



The Scottish Parliament  
Pàrlamaid na h-Alba

# **Delegated Powers and Law Reform Committee**

## **37th Report, 2013 (Session 4)**

### **Land and Buildings Transaction Tax (Scotland) Bill as amended at stage 2**

**Published by the Scottish Parliament on 19 June 2013**

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website -  
[www.scottish.parliament.uk](http://www.scottish.parliament.uk)



The Scottish Parliament  
Pàrlamaid na h-Alba

## **Delegated Powers and Law Reform Committee**

### **Remit and membership**

#### **Remit:**

1. The remit of the Delegated Powers and Law Reform Committee is to consider and report on—
  - (a) any—
    - (i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;
    - (ii) [deleted]
    - (iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;
  - (b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;
  - (c) general questions relating to powers to make subordinate legislation;
  - (d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;
  - (e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act; and
  - (f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject.
  - (g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and
  - (h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.

#### **Membership:**

Christian Allard  
Nigel Don (Convener)  
Mike MacKenzie  
Hanzala Malik  
John Pentland  
John Scott  
Stewart Stevenson (Deputy Convener)

**Committee Clerking Team:**

**Clerk to the Committee**

Euan Donald

**Assistant Clerk**

Elizabeth White

**Support Manager**

Daren Pratt



The Scottish Parliament  
Pàrlamaid na h-Alba

## Delegated Powers and Law Reform Committee

### 37th Report, 2013 (Session 4)

#### Land and Buildings Transaction Tax (Scotland) Bill as amended at stage 2

The Committee reports to the Parliament as follows—

#### INTRODUCTION

1. At its meeting on 18 June 2013, the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Land and Buildings Transaction Tax (Scotland) Bill as amended at Stage 2 (“the Bill”)<sup>1</sup>. The Committee submits this report to the Parliament under Rule 9.7.9 of Standing Orders.
2. The Land and Buildings Transaction Tax (Scotland) Bill was introduced in the Scottish Parliament by the Scottish Government on 29 November 2012.
3. The Bill is the first of three related Bills being brought forward as a consequence of measures enacted in the Scotland Act 2012. Under the terms of that Act, the Scottish Parliament is empowered to make provision in relation to Scotland for devolved taxes. Section 80I of the Scotland Act 1998 provides that a tax charged on the land transactions listed in that section is a devolved tax. This Bill makes such provision to be called the Land and Buildings Transaction Tax (LBTT). It is intended that this replace the current UK Stamp Duty Land Tax in relation to Scotland.
4. The Scottish Government has provided the Parliament with a supplementary memorandum on the delegated powers provisions in the Bill, in advance of Stage 3 of the Bill (“the SDPM”)<sup>2</sup>.
5. The Committee reported on certain matters in relation to the delegated powers provisions in the Bill at Stage 1 in its [15<sup>th</sup> report of 2013](#).

<sup>1</sup> Land and Buildings Transaction Tax (Scotland) Bill (as amended at stage 2) available here: [http://www.scottish.parliament.uk/S4\\_Bills/Land%20and%20Buildings%20Transaction%20Tax%20Bill/b19as4-amend-rev.pdf](http://www.scottish.parliament.uk/S4_Bills/Land%20and%20Buildings%20Transaction%20Tax%20Bill/b19as4-amend-rev.pdf)

<sup>2</sup> Land and Buildings Transaction Tax (Scotland) Bill Supplementary Delegated Powers Memorandum available here: [http://www.scottish.parliament.uk/S4\\_Bills/Land\\_and\\_Buildings\\_Transaction\\_Tax\\_sdpm.pdf](http://www.scottish.parliament.uk/S4_Bills/Land_and_Buildings_Transaction_Tax_sdpm.pdf)

## DELEGATED POWERS PROVISIONS

6. The Committee considered each of the new or substantially amended delegated powers provisions in the Bill after Stage 2.

7. The Committee determined that it did not need to draw the attention of the Parliament to the following delegated powers provisions:

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

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

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

Section 49 – Power to modify schedule 17 (partnerships)

Schedule 8, paragraph 10(1)(b) – Power to specify conditions

Schedule 8, paragraphs 3, 11(1), 20 and 21(5)(a) and (6) – Power to prescribe evidence

Schedule 8, paragraph 14(2) – Power to specify period

Schedule 13, paragraph 15(3) – Power to specify relevant territories re eligibility for charities relief

Schedule 18A, paragraph 3(1) – Duty to set tax rates and bands (leases)

8. The Committee's comments and recommendations on the remaining delegated powers are considered below.

### **Section 51A – Power to make regulations about the application of the Bill to licences**

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

9. This is a new power. Schedule 18A inserted at stage 2 which applies the Bill to leases does not apply to licences to occupy. This power permits the Scottish Ministers to prescribe descriptions of non-residential licences to occupy property which are to be treated as land transactions and therefore potentially liable to LBTT. The regulations are subject to the affirmative procedure if they modify primary legislation but otherwise they are subject to the negative procedure.

10. The effect of the exercise of the power would be to impose liability to pay tax where no liability currently exists. The Committee considers that the extension of liability to tax to a significant class of persons is an important matter and one which should be subject to the affirmative procedure. The Committee raised this issue informally with the Scottish Government. Having reflected on the matter, the Scottish Government has confirmed that it will lodge an amendment at Stage 3 to make this power subject to the affirmative procedure in all cases.

**11. The Committee considers the power to be acceptable subject to the affirmative procedure being applicable in all cases. The Committee notes the Government's commitment to lodge an amendment to this effect at Stage 3.**

**Schedule 18A, paragraph 7(2) – Power to specify the “temporal discount rate”**

<b>Power conferred on:</b>	<b>The Scottish Ministers</b>
<b>Power exercisable by:</b>	<b>Order</b>
<b>Parliamentary procedure:</b>	<b>Negative procedure</b>

12. This power permits the Scottish Ministers to vary the “temporal discount rate” (TDR) referred to in paragraph 7(1) of schedule 18A. The rate is currently 3.5%. The TDR is relevant to the calculation of the tax chargeable in respect of leases and is a means of discounting the annual rent for the purposes of calculating the chargeable value of the lease for tax purposes.

13. The SDPM describes this power as a technical and administrative matter which only amends the Bill to a very limited extent. The Committee does not agree with this analysis. Varying the TDR will affect how the capital value of the lease is calculated and therefore has a significant effect on how liability to tax is calculated. The Committee therefore considers that this power, being of significance, should be subject to the affirmative procedure.

14. The Committee raised this issue with the Scottish Government. Having reflected on the matter, the Scottish Government has confirmed that it will lodge an amendment at Stage 3 to make this power subject to the affirmative procedure in all cases.

**15. The Committee considers the power to vary the temporal discount rate acceptable subject to the affirmative procedure being applicable in all cases. The Committee notes the Government's commitment to lodge an amendment to this effect at Stage 3.**

Members who would like a printed copy of this *Numbered Report* to be forwarded to them should give notice at the Document Supply Centre.

---

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by APS Group Scotland

All documents are available on  
the Scottish Parliament website at:

[www.scottish.parliament.uk](http://www.scottish.parliament.uk)

For details of documents available to  
order in hard copy format, please contact:  
APS Scottish Parliament Publications on 0131 629 9941.

For information on the Scottish Parliament contact  
Public Information on:

Telephone: 0131 348 5000  
Textphone: 0800 092 7100  
Email: [sp.info@scottish.parliament.uk](mailto:sp.info@scottish.parliament.uk)

---

ISBN 978-1-78351-427-4

---