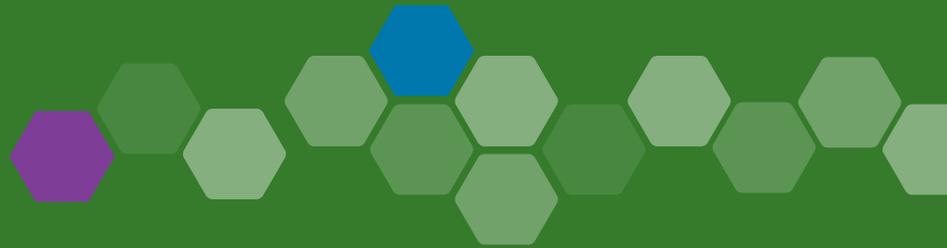




Analysis of responses to Barclay Implementation: A consultation on non-domestic rates reform



BUSINESS AND ENERGY

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1. Executive Summary

Introduction

- 1.1. Over the period from July 2016 to August 2017, the Government commissioned Ken Barclay to lead an independent review on the non-domestic (business) rates system in Scotland. The Review's report was published in August 2017 and contained 30 recommendations, grouped under the following headings:
 - measures to support economic growth;
 - measures to improve ratepayer experience and administration of the system;
 - measures to increase fairness and ensure a level playing field.
- 1.2. Several Barclay Review recommendations can be implemented administratively but others require the Government to bring forward legislation. On 14 December 2017 the Scottish Government published an implementation plan, including responses to all 30 recommendations. It also set up an Implementation Advisory Group which helped design a consultation on the implementation of the Barclay Review recommendations the Government accepted to consider.
- 1.3. The consultation was launched on 25th June and ran until the 17th September 2018 and sought views only on those recommendations which the Government's Implementation Plan identified as requiring primary legislation (Recommendations 1, 2, 5(b), 13, 16, 18, 19, 20, 21, 22, 24, 25, 26, 27 and 30).
- 1.4. The consultation consisted of 26 open questions. A total of 148 responses were received, 124 from organisations and 24 from individuals.
- 1.5. This report presents an analysis of the responses to this consultation. It is important to note that this only presents the views of those who chose to respond to this consultation.
- 1.6. The respondents were placed into eight categories; Businesses; Chartered Surveyors (Private Sector); Independent Education Sector; Individuals; Local Authority / Local Authority Association / Local Community; Other Public Sector and Third Sector; Private Sector Professional / Representative / Trade Body, and; Valuation Board / Assessors / Related Representative Organisation. Table 1 shows the breakdown of categories. Summary terms used to refer to each category are in parentheses and throughout the report the term Local Authority is used interchangeably with the term Council.

Total Breakdown of Respondent Categories

Respondent Category	Number of Responses
Businesses (<i>Businesses</i>)	13
Chartered Surveyor (Private Sector) (<i>Chartered Surveyors</i>)	5
Independent Education Sector (<i>Independent Education Sector</i>)	17
Individual (<i>Individuals</i>)	24
Local Authority / Local Authority Association / Local Community (<i>Local Authorities</i>)	29
Other Public Sector and Third Sector (<i>Other Sector</i>)	6
Private Sector Professional / Representative / Trade Body (<i>Representative Bodies</i>)	47
Valuation Board / Assessor / Related Representative Organisation (<i>Assessor</i>)	7
Total	148

Recurring Themes

- 1.7. A recurring theme in the consultation responses was that proposed changes to non-domestic rates policy, and consequent legislation, needed to be clearer. Consistent calls throughout the responses highlighted the necessity for clarity in definitions, such as: “new build”, “exceptional circumstances” and the timescales of procedures (e.g. appeals). Some responses called for further consultation after legislation had been drafted.
- 1.8. In addition, respondents referred to the necessity to maintain fairness across Scotland and the UK. These concerns were particularly prevalent in responses to the questions relating to the proposal to allow Councils to implement pilot schemes to levy additional rates supplements on certain ratepayers, and in responses to the questions relating to modifications to tax reliefs schemes.
- 1.9. A more detailed summary of responses to each of the questions covered by this analysis is presented in the table below.

Summary Analysis Table

Questions	Views on Recommendation	Main Arguments For and Against/ Further Comments
R1: Business Growth Accelerator (BGA)		
Q1: What are your views on how the growth accelerator and new unoccupied build should be treated in legislation?	The BGA is supported by all respondent groups	<ul style="list-style-type: none"> • Primary legislation offers certainty over the existence of the relief and better encourages investment • Primary legislation could streamline the process and create consistency across Scotland • Concerns over time parameters of the 12 month delay with suggestions that it could be made available for up to five years • Calls for clarity over 'new build' definition • Concerns that if a new-build is not entered into the roll until first occupied, the roll would not reflect existence of properties • Calls for clarity over who is responsible for the practical application of the BGA, local authorities or Assessors
R2: Three yearly revaluations		
Q2: Do you have any comments on three yearly revaluations?	Generally positive	<ul style="list-style-type: none"> • Three yearly revaluations would reflect current market conditions more accurately • Three yearly revaluations could reduce appeals from 'Material Change of Circumstances' • Concerns over the appeals system and revaluation cycle being out of sync. • Concerns that a shortened appeal timetable would increase workload for Assessors and reduce timescales for appeals • The next revaluation will be in 2022, which is out of sync with England and Wales and may put Scotland at a disadvantage

R5(b): Pilot scheme to increase rates out-of-town

<p>Q3: From 2020 a small number of pilot Councils will have a new power to increase rates paid by out of town or predominantly online businesses.</p> <p>a) Do you agree or disagree with putting in place safeguards?</p> <p>b) Please explain your response to (a) including what the safeguards should be if you agree they are required.</p>	<p>General support that safeguards would be needed</p> <p>Most popular safeguard was a statutory cap on the levy</p> <p>Lack of support from businesses and their representatives</p>	<ul style="list-style-type: none"> • Support for the four safeguards proposed¹ • The pilot scheme was seen to be unfair to certain businesses e.g. Garden Centres • Concerns that the Levy may make Scotland less competitive than other parts of the UK • Calls for clarification on ‘out-of-town’ and ‘predominantly online’ definitions • Highlighted the need to consult further to ensure all views were being heard and proposals were in the interest of all parties
<p>Q4: Do you have any comments on the criteria and process which should be used to assess the pilot scheme(s)?</p>	<p>Main point raised: there should be quantifiable evidence of Levy impact on town centre e.g. audit trail</p>	<p>Other criteria suggested:</p> <ul style="list-style-type: none"> • Studies of wider local economy of affected areas • Evaluation of the scheme over a set time period • Consultations both before and after Levy <p>It was emphasised that pilot administration must be consistent and transparent</p>

¹ a) A cap on the level of supplement set in legislation determined by Scottish Ministers.
b) A requirement for Ministerial and/ or Parliamentary approval for each scheme.
c) A requirement for the local Council to consult on the scheme, including with local ratepayers and to publish analysis of this consultation prior to any approach being made to the Scottish Government to take part in a pilot scheme.
d) A requirement for local ratepayers to have a say on how proceeds from the supplement are spent.

R13: Greater information gathering power for Assessors

<p>Q5: What level(s) should this civil penalty be set at?</p>	<p>The penalty should be set above administration costs</p>	<ul style="list-style-type: none"> • The time period to supply requested information is too short, with preference to emulate the English system of 56 days • Assessors believe there needs to be a system reform in order for the change to a civil penalty to be effective • General support in favour of a civil penalty, however Businesses were opposed due to the complexity of the existing system
<p>Q6: How should the penalty be set? Should it be a fixed penalty or proportionate to / banded by rateable value?</p>	<p>There was widespread support for a scaled penalty, although Businesses tended to prefer a fixed penalty and Chartered Surveyors had mixed views</p>	<ul style="list-style-type: none"> • Chartered Surveyors suggested there should be a fixed maximum penalty
<p>Q7: Do you have any views on who is responsible for administering the penalty and the process for appeals against the penalty notice?</p>	<p>Assessors should be responsible for administering the penalty</p> <p>Valuation Appeals Committees (VACs) should be responsible for appeals</p>	<ul style="list-style-type: none"> • There was conflation between the use of VACs and Independent Bodies • Calls for an independent body to be created which could administer the penalty • Potential for the Local Authority to issue the penalty • Assessors focused on making the appeals system effective

Q8: Which organisations/ individuals should be required to supply necessary information to the Assessors where applicable?	The main view was that ratepayers should be responsible for supplying information to the Assessor	Other suggestions included: <ul style="list-style-type: none"> the 'property owner' and 'all bodies' Some responses indicated that current legislation which requires the 'Proprietor, Tenant or Occupier' to provide information is sufficient
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R16: Civil penalty for non-provision of information to Councils by Ratepayers

Q9: What level(s) should this penalty be set at?	Needs to be large enough to act as an incentive to supply information	<ul style="list-style-type: none"> The penalty should be sufficient to offset any administration costs The penalty should be a 'de-minimis figure' upward of £500, to incentivise supply of information Chartered Surveyors (private sector) believed there should be a maximum level for the penalty
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Q10: How should the penalty be set? Should it be a fixed penalty or proportionate to / banded by rateable value?	The main view was that the penalty should be proportionate to / banded by rateable value, however, a number of Representative Bodies, Businesses and Local Authorities advocated for a fixed penalty	Other suggestions included: <ul style="list-style-type: none"> The penalty should increase with each failure to supply If the penalty is proportionate to / banded by rateable value there should be a lower threshold to recover administration costs
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<p>Q11: Do you have any views on who is responsible for administering the penalty and the process for appeals against any penalty notice?</p>	<p>The Local Authority should administer the penalty and the appeals</p>	<ul style="list-style-type: none"> • A number of Businesses, Representative Bodies and Chartered Surveyors preferred an Independent Body to administer penalties • A number of responses indicated the VAC and an Independent Body should be responsible for appeals • Chartered Surveyors were split between an Independent Body and the VAC
<p>Q12: Should this be a mandatory penalty or one that the Council has discretion over (please indicate your preference and add any comments)?</p>	<p>The dominant view was that the penalty should be discretionary</p>	<ul style="list-style-type: none"> • Various responses indicated the penalty could have both a mandatory and a discretionary element (e.g. there is potential for the penalty to be mandatory but discretion to be applied in the appeals process)
	<p>A small number of Local Authorities, Businesses, Chartered Surveyors and Individuals favoured a mandatory penalty</p>	

R18: Councils can initiate debt recovery at an earlier stage

<p>Q13: How should the debt recovery changes be communicated to ratepayers?</p>	<p>The Scottish Government should be responsible for communication</p>	<p>Suggestions included via:</p> <ul style="list-style-type: none"> • Non-Domestic Rates annual bill/billing process • A written notification • Trade/business associations correspondence with membership • Press releases
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<p>Q14: What are your views on whether Councils should retain a discretion over debt recovery to allow for any extenuating circumstances?</p>	<p>Councils should retain discretion to allow for extenuating circumstances</p>	<ul style="list-style-type: none"> • Responses indicated that extenuating circumstances should exist in any fair taxation system • It was perceived that Councils will have a greater understanding of local issues and they are best suited to exercise discretion for this reason • It was argued that Council Tax allows for extenuating circumstances so non-domestic rates should too • Concerns were raised that discretion may create inconsistencies between local authorities in Scotland
<p>R19: Reform appeals system</p>		
<p>Q15: How should this change be communicated to ratepayers?</p>	<p>The Scottish Government should be responsible for communication</p>	<p>Suggestions included via:</p> <ul style="list-style-type: none"> • Non-Domestic Rates annual bill/billing process • Social media/websites • Press releases • A written notification • Trade/business associations correspondence with membership • It was suggested that the change to the appeals system could be communicated jointly with changes to debt recovery (Q13)
<p>Q16: Do you have any points about the change to allow valuation appeals to increase?</p>	<p>General agreement that appeals should allow valuations to increase</p> <p>Most Chartered Surveyors (private sector) did not express an opinion</p>	<p>Various implementation concerns were raised. These included:</p> <ul style="list-style-type: none"> • inconsistencies in valuation of properties • unclear methodology with regard to valuation decisions • potential threat of appeal increases creating a disincentive to small businesses to appeal when they may be eligible for lower rates • calls for clarity of methodology and timescale of appeals <p>A number of responses highlighted that Assessors already have the power to increase a valuation, where an error has come to light, under Section 2 of the Local Government (Scotland) Act 1975, however some noted the legislation may need revised to fully enable this proposal</p>

R20: General Anti-Avoidance Rule (GAAR)

Q17: When the General Anti Avoidance Rule is introduced, do you have any recommendations or principles that this should encompass?

General support for GAAR

Recommendations and principles included:

- Creating measures that specifically target existing loopholes, such as phoenix companies
- Including a statement in GAAR of who the liable party is for any avoidance
- Sharing data with other Councils and Her Majesty's Revenue and Customs (HMRC) in annual reviews, this could raise awareness of potential new loopholes and help prevent avoidance

Responses called for clarity over definitions and guidance on general rules

Q21: Close empty property relief loophole

Q18: How do we raise awareness of this change among ratepayers?

The Scottish Government should be responsible for communication

Suggestions included via:

- Non-Domestic Rates annual bill/billing process
- Social media/websites
- Press releases
- A written notification

Responses advocated for mixed methods of communication, not expressing preference of one over another

<p>Q19: Do you have any further comments around the 6-month reset period for empty property relief?</p>	<p>There were mixed views towards the 6-month reset period. Local Authorities and Representative Bodies were in favour of the change; Chartered Surveyors and Businesses were opposed to the change</p>	<ul style="list-style-type: none"> • A 6-month reset period would be more effective than the current 42-day reset period and benefit the economy • Businesses indicated that the 6 month reset period would be out of line with England and Wales' 42-day reset period and therefore reduce Scottish competitiveness in the UK <p>A number of concerns were raised by those against the 6-month reset period. These included:</p> <ul style="list-style-type: none"> • How changes to the reset period for empty property relief would affect other reliefs and exemptions. Further consideration of this change was called for • Current short-letting market trends are not reflected in the new policy • The 'discontinuous' nature of the reset period, with respondents asking for clarity over whether it would be contained to a calendar or financial year • Lack of clarity over definitions e.g. 'meaningful occupation' and 'empty'
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R22: Close Small Business Bonus Scheme loophole (self-catering)

<p>Q20: Should there be any local discretion in the application of this policy?</p>	<p>There was no consensus on whether discretion should be applicable</p>	<ul style="list-style-type: none"> • Representative Bodies, Businesses and Individuals were in favour of discretion • Chartered Surveyors and Assessors were against local discretion • Local authorities were split in their response
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<p>Q21: If your answer to Question 20 is yes, under what circumstances should this discretion apply?</p>	<p>Responses mentioned “extenuating” or “exceptional” circumstances as a criterion for local discretion, providing those circumstances are outwith the ratepayers’ control.</p>	<p>Respondents identified that “extenuating” and “exceptional” circumstances could include:</p> <ul style="list-style-type: none"> • Natural hazards e.g. landslides • Seasonal / environmental circumstances e.g. limited travel to outer islands, restricted by weather or seasons • Personal circumstances e.g. bereavement <p>A number of issues were raised:</p> <ul style="list-style-type: none"> • There may be difficulty validating evidence of intention to let and actual let • Potential for this policy change to be unfair on the micro-hospitality sector. Calls for this policy change to be paused until the Scottish Government has finished its investigation into potential short-term letting regulations • Local discretion may create inconsistencies across Scotland • The Barclay Review does not indicate whether the 70 day letting criterion is within a financial, rolling or calendar year <p>Further suggestions were:</p> <ul style="list-style-type: none"> • Potential to emulate the Welsh system: flexibility of the 70 day criterion across following years. E.g. properties must meet the multiple of 70 days over three or five years • Self-catering businesses could be included on the Council Tax register
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R24: Reform charity relief

Q22: How should independent schools with exceptional circumstances such as specialist music schools be treated?

Schools should not be treated differently if they are specialised, independent or state run, especially if they support children with additional needs

- There should be parity across all schools who support children with additional needs
- Further consultation was called for to determine criteria and define “exceptional circumstances”
- Independent schools highlighted that this recommendation unfairly targeted them and may unfairly benefit some schools
- The Scottish Charity Regulator highlighted that treating certain independent schools differently to others could create a ‘two-tier’ charity system
- A discretionary scaled relief was suggested as an alternative to removal of relief to make relief proportional to the recipient
- Respondents wished they had been allowed to comment on Arm’s Length External Organisations (ALEOs)

R25: Restrict relief to properties in active occupation

Q23: How should active occupation be defined?

The three criteria suggested in the Barclay Implementation Consultation Paper were the most popular criteria for definition of active occupation:

- floor space used
- accessibility to the public and/or Council
- demonstration of accounts for a business in operation at the property

Additional criteria included:

- Physical evidence of a business being run from the property
- Providing a service or being used to support active use of another property

Other points raised:

- The GAAR may be the best route given the complexities of defining occupation
- Chartered Surveyors believe active occupation is not a viable strategy when determining if rates relief should be granted
- Agreement to remove charity relief from properties that are no longer occupied by a charity

R26: Reform empty property relief (listed buildings and surcharge)

<p>Q24: What are your views on whether Councils should have discretion in the application of this measure for properties, so that local circumstances can be accounted for?</p>	<p>General support for discretion</p>	<ul style="list-style-type: none">• Local discretion would allow unique local circumstances to be considered• Local discretion may create inconsistencies across Scotland <p>Implementation concerns included:</p> <ul style="list-style-type: none">• Potential increase in derelict buildings• If the ratepayer has multiple properties across jurisdictions, they may be eligible for relief in one jurisdiction and not another• It may penalise owners of listed buildings• Some independent schools are listed buildings, removing relief would financially burden the school <p>Further suggestions included:</p> <ul style="list-style-type: none">• Relief to only be removed on certain classifications of listed building as some cannot be brought back into active use.• A four or five year timescale would be more feasible as the two year timescale is not viable to get a vacant listed property back on the market
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R27: Sports relief for affordable community facilities

<p>Q25: How should affordable / community sports facilities be defined?</p>	<p>Suggestions from the Barclay Implementation Consultation Paper were met with general agreement</p> <p>These were:</p> <ul style="list-style-type: none">• inclusive and transparent membership policies	<p>Concerns included:</p> <ul style="list-style-type: none">• “affordability” and “community benefit” are both subjective concepts, they need to be defined in order for the proposed criteria to be successful <p>Other suggestions included:</p> <ul style="list-style-type: none">• Using the Community Amateur Sports Club definition as the base of relief exemptions• Restricting relief for those facilities which run bars and sell food
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- membership fees below a certain threshold
- availability of the facilities to the local community or other criteria

- Independent schools claimed that they should benefit from relief as often their sporting facilities are used for public benefit

R30: Commercial activity on parks

Q26: How should commercial activity on parks be defined?

If the activity is profit raising or fee charging then it should be defined as commercial activity. However, a distinction was recognised between whether the activity charges a fee to cover costs or to raise a profit. If the fee was to cover costs then the activity should be defined as non-commercial.

Other suggestion on how to define commercial activity:

- Based on the length of time and/or the number activities that take place within a given time period

Further comments:

- There were calls for non-profit organisations to be automatically exempt
- It may be better to review language in Section 19 of the Local Government (Financial Provisions etc.) (Scotland) Act 1963 rather than implement new policy
- There is scope for local authorities to have discretion over commercial activity in their jurisdiction
- Definitions were highlighted as a concern, e.g. profit raising

2. Introduction

- 2.1 In November 2018 ERS was commissioned by the Scottish Government to undertake an analysis of the responses to 'Barclay Implementation: A consultation on non-domestic rates reform'. Responses to the consultation will inform the Scottish Government's implementation of the accepted Barclay Review recommendations, some of which require primary legislation.
- 2.2 The Barclay Review aimed to assess the current non-domestic rates system and determine how it could be improved to better reflect economic conditions and support investment and growth.
- 2.3 The Review's report was published in August 2017 and contained 30 recommendations, grouped under the following headings:
- measures to support economic growth;
 - measures to improve ratepayer experience and administration of the system;
 - measures to increase fairness and ensure a level playing field
- 2.4 Several Barclay recommendations can be implemented administratively but others require the Government to bring forward legislation. On the 12 September 2017 the Finance Secretary, Derek Mackay responded in a statement to Parliament to some of the recommendations in the Review, and proposed a number of changes to non-domestic rates from 1 April 2018. On 14 December 2017 an implementation plan was published, including responses to all 30 recommendations, accepting all but four recommendations fully: two recommendations were accepted only in part (Recommendations 24 and 26) and two were rejected outright (Recommendations 28 and 29). The Government also set up an Implementation Advisory Group which helped design a consultation on the implementation of the Barclay Review recommendations the Government accepted to consider.
- 2.5 The consultation ran from 25 June until 17 September 2018. The consultation comprised of 26 open questions and sought the views of stakeholders only on the implementation of the accepted recommendations of the Barclay Review which require primary legislation (Recommendations 1, 2, 5(b), 13, 16, 18, 19, 20, 21, 22, 24, 25, 26, 27 and 30). Annex 1 shows the current stage of all of the Barclay Review's recommendations, taken from Barclay Implementation: A consultation on non-domestic rates reform (June 2018).

- 2.6 A total of 148 responses were received, 124 from organisations and 24 from individuals. Eighty four responses were received via the online consultation response portal Citizen Space and a further 64 were submitted as letters or by email. A list of respondents is available in Annex 2.
- 2.7 This report presents an analysis of the responses to this consultation. It is important to note that this only represents the views of those who chose to respond to this consultation.

3. Methodology

- 3.1 All of the information captured in the Respondent Information Form (RIF) stored on Citizen Space was collated with those submitted non-electronically and entered manually by Scottish Government officials and saved in PDF format.
- 3.2 Text was reviewed manually as well as using a qualitative data analysis computer software package designed for qualitative researchers working with very rich text-based information, where deep levels of analysis are required. Quotations are referenced only where the respondent has indicated their organisation or name could be published.
- 3.3 Where the response provided was not relevant to the Question under which it was submitted, it has been moved to the relevant Question. The corresponding Respondent Tables have been altered to show this.
- 3.4 Analysis has been undertaken in aggregate and in respect of each of the main stakeholder / respondent groups. Respondent categories are as follows:

Respondent Category	Term used in text	Number of Responses
Businesses	Businesses	13
Chartered Surveyor (Private Sector)	Chartered Surveyor	5
Independent Education Sector	Independent Education Sector	17
Individual	Individual	24
Local Authority / Local Authority Association / Local Community	Local Authority	29
Other Public Sector and Third Sector	Other Sector	6
Professional / Representative / Trade Body	Representative Body	47
Valuation Board / Assessor / Related Organisation	Assessors	7

4. Barclay Review Recommendation 1 – Business Growth Accelerator

- 4.1. Question One relates to Barclay’s first recommendation, “A *Business Growth Accelerator (BGA)* – 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.” Secondary legislation to implement the Growth Accelerator was brought into effect from 1 April 2018. The Scottish Government went further in its Implementation Plan and introduced full rates relief until a new build property is occupied, delivering no rates liability until 12 months after a new build is first occupied.

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

- 4.2. There were 94 responses to Question 1, the largest respondent categories were Representative Bodies and Local Authorities. No respondents from the Other Sector category answered this question. The breakdown by each of the seven classifications of respondent is detailed in the Table 1.

Table 1: Respondents Categorised

Respondent Category	Number of Responses
Businesses	10
Chartered Surveyors (Private Sector)	5
Independent Education Sector	8
Individual	6
Local Authority / Local Authority Association / Local Community	27
Other Public Sector and Third Sector	0
Professional / Representative / Trade Body	33
Valuation Boards / Assessors / Related Representative Organisation	5
Total	94

- 4.3 A substantial proportion of respondents supported the provision of this policy in primary legislation, on the basis that primary legislation would better encourage investment by offering certainty over the long-term existence of the relief and may allow for the relief to be automatic rather than application-based. Comments reflected a view that primary legislation would streamline the process and “reduce administrative burdens on Councils and those seeking relief” (Law Society of Scotland). Primary legislation is seen as preferable by Local Authorities, as they view this as a way to ensure consistent policy across Scotland and simplify the non-domestic rates system. Businesses and Representative Bodies also support the move to primary legislation as they too believe it would ensure a consistent policy across Scotland, as well as, providing clear guidance to Assessors and resulting in certainty with regard to taxation. Whilst Assessors agree with the above point, they raised issues over clarity within legislation; clear guidance and taxation certainty would only be achieved if legislation is “clear and unambiguous” (Ayrshire Valuation Joint Board).
- 4.4 The general consensus among Businesses, Representative Bodies, Local Authorities and Chartered Surveyors was that the Business Growth Accelerator (BGA) would be beneficial, it was perceived that the BGA would continue to support investment in Scotland and benefit the economy. The Scotch Whisky Association commented that it had already seen member businesses benefit from the Accelerator. Furthermore, COSLA noted that Councils had “given some indication that these measures [BGA and new unoccupied build] are already having a positive impact”. There was no suggestion, however, that this was conditional on the Accelerator being embedded within primary legislation.
- 4.5 A small number of concerns were raised by Representative Bodies and Businesses as to whether or not the proposed 12-month delay in non-domestic rates would be available for a substantial period of time. Scottish Engineering voiced concerns over future investment planning, stating: “Business investment planning can be a lengthy process and it is best encouraged through consistent and stable business tax policy. The Scottish Government should therefore provide certainty through legislation by committing to making the growth accelerator consistently available.” This view was supported by the Confederation of British Industry Scotland.
- 4.6 In respect of new-build properties specifically, a number of concerns were raised over properties not being subject to valuation until they are first

occupied. It was the view, mainly of Assessors and Representative Bodies, that excluding new-build properties from valuation upon existence would mean the Valuation Roll “would not always reflect the existence, nature or extent of non-domestic properties in existence in Scotland” (Scottish Assessors Association). The potential consequences connected to this were illustrated through the example of third parties who use the Valuation Roll to conduct business, such as the non-domestic water industry, who use the Roll when setting water charges.

- 4.7 Local Authorities and Assessors raised concerns about the practical application of the BGA, with both parties apprehensive about the possible increase in workload and necessity for extra resources. Specific concerns were raised over the potential need for constant monitoring of all new-build properties to ensure they were subject to valuation upon occupation in order to avoid systematic abuse. Clarification was called for by Local Authorities and Assessors on which body would be responsible for implementing the BGA.
- 4.8 In relation to the above point, Assessors suggested that the provisions of Section 2 of the 1975 Local Government (Scotland) Act remain in force. They believed this would ensure that all relevant properties would be entered on the Roll upon coming into existence. A suggestion was made to alter current policy slightly by implementing a system of markers on properties indicating their status. Thus, only properties with markers would be required to be monitored. This would potentially diminish the workload to admit or readmit a property onto the Roll and help prevent systematic abuse.
- 4.9 Some respondents indicated concern over the definition of what constitutes a new build or an improvement to a property and asked for greater clarity. In particular, this was considered necessary in order to reduce potential disputes between ratepayers and Councils. In this context, there was a suggestion by Assessors for an appeal system to be used in the event of disagreement as to whether or not properties were eligible for the Growth Accelerator.

5. Barclay Review Recommendation 2 – Three-yearly revaluations

- 5.1 Question Two relates to the Barclay Review’s second recommendation, “*There should be three-yearly revaluations from 2022 with valuations based on market conditions on a date one year prior (the ‘Tone date’).*” The Review made this recommendation with the view that a three year revaluation cycle, rather than the previous five year cycle, would better reflect changes that occur over time. It suggested the new cycle commence in 2022, with a two year tone date of 2020, moving to a one year tone date in 2025. It also noted that this system reform would rely heavily on reform to the appeals system and timetable.

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

- 5.2 There were 98 responses to Question 2, with the largest respondent categories being Representative Bodies, Local Authorities and Businesses. No respondents from the Other Sector category answered this question. A detailed breakdown by respondent type can be found in the table below.

Table 2: Respondents Categorised

Respondent Category	Number of Responses
Businesses	10
Chartered Surveyors (Private Sector)	5
Independent Education Sector	10
Individuals	10
Local Authority / Local Authority Association / Local Community	27
Other Public Sector and Third Sector	0
Private Sector Professional / Representative / Trade Body	30
Valuation Boards / Assessors / Related Representative Organisation	6
Total	98

- 5.3 The move to three-year revaluations was met with general enthusiasm and the consensus was that moving to a three year system and a one year tone date meant that non-domestic rates paid would more accurately reflect market conditions.
- 5.4 Some respondents commented that they thought that the three year system could potentially reduce the amount of appeals brought forward on the basis of a 'Material Change of Circumstances'.
- 5.5 A small number of responses were not in favour of the move to three year evaluations, these were not confined to a specific respondent type.
- 5.6 Concerns were raised across all groups (whether for or against the proposal) over the appeals system for revaluations which would have to run alongside the three year revaluation system. Therefore, without any further change to the system, the perception was that the existing revaluation appeals timetable would be reduced by two years. The concerns raised related to the ambiguity reported by consultees of the proposed amendments to the appeals process and reduction of the appeals timetable. The concerns included, reviewing time limits for disposals of appeals and time limits for lodging appeal. CBRE Ltd stated that "shortening of the revaluation cycle from 5 to 3 years will require a significant redesign and overhaul of the "appeal" architecture, particularly the "appeal" provisions in the 1975 Act and the "appeal timetable" specified in the Valuation Timetable (Order) 1995 (the 1995 Order)."
- 5.7 Assessors highlighted concern surrounding the potential increase in their workload, both with the move to a three year evaluation and the perceived appeals timetable change. Hence, there was a call for an increase in resources, both information and communications technology (ICT) and personnel to help with the timetable change. Furthermore, COSLA highlighted "significant and operational implications for local government" if the move to three yearly valuations was to go ahead. COSLA emphasised its belief that "all new policies introduced by the Scottish Government [should be] fully funded."
- 5.8 The new timetable has the next revaluation scheduled for 2022, compared to 2021 in England and Wales². Due to this misalignment, concerns were raised by Assessors, that the 2022 timescale may put

² 13th March 2018 Spring Budget Statement – Phillip Hammond.
<https://www.gov.uk/government/speeches/spring-statement-2018-philip-hammonds-speech>

Scotland at a disadvantage. It was noted that the different revaluation schedules may reduce UK-wide harmonisation of valuation practices; information sharing may become more complex (albeit it was not specified as to exactly why this would be nor the types of parties involved). Furthermore, for businesses working across the UK, the difference in revaluation dates may make the UK market as a whole difficult to navigate.

- 5.9 A small number of concerns were raised by Businesses as to the rental market working on a five year timescale which would be out of sync with the proposed three-yearly revaluations. Alongside this, the Scottish Borders Council indicated the “key rationale for 3 yearly revaluations is greater ratepayer confidence in rateable values, this moves away from the greater stability and predictability for Council’s budgeting requirements offered by the longer 5 year cycle.”

6. Barclay Review Recommendation 5b – Pilot scheme to increase rates out-of-town

6.1 Questions Three and Four relate to Recommendation 5b “A new power to enable Councils to impose an additional levy on rates in certain circumstances.”. The Barclay Review suggested the proceeds of this supplement could be used to support town centres. It called for this policy to be tested in a pilot scheme that Councils would have to make bids to participate in, and that no more than three towns would be selected. The Barclay Implementations Advisory Group (BIAG) called for a formal evaluation of the pilot scheme to help determine whether this scheme would be successful prior to implementation across Scotland. The BIAG voiced concerns over the scheme and suggested a number of safeguards:

- a) A cap on the level of supplement set in legislation determined by Scottish Ministers.
- b) A requirement for Ministerial and/ or Parliamentary approval for each scheme.
- c) A requirement for the local Council to consult on the scheme, including with local ratepayers and to publish analysis of this consultation prior to any approach being made to the Scottish Government to take part in a pilot scheme.
- d) A requirement for local ratepayers to have a say on how proceeds from the supplement are spent.

Question 3 – From 2020 a small number of pilot councils will have a new power to increase rates paid by out of town or predominantly online businesses. a) Do you agree or disagree with putting in place safeguards? b) Please explain your response to (a) including what the safeguards should be if you agree they are required.

6.2 There were 93 responses to this question with the largest respondent category being Representative Bodies. No respondents from the Other Sector category answered this question. The breakdown by each of the seven classifications of respondent is detailed in the table below.

Table 3: Respondents Categorised

Respondent Category	Number of Responses
Businesses	11
Chartered Surveyors (Private Sector)	5
Independent Education Sector	1
Individuals	9
Local Authority / Local Authority Association / Local Community	25
Other Public Sector and Third Sector	0
Private Sector Professional / Representative / Trade Body	38
Valuation Boards / Assessors / Related Representative Organisation	4
Total	93

- 6.3 There was general support from across the respondent categories, that safeguards were necessary if the pilots were to go ahead and that the four safeguards stated in the consultation were appropriate. The safeguard with most common support was a statutory cap on the Levy to ensure certain industries were not being unfairly targeted.
- 6.4 Reasons stated for the requirement of safeguards included being able to see the revenue from the Levy to ensure it is being used to the benefit of town centres and the necessity to not unfairly target certain businesses.
- 6.5 It was highlighted that businesses (and other parties) involved in the pilot scheme should be consulted before and during the process to ensure that the scheme is in the interest of all parties involved.
- 6.6 Although there was support for safeguards, a sizeable proportion of respondents, mainly Representative Bodies and Businesses, expressed a negative view towards the implementation of a pilot scheme. It was perceived that any pilot would not be representative enough to apply more widely.

- 6.7 Some Representative Bodies felt that this levy would penalise the businesses they were representing, especially those whose members fall outwith the town centre due to the nature of their business, for example garden centres, oil & gas companies, agricultural businesses and construction companies. The response from Scottish Bakers is a case in point: “Scottish Bakers has a serious concern about the potential for this levy to be applied unfairly to our members, many of whom operate ‘out-of-town’ manufacturing plants that service a wider network of retail outlets and wholesale customers. Applying an out of town levy on a bakery that services its own chain of retail outlets is both counter-productive and counter-intuitive.” Furthermore, respondents across all categories emphasised that businesses should not be penalised because they are not located in town centres.
- 6.8 Businesses in particular, raised major concerns that the Levy (if implemented across Scotland) may disincentivise businesses from investing in Scotland due to creating a more complex non-domestic rates system than the rest of the UK. The concern was that this would make Scotland less competitive within the UK, with knock-on effects for the Scottish economy. It was noted, by Businesses and Representative Bodies, that the Large Business Supplement creates an extra charge on some businesses and is already higher than the equivalent rates in England. Consequently, it was perceived that a further charge on a business for being ‘out of town’ or ‘predominantly online’ may widen the competitive gap between the two jurisdictions.
- 6.9 Alongside this, at a local level, concerns were raised over the pilot scheme only existing in certain areas. Some Local Authorities felt this may benefit or disadvantage different local geographies and cause businesses to move, potentially impacting on local economies. However, COSLA believe that “pilot schemes [are] a reasonable way to explore the potential benefits [of the out of town levy] with suitable safeguards in place.”
- 6.10 Finally, there was a call for more clarification and consultation to determine what would be categorised as a ‘predominantly online business’ and what would constitute ‘out of town’.

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

- 6.11 There were 55 responses to this question, the largest respondent categories were Local Authorities and Representative Bodies. No Assessors or Other Sector respondents responded to this question. A breakdown of the respondent categories can be found in Table 4 below.

Table 4: Respondents Categorised

Respondent Category	Number of Responses
Businesses	6
Chartered Surveyors (Private Sector)	4
Independent Education Sector	1
Individuals	6
Local Authority / Local Authority Association / Local Community	22
Other Public Sector and Third Sector	0
Private Sector Professional / Representative / Trade Body	16
Valuation Boards / Assessors / Related Representative Organisation	0
Total	55

- 6.12 A common response indicated that there ought to be quantifiable evidence of the Levy having an impact on town centres, supported in particular by Representative Bodies and Local Authorities. WYM Rating suggested the evidence was in the form of an “audit trail” to evidence “where the money is to be invested and proof that the works have been done”. Other proposed quantifiable indicators included:
- A comparison of historic trends of business failures in town centres business failures post-Levy.
 - A count of new business start-ups in town centres.
- 6.13 Representative Bodies and Local Authorities called for studies to be done of the wider local economy of the affected areas. It was suggested this could cover any relocations of businesses to other local authorities where

the Levy was not imposed and analysis of general Key Performance Indicators, such as Gross Value Added (GVA) and employment. It was expressed that this could inform a more holistic assessment of the impact of any pilot.

- 6.14 A number of responses highlighted that it would be necessary to evaluate the pilot scheme over a set period of time. A substantial proportion suggested that a pilot ought to run for an adequate length to assess effect. However, only one response, from East Lothian Council, mentioned a specific length of time of “more than one financial year”.
- 6.15 In addition, Businesses, Local Authorities and Representative Bodies advocated for consultation with stakeholders who would be involved in, or affected by the Levy. This would be both before pilots took place and after. Furthermore, responses expressed interest in seeing an implementation method for the pilot. This would ensure all pilots were transparent and consistent for those involved in / impacted by the Levy.

7. Barclay Review Recommendation 13 – Greater information gathering power for Assessors

- 7.1 Questions Five, Six, Seven and Eight relate to Barclay Recommendation 13, “*The current criminal penalty for non-provision of information to Assessors should become a civil penalty and Assessors should be able to collect information from a wider range of bodies*”. The Scottish Government committed in its Implementation Plan to change the current criminal penalty for non-provision of information to Assessors to determine rateable value, to a civil penalty by 2020. This change is intended to reduce the burden on the appeals system and incentivise the return of information to the Assessor. It was emphasised in the Barclay Review that this measure is not intended as a revenue-raising measure and any penalty was an incentive to ensure better provision of information to Assessors from the outset. The Barclay Implementation Consultation Paper states that any new penalty will have a designated body to administer it and there will still be provision for appeals.

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

- 7.2 There were 64 responses to Question 5, the largest respondent categories were Representative Bodies and Local Authorities. There were no responses from the Independent Education Sector. A breakdown of respondents by type can be seen in the table below.

Table 5: Respondents Categorised

Respondent Category	Number of Responses
Businesses	7
Chartered Surveyors (Private Sector)	5
Independent Education Sector	0
Individuals	4
Local Authority / Local Authority Association / Local Community	22
Other Public Sector and Third Sector	1
Private Sector Professional / Representative / Trade Body	20
Valuation Boards / Assessors / Related Representative Organisation	5
Total	64

- 7.3 Local Authorities and Assessors noted that the penalty needed to be higher than the cost of administering the penalty in order for it to be feasible to administer. Furthermore, they believed that the issues surrounding setting civil penalties were of concern for the Assessor rather than Councils and ratepayers.
- 7.4 Respondents were generally in favour of the change to a civil penalty. Assessors were in agreement with the change, however, their responses focused on the necessity for an effective system to administer this change, illustrated here by the Ayrshire Valuation Joint Board. It stated “an effective system must be developed to ensure the Assessor has access to all the information [required] which would contribute to reducing the demands placed on already limited resources. The net effect may minimise demands on the Assessor and the three constituent authorities charged with collecting the revenue from non-domestic rates.”
- 7.5 A small number of responses were opposed to changing the nature of the penalty, the majority of these responses were from Businesses, also with support from the Scottish Borders Council. Opposition to the change was due to existing complexity to the non-domestic rates system, therefore

these respondents believed that simplification of the current system would address problems of non-payment rather than the change to a civil penalty.

- 7.6 In addition, a small number of respondents, predominantly Businesses and Representative Bodies, noted that the current time period for providing requested information to Assessors (14 days) is too short. They stated it would be preferable to emulate the English system in which the time period to provide required information is 56 days.

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

- 7.7 Overall there were 51 responses to this question, the largest respondent categories were Local Authorities and Representative Bodies. There were no responses from the Independent Education Sector. The breakdown by each of the seven classifications of respondent is detailed in the table below.

Table 6: Respondents Categorised

Respondent Category	Number of Responses
Businesses	4
Chartered Surveyors (Private Sector)	4
Independent Education Sector	0
Individuals	4
Local Authority / Local Authority Association / Local Community	21
Other Public Sector and Third Sector	1
Private Sector Professional / Representative / Trade Body	15
Valuation Boards / Assessors / Related Representative Organisation	2
Total	51

- 7.8 With the exception of Chartered Surveyors and Businesses, the majority of respondents advocated for a scaled penalty based on the rateable value. COSLA called for “further consultation” on the detail of the penalty.
- 7.9 Chartered Surveyors were split between having a fixed or a scaled penalty. J&E Shepherd stated that they “do not agree that any correlation can be drawn between a property and the non-return of information. On that basis, any fine should be fixed at the same level for all and should be at a reasonable level. We would suggest £250 as a maximum.” In contrast, WYM Rating stated “Any fine for non-return should be proportional to the level of rateable value but a cap put in place set at £500.” Whilst there was no consensus from Chartered Surveyors in relation to a fixed or scaled penalty, they agreed that there should be a fixed maximum penalty in place.
- 7.10 Businesses were the only respondent category who generally preferred a fixed penalty to a scaled penalty.
- 7.11 From those who advocated for a fixed penalty there were varying suggestions of the size of the penalty; these ranged from GL Hearn Ltd.’s suggestion of “capped at £100 plus VAT” to “up to £10,000 or 20% of rates bill, per rates year” (West Dunbartonshire Council).

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

- 7.12 There were 61 responses to this question, the largest respondent categories were Local Authorities and Representative Bodies. There were no responses from the Independent Educations Sector. A breakdown of the respondent categories can be found in the table below.

Table 7: Respondents Categorised

Respondent Category	Number of Responses
Business	6
Chartered Surveyors (Private Sector)	5
Independent Education Sector	0
Individuals	5
Local Authority / Local Authority Association / Local Community	22
Other Public Sector and Third Sector	1
Private Sector Professional / Representative / Trade Body	18
Valuation Boards / Assessors / Related Representative Organisation	4
Total	61

- 7.13 The responses broadly indicated that Assessors should be responsible for administering the penalty. These responses came from a number of categories including Representative Bodies, Local Authorities, Chartered Surveyors and Individuals. An example of reasoning for this response came from West Dunbartonshire Council, “the Assessor would have the intelligence as to which ratepayers were in default” and therefore they should be the one to administer the penalty.
- 7.14 There were calls for the introduction of an Independent Body which could administer the penalty. Proponents of this included the Scottish Chamber of Commerce, North Ayrshire Council and the Scottish Business Ratepayers Group. No respondents provided detail on how this might work, other than it being emphasised that it would need to be separate to the Local Authority. Assessors and Individuals did not express views in support of or against the suggestion of an Independent Body being used to administer the penalty.
- 7.15 There was conflation between the use of ‘Independent Body’ to indicate the VACs and the reverse. Therefore, it is not possible to know whether all respondents who indicated ‘Independent Body’ are in favour of the

VACs or whether those who responded 'VAC' would agree to any 'Independent Body' being in charge of appeals. Thus, although a significant number of responses are in favour of appeals being handled through a separate body, it is not possible to determine what that body should be.

- 7.16 A small number of responses, from Representative Bodies, Businesses, Chartered Surveyors and Local Authorities, indicated on the other hand that the Council should issue the penalty.
- 7.17 There was no consensus amongst Businesses as to who should administer the penalty, they were split between using an Independent Body or Local Authorities.
- 7.18 In respect of the penalty appeals process, there was general support that the VAC should be responsible for appeals. This was across all respondent categories except Businesses and Chartered Surveyors.
- 7.19 Assessors focused their response, as explained by the Grampian Valuation Joint Board, on "seeking a robust and effective system that ensure that Assessors have access to the information they require and minimises the demands on the resources of the valuation authorities." Although the focus of the Assessors responses was on functionality of the penalty, Dunbartonshire and Argyll & Bute Joint Valuation Board agreed that Assessors should be responsible for administering the penalty; the others did not comment.

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

- 7.20 There were 59 responses to this question, the largest respondent categories were Local Authorities and Representative Bodies. There were no responses from the Independent Educations Sector. A breakdown by respondent categories can be found in the table below.

Table 8: Respondents Categorised

Respondent Category	Number of Responses
Businesses	7
Chartered Surveyor (Private Sector)	4
Independent Education Sector	0
Individuals	5
Local Authority / Local Authority Association / Local Community	21
Other Public Sector and Third Sector	1
Private Sector Professional / Representative / Trade Body	16
Valuation Boards / Assessors / Related Representative Organisation	5
Total	59

7.21 It was widely thought that ratepayers should be responsible, at least in part, for supplying information to the Assessor. The perception was that ratepayers must be approached by the Assessor “in the first instance” to supply information (Rating Surveyors Association). Thereafter, the Assessors have the authority to approach other bodies for information. It was not mentioned how this would affect any potential penalty for non-compliance.

Other suggestions included:

- Current legislation, whereby the Proprietor, Tenant or Occupier are the only bodies to supply information, was sufficient.
- The ‘Property Owner’ should be responsible for supplying information.
- ‘All bodies’ should be required to provide information to the Assessors. Ayrshire Joint Board indicated that ‘All bodies’ meant “any person who holds, or has access to, any relevant information other than the proprietor, tenant or occupier. This will, for example, include contractors, architects, surveyors, solicitors, accountants, agent's advisors etc”.

8. Barclay Review Recommendation 16 – Civil penalty for non-provision of information to Councils by Ratepayers

- 8.1 Questions Nine, Ten, Eleven and Twelve relate to Barclay Recommendation 16, “*A new civil penalty for non-provision of information to Councils by ratepayers should be created.*” The Barclay Review noted that preventing fraud is a key issue in non-domestic rates policy. Therefore, it is vital that Councils have up to date information of all non-domestic properties.
- 8.2 The Scottish Government committed to the creation of this penalty in its Implementation Plan. The Barclay Review emphasised that the penalty was not a revenue-raising measure but intended to deter fraud and keep information up to date. The BIAG indicated that the ratepayer has a duty to inform a Council within 28 days of moving in and moving out of a non-domestic property. Ratepayers have the same time period to provide any information requested by the Council. It has not been determined whether the penalty should be fixed or scaled.

Question 9 – What should this penalty be set at?

- 8.3 There were 57 responses to Question 9, with the largest respondent category being Local Authorities. However, only 44 of the 57 responses related to Question 9. The analysis presented here reflects only the relevant responses to Q9. No Assessors responded to this question stating it was outside their remit. There were no responses from the Independent Education Sector. A breakdown of the respondent categories can be found in the table below.

Table 9: Respondents Categorised

Respondent Category	Number of Responses
Businesses	3
Chartered Surveyor (Private Sector)	3
Independent Education Sector	0
Individuals	2
Local Authority / Local Authority Association / Local Community	24
Other Public Sector and Third Sector	1
Private Sector Professional / Representative / Trade Body	11
Valuation Boards / Assessors / Related Representative Organisation	0
Total	44

- 8.4 Local Authorities and Representative Bodies highlighted that the penalty must be large enough to act as an incentive to supply information. It should also be set at an amount significant enough to offset any administration costs incurred by the body enforcing and collecting the penalty.
- 8.5 With regard to the penalty level that would be needed to ensure an incentive to supply information, East Dunbartonshire Council stated that it must be a “de-minimis figure” recommending upwards of £500. Furthermore, COSLA advocated for “the penalty to be set at the same level as that for non-provision of information to Assessors [regarding Council Tax]”.
- 8.6 Chartered Surveyors agreed that there should be a maximum level for the penalty, with suggestions ranging from £250 (J&E Shepherd) to £500 (WYM Rating).
- 8.7 A small number of Individuals replied to this question, amongst whom views differed as to how the penalty should be set. One Individual simply disagreed with the notion of a penalty entirely. At the other extreme, one

believed the penalty should be set at the full rateable value and paid within three months.

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

- 8.1 There were 56 responses to Question 10 including relevant responses from Question 9. No Independent Education Sector or Assessors responded to this question, the latter stating it was outside their remit. The largest respondent category was Local Authorities. A breakdown of responses by respondent categories can be found in the table below.

Table 10: Respondents Categorised

Respondent Category	Number of Responses
Businesses	4
Chartered Surveyor (Private Sector)	4
Independent Education Sector	0
Individuals	4
Local Authority / Local Authority Association / Local Community	27
Other Public Sector and Third Sector	1
Private Sector Professional / Representative / Trade Body	16
Valuation Boards / Assessors / Related Representative Organisation	0
Total	56

- 8.2 The main view was that the penalty should be proportionate to / banded by rateable value. A number of responses mentioned that the penalty should be a set percentage of rateable value. Individuals were the only category that held consensus on this view, they were supported by Local Authorities and Representative Bodies.
- 8.3 Some responses favoured a fixed penalty, of these the largest respondent category was Local Authorities, with Representative Bodies and Businesses making up the remaining responses.

8.4 There was no consensus among Local Authorities, Representative Bodies or Chartered Surveyors on their preferred method of penalty. For example: WYM Rating advocated for a penalty “proportional to the level of rateable value”, whereas GL Hearn and J&E Shepherd advocated for a fixed and capped penalty of either £100 or £500 respectively.

8.5 Other suggestions included:

- The penalty should increase with each failure to supply information. However, no specific figures were given on what the increase might be. This suggestion came from Local Authorities and Representative Bodies.
- A minimum penalty which, as stated by East Ayrshire Council, would act as a ‘lower threshold’ and would “recover costs of penalty issue/administration etc”.

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

8.7 There were 56 responses to Question 11, the largest respondent category was Local Authorities. No Assessors or the Independent Education Sector responded to Question 11 stating it was outside their remit. A breakdown of respondent categories can be found in the table below.

Table 11: Respondents Categorised

Respondent Category	Number of Responses
Businesses	4
Chartered Surveyor (Private Sector)	5
Independent Education Sector	0
Individuals	5
Local Authority / Local Authority Association / Local Community	25
Other Public Sector and Third Sector	1
Private Sector Professional / Representative / Trade Body	16
Valuation Boards / Assessors / Related Representative Organisation	0
Total	56

- 8.8 Across the board responses indicated that the Council should administer the penalty.
- 8.9 Other suggestions included:
- the use of an Independent Body (in a form not specified), suggested by Businesses and Representative Bodies,
 - using the Valuation Appeals Committee,
 - the Assessors should administer the penalty.
- 8.10 Of the responses that made reference to the contest of the penalty notice, Councils / Local Billing Authorities were identified as those who should be responsible for appeals against penalty notices. The majority of these responses were from Local Authorities, with a small number from Representative Bodies, Individuals and Businesses.
- 8.11 Again, other suggestions for the responsibility for process of appeals emulated the suggestions in 8.9.
- 8.12 In respect of Chartered Surveyors, their responses were split between the use of an Independent Body and the Valuation Appeals Committee.

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

- 8.13 There were 65 responses to this question. The Independent Education Sector did not respond to this question. A breakdown of responses by respondent categories can be found in the table below.

Table 12: Respondents Categorised

Respondent Category	Number of Responses
Businesses	5
Chartered Surveyor (Private Sector)	5
Independent Education Sector	0
Individuals	8
Local Authority / Local Authority Association / Local Community	27
Other Public Sector and Third Sector	1
Private Sector Professional / Representative / Trade Body	18
Valuation Boards / Assessors / Related Representative Organisation	1
Total	65

- 8.14 There was general support in favour of the penalty being discretionary, this was partly due to the view that “a mandatory penalty could be difficult to administer and may be disproportionate for some ratepayers” emphasised by COSLA. The majority of Representative Bodies believed in the penalty being discretionary.
- 8.15 A smaller number of Local Authorities, Businesses, Chartered Surveyors and Individuals were in favour of a mandatory penalty.
- 8.16 There were various suggestions, supported by a small number of respondents, which involved the penalty having both mandatory and discretionary elements. For example:
- WYM Rating indicated that the penalty should be mandatory however, Local Authorities should be able to withhold the application of the penalty.
 - The Rating Surveyors Association held the view that the penalty should be mandatory however, discretion could be given during the appeals process.

9. Barclay Review Recommendation 18 – Councils can initiate debt recovery at an earlier stage

- 9.1 Question 13 and 14 relate to Recommendation 18, “*Councils should be able to initiate debt recovery at an earlier stage.*” The Barclay Implementation Consultation Paper stated that in 2020 the Scottish Government will consolidate recovery of both non-domestic rates and council tax into the same timeframe. This will enable Councils to initiate enforcement action earlier in the year to ensure fairness across all taxpayers. It was also stated that there would be an option for Councils to have discretion over debt recovery in exceptional circumstances and that ratepayers need to be made aware that payments still need to be made regardless of whether a bill is in dispute. To communicate this, the Barclay Review suggested it be included on bills.

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

- 9.2 There were 55 responses to Question 13. No Assessors or respondents from the Independent Education Sector answered this question. A breakdown of respondent categories can be found in the table below.

Table 13: Respondents Categorised

Respondent Category	Number of Responses
Businesses	5
Chartered Surveyor (Private Sector)	4
Independent Education Sector	0
Individuals	3
Local Authority / Local Authority Association / Local Community	26
Other Public Sector and Third Sector	1
Private Sector Professional / Representative / Trade Body	16
Valuation Boards / Assessors / Related Representative Organisation	0
Total	55

- 9.3 There was strong indication that the Scottish Government should be responsible in some part for communication of the debt recovery changes to ratepayers, although to a lesser extent it was suggested that Local Authorities should also play some role.
- 9.4 Communication strategies identified through the responses included: via annual non-domestic rates billing, via social media or websites, via press releases, in writing (email and letters) and via trade or business associations.

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

- 9.5 There were 61 responses to Question 14. No Assessors answered this question stating it was outside their remit. A breakdown of responses by respondent categories can be found in the table below.

Table 14: Respondents Categorised

Respondent Category	Number of Responses
Businesses	5
Chartered Surveyor (Private Sector)	4
Independent Education Sector	1
Individuals	7
Local Authority / Local Authority Association / Local Community	26
Other Public Sector and Third Sector	1
Private Sector Professional / Representative / Trade Body	17
Valuation Boards / Assessors / Related Representative Organisation	0
Total	61

- 9.6 The responses indicated that Councils should retain discretion over debt recovery to allow for any extenuating circumstances. The Scottish Chamber of Commerce stated “Extenuating circumstances should be a feature of any fair taxation system” and Stirling Council argued Councils “have a better understanding of potential local issues that may require us to apply discretion”. Furthermore, East Lothian Council proposed that if both council tax and non-domestic rates were consolidating in terms of timing, they should further the consolidation and “as with council tax, flexibility and discretion should be permitted to cater for all circumstances.” COSLA supported this view stating “Councils should retain discretion locally to deal with extenuating circumstances, as is the case for Council Tax recovery”.
- 9.7 Concerns were raised by a small number of responses that if Local Authorities had discretion over debt recovery for extenuating circumstances it would create inconsistencies between different local authorities. Glasgow City Council stated “discretion generates inconsistency for ratepayers who pay to multiple Councils without resultant potentially negative impacts.” Thus, it was argued by the City of

Edinburgh Council that “to be fair and again to allow a consistent application of legislation, there should be no discretion. Recovery should be set in line with Council Tax recovery regulations and should be the same for all Scottish Authorities”.

- 9.8 One respondent suggested that discretion could be given by the Valuation Appeal Committee if / when the case was taken to appeal.

10. Barclay Review Recommendation 19 – Reform appeals system

- 10.1 Questions 15 and 16 relate to Recommendation 19, “*Reform of the appeals system is needed to modernise the approach, reduce appeal volume and ensure greater transparency and fairness*”. The Tribunals (Scotland) Act 2014 provides for the transfer of VACs to Scottish Tribunals. The consultation notes this transfer is planned to take place in 2022. Currently, the appeals process can only result in a decrease in rateable value or the rateable value staying the same. The Barclay Review recommended that it should also be possible for the outcome of an appeal to be an increase in rateable value. The Review anticipated that this will help ensure fairness across non-domestic rates. The BIAG highlighted the importance of ensuring the appeals system is reformed to guarantee an effective delivery system within the new three year revaluation timescale (noted in Recommendation Two).

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

- 10.2 There were 64 responses to Question 15. The Independent Education Sector and the Other Sector did not answer this question. A breakdown of respondent categories can be found in the table below.

Table 15: Respondents Categorised

Respondent Category	Number of Responses
Businesses	6
Chartered Surveyor (Private Sector)	5
Independent Education Sector	0
Individuals	4
Local Authority / Local Authority Association / Local Community	24
Other Public Sector and Third Sector	0
Private Sector Professional / Representative / Trade Body	19
Valuation Boards / Assessors / Related Representative Organisation	6
Total	64

- 10.3 There was strong indication that the Scottish Government should be responsible in some part for communicating the changes to the appeals system to ratepayers. To a lesser extent, Local Rating Authorities were also identified as a conduit for communicating changes.
- 10.4 Communication strategies identified from the responses included: via annual non-domestic rate billing, social media or websites, press releases, in writing (email and letters) and via trade or business associations.
- 10.5 A suggestion was made that the changes to the appeals system could be communicated in conjunction with the changes to debt recovery, as outlined in Question 13.

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

- 10.6 There were 78 responses to Question 16, the largest respondent categories were Representative Bodies and Local Authorities. A breakdown of respondent categories can be found in the table below.

Table 16: Respondents Categorised

Respondent Category	Number of Responses
Businesses	8
Chartered Surveyor (Private Sector)	5
Independent Education Sector	6
Individuals	11
Local Authority / Local Authority Association / Local Community	23
Other Public Sector and Third Sector	1
Private Sector Professional / Representative / Trade Body	20
Valuation Boards / Assessors / Related Representative Organisation	4
Total	78

- 10.7 There was general agreement with the proposed change to allow rateable values to increase on appeal, this was expressed by all respondent groups except Chartered Surveyors.
- 10.8 Various implementation concerns were raised with the proposed change to valuation appeals. Concerns included:
- Inconsistencies in valuation of properties,
 - Unclear methodology with regard to valuation decisions,
 - A potential threat of appeal increases disincentivising small businesses from appealing when they are eligible for lower rates.
- 10.9 Inconsistencies in the valuation of properties across different geographies was highlighted by Local Authorities, Representative Bodies and ratepayers (Education and Other). There was a call for clarity of the impact an appeal increase or decrease could have on neighbouring or similar properties. The Scottish Chamber of Commerce stated “one business can appeal, see their RV (Rateable Value) reduced, and their next-door neighbour, in an identical property, will never receive a revised

value themselves [if they have not appealed]”. It was suggested that this could continue a system of unequal valuations on neighbouring or like properties.

- 10.10 A concern, particularly for Representative Bodies, was the potential threat of appeal increases disincentivising small businesses from appealing when they are eligible for lower rates; for example, eligibility for the Small Business Bonus Scheme. The British Independent Retailers Association (BIRA) for instance stated “the stakes are simply too high and we are concerned that small business will be incentivised to accept that they have to pay too much tax rather than risking an even larger bill”. Concerns were not confined to small businesses, the Chartered Institute of Taxation commented that there was “a danger that some ratepayers with sound reasons for submitting an appeal may be put off doing so”. Therefore, the new appeals system may be prejudiced towards not only smaller businesses, but may also “create a category of businesses who are paying too much but who are frightened into not enforcing their rights by the potential of even higher bills” (BIRA).
- 10.11 Some respondents suggested that clarification of the methodology the Assessor used to arrive at valuations would be useful in deciding whether a business should launch an appeal. It was felt that if the Assessor was compelled to publish this method, it would increase the transparency and reassure the ratepayer of consistency and fairness within the system. There were also calls for additional clarity as to the timescale of appeals in relation to the new three year valuation cycle.
- 10.12 A small number of Local Authorities, Businesses and Representative Bodies highlighted that Assessors already have the power, set out in the Local Government (Scotland) Act 1975³ to change valuations once they have been entered onto the roll where errors exist (i.e. valuations are incorrect due to factual or fundamental errors). However, some noted that these powers may need amended to enable the proposals to be fully realised.

³ <http://www.legislation.gov.uk/ukpga/1975/30/section/2>

11. Barclay Review Recommendation 20 – General Anti-Avoidance Rule (GAAR)

- 11.1 Question 17 relates to Recommendation 20, “A General Anti-Avoidance Rule (GAAR) should be created to reduce avoidance and make it harder”. This recommendation is intended to close known loopholes and stop any future loopholes from being exploited.

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

- 11.2 There were 65 responses to Question 17. The largest response categories were Local Authorities and Representative Bodies. A breakdown of respondent categories can be found in the table below.

Table 17: Respondents Categorised

Respondent Category	Number of Responses
Businesses	6
Chartered Surveyor (Private Sector)	3
Independent Education Sector	8
Individuals	5
Local Authority / Local Authority Association / Local Community	24
Other Public Sector and Third Sector	1
Private Sector Professional / Representative / Trade Body	16
Valuation Boards / Assessors / Related Representative Organisation	2
Total	65

- 11.3 General support for the GAAR came from across all respondent categories. Only one response was explicitly against the introduction of the GAAR. UNISON reasoned that the “GAAR at a UK level has not been an effective tool in deterring or countering tax avoidance.”
- 11.4 A number of Local Authorities recommended that GAAR should include a statement that indicated who the liable party was for any potential avoidance. Suggestions included the Director of the business or the property owner. This would “override the ordinary principles of beneficial occupation to hold the owners of the building, individual company directors or other party instigating the avoidance to be liable” (Glasgow City Council). There is a perception that, if it is possible to hold someone personally responsible for any disregard to the GAAR, this will deter blatant violations.
- 11.5 Furthermore, a number of Local Authorities, advocated strongly for measures against known loopholes to be included in the GAAR, such as phoenix companies⁴ and misuse of the Small Business Bonus Scheme. To counter these loopholes Local Authorities, such as the City of Edinburgh Council, advocated for a framework to be created whereby data and details of avoidance tactics could be shared amongst them. Moray Council, along with others, advocated for annual reviews of this feedback which could then be used to update the GAAR to target new loopholes. South Ayrshire Council suggested that data sharing with other agencies such as Her Majesty’s Revenue and Customs (HMRC) would help prevent avoidance.
- 11.6 Alongside the above, COSLA highlighted “pertinent principles [...] similar to principles which underlie other taxes” which should apply to the GAAR. These include:
- local taxation should be fair and easy to pay,
 - should be administratively efficient, and
 - difficult to avoid.

⁴ The term “phoenix company” is used to describe the practice of carrying on the same business or trade successively through a series of companies where each becomes insolvent (can’t pay their debts) in turn. Each time this happens, the insolvent company’s business, but not its debts, is transferred to a new, similar ‘phoenix’ company. The insolvent company then ceases to trade and might enter into formal insolvency proceedings (liquidation, administration or administrative receivership) or be dissolved. (<https://www.gov.uk/government/publications/phoenix-companies-and-the-role-of-the-insolvency-service/phoenix-companies-and-the-role-of-the-insolvency-service>)

- 11.7 Some respondents advocated that penalties for avoidance should include disclosure of businesses to the public, significant financial penalties to be enforced and seizure of property as a last resort.
- 11.8 Concerns were raised over clarity of definitions and the GAAR procedures. There were calls for guidance on the general rules that would be implemented under the GAAR. It was highlighted that the GAAR “should differentiate between those that cannot find occupiers for property and those that do deliberately leave property vacant” (Scottish Business Ratepayers Group). Furthermore, East Dunbartonshire Council highlighted the necessity to define in the GAAR when avoidance is and is not “reasonably regarded as reasonable”.

12. Barclay Review Recommendation 21 – Close empty property relief loophole

- 12.1 Question 18 and 19 relate to Recommendation 21, “*To counter a known avoidance tactic, the current 42-days reset period for empty property should be increased to 6 months in any financial year.*” Currently, a ratepayer can reapply for empty property relief after the 42-day reset period, the proposed change will increase the time period to six months. It is expected that this will help restrict any abuse through patterns of occupation which seek to exploit empty property relief. The Barclay Review advised the six month period should be discontinuous, to ensure that properties could provide space for “pop-up” use. The Barclay Review recommended this proposed change be implemented in 2020.

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

- 12.2 There were 51 responses to Question 18. No Assessors or respondents from the Independent Education Sector answered Question 18. A breakdown of respondent categories can be found in the table below.

Table 18: Respondents Categorised

Respondent Category	Number of Responses
Businesses	6
Chartered Surveyor (Private Sector)	4
Independent Education Sector	0
Individuals	2
Local Authority / Local Authority Association / Local Community	25
Other Public Sector and Third Sector	0
Private Sector Professional / Representative / Trade Body	14
Valuation Boards / Assessors / Related Representative Organisation	0
Total	51

- 12.3 Most responses suggested that it ought to be the Scottish Government's responsibility to raise awareness of the proposed change to the empty property reset period.
- 12.4 Respondents generally advocated for mixed methods of communication which included websites / social media, via bills / formal notices and business / trade organisations. A small number of responses indicated there should be involvement of the press, for example advertising campaigns in the national media.

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

- 12.5 There were 54 responses to Question 19. No Assessors, respondents from the Independent Education Sector or the Other Sector answered this question. A breakdown of responses by respondent categories can be found in the table below.

Table 19: Respondents Categorised

Respondent Category	Number of Responses
Businesses	7
Chartered Surveyor (Private Sector)	4
Independent Education Sector	0
Individuals	5
Local Authority / Local Authority Association / Local Community	24
Other Public Sector and Third Sector	0
Private Sector Professional / Representative / Trade Body	14
Valuation Boards / Assessors / Related Representative Organisation	0
Total	54

- 12.6 Overall, there were divided views between different types of respondents. Local Authorities and Representative Bodies were largely in favour of the 6-month reset period. Many suggested that a 6-month reset period would

be more effective in preventing avoidance than a 42-day reset period. Chartered Surveyors and Businesses were against this proposal.

- 12.7 Along with preventing avoidance, Dumfries and Galloway Council stated that the 6-month reset period “will have direct and indirect benefits on the local economy”. The Institute of Revenues, Ratings and Valuation (Scotland) specified that this change “would provide more time to undertake property inspection and, in our view, would generally be more effective in preventing avoidance than the current measures. It would be relatively simple to administer and relatively straightforward for a landlord to understand”.
- 12.8 Chartered Surveyors were not in favour of the 6-month reset period along with a small number of Representative Bodies. The Scottish Property Federation stated “there is not an incentive to seek empty property rate relief rather than rent. Where this is done it is because of market failure not a desire to avoid taxes”. They believed the reset period should stay at 42 days and the change to six months would not increase the incentive for landlords to find tenants.
- 12.9 Businesses indicated that the change to a 6-month period would make Scotland uncompetitive in the UK mainland market as England and Wales⁵ have a 42-day reset period. Therefore, these respondents advocated for the reset period on empty property relief to remain at 42 days. Along with this view, GVA noted that creating a discontinuous 6-month period would help maintain pop-up businesses. Another respondent held the view that there was no need for the change in policy as there were already financial incentives to sub-let and dispose of leases.
- 12.10 The Scottish Council for Development and Industry (SCDI) identified “current [letting] market trends [...] towards short leases with a break clause”. These trends, noted by SCDI and others, were not appropriately acknowledged by the new 6-month reset period. Argyll and Bute Council highlighted that “Short periods of occupation of less than 6 weeks are currently ignored. If a new business takes on a lease of a property and

⁵ N.B. Mark Drakeford, Cabinet Secretary for Finance issued a written statement on 16th October 2018 on behalf of the The Welsh Government. This statement detailed the decision by the Welsh Government to increase the period of temporary occupation of empty property from 42 days to 6 months. The Barclays Review Consultation period ran from the 25th June to 17th September 2018.

occupies it for less than 6 months under this proposal, and then the tenant fails and vacates the premises, the owner would then be penalised by not receiving any further empty relief whilst looking for a new tenant.” Argyll and Bute Council felt the change in policy would deter owners from letting to start-up businesses, as they are more likely to fail in the first 6 months. SCDI suggested that a “3 month reset period for empty property relief would more closely reflect current market trends”.

- 12.11 Concerns were raised by some respondents over the discontinuous nature of the 6-month reset period and there was support for the reset period to not be restricted to a single financial or calendar year. Suggestions from a small number of responses stated the 6-month reset period should be rolling. Inverclyde Council noted this would help avoid “artificial break points”.
- 12.12 It was suggested that the Scottish Government should take into account how the change in the empty property relief may affect other reliefs and exemptions. In particular, “When a relief is changed (say to support a particular policy aim), it is necessary to be aware of issues such as, how it interacts with other reliefs and exemptions (whether business rates or other taxes), whether information needed to determine eligibility for a relief or exemption is readily available, how easy it would be to check compliance in respect of a relief or exemption, and whether IT and administration systems can cope with the requirements of the relief” (Chartered Institute of Taxation).
- 12.13 In addition, the necessity for clarity was highlighted over certain definitions such as ‘meaningful occupation’ and ‘empty’. Stirling Council exemplified this point stating that the “regulation should define 'occupied' for example, 75% or more of the property should be occupied. This would prevent cases such as the Makro [Properties Limited vs Nuneaton & Bedworth Borough Council] case”⁶.

⁶ Makro Properties Limited v Nuneaton & Bedworth Borough Council - <http://www.mondaq.com/uk/x/200814/landlord+tenant+leases/Case+Note+Empty+Rates+Makro+Properties+Limited+v+Nuneaton+Bedworth+Borough+Council>

13. Barclay Review Recommendation 22 – Close Small Business Bonus Scheme loophole (self-catering)

- 13.1 Questions 20 and 21 relate to Recommendation 22, “*To counter a known avoidance tactic for second homes, owners or occupiers of self-catering properties must prove an intention to let for 140 days in the year and evidence of actual letting for 70 days.*” This recommendation intends to tackle a loophole for second homes identified by the Barclay Review. Presently, occupiers should notify the Assessor and request a move from domestic to non-domestic classification if their property is available to let for 140 days or more a year; there is no requirement for evidence of actual letting to be provided. Therefore, owners of second homes can potentially avoid both council tax and non-domestic rates on their property by claiming that it is a self-catering property when it is not and then potentially claiming the Small Business Bonus Scheme if they qualify. Recommendation 22 will ensure that any self-catering property must be intended to be let for 140 days a year and actually let for 70 days a year in order to qualify as non-domestic. The Barclay Review did not specify whether there should be any discretion in the application of the 70 day criterion.

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

- 13.2 There were 57 responses to Question 20. The largest respondent category was Local Authorities. There were no responses from the Independent Education Sector or the Other Sector. A breakdown of respondent categories can be found in the table below.

Table 20: Respondents Categorised

Respondent Category	Number of Responses
Businesses	3
Chartered Surveyor (Private Sector)	2
Independent Education Sector	0
Individuals	9
Local Authority / Local Authority Association / Local Community	27
Other Public Sector and Third Sector	0
Private Sector Professional / Representative / Trade Body	15
Valuation Boards / Assessors / Related Representative Organisation	1
Total	57

- 13.3** Opinion was divided, Representative Bodies, Businesses and Individuals were in favour of discretion, whereas Chartered Surveyors and the Assessor that responded to this question did not believe in local discretion. Local Authorities were split between agreement and disagreement with the proposal.

Question 21 - If your answer to Question 20 is yes, under what circumstances should this discretion apply?

- 13.4** There were 39 responses to Question 21. Representative Bodies and Local Authorities were the largest respondent categories. The Independent Education Sector, Chartered Surveyors and the Other Sector did not respond to Question 21. A breakdown of responses by respondent categories can be found in the table below.

Table 21: Respondents Categorised

Respondent Category	Number of Responses
Businesses	4
Chartered Surveyor (Private Sector)	0
Independent Education Sector	0
Individuals	5
Local Authority / Local Authority Association / Local Community	14
Other Public Sector and Third Sector	0
Private Sector Professional / Representative / Trade Body	14
Valuation Boards / Assessors / Related Representative Organisation	2
Total	39

13.5 Responses mentioned “extenuating” or “exceptional” circumstances which may be outwith the ratepayer’s control as a criterion for local discretion to be used. Examples included:

- “Landslides, floods and fire” (Argyll and Bute Council).
- Seasonal/environmental based discretion (with specific reference made to outer islands by the Scottish Property Federation). For example, where travel to and from an island is limited to ferries which can be restricted due to the weather or season, this would then impact the amount of time for which any properties on the island can be let.
- When personal circumstances arise, such as a bereavement.

13.6 The responses raised a number of issues:

- Challenges around validating eligibility. Scottish Borders Council for instance stated that there may be “difficulty in assessors/councils being able to validate evidence of an intention to let for 140 days in the year and evidence of actual letting for 70 days.” Thus, they called for ratepayers to be responsible for declaring intention to let and actual letting, with sanctions applied if the declaration was inaccurate.

- Clarity is needed with regard to the timescale of the 70 day letting criterion. The Barclay Review does not state whether this is a financial year, rolling year or calendar year. The Institute of Revenues, Rating and Valuation Scotland (IRRV) highlighted an exception in the Welsh system; properties “must meet the multiple of 70 days total over the three or five years” (IRRV). This option gives the ratepayer more flexibility if extenuating circumstance did come to light.
- Local discretion may cause inconsistencies across Scotland, “discretionary decisions will lead to inconsistency of approach across authorities with the potential for greater confusion / higher levels of appeal” (Glasgow City Council).
- Self-catering businesses may never reach the 70 day letting criterion. To counter this, a suggestion was made by the Scottish Borders Council and Argyll and Bute Council that they should be kept or reinstated on the Council Tax Register.
- This policy change for the “micro-hospitality sector would be inequitable, and there must be further consideration of this in moving ahead with this recommendation” (Scottish Chamber of Commerce). As stated by Airbnb, the Scottish Government is currently exploring the “regulation of short-term letting”, therefore they asked that the Barclay Review “await the Government’s recommendations on letting the sector before redefining business rates which would impact the sector”.

14. Barclay Review Recommendation 24 – Reform charity relief

- 14.1 Question 22 relates to Recommendation 24, “*Charity relief should be reformed / restricted for a small number of recipients.*” The Government accepted this recommendation in part in its Implementation Plan, namely removing charity relief for most independent schools from 2020. However, the Scottish Government has committed that schools for children and young people with additional support needs that are in receipt of disabled persons relief or charitable relief will be able to retain that relief. There may be a small number of independent schools with exceptional circumstances that require further consideration.

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

- 14.2 There were 71 responses to Question 22. No Assessors answered this question. The largest respondent categories were Local Authorities, Individuals and the Independent Education Sector. A breakdown of respondent categories can be found in the table below.

Table 22: Respondents Categorised

Respondent Category	Number of Responses
Businesses	2
Chartered Surveyor (Private Sector)	1
Independent Education Sector	17
Individuals	18
Local Authority / Local Authority Association / Local Community	23
Other Public Sector and Third Sector	1
Private Sector Professional / Representative / Trade Body	9
Valuation Boards / Assessors / Related Representative Organisation	0
Total	71

14.3 The predominant view was that there should be parity of treatment regardless of whether schools are independent, state-run or specialist, supported by Local Authorities, Representative Bodies and Individuals. The Independent Education Sector and Representative Bodies highlighted the necessity for parity across all schools which supported children with additional needs. Therefore, these schools should be treated the same regardless of status. The Scottish Council for Independent Schools stated “If educational bodies are worthy of relief, the same principle should be applied to all – state and independent schools, colleges, universities and other teaching institutions and foundations.”

14.4 The Independent Education Sector also commented that the Barclay Review unfairly targeted Independent Schools as the suggestion of exempting certain types of Independent Schools would unfairly benefit some schools whilst leaving others struggling. The Scottish Charity Regulator commented that the “creation of a ‘two-tier’ charity sector within a ‘single-tier’ regulatory regime could be damaging to the public’s trust and confidence in both the sector and charity law.” They also stated that the proposed change to remove non-domestic rates relief from certain Independent Schools may devalue “charity status of certain groups of charities”.

- 14.5 Those with an interest in faith schools also stressed the need for parity across the education sector. However, they emphasised that if this change was enacted that they would advocate for an “exceptional circumstance” criterion to be faith schools with minimal fees.
- 14.6 Furthermore, there was widespread consensus that there needed to be a definition of ‘exceptional circumstances’ to provide clarity over who would receive relief. The Institute of Revenues, Ratings and Valuations along with the Scottish Chamber of Commerce believed that further consultation was needed in order to determine criteria upon which the charity relief was claimed.
- 14.7 There were a number of additional points raised:
- The Recommendation’s statement that “The separate strand of this recommendation for ALEO [Arm’s Length External Organisations] properties is being taken forward administratively” was met with concern. The Highland Council and The Scottish Charity Regulator, along with a number of others, wished to have been allowed to add comment on this section of the Review.
 - Scaled relief was perceived to make the relief more proportional to the recipient. Aberdeenshire Council suggested there should be “a reduction in Rates through discretionary relief [based on] e.g. retained profits, unreserved funds. This could be done based on a sliding scale calculation”.

15. Barclay Review Recommendation 25 – Restrict relief to properties in active occupation

- 15.1 Question 23 relates to Recommendation 25, “*To focus relief on economically active properties, only properties in active occupation should be entitled*”. This recommendation will primarily impact on empty properties either previously occupied by charities which receive charity relief (not empty property relief), or empty properties that claim the more generous SBBS instead of empty property relief. Active occupation has yet to be defined but suggestions in the Barclay Implementation Consultation Paper included “floor space used, accessibility to the public and / or council, demonstration of accounts for a business in operation at the property”. The consultation also suggested an alternative could be to use the GAAR as an alternative in cases where a property is not in active use, but claims a relief other than empty property relief.

Question 23 - How should active occupation be defined?

- 15.2 There were 54 responses to Question 24. The largest respondent category was Local Authorities. A breakdown of responses by respondent categories can be found in the table below.
- 15.3 The Barclay Implementation Consultation Paper (paragraph 61) identified “floor space used, accessibility to the public and/ or council, demonstration of accounts for a business in operation at the property” as possible criteria to form the definition of active occupation. These three criteria, as well as potential use of the GAAR, were supported by Local Authorities and Representative Bodies.

Table 23: Respondents Categorised

Respondent Category	Number of Responses
Businesses	6
Chartered Surveyor (Private Sector)	4
Independent Education Sector	1
Individuals	3
Local Authority / Local Authority Association / Local Community	25
Other Public Sector and Third Sector	1
Private Sector Professional / Representative / Trade Body	13
Valuation Boards / Assessors / Related Representative Organisation	1
Total	54

15.4 The GAAR was supported, in part because of the perceived difficulty in arriving at a practical and effective definition of active occupation. For example, “subjects take the form of telecommunications cables, radio masts, rights over land or other entities where physical / human occupation never occur” (Dunbartonshire and Argyll & Bute Valuation Board). Furthermore, GL Hearn was concerned that defining ‘active occupation’ was not “a viable strategy for deciding whether business rates relief should be granted”. Therefore, “due to the complexities of arriving at a practical and effective definition of active occupation”, West Lothian Council, among others, suggested using the GAAR.

15.5 Additional criteria suggested included:

- Physical evidence of a business being run from the property, however there was no consensus on the evidence preferred to determine a physical business.
- North Lanarkshire Council suggested that “providing a service or being used in support of active use of another property” could be used to define active occupation.

- 15.6 The proposal to remove charity relief from properties which were no longer occupied by a charity was met with agreement by a number of respondents. GL Hearn Ltd stated “if a unit is no longer occupied by a qualifying charity then charitable relief should be removed”. Furthermore, Argyll and Bute Council noted “that charitable relief should only be given to properties which are occupied by the charity. Currently there are situations where charities own properties and have limited incentives to ensure they are well utilised”. Therefore, there was agreement from Local Authorities and Chartered Surveyors that the charity relief should only apply on buildings where charities were in occupation.
- 15.7 However, the Royal Blind School highlighted potential scenarios in which charity relief should still be applicable even when the charity is not actively using the building. These included “changes to school rolls, the physical needs of their service users, and moving services out of buildings which are no longer fit for purpose”. In these instances, charity relief should still apply on the property. Therefore, the Royal Blind argue that “a definition of “active property” which did not give any consideration to such scenarios and processes could also have a detrimental impact on charities providing vital educational benefit to disabled children and young people”.
- 15.8 Similarly, the Scottish Business Ratepayers Group stated that “not all properties that are vacant are economically active”. Therefore, if the property is not capable of being let for reasons outwith the ratepayers’ control then it is not fair to further penalise them with the removal of rates relief. This view was supported by a number of Businesses, Representative Bodies and Chartered Surveyors.

16. Barclay Review Recommendation 26 – Reform empty property relief (listed buildings and surcharge)

- 16.1 Question 24 relates to Recommendation 26, “*To encourage bringing empty property back into economic use, relief should be reformed to restrict relief for listed buildings to a maximum of 2 years and the rates liability for property that has been empty for significant periods should be increased.*” The consultation stated that from 2020, empty listed property will receive 100% relief for 2 years. After this period, it will be eligible for the same relief as other types of empty property, this currently stands at 10% relief. Any property that is empty for more than 5 years, except for listed buildings, will pay a 10% bill surcharge after 5 years. This recommendation is intended to incentivise bringing all types of empty non-domestic property back into economic use. The BIAG suggested the planning process could be excluded from reforms, although it was recognised this could be open to abuse and an alternative suggestion was to allow local discretion.

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

- 16.2 There were 71 responses to Question 24, the largest respondent categories were Local Authorities and Representative Bodies. No Assessors responded to this question. A breakdown of respondent categories can be found in the table below.

Table 24: Respondents Categorised

Respondent Category	Number of Responses
Businesses	5
Chartered Surveyor (Private Sector)	4
Independent Education Sector	8
Individuals	8
Local Authority / Local Authority Association / Local Community	26
Other Public Sector and Third Sector	4
Private Sector Professional / Representative / Trade Body	16
Valuation Boards / Assessors / Related Representative Organisation	0
Total	71

- 16.3 Across all respondent categories there was a strong consensus that Councils should have discretion over the application of this relief. It was noted that this would allow “local circumstances to be considered” in the application of the relief (Dumfries and Galloway Council) which may include “local needs / requirements / anomalies specific within the Council area to be dealt with which may not have affected other Councils” (Highland Council).
- 16.4 A small number of responses, which included Local Authorities, Businesses and Representative Bodies, did not agree with allowing local discretion. They raised concern that this would be a detriment to consistency in policy across Scotland.
- 16.5 A number of implementation concerns and unintended consequences were highlighted from those in favour as well as against local discretion or who expressed no clear opinion. The concerns included:
- A potential negative impact on townscapes due to a possible increase in dereliction. It was suggested that listed buildings are more expensive to maintain therefore if the relief was removed, they would be more likely to fall derelict or into disrepair. This concern

was raised by Dundee City Council which did not express a view on whether local discretion was favourable.

- Aberdeen City Council, amongst others, speculated that if a ratepayer has properties that span across multiple local jurisdictions it may lead to complexities as one property may benefit from relief whereas one in a different jurisdiction may not.
- It was noted that listed buildings “can be difficult to lease and planning processes in these cases can be complex” (Institute of Revenues, Ratings and Valuations). Thus, it would be unfair to penalise owners or landlords of these properties.
- Any changes to existing relief could distort markets, leading to unequal beneficiaries of policy change. For example, some listed buildings won’t ever be able to be brought back into active use.
- The Independent Education Sector noted the potential for the relief to unfairly financially burden some schools. The Scottish Council of Independent Schools noted there are 16 independent schools which are classified as Category A and more as Category B listed buildings.
- Finally, a number of responses believed that restricting relief to two years would be too short a period. The Scottish Property Federation, amongst others, stated that the two year period “is based on unrealistic expectations of the ability of even the best resourced property developers to turn around a vacant and listed empty property”. Of the responses that stated the two year period would be too short, only the Rating Surveyors Association and West Lothian Council suggested an alternative timeframe of four or five years.

17. Barclay Review Recommendation 27 – Sports relief for affordable community facilities

- 17.1 Question 25 relates to recommendation 27, “*Sports club relief should be reviewed to ensure it supports affordable community-based facilities, rather than members clubs with significant assets which do not require relief.*” It is expected that 95% of current recipients will be unaffected by this recommendation. However, a small number of clubs which either have very high membership fees and / or membership policies which exclude certain parts of the community may lose relief due to this recommendation. The Barclay Consultation Paper proposed a number of reforms which could include 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.”

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

- 17.2 There were 55 responses to Question 25. The largest respondent category was Local Authorities. No Chartered Surveyors or Assessors answered this question. A breakdown of respondent categories can be found in the table below.

Table 25: Respondents Categorised

Respondent Category	Number of Responses
Businesses	3
Chartered Surveyor (Private Sector)	0
Independent Education Sector	7
Individuals	7
Local Authority / Local Authority Association / Local Community	26
Other Public Sector and Third Sector	1
Private Sector Professional / Representative / Trade Body	11
Valuation Boards / Assessors / Related Representative Organisation	0
Total	55

- 17.3 The suggestions from the recommendation regarding fee thresholds, transparent and inclusive membership policies and availability of facilities to the local community were met with wide support.
- 17.4 Definitions again led to concerns being raised, in this case over what would constitute “affordability”, as this was seen as subjective to the fee-payer. In addition, the definition of “community benefit” was queried, Sporta suggested the following definition “charitable, non-profit distributing, with reinvestment of any profit into communities”. The Community Amateur Sports Club definition was highlighted by a number of respondents as being a potential definition upon which to base relief exemptions.
- 17.5 The Independent Education Sector proposed, as illustrated by the Scottish Council for Independent Schools, that “any such definition [of affordable / community sports facilities] should include the extensive sporting facilities operated by independent schools, and shared with state schools, local teams and communities as part of the explicit public benefit provisions of each school”.

- 17.6 A number of Local Authorities and Representative Bodies highlighted that relief should not be available for sports facilities that operated a bar or sold food. This was seen to incorporate them into the hospitality sector.
- 17.7 The Barclay Review's intention to consult further on this recommendation was welcomed, motivated by the need for clarity on definitions.

18. Barclay Review Recommendation 30 – Commercial activity on parks

- 18.1 Question 26 relates to Recommendation 30, “*Commercial activity on current exempt parks and Local Authority (Council) land vested in recreation should pay the same level of rates as similar activity elsewhere so as to ensure fairness.*” Currently public parks and land vested by the Local Authority in recreational purposes are exempt from entry on the valuation roll and hence commercial activity taking place on these pay no rates. From 2020 the Scottish Government will remove this exemption, these will now be entered into the valuation roll and non-domestic rates will become payable on the property or land within the park undertaking commercial activity.

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

- 18.2 There were 62 responses to Question 26. The largest respondent category was Local Authorities and Representative Bodies. The Independent Education Sector did not answer this question. A breakdown of respondent categories can be found in the table below.

Table 26: Respondents Categorised

Respondent Category	Number of Responses
Businesses	4
Chartered Surveyor (Private Sector)	3
Independent Education Sector	0
Individuals	9
Local Authority / Local Authority Association / Local Community	25
Other Public Sector and Third Sector	2
Private Sector Professional / Representative / Trade Body	15
Valuation Boards / Assessors / Related Representative Organisation	4
Total	62

- 18.3 Profit-raising and fee-charging were highlighted as key bases for defining commercial activity, however, it was recognised that not all fee-charging was intended to create profit. The Scottish Borders Council stated that “a key distinction lies in whether the activity and the asset are operated with the intention of generating a profit”.
- 18.4 An alternative suggestion was made to use length of time and / or the number of activities that took place within a year (no indication was given whether this was calendar or financial). For example, the City of Edinburgh Council suggested that if the activity took place for more than a designated number of days per year (days to be agreed after further consultation) then it would become liable for non-domestic rates.
- 18.5 A number of Local Authorities, Representative Bodies and Other Sector held the view that non-profit organisations should automatically be exempt from the definition of commercial activity. Sportscotland argued that “there is a risk of unintended consequences if the definition of ‘commercial activity’ is too wide, encompassing charging for sports facilities located within parks [...]. If charges for park-based sports facilities is included within the definition of ‘commercial activity’, this could

lead to significantly increased costs to users or make facilities non-viable to operators, with a resultant decrease in physical activity”.

- 18.6 Furthermore, Sporta commented that if the activity or asset “operate some commercial activities and reinvest any profit to support the delivery of their wider activities and charitable purpose”, they should not be liable to non-domestic rates. This was supported by COSLA, who also argued that: “Council run facilities [should] not be classed as commercial activity as Councils are non-profit making organisations”.
- 18.7 This was supported by COSLA, who also argued that “Council run facilities [s]would not be classed as commercial activity as Councils are non-profit making organisations”.
- 18.8 A number of Assessors, Chartered Surveyors and the Rating Surveyors Association highlighted that the recommendation’s objectives would be best achieved by reviewing the existing Section 19 of the Local Government (Financial Provisions etc.) (Scotland) Act 1963⁷ rather than implementing new policy.
- 18.9 A small number of Businesses and Representative Bodies, advocated for Local Authorities to have discretion over commercial activity.
- 18.10 Again, the issue of getting the definitions correct was highlighted by a number of respondents with calls for further consultation.

⁷ Section 19 of the Local Government (Financial Provisions etc.) (Scotland) Act 1963 - <http://www.legislation.gov.uk/ukpga/1963/12/section/19>

Annex 1: Status of Recommendations as at June 2018

Recommendation Number	Description	Status	Legislation needed
1	Business Growth Accelerator	Accepted – Implemented 1 April 2018	Secondary legislation (annual legislation on 1 April 2018). Option for primary legislation-informed by the consultation
2	Three yearly revaluations	Accepted	Primary legislation needed. Informed by the consultation
3	Reduction in Large Business Supplement	Accepted	Will be implemented by secondary legislation when affordable
4	New relief for day nurseries	Accepted – Implemented 1 April 2018	Secondary legislation (from 1 April 2018 to 31 March 2021)
5 (a)	Expanding fresh start relief to benefit town centres	Accepted – Implemented 1 April 2018	Secondary legislation (from 1 April 2018)
5 (b)	Pilot scheme to increase rates out of town	Accepted	Primary legislation needed. Informed by the consultation
6	Review of plant and machinery valuation	Accepted	None. Administrative change
7	Review of Small Business Bonus Scheme	Accepted	None. Administrative change
8	'Road map' for future rates changes	Accepted	None. Administrative change
9	Provision of better information	Accepted	None. Administrative change

10	Relief recipients to be published	Accepted	None. Administrative change
11	Employ rateable value finder product	Accepted	None. Administrative change
12	More transparency & consistency from Assessors	Accepted	None. Administrative change
13	Greater information gathering power for Assessors	Accepted	Primary legislation needed. Informed by the consultation
14	Standardised rates bills across Scotland	Accepted	None. Administrative change
15	Incentivise online billing	Accepted	None. Administrative change
16	Penalty for non-provision of information to Councils	Accepted	Primary legislation needed. Informed by the consultation
17	Councils to make refund payments faster	Accepted	None. Administrative change
18	Enable quicker debt recovery from ratepayers	Accepted	Primary legislation needed. Informed by the consultation
19	Reform of the appeals system	Accepted	Primary legislation needed. Informed by the consultation
20	General Anti-Avoidance Rule (GAAR)	Accepted	Primary legislation needed. Informed by the consultation
21	Close empty property relief loophole	Accepted	Primary legislation needed. Informed by the consultation
22	Close SBBS second homes loophole	Accepted	Primary legislation needed. Informed by the consultation
23	All relief awards to be checked for errors	Accepted	None. Administrative change

24	Reform charity relief	Partially accepted	Primary legislation needed for this part of recommendation. Informed by the consultation
25	Relief restricted to properties in active occupation	Accepted	Primary legislation needed. Informed by the consultation
26	Reform empty property relief	Accepted	Primary legislation needed. Informed by the consultation
27	Sports relief for affordable community facilities	Accepted	Primary legislation needed. Informed by the consultation
28	All property should be on valuation roll	Will not be progressed	N/A
29	Commercial agricultural processing	Will not be progressed	N/A
30	Commercial activity on parks etc.	Accepted	Primary legislation needed. Informed by the consultation

Annex 2: Consultation Respondents

148 Respondents in total

Valuation Joint Board / Assessor / Related Representative Organisation (7 total)

Ayrshire Valuation Joint Board
Dunbartonshire and Argyll & Bute
Valuation Joint Board
Grampian Valuation Joint Board
Renfrewshire Valuation Joint Board
Scottish Assessors Association
Scottish Borders Valuation Appeal
Panel
Scottish Valuation Appeal
Committees Forum

Local Authority / Local Authority Association / Local Community (29 total)

Aberdeen City Council
Aberdeenshire Council
Argyll and Bute Council
Convention of Scottish Local
Authorities (COSLA)
Directors of Finance Section for the
Councils in Scotland
Dumfries and Galloway Council
Dundee City Council
East Ayrshire Council
East Dunbartonshire Council
East Lothian Council
Falkirk Council
Fife Council
Glasgow City Council
Inverclyde Council
Isle of Gometra
Moray Council
North Ayrshire Council

North Lanarkshire Council
Renfrewshire Council
Scottish Borders Council
Shetland Islands Council
South Ayrshire Council
South Lanarkshire Council
Stirling Council
The City of Edinburgh Council
The Highland Council
VOCAL Scotland
West Dunbartonshire Council
West Lothian Council

Independent Education Sector (17 total)

Cedars School of Excellence
Clifton Hall School, Edinburgh
Fettes College
Focus Learning Trust
George Watson's College
Hamilton College
High School of Dundee
Kelvinside Academy
Oakwood Education Trust
Regius School
Robert Gordon's College
Scottish Council for Independent
Schools
St Margaret's School for Girls
Strathallen School
The Edinburgh Academy
The Royal Blind School
St Columba's School, Kilmacolm

Businesses (13 total)

Airbnb
Asda Stores Ltd
BNP Paribas Real Estate
Boots UK
British Land
Carron Real Estate Ltd
CBRE Ltd
Green Cat Renewables Ltd
Griffin Fitness Ltd
GVA
Historic Houses
Sainsbury's Group
Whitbread group PLC

Chartered Surveyor (Private Sector) (5 total)

Eric Young & Co LLP
Gerald Eve LLP
GL Hearn Limited
J&E Shepherd
WYM Rating

Private Sector Professional / Representative / Trade Body (47 total)

Accessible Retail
Association of Scotland's Self-Caterers
British Independent Retail Association (BIRA)
Built Environment Forum Scotland
Confederation of British Industry Scotland
Chartered Institute of Taxation
Civil Engineering Contractors Association (Scotland)
Federation of Master Builders
Federation of Small Businesses
Fife Licensed Trade Association/Fife Licensing Forum
Food and Drink Federation
Freight Transport Association

Homes for Scotland
Horticultural Trade Association
Institute of Revenues, Ratings and Valuation
Institute of Revenues, Ratings and Valuation (Scotland)
Institute of Directors Scotland
Kirkcaldy4all
Law Society of Scotland
National Hairdressers Federation
National Federation of Retail Newsagents
National Farmers' Union Scotland
Oil & Gas UK
Print Scotland
Rating Surveyors Association
Reform Scotland
Royal Institution of Chartered Surveyors
Scotch Whisky Association
Scottish Bakers
Scottish Business Ratepayers Group
Scottish Chambers of Commerce
Scottish Engineering
Scottish Grocers' Federation
Scottish Land & Estate
Scottish Licensed Trade Association
Scottish Property Federation
Scottish Renewables
Scottish Retail Consortium
Scottish Sports Association
Scottish Tourism Alliance
Scottish Wholesale Association
Sporta
The Scottish Council for Development and Industry
UK Hospitality
UK Petroleum Industry Association
UNISON Scotland
Wine and Spirit Trade Association

Individuals (24 total)

Colin Palmer

Lee Parry

22 further responses, name and/or
response withheld

**Other Public and Third
Sector (6 total)**

Glasgow Life

Historic Environment Scotland

sportscotland

The National Trust for Scotland

The Office of the Scottish Charity

Regulator

University of Stirling



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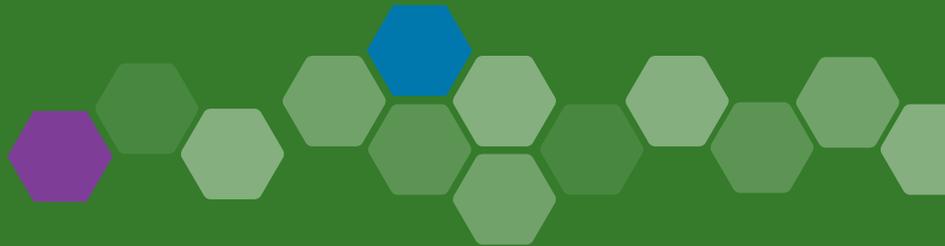
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