



The Scottish Parliament
Pàrlamaid na h-Alba

Delegated Powers and Law Reform Committee

47th Report, 2014 (Session 4)

Revenue Scotland and Tax Powers Bill as amended at stage 2

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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:

Richard Baker
Nigel Don (Convener)
Mike MacKenzie
Margaret McCulloch
Stuart McMillan (Deputy Convener)
John Scott
Stewart Stevenson

Committee Clerking Team:

Clerk to the Committee

Euan Donald

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Support Manager

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47th Report, 2014 (Session 4)

Revenue Scotland and Tax Powers Bill as amended at stage 2

The Committee reports to the Parliament as follows—

INTRODUCTION

1. At its meeting on 12 August 2014, the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Revenue Scotland and Tax Powers Bill as amended at Stage 2 (“the Bill”)¹. The Committee submits this report to the Parliament under Rule 9.7.9 of Standing Orders.
2. The Bill is the third of three related Bills brought forward as a consequence of measures enacted in the Scotland Act 2012. It follows the Land and Buildings Transaction Tax (Scotland) Act 2013 which received Royal Assent on 31 July 2013, and the Landfill Tax (Scotland) Act which received Royal Assent on 21 January 2014.
3. In broadest outline, the Bill makes provisions for a Scottish tax system to enable the collection and management of Land and Buildings Transaction Tax (LBTT) and Scottish Landfill Tax (SLfT) - “the devolved taxes”. It establishes Revenue Scotland as a new non-Ministerial Department which will be the tax authority responsible for collecting Scotland’s devolved taxes from 1 April 2015.
4. The Bill puts in place a statutory framework which will apply to the devolved taxes, and sets out the relationship between the tax authority and taxpayers in Scotland, including the relevant powers, rights and duties.
5. 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”²).

¹ Revenue Scotland and Tax Powers Bill [as amended at Stage 2] available at: http://www.scottish.parliament.uk/S4_Bills/Revenue%20Scotland%20and%20Tax%20Powers%20Bill/b43as4-stage2.pdf

² Revenue Scotland and Tax Powers Bill Supplementary Delegated Powers Memorandum available at: http://www.scottish.parliament.uk/S4_Bills/RSTP_SDPM_.pdf

6. The Committee reported on certain matters in relation to the delegated powers provisions in the Bill at Stage 1 in its [25th report of 2014](#).

DELEGATED POWERS PROVISIONS

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

8. After Stage 2, the Committee reports that it does not need to draw the attention of the Parliament to the new or substantially amended delegated powers provisions listed below, and that it is content with the Parliamentary procedure to which they are subject:

- Section 30A – Voting for decisions
- Section 45A – Offences in relation to proceedings
- Section 54(2) to (4) – Guidance by the President of the Tax Tribunals
- Section 70(b) – Preservation of information etc.
- Section 71D – Power to change penalty provisions in sections 71 to 71C
- Section 72(4) – Further provision: land and buildings transaction tax (“LBTT”)
- Section 144A - Power to modify section 144
- Section 159A - Power to change penalty provisions in Chapter 2 of Part 8
- Section 166A - Power to change penalty provisions in Chapter 3 of Part 8
- Section 180A - Power to change penalty provisions in Chapter 4 of Part 8 (apart from penalties under section 179)
- Section 181G - Power to change penalty provisions in Chapter 5 of Part 8
- Section 194A - Power to modify section 194
- Paragraphs 8 and 9 of Schedule 2 – Eligibility under regulations for appointment to the First-tier Tribunal and Upper Tribunal
- Paragraph 5D of Schedule 3- Power to change penalty provisions in paragraphs 5 to 5C

9. In light of amendments made at stage 2, the delegated powers provisions listed below have been removed from the Bill. The Committee reports that it finds the removal of these powers to be acceptable.

- Section 73(1) on introduction – Power to make regulations about the dates by which tax returns must be made to Revenue Scotland

- Section 150(2) on introduction – Power to make further provision about penalties for failure to make a tax return
- Section 151(2) on introduction – Power to make further provision about penalties for failure to pay tax on or before the due date
- Section 160(7) on introduction – Power to make further provision about penalties for errors in taxpayer documents
- Section 162(4) on introduction – Power to make further provision about penalties for errors in taxpayer documents attributable to another person
- Section 163(3) on introduction – Power to make further provision about penalties for failure to notify Revenue Scotland about a Revenue Scotland assessment which understates the tax liability
- Section 170(1) on introduction – Power to make further provision about the amount of penalties relating to failure to comply with an information notice, obstruction of an officer during an inspection or providing inaccurate information or documents as a result of an information notice
- Section 181(2) on introduction – Power to make further provision about penalties for failure to comply with a requirement imposed by or under section 22 or 23 of the Landfill Tax (Scotland) Act 2014
- Section 196(1) on introduction – Power to change the amount of a penalty arising from a third party failing to comply with a notice to supply contact details of a debtor

10. The Committee's comments and, where appropriate, recommendations on the remaining new, removed or substantially altered delegated powers in the Bill as amended are detailed below.

Section 46(1) - Power to make Scottish Tax Tribunal Rules

Power conferred on: the Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: negative

11. As in the Bill at Stage 1, this power enables the making of Scottish tax tribunal rules, regulating the practice and procedure to be followed in proceedings in the Scottish Tax Tribunals. Various sections in the Bill allow tribunal rules to make provision on matters relating to the work of the Scottish Tax Tribunals.

12. A number of other provisions in the Bill were added or amended at Stage 2 in relation to tribunal rules made under section 46(1). These are:

- Section 30B(1) - This power allows the Scottish Ministers to provide in tribunal rules for who is to chair when tribunals are composed of more than one member.

- Section 41(2) – this allows tribunal rules to provide where and when the Scottish Tax Tribunals are to be convened. The rules may allow the President of the Tax Tribunals to determine this question. This provision implements an undertaking which the Scottish Government gave to the Committee, to amend the provision in light of its Stage 1 Report.
- Section 49(2)(ca) – this allows tribunal rules to make provision for conjoining applications in certain circumstances.
- Section 50(2)(ea) – this allows tribunal rules to make provision for hearings in two or more proceedings to be held together.
- Section 51(4) – this allows tribunal rules to make provision about the form, manner, content, recording, issuing and publication of tribunal decisions.

13. The Committee finds that the amendments to the powers in the following sections, in connection with tribunal rules, are acceptable in principle: Sections 30B(1), 41(2), 46, 49(2)(ca), 50(2)(ea), 51(4). The Committee also reports that it is content that the exercise of the powers is subject to the negative procedure.

14. The Committee further reports on the amended section 46(1) as follows:

- **The Committee notes that section 46 as amended provides that the Scottish Tax Tribunal Rules would be made by the Scottish Ministers by regulations, rather than by the Court of Session by Act of Sederunt. Section 46 as amended puts in place a similar arrangement to that enacted by paragraph 4 of schedule 9 to the Tribunals (Scotland) Act 2014. That paragraph is a transitional provision which enables the Scottish Ministers to make tribunal rules in regulations until the Scottish Civil Justice Council (SCJC) and the Court of Session are involved in making the rules.**
- **The Committee also notes that, until the Scottish Tax Tribunals become judicially administered by the proposed Scottish Courts and Tribunals Service, with rules drafted under the auspices of the SCJC, the Tax Tribunal Rules will be made by the Scottish Ministers rather than by the Court of Session. The Committee simply notes in that regard that section 46(3) is not framed as a transitional arrangement. Accordingly, it appears that the intended position that the Tax Tribunal Rules would in future be made by the Court of Session would be dependent upon appropriate provisions being enacted in future under the powers in the Tribunals (Scotland) Act 2014, to achieve that position.**

Section 102 – Unjustified enrichment: reimbursement arrangements

Power conferred on: the Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: affirmative (section 218)

15. At Stage 1, the Committee queried why regulations made under this power were only subject to affirmative procedure where primary legislation was being amended. The Committee took the view that as these regulations can include provision about a penalty under section 103 of the Bill (as introduced), to ensure consistency with the other penalty-related regulation making powers in the Bill, regulations under section 102 should always be subject to affirmative procedure.

16. The Bill has been amended at Stage 2, seeking to implement the Committee's recommendation.

17. Section 218(3)(da) makes the change of procedure, referring to section 102(1). Sections 102 and 103 repeatedly refer to the regulations under section 102 - not only 102(1). Specifically, section 103 which enables the provision for penalties refers to the regulations under section 102.

18. The Committee notes that section 218(3)(da) seeks to implement the Committee's recommendation at Stage 1 that the exercise of the powers in section 102 should be subject to the affirmative procedure.

19. The Committee reports, however, that the paragraph (da) should refer to section 102, rather than 102(1), given that sections 102 and 103 repeatedly refer to the regulations under the whole of section 102.

Other provisions referred to in the Stage 1 Report

20. The Committee notes that its Stage 1 report made recommendations on two other provisions, where the Scottish Government undertook to bring forward amendments, but the provisions were not so amended at Stage 2. The Committee's recommendations on these provisions remain the same as at Stage 1.

21. First, the Committee noted at Stage 1 that the Scottish Government would bring forward an amendment to provide that a copy of the Ministerial guidance to Revenue Scotland issued in terms of section 8(1) shall be laid before Parliament.

22. Second, the Committee noted that the Scottish Government would bring forward an amendment to paragraph 31 of schedule 2, so that there is provision for the publication of the rules for the procedures at a fitness assessment tribunal made under that paragraph. This would be consistent with the provision for the rules under paragraph 21 of that schedule.

23. The Committee reports that its recommendations on these provisions remain the same as at Stage 1 and in so doing, invites the Scottish Government to respond to those recommendations.

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