LAND AND BUILDINGS TRANSACTION TAX (SCOTLAND) BILL

DELEGATED POWERS MEMORANDUM

PURPOSE

1. This memorandum has been prepared by the Scottish Government in accordance with Rule 9.4A of the Parliament’s Standing Orders, in relation to the Land and Buildings Transaction Tax (Scotland) Bill. It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. This memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.

2. The contents of this Memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament.

BACKGROUND

3. The Land and Buildings Transaction Tax (Scotland) Bill is the first of three related Bills being brought forward as a consequence of measures enacted in the Scotland Act 2012 (c.11) ("the 2012 Act") which received Royal Assent on 1 May 2012. Under the terms of the 2012 Act, the Scottish Parliament will have responsibility for taxes on land transactions and disposals to landfill. The Bill deals with the former responsibility and makes provisions for a tax on land transactions in Scotland, to be called the Land and Buildings Transaction Tax ("LBTT"). LBTT is based on UK Stamp Duty Land Tax ("SDLT") as enacted in Part 4 of the Finance Act 2003 (c.14). The provision of the 2012 Act disapplying the existing SDLT regime in Scotland will be brought into force by a Treasury Order in the UK Parliament. The intention is that the provisions introducing LBTT will come into force in April 2015, the day after SDLT is disapplied.

4. The Bill is intended to inter-operate with a further Bill (which may be called the Tax Management Bill) to be introduced to the Scottish Parliament in 2013. The Tax Management Bill will, subject to Parliamentary approval, establish the overall framework for tax administration in Scotland. A Tax Management consultation paper is due to issue in mid December and the consultation will run until spring 2013.

APPROACH TO USE OF DELEGATED POWERS

5. The Government has had regard, when deciding where and how provision should be set out in subordinate legislation rather than on the face of the Bill, to:
the need to strike the right balance between the importance of the issue and providing flexibility to respond to changing circumstances (for example changing market conditions);

• the need to make proper use of valuable Parliamentary time; and

• the need to anticipate the unexpected, which might otherwise frustrate the purpose of the provision in primary legislation approved by the Parliament (for example tax avoidance\(^1\)).

6. In relation to the third bullet point above, the Government is mindful that SDLT has since its introduction in 2003 been subject to sustained and aggressive tax avoidance.

7. The delegated powers provisions are listed below, with a short explanation of what each power allows, why the power has been taken in the Bill and why the selected form of Parliamentary procedure has been considered appropriate.

DELEGATED POWERS

Section 5(4) – Power to vary the interests in land that are exempt interests

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Provision

8. This provision enables the Scottish Ministers to modify section 5, which sets out the interests in land that are “exempt interests”. Section 4(1) provides that the concept of “chargeable interest” excludes exempt interests.

9. See also the power to vary the transactions that are exempt transactions in paragraph 8 of schedule 1.

Reason for taking power

10. The reason for taking the power is to enable regulations to add to the categories of exempt interests or for the description of an exempt interest to be varied. Similarly, if there is a need for an interest in land to cease to be an exempt interest that can be provided for in regulations. That might be the case if tax avoidance arises through abuse of the exempt interest rules. It would not be an effective use of either the Parliament’s or the Government’s resources for this matter to have to be dealt with through subsequent primary legislation. Having a regulatory power would provide the Scottish Ministers with a degree of flexibility and enable them to move quickly to bring forward amending legislation to close off potential tax loopholes.

\(^1\) The Scottish Government broadly endorses the definition of tax avoidance, “The hallmark of tax avoidance is that the taxpayer reduces his liability to tax without incurring the economic consequences that Parliament intended to be suffered by any taxpayer qualifying for such reduction in his [or her] tax liability.” (Dicta of Lord Nolan in Inland Revenue Commissioners v Willoughby [1997] 4 All E.R. 65)
11. A similar power is provided for SDLT in section 48(5) of the Finance Act 2003.

Choice of procedure

12. Affirmative procedure is considered to be appropriate because the power allows for the amendment of primary legislation, that is to say section 5 itself.

Section 17(2) – Power to amend Act or make other provision about chargeable consideration

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Affirmative procedure if amending the Act, otherwise negative

Provision

13. This provision enables the Scottish Ministers to amend the Act or make other provision about “chargeable consideration”. Pursuant to sections 25 and 26, the amount of tax chargeable in respect of a chargeable transaction is determined by reference to the chargeable consideration for the transaction.

Reason for taking power

14. The Bill makes extensive provision about chargeable consideration, principally in Chapter 3 of Part 2 and in schedule 2. The reason for taking the regulatory power is to facilitate the processing of any future amendments to the rules concerning chargeable consideration which may arise. This might be the case if tax avoidance arises through abuse of the chargeable consideration rules. It would not be a productive use of parliamentary time to require that every amendment to the rules concerning chargeable consideration be made by primary legislation. Using regulations, subject to the affirmative procedure if amendments are made to the Act, will allow responsive implementation of any amendments, while still retaining an appropriately strong level of scrutiny by the Parliament.


Choice of procedure

16. Affirmative procedure is considered to be appropriate to the extent that the power allows for the amendment of primary legislation, that is to say the Bill itself. For other provision made, negative procedure is appropriate.

Section 24(1) – Duty to specify tax bands and rates

Power conferred on: The Scottish Ministers
This document relates to the Land and Buildings Transaction Tax (Scotland) Bill (SP Bill 19) as introduced in the Scottish Parliament on 29 November 2012

Power exercisable by: Order
Parliamentary procedure: Affirmative procedure for the first order, negative thereafter

Provision

17. This provision requires the Scottish Ministers to specify tax bands and rates for LBTT. Bands must be specified for both residential and non-residential property transactions. There must be a nil rate band and at least two other tax bands.

Reason for taking power

18. Under the SDLT regime, the level of revenue has fluctuated significantly, depending on property prices and the number of transactions taking place in the property markets. In recognition of this, the Scottish Ministers have said that decisions about the scale of revenues and the tax rates and thresholds to be set for LBTT will be taken in due course alongside the budget process for 2015-2016. This will enable the Scottish Ministers to take a range of different, time sensitive factors into account. This is the rationale for taking the power to enable the Scottish Ministers to specify, by way of an order, the tax bands and rates for LBTT. Using the affirmative procedure for the first order, will allow responsive implementation of the order, while still retaining an appropriately strong level of scrutiny by the Parliament.

Choice of procedure

19. Affirmative procedure is considered to be appropriate for the first exercise of the power to set the tax rates and bands prior to the introduction of the tax. Once the tax has been established any subsequent changes to the tax rates or bands, for example on account of a change in market conditions or Government revenue, are likely to be less significant and it is desirable to allow the change to be made quickly under the negative procedure. A Budget Process Review Group comprised of Government and Parliamentary officials is considering how tax bands and rates might be varied after the point at which the devolved taxes (LBTT and Landfill Tax in Scotland) are up and running.

Section 27(3) – Power to vary reliefs

Power conferred on: The Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Affirmative procedure

Provision

20. This provision enables the Scottish Ministers to amend the Act or other enactments to vary reliefs. A relief entitles the buyer to a tax discount (possibly a 100% discount) which must be claimed in the land transaction return.

Reason for taking power

21. Once the new LBTT regime has had time to become embedded, the Scottish Ministers wish to have the flexibility to introduce new reliefs to support key government priorities or perhaps to provide time limited and targeted support to a specific sector of the property market. The ability to add a new relief by order would enable the LBTT regime to operate with a degree

SP Bill 19–DPM 4 Session 4 (2012)
of flexibility and responsiveness. Similarly, if there is a need for a relief to be abolished, or for a relief to be modified, that can be provided for by order. That might be the case if tax avoidance arises through abuse of reliefs or property market conditions change to such an extent that a relief becomes redundant. It would not be an effective use of either the Parliament’s or the Government’s resources for this matter to have to be dealt with through subsequent primary legislation. Using an order, subject to the affirmative procedure, will allow responsive implementation of any amendments, while still retaining an appropriately strong level of scrutiny by the Parliament.


Choice of procedure

23. Affirmative procedure is considered to be appropriate to the extent that the power allows for the amendment of primary legislation, that is to say the Bill and other enactments.

Section 30(5) – Power to amend £40,000 notification threshold

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Provision

24. Section 30(1)(b) provides that the acquisition of the ownership of land is not a notifiable transaction where the chargeable consideration for the acquisition, together with the chargeable consideration for any linked transactions, is less than £40,000. In other words, where there is relatively low consideration, no land transaction return requires to be submitted to the Tax Authority.

25. The power in section 30(5) allows for the variation of the £40,000 figure.

Reason for taking power

26. Permitting the Scottish Ministers to amend the £40,000 figure by order will provide a degree of flexibility which will assist with the efficient administration of the LBTT system. Any change in this threshold figure will impact on the number of transactions which are notifiable. A change to the figure might be required, for example, in consequence of setting the tax bands under section 24. As with the section 39(1) power, being a technical and administrative matter it would not be an effective use of either the Parliament’s or the Government’s resources for the matter to have to be dealt with through subsequent primary legislation. To reduce the administrative burden on those taxpayers who, as a result of any change in the threshold figure, may no longer require to submit an LBTT return it would be desirable for any change to be made as quickly as possible. An order making power would enable the Scottish Ministers to do this.
27. Section 109 of the Finance Act 2003, and S.I. 2008/2338 made under it, both as mentioned above, have some relevance.

Choice of procedure
28. Although the power allows for amendment of the Bill, it only does so to a very limited extent. It is considered that this is a technical and administrative matter and that negative procedure is appropriate.

Section 39(1) – Power to amend 30 day period in which returns must be made

Power conferred on: The Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Negative procedure

Provision
29. The provisions listed in section 39(2) each include a 30 day period for the making of LBTT returns. Where tax is payable, the period for the payment of LBTT is the same. The power allows for the variation of these 30 day periods.

Reason for taking power
30. The reason for taking this order making power is to provide the Scottish Ministers with a degree of flexibility should there be a need for any of all of the 30 day periods to be shortened or extended. Being a technical and administrative matter it would not be an effective use of either the Parliament’s or the Government’s resources for the matter to have to be dealt with through subsequent primary legislation. It might be some time before an opportunity arises to deal with the matter through primary legislation.

31. A similar power is provided for SDLT in section 76(2) of the Finance Act 2003.

Choice of procedure
32. Although the power allows for amendment of the Bill, it only does so to a very limited extent. It is considered that this is a technical and administrative matter and that negative procedure is appropriate.

Section 42(1) – Power to make regulations about applications to defer payment in case of contingent or uncertain consideration

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Negative procedure

Provision
33. Section 42 provides that the buyer may apply to the Tax Authority to defer payment that would ordinarily be due, in a case where the chargeable consideration is contingent or uncertain. The power in section 42 allows for regulations to make further provision about applications.
Reason for taking power

34. The reason for taking the power is to enable regulations to set out, in detail, how the rules for applications under section 41 will operate. As the LBTT Bill begins the parliamentary process, the shape of the proposed Tax Management Bill is subject to consultation, and the LBTT Bill should not therefore contain overly prescriptive provisions about administrative matters. Additionally, setting the rules out in regulations means that these can be periodically amended, if required, without recourse to primary legislation. It would not be productive use of parliamentary time to require every change to the rules to be made by primary legislation.

35. A similar power is provided for SDLT in section 90(2) of the Finance Act 2003. See Part 4 of the Stamp Duty Land Tax (Administration) Regulations 2003 (S.I. 2003/2837).

Choice of procedure

36. Negative procedure is considered appropriate for a technical and administrative matter. The power does not allow for the amendment of the Bill itself.

Section 45(6) – Power to make regulations to specify scheme as not being a unit trust scheme

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Negative procedure

Provision

37. Section 45 makes provision about unit trust schemes. “Unit trust scheme” is defined in subsection (5). The power in subsection (6) enables the Scottish Ministers to specify that a scheme falling within the subsection (5) definition is not a unit trust scheme for the purposes of the Bill.

Reason for taking power

38. The reason for taking the power is to give the Scottish Ministers the flexibility to make regulations where new types of unit trust scheme emerge and it is inappropriate for the usual rules for unit trust schemes to apply. That might be the case if tax avoidance arises through abuse of the unit trust rules. The regulation making power would enable the Scottish Ministers to move quickly to close any potential tax loopholes which could adversely impact on the level of LBTT revenue.

39. A similar power is provided for SDLT in section 101(5) of the Finance Act 2003.

Choice of procedure

40. Negative procedure is considered appropriate for a technical and administrative matter. The power does not allow for the amendment of the Bill itself.
This document relates to the Land and Buildings Transaction Tax (Scotland) Bill (SP Bill 19) as introduced in the Scottish Parliament on 29 November 2012

Section 46(1) – Power to make regulations in relation to open-ended investment companies

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Negative procedure

Provision

41. This provision enables the Scottish Ministers to make regulations in relation to open-ended investment companies (“OEICs”).

Reason for taking power

42. To give flexibility to make appropriate provision for OEICs nearer the time that the LBTT comes into effect (expected to be April 2015). This will enable the Scottish Ministers to take account of any changes in the operation of what can be complex vehicles to ensure OEICs are treated appropriately within the LBTT regime.

43. A similar power is provided for SDLT in section 102 of the Finance Act 2003. See the Stamp Duty Land Tax (Open-ended Investment Companies) Regulations 2008 (S.I. 2008/710).

Choice of procedure

44. Negative procedure is considered appropriate for a technical and administrative matter. The power does not allow for the amendment of the Bill itself. Most taxpayers will not be OEICs.

Section 47(1) – Power to make regulations about residential property holding companies

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Affirmative procedure (if amends an Act), otherwise negative

45. This provision enables the Scottish Ministers to make regulations treating certain transfers of interest in residential property holding companies (“RPHCs”) as land transactions and chargeable transactions. This is to negate the tax benefit that could accrue by enveloping residential property in a holding company and transferring interests in the company instead of transferring title to the property in the ordinary manner. A broad parallel can be drawn with the established rules for LBTT and property investment partnerships (“PIPs”) – see in Part 6 of Schedule 17. Regulations may modify any enactment.

Reason for taking power

46. The use of RPHCs is a complex matter. Taking a power to deal with the matter by regulations allows further time to be given to getting the detailed rules right. The UK Government has tackled the matter for SDLT in a different manner (see Schedule 35 to the Finance Act 2012 (c.8)) but the Scottish Government is not persuaded that the method employed is sufficiently effective or dissuasive. The inclusion of the power in the Bill demonstrates that the Government views the use of RPHCs as unacceptable tax avoidance which places ordinary taxpayers at an unfair disadvantage.
Choice of procedure

47. Affirmative procedure is considered to be appropriate to the extent that the power allows for the amendment of primary legislation. For other provision made, negative procedure is appropriate.

Section 52(2) – Power to provide that a person other than the Scottish Ministers is the Tax Authority

Power conferred on: The Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Affirmative procedure

Provision

48. Section 52(1) provides that the “Tax Authority”, as referred to throughout the Bill, is the Scottish Ministers. The Tax Authority has the care and management of LBTT (see section 1(3) and tax must be paid to the Tax Authority (see section 40(1)(a)). The power in subsection (2) is intended to allow for the Tax Authority to be Revenue Scotland, at a future point when Revenue Scotland has a legal personality separate to that of the Scottish Ministers. This is of course subject to Parliamentary agreement of provisions for Revenue Scotland; Government proposals for Revenue Scotland will be set out in the forthcoming consultation on a Tax Management Bill.

Reason for taking power

49. Revenue Scotland does not yet exist as a legal person separate to the Scottish Ministers so the power allows for Revenue Scotland to become the Tax Authority in due course without there being a need for further primary legislation.

Choice of procedure

50. Affirmative procedure is considered to be appropriate because the decision as to who is the Tax Authority is particularly important and the power allows for the amendment of primary legislation, that is to say section 52 itself.

Section 54(1) – Power to make provision about review and appeal of Tax Authority decisions

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Affirmative procedure if amending the Act, otherwise negative

Provision

51. The Bill generally does not make provision for decisions of the Tax Authority against which it might be appropriate to allow for review or appeal. Reviews and appeals are matters that are to be consulted on in connection with the Tax Management Bill. A regulation making power is included in the Bill.
Reason for taking power

52. Given that the consultation on a Tax Management Bill (including provisions as to review and appeal) has not commenced, it would be premature to set out detailed provision in this Bill concerning review and appeal. Inclusion of the power demonstrates that the Government is minded to allow review and appeal of certain Tax Authority decisions, the details of which will be provided for following consultation.


Choice of procedure

54. Affirmative procedure is considered to be appropriate to the extent that the power allows for the amendment of primary legislation, that is to say the Bill itself. For other provision made, negative procedure is appropriate.

Section 55(1) – Power to make regulations about the application of the Bill to leases

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Affirmative procedure (if amends an Act), otherwise negative

Provision

55. The power allows for regulations to be made about the application of LBTT to leases. Regulations may modify any enactment.

Reason for taking power

56. Following feedback from attendees at the public consultation events held in July and August 2012 and comments made in responses received to Taking Forward a Land and Buildings Transaction Tax consultation paper the Government agrees that additional time should be taken to formulate policy for LBTT and leases (with specific reference to non-residential leases), with a view to producing legislation that is better aligned with Scots law and practice than the SDLT rules for leases. See section 6 of the Policy Memorandum. If time allows it is hoped that provisions for leases can be amended into the Bill (supplanting the power in section 55(1)) at Stage 2 or 3.

Choice of procedure

57. Affirmative procedure is considered to be appropriate to the extent that the power allows for the amendment of primary legislation. For other provision made, negative procedure is appropriate.

Section 58(9) – Power to change what counts as residential property

Power conferred on: The Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Affirmative procedure
Provision

58. Section 58 sets out what counts as residential property for the purposes of the Bill. There will be separate tax bands and rates for residential and non-residential property (see section 24(2)). The power in section 58(9) allows for the rules in that section to be amended so as to change what counts as residential property. If property does not count as residential property then it is non-residential property.

Reason for taking power

59. The reason for taking the power is to give the Scottish Ministers the flexibility to make an order if there is a need for the rules as to what counts as residential property to be amended. This might be the case if tax avoidance arises through abuse of the residential property rules. The order making power would allow the Scottish Ministers to move quickly to close off any perceived tax avoidance opportunity which could adversely impact on the level of LBTT revenue. Using an order, subject to the affirmative procedure, will retain an appropriately strong level of scrutiny by the Parliament.

60. A similar power is provided for SDLT in section 116(8) of the Finance Act 2003.

Choice of procedure

61. Affirmative procedure is considered to be appropriate because the power allows for the amendment of primary legislation, that is to say section 58 itself.

Section 62(1)(b) – Power to prescribe date other than the date of completion as the effective date

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Negative procedure

Provision

62. “Effective date” is one of the key concepts for LBTT. The effective date is the tax point in respect of which obligations to notify the Tax Authority and pay LBTT might emerge. The general rule is that the date of completion is the effective date. For a standard house purchase the date of completion would be the date on which the buyer receives a signed disposition and the keys to the house. The power in section 62(1)(b) allows for regulations to prescribe a date other than the date of completion as the effective date.

Reason for taking power

63. If there is a need for the general rule concerning the effective date to be modified, it is desirable for that to be provided for in regulations. This might be the case if tax avoidance arises through abuse of the general effective date rule. It would not be an effective use of either the Parliament’s or the Government’s resources for this matter to have to be dealt with through subsequent primary legislation. It might be some time before an opportunity arises to deal with the matter through primary legislation.

64. A similar power is provided for SDLT in section 119(1)(b) of the Finance Act 2003.
Choice of procedure

65. Negative procedure is considered appropriate for a technical and administrative matter. The power does not allow for the amendment of the Bill itself.

Section 66 – Power to make ancillary provision

Power conferred on: The Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Affirmative procedure (if amends an Act), otherwise negative

Provision

66. This provision enables the Scottish Ministers to make such incidental, supplementary, consequential, transitory, transitional or saving provision as they consider appropriate for the purposes of, in consequence of, or for giving full effect to, any provision of the Bill or made under the Bill.

Reason for taking power

67. The reason for taking the power is to enable the Scottish Ministers to adequately give effect to the provisions of the Bill. Whilst the power is wide-ranging, tax is a particularly complicated matter and it is vital that the tax interacts well with Scots law and practices. As mentioned above, the Government is mindful that SDLT has since its introduction in 2003 been subject to sustained and aggressive tax avoidance. The power will enable unforeseen situations to be addressed as soon as it is practical for the Scottish Ministers to bring forward an order.


Choice of procedure

69. An order made under this section which contains a provision which adds to, omits or replaces any part of an Act is subject to the affirmative procedure. Any other order made under this section is subject to the negative procedure. These procedures are typical for ancillary powers.

Section 69(2) – Power to commence Bill

Power conferred on: The Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: No procedure

Provision

70. This provision enables the Scottish Ministers to commence the Bill. Transitional, transitory or saving provision may be made.
This document relates to the Land and Buildings Transaction Tax (Scotland) Bill (SP Bill 19) as introduced in the Scottish Parliament on 29 November 2012

Reason for taking power

71. It is standard for Ministers to have control over the commencement of Bills.

Choice of procedure

72. No procedure is provided for, which is typical for commencement powers.

Schedule 1, paragraph 8 – Power to vary the transactions that are exempt transactions

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73. This power enables the Scottish Ministers to modify schedule 1, which sets out the land transactions that are “exempt transactions”. Section 15(a) provides that a land transaction is not a chargeable transaction if it is an exempt transaction. In other words, no tax will be payable. Section 30 provides that an exempt transaction is not notifiable; in other words no land transaction return requires to be made.

74. This power is connected to the power to vary the interests in land that are exempt interests in section 5(4).

Reason for taking power

75. If it is desirable for new categories of exempt transactions to be created, that can be provided for by regulations. Similarly, if there is a need for types of transactions to cease to be exempt, or for the description of an exempt transaction to be varied, that can be provided for in regulations. That might be the case if tax avoidance arises through abuse of the exempt transactions rules. It would not be an effective use of either the Parliament’s or the Government’s resources for this matter to have to be dealt with through subsequent primary legislation. It might be some time before an opportunity arises to deal with the matter through primary legislation.


Choice of procedure

77. Affirmative procedure is considered to be appropriate because the power allows for the amendment of primary legislation, that is to say schedule 1 itself.

Schedule 2, paragraph 17(3) – Power to modify qualifying public or educational bodies

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SP Bill 19–DPM 13 Session 4 (2012)
Parliamentary procedure: Negative procedure

Provision

78. Paragraph 17 of schedule 2 modifies the usual chargeable consideration rules for certain arrangements involving public or educational bodies. The power allows for the list of qualifying bodies to be modified.

Reason for taking power

79. To enable the list of qualifying bodies to be kept up to date if and when provisions for public or educational bodies change. For example, changes in consequence of the Post-16 Education Reform Bill. It is common for lists of public bodies in Acts of the Scottish Parliament to be amendable by statutory instrument. It would not be an effective use of either the Parliament’s or the Government’s resources for this matter to have to be dealt with through subsequent primary legislation. It might be some time before an opportunity arises to deal with the matter through primary legislation.

80. A similar power is provided for SDLT in paragraph 17 of Schedule 4 to the Finance Act 2003.

Choice of procedure

81. Although the power allows for amendment of the Bill, it only does so to a very limited extent. It is considered that this is a technical and administrative matter and that negative procedure is appropriate. A parallel can be drawn with the power in schedule 15 referred to below.

Schedule 5, paragraph 14 – Power to prescribe minimum prescribed amount for multiple dwellings relief

Power conferred on: The Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Negative procedure

Provision

82. Multiple dwellings relief provides relief from LBTT in relation to purchases of multiple dwellings to ensure that a single transaction involving a number of dwellings is not taxed at a high tax band when it involves dwellings that, individually, may each involve a consideration only falling within lower bands. The calculation of the relief involves calculating an average price per dwelling and then calculating the tax that would be paid on such a price. The tax due on the average price per dwelling is then multiplied by the number of dwellings covered by the transaction to produce the amount of tax due in respect of the dwellings. To that figure is added any tax payable in respect of property other than dwellings. The result is the tax payable in respect of the transaction.

83. However it is possible, for example, that a number of dwellings bought in a single transaction may have an average price that falls in the nil tax rate band, in which case 100% relief would be provided and no tax would be due.
This document relates to the Land and Buildings Transaction Tax (Scotland) Bill (SP Bill 19) as introduced in the Scottish Parliament on 29 November 2012

84. This provision enables the Scottish Ministers to make regulations to ensure that if the tax on a particular transaction involving multiple dwellings would be lower than a prescribed amount, then the tax payable would be the prescribed amount. The method for calculating the prescribed amount will be set out in the order.

Reason for taking power
85. Because bands and rates are not being set at the point of introducing the Bill, it is necessary for the minimum prescribed amount for multiple dwellings relief to be set at the later point when Ministers set bands and rates for LBTT.

Choice of procedure
86. Negative procedure is considered appropriate for a technical and administrative matter. The power does not allow for the amendment of the Bill itself. The duty to set bands and rates in section 17 is subject to the affirmative procedure.

Schedule 8, paragraph 1 – Power to make regulations granting relief concerning alternative finance investment bonds

Power conferred on: The Scottish Ministers  
Power exercisable by: Regulations  
Parliamentary procedure: Affirmative procedure (if amends an Act), otherwise negative

Provision
87. This provision enables the Scottish Ministers to make regulations granting relief for land transactions connected to alternative finance investment bonds. Other provisions about alternative property finance are set out on the face of the Bill in schedule 7. Regulations may modify any enactment.

Reason for taking power
88. The alternative finance investment bond relief is complex and technical. The current UK tax legislation does not deal with alternative finance investment bonds and SDLT in isolation but rather takes a holistic approach to the taxation of these type of bonds and the legislative provisions inter-link SDLT, income tax and capital gains tax. The Scottish Parliament's competence to legislate in this manner may mean that some of these issues will require to be dealt with by means of another approach such as a section 104 order under the Scotland Act 1998. To ensure whatever legislative proposals the Scottish Government brings forward are the correct ones and within the competence of the Scottish Parliament, further work requires to be undertaken.

Choice of procedure
89. Affirmative procedure is considered to be appropriate to the extent that the power allows for the amendment of primary legislation. For other provision made, negative procedure is appropriate.
Schedule 9, paragraph 3 – Power to prescribe appropriate proportion for crofting community right to buy relief

Power conferred on: The Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Negative procedure

Provision

90. This is one of a couple of provisions concerning the “prescribed proportion” for the purposes of applying certain reliefs. The amount of discount for some reliefs is proposed to be calculated in a different manner from that for SDLT; that is because of the change from slab to progressive tax rates (see section 17 as discussed above). Relief for LBTT will be calculated by applying the prescribed proportion to the amount of tax that otherwise would be chargeable but for the relief.

91. The power in paragraph 3 of schedule 9 concerns the prescribed proportion for application of the crofting community right to buy relief provided for in that schedule.

Reason for taking power

92. The reason for taking this power is because bands and rates are not being set at the point of introducing the Bill, it is necessary for the prescribed proportion for this particular relief to be set at the later point when Ministers set bands and rates for LBTT.

Choice of procedure

93. Negative procedure is considered appropriate for a technical and administrative matter. The power does not allow for the amendment of the Bill itself. The duty to set bands and rates in section 17 is subject to the affirmative procedure.

Schedule 11, Part 3, paragraph 6(3) – Power to prescribe proportion for acquisition relief

Power conferred on: The Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Negative procedure

Provision

94. The power in paragraph 6(3) of schedule 11 enables Ministers to prescribe the proportion for the purposes of acquisition relief provided for in Part 3 of that schedule.

Reason for taking power

95. As with the crofting community right to buy relief discussed above, as bands and rates are not being set at the point of introducing the Bill, it is necessary for the proportion to be prescribed in an order at the later point when Ministers set bands and rates for LBTT.
Choice of procedure
96. Negative procedure is considered appropriate for a technical and administrative matter. The power does not allow for the amendment of the Bill itself. The duty to set bands and rates in section 17 is subject to the affirmative procedure.

Schedule 15, paragraph 5 – Power to prescribe additional public bodies for the purposes of compliance with planning obligations relief

<table>
<thead>
<tr>
<th>Power conferred on:</th>
<th>The Scottish Ministers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power exercisable by:</td>
<td>Order</td>
</tr>
<tr>
<td>Parliamentary procedure:</td>
<td>Negative procedure</td>
</tr>
</tbody>
</table>

Provision
97. Paragraph 5 of schedule 15 sets out the public bodies that may claim compliance with planning obligations relief. The power allows additional bodies to be prescribed.

Reason for taking power
98. To enable additional bodies to benefit from the relief, for example if provisions for planning law change. It is common for it to be possible to supplement lists of public bodies in Acts of the Scottish Parliament by statutory instrument. It would not be an effective use of either the Parliament’s or the Government’s resources for this matter to have to be dealt with through subsequent primary legislation. It might be some time before an opportunity arises to deal with the matter through primary legislation.

99. A similar power is provided for SDLT in section 61(3) of the Finance Act 2003.

Choice of procedure
100. Negative procedure is considered appropriate for a technical and administrative matter. The power does not allow for the amendment of the Bill itself.

Schedule 16, paragraph 2 – Power to relieve certain land transactions involving public bodies

<table>
<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>Power exercisable by:</td>
<td>Order</td>
</tr>
<tr>
<td>Parliamentary procedure:</td>
<td>Negative procedure</td>
</tr>
</tbody>
</table>

Provision
101. Schedule 16 provides a relief for certain transfers involving public bodies. The power in paragraph 2 allows for additional types of land transactions involving public bodies to be relieved.

Reason for taking power
102. To enable the Scottish Ministers to relieve additional types of land transactions involving public bodies if it emerges that certain land transactions are not relieved but ought to be.

Choice of procedure

104. Negative procedure is considered appropriate for a technical and administrative matter. The power does not allow for the amendment of the Bill itself.

Schedule 16, paragraph 4 – Power to prescribe additional public bodies for the purposes of transfers involving public bodies relief

Power conferred on: The Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Negative procedure

Provision

105. Paragraph 4 of schedule 16 sets out the public bodies that may claim transfers involving public bodies relief. The power allows additional bodies to be prescribed.

Reason for taking power

106. To enable additional bodies to benefit from the relief, for example if new public bodies come into existence. It is common for it to be possible to supplement lists of public bodies in Acts of the Scottish Parliament by statutory instrument. It would not be an effective use of either the Parliament’s or the Government’s resources for this matter to have to be dealt with through subsequent primary legislation. It might be some time before an opportunity arises to deal with the matter through primary legislation.


Choice of procedure

108. Negative procedure is considered appropriate for a technical and administrative matter. The power does not allow for the amendment of the Bill itself.
This document relates to the Land and Buildings Transaction Tax (Scotland) Bill (SP Bill19) as introduced in the Scottish Parliament on 29 November 2012

LAND AND BUILDINGS TRANSACTION TAX
(SCOTLAND) BILL

DELEGATED POWERS MEMORANDUM