

INTRODUCTION

1. *Non Domestic Rates: Returning Prescribed Industries to Conventional Valuation-A consultation paper* sought views on the Scottish Executive's proposal to return each of the following currently prescribed industries to conventional valuation:

- Electricity Generation
- Electricity Distribution
- Electricity Transmission
- Gas
- Scottish Water
- Docks and Harbours (large)
- Railways
- Train Operating Companies (TOCS)

2. The consultation paper was issued to 79 organisations on 18 December 2002. It was also available on the internet and open to all to contribute. The following link <http://www.scotland.gov.uk/consultations/enterprise/prescribed.pdf> takes you to the paper. The consultation period ended on 12 March 2003.

3. We would like to thank all those who responded to the consultation. The responses received will help inform the decision making process with regard to whether or not the industries listed above should be valued on a conventional basis at the next Revaluation (1 April 2005).

4. A list of the 36 respondents is provided at Annex A. 1 respondent asked for their response to be kept confidential. 1 respondent offered no comments at all. 3 respondents offered comments on their particular industry, but no firm view on the proposal to end prescription. 8 respondents supported the ending of prescription in principal without offering any views on the individual industries. 1 respondent opposed the ending of prescription for all industries without offering any views on the individual industries.

5. The remaining 22 respondents offered views on whether prescription should be ended for one or more of the currently prescribed industries. The majority of those who commented on electricity distribution, electricity generation (albeit a marginal majority), electricity transmission, gas, railways including the train operating companies and Scottish Water were in favour of ending prescription. The majority view on docks and harbours (large) was that their rateable values should continue to be prescribed.

6. Copies of individual responses (except those marked confidential) can be seen/are available from the Scottish Executive library at Saughton House, Broomhouse Drive, Edinburgh EH11 3XD (telephone 0131 244 4565)

SUMMARY OF RESPONSES

General

7. 8 respondents (*Aberdeen City Council, City of Edinburgh Council, Falkirk Council, Orkney Islands Council, Rating Surveyors Association, Royal Institution of Chartered Surveyors in Scotland, Scottish Council for Development in Industry and South Lanarkshire Council*) supported the ending of prescription in principal without commenting on individual industries.

Examples of the views expressed:

- will result in greater transparency and openness
- will provide a level playing field with England where it is believed prescription will end at next revaluation
- access to right of appeal means currently prescribed industries will be treated the same as rest of ratepayers
- industries would benefit from the same flexibility over the 5 year period to take into account any material change of circumstances that may occur which affect their properties
- seems reasonable in today's economic and business climate to return such industries to normal valuation practice

8. 1 respondent (*Glasgow City Council*) was against a return to conventional valuation for all the industries.

Examples of the view expressed

- not clear that the conditions for valuation of the industry are much different than when prescribed assessment was introduced
- further uncertainty could be introduced by appeals process if a return to conventional valuation goes ahead which could take some years before it is fully worked through

Return of Electricity Industry to conventional valuation

Electricity Distribution

9. 5 respondents took a view on ending prescription for the electricity distribution industry. 4 respondents (*Electricity Association Services Ltd, North Lanarkshire Council, Scottish and Southern Energy plc & SP Distribution*) were in favour and 1 respondent (*Scottish Assessors' Association*) was against.

Examples of views of those in favour:

- bring industry into line with other industries in Scotland and rest of UK
- would allow companies the right of appeal
- any material change of circumstance that occurred during a revaluation may be reflected in the rateable value

Example of views of those not in favour

- reversion of industry to private ownership does not remove the difficulty of there being very few comparable properties to which the Assessor can turn for rental evidence
- timing and impact of regulatory reviews could pose difficulties; arguably regulated industries should remain in prescription

Electricity Generation

10. 9 respondents took a view on ending prescription for the electricity generation industry. 5 respondents (*British Energy, Electricity Association Services Ltd, North Lanarkshire Council, Scottish & Southern Energy plc, & Strathclyde Passenger Transport,*) were in favour and 4 ‘green energy’ respondents (*DERL, Grangemouth CHP, Scottish Assessors' Association & Scottish Renewables*) were against.

Examples of views of those in favour:

- operate as a commercial concern should be valued conventionally
- would bring generation industry in line with other industries
- would allow companies to have a right of appeal
- would mean that material changes that occur during a revaluation period can be reflected in rateable value

Example of views of those not in favour

- industry has been subject to radical change with introduction of new trading arrangements
- further change will occur with the introduction of the British Electricity Trading and Transmission Arrangement (BETTA)
- any move away from a relatively stable and predictable rating valuation regime is unwelcome
- change in revaluation method at this time would increase the barriers to further new investment in the generation industry until one cycle of revaluation, appeal and poundage adjustment had been completed
- uncertainty likely to hinder the development of renewable energy projects
- Private Public Partnerships financial structures and ethos bears no relation to the national generating sector which is in private ownership

Electricity Transmission

11. 6 respondents took a view on ending prescription for electricity transmission. 4 respondents (*Electricity Association Services Ltd, North Lanarkshire Council, Scottish and Southern Energy plc, SP Transmission & Strathclyde Passenger Transport*) were in favour and 1 respondent (*Scottish Assessors' Association*) was against

Example of views of those in favour

- operate as a commercial concern should be valued conventionally
- would bring transmission industry in line with other industries
- would allow companies to have a right of appeal
- would mean that material changes that occur during a revaluation period can be reflected in rateable value

Examples of views of those not in favour

- reversion of industry to private ownership does not remove the difficulty of there being very few comparable properties to which the Assessor can turn for rental evidence
- timing and impact of regulatory reviews could pose difficulties; arguably regulated industries should remain in prescription

Ofgem -did not offer a view on the ending of prescription for the electricity distribution/generation/transmission industries. Ofgem commented that prescribed rates make up typically 5%-10% of the costs for electricity companies owning and operating infrastructure assets in Scotland. Any change in rating arrangements that increase these costs will lead to increases in prices. This would not be consistent with the Government's strategy to reduce fuel property.

Return of Gas Industry to conventional valuation

12. 4 respondents took a view on the ending of prescription for the gas industry. 3 respondents were in favour (*North Lanarkshire Council, Strathclyde Passenger Transport & Transco National Grid*) were in favour and 1 respondent (*Scottish Assessors' Association*) was against.

Examples of views of those in favour

- prescription is inflexible when dealing with material change of circumstances
- outcome of prescription process is uncertain for ratepayer and no conventional appeal rights exist to correct assessment errors

Examples of views of those not in favour

- reversion of industry to private ownership does not remove the difficulty of there being very few comparable properties to which the Assessor can turn for rental evidence
- timing and impact of regulatory reviews could pose difficulties; arguably regulated industries should remain in prescription

Ofgem -did not offer a view on the ending of prescription for the gas industry. Ofgem commented that prescribed rates make up typically 5%-10% of the costs for gas companies owning and operating infrastructure assets in Scotland. Any change in rating arrangements that increase these costs will lead to increases in prices. This would not be consistent with the Government's strategy to reduce fuel property

Return of Water Industry to conventional valuation

13. 5 respondents took a view on returning the water industry to conventional valuation. 3 respondents (*OFWAT, Scottish Water & the Water Commissioner*) were in favour and 2 respondents (*Scottish Assessors' Association & Strathclyde Passenger Transport*) were against.

Examples of views of those in favour

- water industry in England and Wales is moving in this direction and comparisons with England & Wales are an important part of the Water Commissioner in Scotland's approach to regulating industry
- would be treated same as other industries
- would have right of appeal
- would be of long term benefit to Scottish Water as it will allow for greater cost control and act as an incentive to rationalise its property portfolio & hence become more efficient

Examples of views of those not in favour

- company remains in public ownership
- company has limited ability to generate additional income streams
- timing and impact of regulatory reviews could pose difficulties; arguably regulated industries should remain in prescription

Return of Docks and Harbours (large) to conventional valuation

14. 5 respondents expressed a view on the return of the docks & harbours (large) to conventional valuation. 1 respondent (*Forth Ports plc*) offered comments but no view one way or the other. 1 respondent (*North Lanarkshire Council*) was in favour of the proposal and 4 respondents (*British Ports Association, Caledonian MacBrayne Ltd, Clydeport & Scottish Assessors Association,*) were not in favour of the proposal.

Examples of views of those not in favour

- port sector remains a mix of private, trust and municipal ports whose commercial objectives will differ widely; consider original justification for prescription remains in tact
- Caledonian MacBrayne is owned by the Scottish Executive & operates on a not for profit basis -similar to nationalised industries for which prescription was introduced
- prescription provides stability & certainty in determining assessment of liability
- port businesses have spent a significant amount of time and effort understanding current system
- new system would require full analysis investigation which could lead to appeals - not productive and is in nobody's interests
- prescription reduces the workloads of the Assessors as no need for port by port valuations

- conventional valuation method will be based on some form of reference to profitability generated from property, not too dissimilar to current method of valuation

Forth Ports

- Prescription has provided both plusses (a form of past certainty) and minuses (lack of flexibility and ability to correct errors in assessment).

Return of Railway Industry (including TOCS) to conventional valuation

15. 7 respondents expressed a view on the return of the railways industry, including the train operating companies to conventional valuation. 5 respondents (*BRB (Residuary) Ltd, Network Rail, North Lanarkshire Council, Strathclyde Passenger Transport, Virgin Trains*) were in favour of the proposal. 2 respondents (*Scottish Assessors' Association, Scotrail*) were against.

Examples of views of those in favour

- would put companies on a consistent basis with other rail industries
- welcome conventional assessment of their property with the associate rights of appeal and open negotiation attached to it
- given the nature of the lands currently subject to prescription (property at operational railway stations) it is logical to return these to conventional valuation

Example of views of those against

- industry is in theory privatised, but stations are owned by Network Rail, a not for profit company limited by guarantee, owned by and largely financed by the state.
- prospective franchisees are likely to pass any risk associated with a change in rating policy back to the bodies awarding the Franchise - these bodies are dependent on the Executive for funding
- timing and impact of regulatory reviews could pose difficulties; arguably regulated industries should remain in prescription
- given volatile nature of industry in recent times, may be case for continuing prescription until stability is restored

FINANCIAL ASPECTS

16. 12 respondents (*Glasgow City Council, Grangemouth CHP, Falkirk Council, Forth Ports, North Lanarkshire Council, OFWAT, Royal Surveyors Association, Scotrail, Scottish and Southern Energy plc, South Lanarkshire Council, Strathclyde Passenger Transport and Transco National Grid*) commented on the financial aspects that need to be considered for both the industries concerned and for other ratepayers.

Examples of the comments made:

Rate Burden

- whilst redistribution of rates burden is purpose of a revaluation, recommend a level playing field be maintained with those subjects already operating in conventional valuation roll.
- uncertainty around appeals assumption would have potential impact on rates income.

Poundage

- support proposal to increase the poundage during revaluation period to take account of "appeal leakage" if this is needed to remove prescription
- any increase in the poundage rate above inflation rate should be notified as soon as possible to allow companies to budget for additional expenditure
- power to alter the poundage rate in order to maintain yield from non domestic rates following outcome of appeals process should not be used for any other purpose
- poundage should be decreased where assumptions on appeal leakage has been over-stated
- current policy to limit poundage increases to rate of inflation should be retained as will allow an assessment of short and medium term financial planning
- would be a retrograde step to allow the Scottish Executive to adjust the poundage annually; assumptions are currently made on what the likely appeals losses will be at revaluation and this is built into the poundage
- if rates increase is not limited to inflation, the result would be that industries would have to pay more in rates and these costs are likely to be passed onto the customers/consumers in the form of increased prices

Appeals

- potential lengthy timescales involved in complex appeals means impact on revenue generation may not be known for some years
- have to consider level and costs of appeals in light of experience in 1995 when telecommunication and canals industry were returned to conventional valuation

LEGISLATION: LOCAL GOVERNMENT IN SCOTLAND ACT 2003

17 We said in the consultation paper that as the currently prescribed industries are complex industries made up of many subjects and spread over Scotland, legislation was required to enable the conventional valuation of these industries to be carried out effectively and efficiently.

18. The Local Government Act received Royal Assent on 11 February 2003 and the rating provisions contained within Part 5 of the Act -including Section 32 *Power to combine lands and heritages situated in more than one valuation area* - were commenced on 1 April 2003. Section 32 provides the Scottish Ministers with a number of order making powers namely that:

- a single Assessor can be appointed to value an industry as a whole
- the valuation figure for each industry can be entered in one valuation roll or apportioned amongst valuation rolls
- the Valuation Appeal Committee (VAC) within the "designated" Assessor's own valuation authority area can hear and determine appeals and complaints under the Valuation Acts in relation to the valuation of these industries.

19. 9 respondents (*Forth Ports plc, Rating Surveyors Association, Royal Institution of Chartered Surveyors, Scottish Assessors' Association, Scottish and Southern Energy plc, Scottish Water, SP Distribution, SP Transmission & Strathclyde Passenger Transport*) offered comments on the **appointment of a single Assessor to value each industry**. All respondents welcomed this move as it was felt this would ensure a harmonised approach to valuation throughout Scotland.

20. The Scottish Assessors' Association suggested that it might not be altogether necessary to place the currently prescribed ports in the hands of a single Assessor. The Association thought it might be an idea to appoint a designated Assessor for the telecommunications industry as this would result in a consistent approach across all of the network industries.

21. 6 respondents offered comments on **valuing each of the industries as a whole**. 5 respondents (*English Welsh & Scottish Railways Ltd, Forth Ports plc, Network Rail, Scottish Assessors' Association & Scottish Water*) welcomed this approach. However the 2 railway companies indicated it would be more appropriate to value their particular industry on a UK basis and then apportion this value between Scotland, England and Wales. 1 respondent (*British Railways Board (Residuary) Ltd*) indicated that as their lands and heritages were readily identifiable, each land & heritage should be individually valued by the appropriate Assessor.

22. 7 respondents offered comments on the **valuation figure for each industry being entered in one valuation roll**. 6 respondents (*Falkirk Council, Forth Ports plc, Scottish Assessors' Association, Scottish and Southern Energy plc, Scottish Water & Transco National Grid*) thought this was a good idea as it would reduce the administrative burden of dealing with numerous notices, rates bills etc. 1 respondent (*BRB (Residuary) Ltd*) felt that each land and heritage should have a single entry in the valuation roll consistent with its location.

23. 5 respondents (*Forth Ports plc, Scottish Assessors' Association, SP Distribution, SP Transmission & Transco National Grid*) offered comments on the **Valuation Appeal Committee within the "designated" Assessor's own valuation area should hear/determine all appeals and complaints in relation to the valuation of the industry concerned**. The 5 respondents were in favour of the appeals/complaints being dealt with by one Committee. However, 2 respondents felt that as it was over fifty years since these industries had been conventionally valued a Utility Valuation Appeal Committee should be set up to deal with all appeals.

OTHER ISSUES

24. 19 respondents offered additional comments on a variety of issues relating to the return of the currently prescribed industries to conventional valuation. A number of issues were raised by more than one respondent.

Valuation

- differing views amongst utility companies and chartered surveyors in public and private practice on the appropriate method of valuation to be adopted would require to be resolved
- need to consider impact of the Regulator imposing a revised price control in the years between revaluations
- significant adjustment needs to be made to reflect the under-utilisation at any one time of major parts of the rail portfolio
- obligation to be placed on the utility industries to provide the necessary information for a fair and reasonable valuation by the Assessors
- concern expressed that no additional information gathering powers have been given to the Assessors
- consider need for an annual change mechanism to reduce inter quinquennial changes

Appeals

- should be harmonisation between Scotland and England regarding the disposal of appeal cases. Concerned that landmark appeal decision in England would be made too late for effect to be taken account of in Scotland.
- number of appeals which the designated Assessor is likely to have to deal with, will place a burden on the Assessor and could slow down the whole appeal process
- consider need for an annual change mechanism to reduce inter-quinquennial appeals activity

Legislation

- The Executive should have repealed the provisions in the Local Government (Scotland) Act 1975 which allows the Scottish Ministers to prescribe rateable values of lands and heritages occupied by the currently prescribed industries.
- Transco National Grid and Network would like the definition of their taxable lands and heritages in Scotland to be in line with the definition of their hereditaments in England

Transitional Arrangements

- Robust, self financing transitional arrangements should be put in place if the redistribution of the rate burden is significant
- Transitional arrangements should be in place for long enough to ensure a smooth transition from prescription to conventional valuation

- If there is to be a transitional scheme then it is essential it unwinds within the 5 year period; the method adopted in England is unacceptable
- the transitional arrangements should not penalise those ratepayers whose rateable values are reduced at the next revaluation, by limiting the decrease in their rates bills to 5% as happened at the last revaluation
- suggestion that a scheme similar to that outlined in a research paper "*The future of business rating transition in England*" is considered. The report concludes that a self-funding transitional relief scheme which would allow for full and immediate rates reductions, whilst capping rates increases would only require a premium on the UBR (in England) of between 0.2% and 2.5%. The maximum premium of 2.5% would equate to 1.11 pence on the 2003-04 UBR in England.

Funding

- suitable arrangements need to be put in place for 2004-05 onwards if there is to be a return to conventional valuation to ensure that a local authority is not penalised as a consequence of their Assessor being one of the "designated" Assessors
- costs of employing consultants and of obtaining legal advice when preparing for appeals may be significant -funding will require to be put in place

Administrative Burden on Local Authority Staff

- if prescribed industry was valued as a whole and only one entry made in valuation roll then impact of appeals on Local Authority staff should be limited.
- frequency of valuation changes will result in additional work for staff in updating records, issuing revised bills
- potentially there could be a higher number of claims for part empty property relief which would impact on staff resources
- it would be a major concern if a transitional rate relief scheme was to be introduced for either the public utilities or all businesses

POST CONSULTATION

25. We had separate meetings with the smaller electricity generation companies and the ports companies as their responses to the consultation exercise indicated they were opposed to the ending of prescription. The purpose of the meetings was to give the representatives from the industries concerned an opportunity to expand on the points made in their respective consultation responses to ensure that the Executive would be able to make a fully informed decision on the ending or otherwise of prescription.

26. At a later stage we had separate meetings with representatives from the electricity, gas, water, railways (including train operating companies) and ports companies to discuss issues raised by the consultation exercise and agree a way forward. A Scottish Assessor attended each meeting.

27. A number of the comments made within the "Other Issues" section will have to be considered as we progress further into the revaluation 2005 process. The Minister for Finance and Public Services recently announced that that all the currently prescribed industries will be returned to conventional valuation at the 2005

Revaluation (1 April 2005). The following link will take you to the Scottish Executive Press Release <http://www.scotland.gov.uk/pages/news/2003/11/SEfd299.aspx>.

28. It will now be for the Scottish Assessors, the utility companies concerned and their rating agents to agree on the valuation method to be used for each industry. Whilst it is, as yet, too early in the revaluation process to say whether or not there will be transitional arrangements put in place at the 2005 Revaluation, the Scottish Executive will publicly consult on the need for and possible format of a transitional scheme.

LIST OF RESPONDENTS

Local Authorities

Aberdeen City Council
City of Edinburgh Council
Falkirk Council
Glasgow City Council
North Lanarkshire Council
South Lanarkshire Council
Orkney Islands Council

Organisations

BRB (Residuary) Ltd
British Energy
British Ports Association
Caledonian MacBrayne Ltd
Clydeport plc
Dundee Energy Recycling Ltd
Electricity Association Services Ltd
English, Welsh and Scottish Railways Ltd.
Forth Ports plc
Grangemouth CHP Ltd
Great North Eastern Railways
National Grid Transco
Network Rail
Scotrail
Scottish and Southern Energy plc
Scottish Council for Development and Industry
Scottish Renewables
Scottish Water
SP Distribution & SP Transmission
SPT (Strathclyde Passenger Transport)
Virgin Trains

Rating Professionals

Rating Surveyors Association
Royal Institution of Chartered Surveyors in Scotland
Scottish Assessors' Association

Regulators

OFGEM
OFWAT
Water Commissioner for Scotland

1 confidential response