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Andrew Proudfoot
Clerk
Delegated Powers and Law Reform Committee
Room T1.01
Scottish Parliament

By email: DPLR.Committee@parliament.scot

27 October 2019

Dear Andrew,

Delegated Powers and Law Reform Committee Non-Domestic Rates (Scotland) Bill: Stage 1

Further to my letter of 28 June 2019, the Scottish Government welcomes the Delegated Powers and Law Reform Committee's ("the Committee") report on the Delegated Powers Memorandum that accompanies the Non-Domestic Rates (Scotland) Bill ("the Bill") and would like to thank the Committee for their thorough scrutiny of the delegated powers contained in the Bill.

The Scottish Government would like to respond to the Committee's recommendations as set out in paragraphs 25, 28, 35 & 36, and 43 & 44, of their report.

Paragraphs 25 and 28 - recommendations

At *paragraphs 25 and 28* the Committee recommended that the Scottish Government give further consideration to the ancillary powers provisions in the Bill, particularly about their relationship with powers to make further provision about certain matters, and the potential interaction of the ancillary powers attached to some of the specific provisions in the Bill with the more general ancillary power in section 29(1). The concern is that this could create potential for "ancillary to ancillary" provision.

The Scottish Government has reflected on the Committee's concern at *paragraph 28*, and intends at Stage 2 to bring forward an amendment so that the ancillary power in section 29(1) can only be used to give full effect (etc.) to the Bill as enacted, and can no longer be used to make ancillary provision to give full effect (etc.) to regulations made under the Act. The Scottish Government will also bring forward an amendment to omit section 29(2)(a), which allows standalone regulations under the section to make further ancillary provision.

The Scottish Government considers that these amendments would, if approved, strike an appropriate balance between having flexibility in how powers can be used, while maintaining limits that are tied to the purposes of the Act itself. These amendments will avoid any

ancillary use of individual powers extending further the power to make ancillary provision under section 29.

The Scottish Government has also reflected on the Committee's concern at *paragraph 25*. The powers inserted by section 7(4) (sections 3ZA(6)(e) and 3ZB(6)(g)) enable regulations to make provision about aspects of proposals and appeals not mentioned in the rest of those subsections. The Scottish Government considers this to be different to a power to make further, or supplementary, provision. The Scottish Government also considers that the powers in sections 18(10) and 20(8) are to make provision further to provision in the Bill, rather than to the main subject matter of the powers. However, the Scottish Government intends to bring forward amendments at Stage 2 to sections 19(7)(d) and 21(6)(d), as it is considered that the power to make further provision about appeals will include matters other than those mentioned in paragraphs (a) to (c) of those subsections.

Paragraphs 35 and 36 - recommendations

At *paragraphs 35 and 36* of its report the Committee invited the lead committee to consider whether Parliament should have the ability to annul guidance to local authorities on reduction or remission of rates for various organisations, or whether publication of the guidance would suffice. If publication would suffice, the recommendation is that guidance should be laid before Parliament. Noting paragraph 90 of the lead Committee's report on this point, the Scottish Government will bring forward an amendment at Stage 2 to require that the guidance is laid before the Scottish Parliament

Paragraphs 44 and 45 - recommendations

At *paragraph 44* of its report the Committee recommends that the Scottish Government considers how further specification could be provided in section 23 of types of provision that could be made in anti-avoidance regulations. The Scottish Government does not consider it appropriate or possible to proceed in this way. The power has been drafted by reference to what the aim of regulations must be, to prevent or minimise advantages arising from non-domestic rates avoidance arrangements that are artificial.

Specifying types of provision risks unintended effects on the breadth that this power is intended to give; the Scottish Government considers that the breadth should be controlled through the scrutiny arrangements for any use of the power. Section 27 of the Bill sets out a super-affirmative form of procedure to that end, including a requirement for consultation with local authorities or assessors (recognising that either, or both, will have particular interests in any proposals for regulations).

Paragraph 45 of the report recommends that the Scottish Ministers seek to improve the clarity of section 27(4), as regards when the Scottish Ministers must notify the Parliament that it has begun consultation. The Scottish Ministers accepts this recommendation and will bring forward an amendment at Stage 2 to that effect.

Local Government and Communities Committee

In its response to the lead Committee's Stage 1 Report, the Scottish Government commented that it would send a copy of this letter to the lead Committee and that issued today.

Yours sincerely,

Carol Sibbald

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