Government fully funds.

The vast majority of sports clubs will retain Sports Relief, and so will not be negatively affected under Option 2 and will continue to benefit from the relief.

These savings to the Scottish Government could have a knock on effect on the overall funding allocation for Councils and Scottish Government as it has a potentially financial impact in the budget.

There will be some indirect benefits resulting from the increased fairness and guarantee of a level playing field amongst rate payers.

Option 2 – Costs

Option 2 will impose costs on some non-affordable, non-inclusive community-based sports clubs, through removal of sports relief. It is not possible to estimate at this point the number of sports clubs which will be affected by this legislation until the detail of the policy is agreed but it is expected that the number of sports club affected will be very small as a proportion of all sports clubs in Scotland. More detailed analysis will be carried out once the criteria to define community sports have been agreed.

Subject to the criteria, under Option 2, some Councils may need to increase the amount of information they require from Sports Clubs when applying for discretionary relief, for example, requesting information on annual membership fees and joining policies. This might imply a small administrative cost on Councils.

There will be a cost to the Scottish Government in making sure all stakeholders affected by this proposal are informed of the changes in legislation. The cost of this information campaign will be determined by the Scottish Government in due course.

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

Options

Option 1 – Do nothing option – continue to exclude commercial activities located in public parks from rates

Option 2 – implementation of rates for commercial activities in public parks

Sectors and Groups Affected

- Non-domestic owners and occupiers in Scotland
- Councils
- Scottish Assessors
- Scottish Government

Context

Currently all public parks are exempt from rating and therefore do not appear on the valuation roll maintained by Scottish Assessors. There are no plans for this to change under Option 2 except where commercial activity takes place. For example, cafes or sports facilities that are located in a public park will be rated under Option 2, but the park itself will not be rated and therefore will not be liable for rates, There are some exceptions to this such as when the park itself is commercial e.g. a golf course. A similar exemption exists for land vested by the Council (council) in recreational facilities. As far as we can assess, only 2 properties meet these conditions currently (Midlothian Ski Centre at Hillend and a tennis club in Aberdeen).

Because the type of properties that Option 2 will affect is currently exempt from being rated, they do not appear on the valuation roll. This means it is not possible to quantify the number of properties that may be affected by this change or establish, in any reliable way, the amount of income that will be generated from this change. However, the Barclay Review made an indicative, conservative estimate that this measure would raise an additional £1.5 million per annum.

Option 1 – Do nothing option (Status Quo) – Benefits

Option 1 proposes to make no changes to the current rules which mean that commercial activity located in a public parks or any land vested by the Council in recreational facilities will continue to be excluded from the valuation roll and therefore not be liable for rates. This will benefit owners and occupiers of properties or land that undertakes commercial activity in parks and Council areas which have land vested for recreational purposes. The extent of these benefits are difficult to estimate at this point as these businesses do not currently appear on the valuation roll and so it is not possible to quantify either the number of properties involved, their rateable value and therefore the income that would be generated.

Option 1 – Do nothing option (Status Quo) – Costs

The status quo will mean that commercial activity in parks and land vested by the Council in recreational purposes will continue to trade exempted from business rates and therefore creates a distortion that leads to an unfair advantage over similar commercial and recreational activity in the area making it harder for these businesses to compete on equal terms.

Additionally, it will mean a loss of income to the Scottish Government in terms of forgone NDR income and the overall resources available through the Budget. Although this is difficult to quantify for the reasons stated above, the Barclay review estimated this income could be up to £1.5 million.

Option 2 – Benefits

Ratepayers of businesses running similar commercial activity as those being run in parks and in same location will be beneficiaries of this option as this legislation will make it possible for them to compete on equal terms with those ratepayers running similar services in parks by removing the unfair advantage they currently have. This will increase the perceived fairness in the system.

Although difficult to ascertain, it is likely that the actual impact of this option on ratepayers in direct competition with businesses in parks and Council recreation will be small. This is because it is most likely that the majority of these ratepayers would likely receive relief on their business rates bills through one of the existing relief scheme such as the Small Business Bonus Scheme, Charity relief or reformed Sports club Relief. Therefore the benefits are likely to only accrue to those ratepayers with businesses which are currently paying rates.

This option will also benefit the Scottish Government and Councils as it is estimated to increase the income raised through Non Domestic Rates by up to £1.5 million, thus increasing the amount of income available to Councils to fund local services. This estimate is highlight uncertain as explain above.

Option 2 – Costs

Option two is likely to impose some costs on Scottish Assessors as a result of an increased workload resulting from having to identify and assess the rateable value of the additional business properties or uses in parks and add them to the valuation roll. It is difficult to estimate the scale of these costs at this stage. Further consultation with stakeholders will

provide more information on the scale of these costs.

Councils which run recreational facilities on exempt land and are currently exempt from paying business rates could potentially have to pay business rates on these facilities resulting in additional costs.

Scottish Firms Impact Test

The Barclay Review recommendations were well received by the business community and the associated legislation will have a range of impacts on Scottish firms and the rating community more widely.

The consultation document has been developed with advice from the Barclay Implementation Advisory Group which includes representation from Scottish businesses.

Final policy decisions have yet to be taken ahead of the consultation process but during this consultation phase, we will continue to engage with key stakeholder groups to elicit feedback on whether the subsequent legislation will have any impacts on small firms not previously identified.

Competition Assessment

As non-domestic rates are a universal measure, we do not envisage any material competition issues but final policy decisions have yet to be taken ahead of the consultation process. During the consultation phase we will continue to engage with key stakeholder groups to elicit feedback on whether the subsequent legislation will have any competition impacts not previously identified.

A wide range of business interests are represented on the Barclay Implementation Advisory Group and the associated sub-groups. It is not currently envisaged that additional forms will need to be completed but one sub-group is looking explicitly at 'Billing' which includes the nature of Bills presented to ratepayers and the payment options available to them. That sub-group will provide the forum through which the final recommendations on any amended business forms will be tested.

Test run of business forms

Any new forms that businesses are required to complete as a result of the proposed legislation will be developed and tested in full consultation through the Barclay Review Implementation Advisory Group which includes representatives from all the key non-domestic rates stakeholder groups, including representatives bodies from across business organisations.

Legal Aid Impact Test

Final policy decisions have yet to be taken on a range of issues relating to appeals and associated legal processes ahead of the consultation process.

During this consultation phase, we will continue to engage with key stakeholder groups including the Barclay Implementation Advisory Group to elicit feedback on whether the subsequent legislation will have any legal aid implications.

Enforcement, sanctions and monitoring

Final policy decisions have yet to be taken on a range of issues relating to enforcement, sanctions and monitoring ahead of the consultation process.

During this consultation phase, we will continue to engage with key stakeholder groups including the Barclay Implementation Advisory Group to elicit feedback on any Enforcement, sanctions and monitoring implications.

Implementation and delivery plan

The proposals will be implemented through primary legislation currently envisaged for the 2018-19 parliamentary session ahead of the next Tone date on 01 April 2020.

- **Post-implementation review**

Final policy decisions have yet to be taken on a range of issues relating to the legislation ahead of the consultation process including any plans on post-implementation review.

Summary and recommendation

The recommended policy option(s) is to introduce primary legislation as set out under option 2 under each of the proposals. This will achieve the Scottish Government's aim of implementing the accepted recommendations of the Barclay Review.

Declaration and publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed Derek Mackay

Cabinet Secretary for Finance and Constitution

Date: 25 June 2018

Contact point: Ian Storrie



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