

# Aggregates Tax and Devolved Taxes Administration (Scotland) Bill

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## Delegated Powers Memorandum

### Introduction

1. This Delegated Powers Memorandum has been prepared by the Scottish Government in accordance with Rule 9.3.3B of the Parliament's Standing Orders in relation to the Aggregates Tax and Devolved Taxes Administration (Scotland) Bill ("the Bill"). It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers.
2. The following other accompanying documents are published separately:
  - Explanatory Notes (SP Bill 38–EN);
  - a Financial Memorandum (SP Bill 38–FM);
  - a Policy Memorandum (SP Bill 38–PM);
  - statements on legislative competence made by the Presiding Officer and the Scottish Government (SP Bill 38–LC).
3. This Memorandum has been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Parliament.

### Outline of Bill provisions

4. The Bill is brought forward primarily as a consequence of measures enacted in the Scotland Act 2016<sup>1</sup> ("the 2016 Act"). Following the commencement of section 17 of the 2016 Act on 23 May 2016, the Scottish Parliament now has the power under section 80M of the Scotland Act 1998<sup>2</sup> ("the 1998 Act") to legislate for a tax on the commercial exploitation of aggregate. This will replace the UK Aggregates Levy ("UKAL") in Scotland.

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<sup>1</sup> <https://www.legislation.gov.uk/ukpga/2016/11/contents/enacted>

<sup>2</sup> <https://www.legislation.gov.uk/ukpga/1998/46/contents>

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5. The Bill makes provision for a Scottish Aggregates Tax (“SAT”), a tax on the commercial exploitation of primary aggregates in Scotland. As provided in section 80M(3) and Schedule 1 of the Scotland Act 2016, UKAL will cease to apply in Scotland and will be replaced by SAT. Assuming successful enactment of this Bill, this will take place on 1 April 2026. The provisions of the 2016 Act which disapply the existing UKAL regime in Scotland will be brought into force with effect from 1 April 2026 by regulations laid by His Majesty’s Treasury in the UK Parliament.

6. Revenue Scotland is the tax authority responsible for the collection and management of Land and Buildings Transaction Tax (“LBTT”) and Scottish Landfill Tax (“SLfT”). These taxes came into effect on 1 April 2015, replacing their UK equivalents (Stamp Duty Land Tax and UK Landfill Tax respectively). Revenue Scotland will also be responsible for the collection and management of SAT from 1 April 2026.

7. The proposed legislative framework for the collection and management of SAT consists of the provisions in Part 1 Chapters 4-6 of the Bill and the Revenue Scotland and Tax Powers Act 2014<sup>3</sup> (“2014 Act”), as amended by Part 2 of the Bill. The 2014 Act, amongst other things, provides the general collection and management framework for Scotland’s devolved taxes.

8. In addition to measures related specifically to SAT, the Bill includes a small number of wider legislative amendments to the 2014 Act. These amendments, which would affect LBTT and SLfT in addition to SAT, are intended to support the efficient and effective collection of all devolved taxes by Revenue Scotland.

## Rationale for subordinate legislation

9. The Government has had regard, when deciding what subordinate legislation powers and respective Parliamentary procedures are appropriate for the Bill and whether provisions should be in primary or in subordinate legislation, to:

- the need to strike a balance between the importance of the issue and providing flexibility to respond to changing circumstances (for example changing market conditions or government priorities, or in light of operational experience of the collection and management of the tax);
- the need to make proper use of valuable Parliamentary time; and
- the need to deal with the unexpected, which might otherwise frustrate the purpose of the provision in primary legislation approved by the Parliament (for example tax avoidance).

10. 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.

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<sup>3</sup> <https://www.legislation.gov.uk/asp/2014/16/contents>

## Delegated powers

### Section 4(4): Power to add or remove items from a list of relevant substances for the purpose of exempt processes

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

#### Provision

11. Section 4 of the Bill defines exempt processes, the products of which are not considered to be aggregate for the purposes of SAT. Included as an exempt process is any process by which a relevant substance is extracted or otherwise separated from aggregate.

12. The Bill sets out a list of relevant substances, generally industrial minerals not used for aggregate purposes. This power allows Scottish Ministers to add or remove a substance from this list

#### Reason for taking power

13. The list of relevant substances set out in the Bill replicate those available for the UKAL, such as, talc, sodium chloride, pumice, vermiculate and other minerals. This power allows Scottish Ministers to ensure that the list of relevant substances is kept up to date and takes account of current circumstances.

#### Choice of procedure

14. It is anticipated that any changes made using this power will essentially be minor technical updates, adding or removing minerals to the list of relevant substances. Use of the negative procedure is considered appropriate for a technical and administrative matter. Generally, these minerals are produced in small quantities.

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## Section 7(10): Power to make regulations regarding the circumstances in which the exploitation of commercial aggregate is taken to occur in Scotland or Scottish waters

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

### Provision

15. Section 7 defines when aggregate is considered to have been commercially exploited. Subsection (5) defines when this commercial exploitation is considered to have taken place in Scotland. Section 7(10) allows for Scottish Ministers to make further provisions on the circumstances in which the exploitation of aggregate is taken to occur in Scotland or in Scottish waters.

### Reason for taking power

16. The interaction of SAT with the UKAL and the need to take account of cross-border movements of aggregate is a novel part of the Bill. The Scottish Government closely considered the relevant issues and chose to align with the UKAL definition of commercial exploitation with additional clarification regarding the treatment of aggregate sold or moved to Scotland from the rest of the UK. This power will provide Scottish Ministers with scope for refinement should this be required to support the effective administration and enforcement of the tax and protect Scottish revenues.

### Choice of procedure

17. Affirmative procedure is considered to be appropriate to the extent that the power allows for the amendment of primary legislation. This will allow for an appropriate level of scrutiny for a provision which is primarily intended to affect who is required to register for SAT to begin with.

## Section 11(1): Power to determine how aggregate is weighed for the purpose of calculating the tax

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

### Provision

18. Section 11 allows for Scottish Ministers to determine in regulations how material is weighed for the purpose of calculating SAT.

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### Reason for taking power

19. Weight will be determined by weighing the aggregate at the time of commercial exploitation. However, Scottish Ministers will need to keep a degree of flexibility as to how material is weighed in order to ensure that all circumstances are accounted for.

20. This approach is line with that taken for determining weight of material for the purposes of SLfT.

### Choice of procedure

21. Negative procedure is considered appropriate because this power relates to technical and administrative adjustments that are relatively minor in impact, do not affect the scope of the tax or the circumstances in which people will pay it and as such are unlikely to require substantial scrutiny.

## Section 12(3): Power to specify the rate(s) of tax

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Provisional Affirmative

### Provision

22. Section 12 determines how the amount of tax charged on taxable aggregate should be calculated. This provision allows Scottish Ministers to set the rate or rates of SAT.

### Reason for taking power

23. This provision provides future flexibility to make further provision concerning tax rates and bands. The Scottish Government may wish to change the tax rate or structure of tax bands or to support key government priorities, to reflect changing market conditions or in light of operational experience of collecting and managing the tax.

24. This is consistent with the approach taken for the existing fully devolved taxes where tax rates and bands are considered as part of the Scottish Budget process.

### Choice of procedure

25. Once the tax has been established, it may be necessary to ensure that tax rates can be changed quickly. It is considered that provisional affirmative procedure provides that flexibility while providing an appropriate level of Parliamentary scrutiny afterwards. As with Scottish Landfill Tax, the Scottish Government would however normally expect to announce any rate or rate change as part of the Scottish Budget and for this to come into effect from 1 April of the relevant year.

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## Section 15(1): Power to make regulations regarding the application of tax credits

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

### Provision

26. Section 15 of the Bill sets out a number of credits that taxpayers may claim, and this power allows Scottish Ministers to make regulations regarding the administration and value of these credits.

### Reason for taking power

27. The Bill itself sets out the tax credits which can be claimed but this power is required to make rules which govern when and how a tax credit claim can be made, along with the evidential requirements to support these claims. This is consistent with the approach to tax credits taken in the existing devolved taxes.

### Choice of procedure

28. Negative procedure is considered appropriate as this power does not determine the credits which can be claimed but allows for the making of administrative rules regarding tax credits which are specified on the face of the Bill. This is consistent with the approach taken to tax credits in the Landfill Tax (Scotland) Act 2014<sup>4</sup>.

## Section 18(5): Power to make regulations exempting persons from the requirement to register

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

### Provision

29. Section 18 of the Bill sets out a duty for someone responsible for subjecting a quantity of aggregate to commercial exploitation, to register for SAT. This provision provides Scottish Ministers with the power to make regulations exempting persons carrying out taxable activity from requirements to register, subject to such conditions or restrictions as specified.

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<sup>4</sup> <https://www.legislation.gov.uk/asp/2014/2/contents>

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## Reason for taking power

30. This power is required to ensure that those producing aggregate which would usually be considered taxable but is exempted by section 6 of the Bill, do not need to register for SAT. This is to be set out in secondary legislation rather than in the Bill to allow for adjustments in light of operational experience of administering the tax.

## Choice of procedure

31. Affirmative procedure was selected for this power as it will impact responsibilities put on taxpayers with penalties for non-compliance. Therefore, affirmative procedure is considered to provide the appropriate level of scrutiny.

## Section 20: Power to make regulations requiring notification of production of exempt aggregate

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

## Provision

32. Section 18 of the Bill sets out a duty for, someone responsible for subjecting a quantity of aggregate to commercial exploitation, to register for SAT. Section 18(5) provides Scottish Ministers with the power to exempt people who produce exempt aggregate from a duty to register.

33. Section 20 provides Scottish Ministers with the power to make regulations requiring people who are exempt from duty to register, because of regulations made under section 18(5), to make a notification to Revenue Scotland.

## Reason for taking power

34. Certain types of exempt aggregate production, in particular coal, lignite, slate, and clay, are similar in process to the production of taxable aggregate. The notification to Revenue Scotland will allow for management of compliance risks.

35. The requirement to notify is to be set out in secondary legislation rather than in the Bill in order to provide for maximum operational flexibility, and to allow for adjustments to requirements in light of operational experience administering the tax, but it is not anticipated that there will be a need for frequent adjustments.

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## Choice of procedure

36. Affirmative procedure was selected for this power as it will impact responsibilities put on taxpayers with penalties for non-compliance. Therefore, affirmative procedure is considered to provide the appropriate level of scrutiny.

## Section 22: Power to make further regulations relating to registration

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

## Provision

37. This provision enables Scottish Ministers to make further regulations in relation to:

- section 18 – Duty to register for tax,
- section 19 – Duty to cancel registration for tax, or
- section 20 – Duty to Notify Revenue Scotland of productions of exempt aggregate.

## Reason for taking power

38. This provision allows Scottish Ministers to specify the administrative requirements of making notifications under sections 18, 19 and 20. In other words, to fill in the practical details of registration, cancellation and notification processes. This is to be set out in secondary legislation rather than in the Bill to allow for operational flexibility and leave room for adjustments in light of operational experience of administering the tax. This approach is common in tax law because secondary legislation can be more suitable for operational detail at this level.

## Choice of procedure

39. Negative procedure is considered appropriate for a technical and administrative power of this nature: for instance setting the times of particular notifications under the Bill.

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**Section 23(1): Power to set accounting periods, require tax returns to be submitted in relation to those accounting periods and require tax to be paid**

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

40. Section 23 sets out the duty to make tax returns and pay tax. This power allows Scottish Ministers to set accounting periods and to require self-assessed SAT returns to be submitted and tax paid in relation to those accounting periods.

Reason for taking power

41. This power is required to allow Scottish Ministers to set out the frequency of returns to be submitted by the registered person. This approach is consistent with the approach taken to accounting periods in and tax returns in other devolved taxes.

Choice of procedure

42. Negative procedure is considered appropriate for the technical and administrative matter of setting accounting periods and allowing for their adjustment in the light of operational experience administering the tax.

**Section 26(1): Power to make regulations to ensure that every non-resident taxpayer has a person resident in the United Kingdom to act as the person's tax representative for the purpose of paying the tax**

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

43. Section 26 refers to the appointment of tax representatives. This provision provides Scottish Ministers with the power to make regulations requiring that every non-resident taxpayer has a person resident in the United Kingdom to act as their tax representative.

This document relates to the Aggregates Tax and Devolved Taxes Administration (Scotland) Bill (SP Bill 38) as introduced in the Scottish Parliament on 14 November 2023

### Reason for taking power

44. The requirement for non-resident taxpayers to appoint a tax representative will encourage taxpayers to ensure that all obligations and liabilities in relation to the tax are met and will therefore reduce the risk of non-compliance, which is more challenging for a tax authority to combat in respect of non-resident taxpayers. This power enables Scottish Ministers to put in place the relevant administrative processes which will support SAT compliance.

### Choice of procedure

45. Negative Procedure is considered appropriate for a technical and administrative matter which does not amend the Bill or other primary legislation but allows for the making of more detailed administrative rules relating to tax representatives.

**Section 27(2): Power to make regulations regarding the extent to which the tax representative of a non-resident taxpayer is required to secure the non-resident taxpayer's compliance with any requirements**

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

### Provision

46. This provision provides Scottish Ministers with the power to make regulations regarding the extent to which the tax representative of a non-resident tax payer is required to secure the non-resident taxpayer's compliance with any requirements of this Bill or the 2014 Act.

### Reason for taking power

47. The requirement for non-resident taxpayers to appoint a tax representative will encourage taxpayers to ensure that all obligations and liabilities in relation to the tax are met. This power allows Scottish Ministers to put in place administrative rules regarding the extent to which the representatives are required to secure the non-resident taxpayers compliance. This allows Scottish Ministers to ensure that the requirements placed on tax representatives remain reasonable.

### Choice of procedure

48. Negative procedure is considered appropriate for a technical and administrative matter.

This document relates to the Aggregates Tax and Devolved Taxes Administration (Scotland) Bill (SP Bill 38) as introduced in the Scottish Parliament on 14 November 2023

## Section 32(1): Power to make regulations regarding the application of requirements to partnerships and unincorporated bodies

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

### Provision

49. Part 1, chapter 4 of the Bill sets out provisions relating to the administration of SAT. This provision enables Scottish Ministers to make provisions applying any of the requirements of Part 4 to cases where business is carried on by partnerships or unincorporated bodies.

### Reason for taking power

50. This power is required to ensure that provisions of the tax apply in cases where the business exploiting aggregate is a partnership or unincorporated body. This approach is consistent with the approach taken to accounting periods in and tax returns in other devolved taxes.

### Choice of procedure

51. Negative procedure is considered appropriate for a technical and administrative matter which does not amend the Bill or other primary legislation but allows for the making of administrative rules relating to partnerships and unincorporated bodies.

## Section 33(1): Power to make regulations regarding carrying on of a business following death, bankruptcy or incapacity

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

### Provision

52. Section 33 refers to bankruptcy, incapacity and death. This provision provides Scottish Ministers may make regulations to require the person carrying on the business after a death, bankruptcy, sequestration, liquidation, receivership, or administration, to notify Revenue Scotland of that fact, to make provision for the person carrying on the business to be treated as the original person and to make provisions for securing continuity.

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### Reason for taking power

53. This power is to ensure that liability of a quarry operation continues under set conditions should the business continue to operate after the original registered person is no longer the operator.

### Choice of procedure

54. Negative procedure is considered appropriate for a technical and administrative matter which does amend the Bill or other primary legislation but allows for the making of administrative rules to enable taxpayer continuity.

## Section 34(1): Power to make regulations regarding the transfer of a business as a going concern

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

### Provision

55. This provision provides Scottish Ministers may make regulations regarding the transfer of a business as a going concern.

### Reason for taking power

56. This power is to ensure that liability of a quarry operation continues under set conditions should the business be transferred as a going concern.

### Choice of procedure

57. Negative procedure is considered appropriate for a technical and administrative matter, which does not amend the bill or other primary legislation but allows for the making of administrative rules regarding the transfer of a business to a going concern and for these rules to be adjusted in light of operational experience.

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## Section 37(2)(a): Power to specify a relevant person to which Revenue Scotland may delegate any of its functions relating to SAT

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

### Provision

58. Section 37 refers to the delegation of functions by Revenue Scotland. This provision allows Scottish Ministers to specify a relevant person to whom Revenue Scotland may delegate any of its functions relating to SAT.

### Reason for taking power

59. Revenue Scotland delegates aspects of its functions for Scottish Landfill Tax to the Scottish Environment Protection Agency and for Land and Buildings Transactions Tax to Registers of Scotland under section 4 of the 2014 Act. This power amends section 4 to enable Scottish Ministers to permit Revenue Scotland to delegate particular functions to specific organisations in the event that operational experience of administering SAT identifies a relevant need to do so, without the need for further primary legislation.

### Choice of procedure

60. Negative procedure is considered appropriate for a technical and administrative matter which will not affect the scope of the tax but enable its effective administration.

## Section 47(2): Power to change penalty provisions relating to SAT

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

### Provision

61. Section 47 makes general provisions for penalties relating to SAT. This provision allows Scottish Ministers to make provision about the new penalties relating to SAT inserted into the 2014 Act as Chapter 5A of Part 8.

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## Reason for taking power

62. Sections 42 to 46 of the Bill insert new penalties relating to SAT into the 2014 Act. This power is inserted into the 2014 Act as new section 216G, in order to allow adjustments to those new penalties in light of operational experience of administering SAT. This is consistent with the approach for other penalties for devolved taxes in Part 8 of the 2014 Act (see e.g. section 216).

## Choice of procedure

63. Affirmative procedure is considered to be appropriate on the basis that the power allows for the amendment of primary legislation.

## Section 54(2): Communications from Revenue Scotland to taxpayers

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory instrument

Parliamentary procedure: Affirmative

## Provision

64. This provision inserts a new section 251A into the 2014 Act, enabling Scottish Ministers to bring forward regulations about communications from Revenue Scotland to taxpayers: in particular, but not limited to, the use of electronic communications.

## Reason for taking power

65. This power will allow for regulations to be developed which would add further detail to the arrangements in place around the use by Revenue Scotland of electronic communications to taxpayers based on their consent, including on the relevant presumptions that should apply. Any further detail would provide additional certainty, thereby benefiting both taxpayers and Revenue Scotland. The use of regulations would enable these arrangements to be updated over time as necessary, taking account of developments in information technology.

66. This power would also enable Scottish Ministers to make regulations in other areas of communication used by Revenue Scotland, including to introduce specific provisions on postal communications into the 2014 Act.

## Choice of procedure

67. Affirmative procedure is considered to be appropriate on the basis that the power allows for the amendment of primary legislation.

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## Section 55(2): Use of automation by Revenue Scotland

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

### Provision

68. This power inserts a new section 251B into the 2014 Act, enabling Scottish Ministers to bring forward regulations relating to the use of automation by Revenue Scotland, in carrying out functions conferred on either Revenue Scotland or a designated officer.

### Reason for taking power

69. This power will allow for regulations to be developed which will help ensure that the arrangements in the 2014 Act are future-proofed and consider the impacts of developments in information technology on tax administration. Any regulations would be intended to support the efficient and effective administration of the devolved taxes by Revenue Scotland.

### Choice of procedure

70. Affirmative procedure is considered to be appropriate on the basis that the power allows for the amendment of primary legislation.

## Section 59(1): Power to make ancillary provisions

Power conferred on: Scottish Ministers

Power exercisable by: Regulations

Parliamentary procedure: Affirmative Procedure if amending primary legislation, otherwise negative

### Provision

71. This provision enables 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.

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## Reason for taking power

72. This power will enable Scottish Ministers to adequately give effect to the provisions of the Bill. Whilst the power is wide-ranging, it is vital that SAT interacts well with Scots law and practices, including the distinctive environmental law regime. The power will enable unforeseen situations to be addressed as soon as it is practical for Scottish Ministers to bring forward regulations. For example, consequential provision may be required in order to make necessary changes to related legislation. The Scottish Ministers consider the power to be necessary to provide this flexibility and that it should extend to the modification of primary legislation. Otherwise, it might be necessary to return to Parliament for further primary legislation to make adjustments to another statute where it is obvious that the adjustment has to be made if the intentions of Parliament in passing this Bill are to be given effect.

## Choice of procedure

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

## Section 61(2): Commencement

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Laid, no procedure

## Provision

74. Section 61(2) of the Bill provides that the Scottish Ministers may, by regulations, appoint days on which the provisions in the Bill come into force. This is with the exception of sections 59 to 62, which come into force on the day after Royal Assent. Regulations under section 61(2) may include transitional, transitory or saving provisions and may also make different provision for different purposes.

## Reason for taking power

75. This power will enable the Scottish Ministers to bring the provisions of the Bill into force and to manage the effects of their commencement. Having the provisions come into force on a date appointed by regulations means that the Scottish Government can appoint a date having ensured that everyone who needs to prepare for the law changing has made the necessary preparation.

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## Choice of procedure

76. As is now usual for commencement regulations, the default laying requirement will apply, as provided for by section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010<sup>5</sup>. This is considered appropriate because the policy behind the provisions will already have been considered by the Parliament during the passage of the Bill.

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<sup>5</sup> <https://www.legislation.gov.uk/asp/2010/10/contents>

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