

# Building Safety Levy (Scotland) Bill

## [As amended at Stage 2]

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## Supplementary Delegated Powers Memorandum

### Introduction

1. This supplementary Delegated Powers Memorandum has been prepared by the Scottish Government in accordance with Rule 9.7.9 of the Parliament's Standing Orders in relation to the Building Safety Levy (Scotland) Bill ("the Bill") following Stage 2. This memorandum describes provisions in the Bill conferring power to make subordinate legislation which were added and amended into the Bill at Stage 2. It should be read in conjunction with the Delegated Powers Memorandum published to accompany the Bill on introduction.

2. 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.

### Provisions conferring power to make subordinate legislation introduced or amended at Stage 2

3. The amended or new delegated powers in the Bill 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 6: Power to modify types of buildings which may be taxable

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Revised or new power: Revised

This document relates to the Building Safety Levy (Scotland) Bill (SP Bill 73A) as amended at Stage 2

## Provision

4. Section 4 of the Bill provides a definition of ‘new residential unit’ for the purposes of the Scottish Building Safety Levy (“SBSL”). Section 5 of the Bill provides a definition of an ‘exempt new residential unit’ for the purposes of the SBSL. Section 6 provides a power for Scottish Ministers to modify the list of cases set out in section 4 where a building or part of a building is to be taken as intended to be used as a dwelling or other accommodation as set out in section 4; to modify the list of cases where a building or part of a building is **not** to be taken as intended to be used as a dwelling or other accommodation; and to modify the meaning of ‘exempt new residential unit’ in section 5. Before making regulations under this section, the Scottish Ministers must consult with local authorities, persons whom the Scottish Ministers consider represent the interests of the residential property development sector and such other persons as they consider appropriate.

5. The regulations may make different provision for adding, varying and removing a type of relevant building; different areas or classes of land; and may also make provision describing lands or buildings with referent to externally published documents.

## Reason for taking power

6. At Stage 2, section 6(4) was inserted to require Scottish Ministers, before using the power, to consult with local authorities and representatives of the residential property development sector. This is in addition to any other such persons with whom Scottish Ministers consider it appropriate to consult. This amendment is similar to others requiring consultation that were recommended by the Delegated Powers and Law Reform Committee for other powers during Stage 1 scrutiny of the Bill.

## Choice of procedure

7. As stated in the Delegated Powers Memorandum at introduction, 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 concerning the types of buildings to which the SBSL applies — a key element of the tax.

## Section 10(3)(b): Definition of financial year

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Revised or new power: Revised

## Provision

8. Section 10 of the Bill sets out the steps to be taken by a person in calculating their liability to pay the levy and allows for payments of the SBSL to be calculated in the accounting periods for a financial year. For the purposes of the Bill, a financial year is

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defined as beginning on 1 April and ending on the following 31 March, or such other 12-month period as may be set by Ministers by regulations.

9. Subsection (3)(b) provides a power to set a different 12-month period as the financial year for the SBSL. Before making regulations under section 10(3)(b), the Scottish Ministers must consult with Revenue Scotland, persons whom the Scottish Ministers consider represent the interests of the residential property development sector and any such other persons as the Scottish Ministers consider appropriate.

### Reason for taking power

10. At Stage 2, section 10(4) was inserted to require the Scottish Ministers, before using the power, to consult with Revenue Scotland, representatives of the residential property development sector and any such other persons as the Scottish Ministers consider appropriate. This amendment is in line with the recommendation of the Delegated Powers and Law Reform committee during Stage 1 scrutiny of the Bill.

### Choice of procedure

11. As stated in the Delegated Powers Memorandum at introduction, negative procedure is considered appropriate for a technical and administrative adjustment to accounting practices for the SBSL.

## Section 11(1): Reliefs

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Revised or new power: Revised

### Provision

12. Section 11(1) of the Bill concerns regulations making provision for, and in connection with, reliefs from the levy for certain building control events.

### Reason for taking power

13. At Stage 2, section 11(1) was amended so that instead of being a discretionary power that Scottish Ministers may use, it is a mandatory requirement for Scottish Ministers to lay regulations to make provision for reliefs. In addition, section 11(2A) was inserted setting out that regulations made under subsection (1) must include a relief for the construction of, or conversion works creating, a new residential unit on brownfield land which must be no less than 50% of the charge of the levy to be applied under this Act. This section effectively commits the Scottish Government, and all future administrations, to introducing a relief of at least 50% to taxable new residential units built on brownfield land. This provision cements the Scottish Government's intention, as indicated in the Policy Memorandum accompanying the Bill at introduction, of providing for a discount for brownfield through the regulation-making powers in the Bill.

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## Choice of procedure

14. As stated in the Delegated Powers Memorandum at introduction, affirmative procedure has been chosen for this power as it will impact liabilities and responsibilities on taxpayers with penalties for non-compliance. The affirmative procedure is considered to provide the appropriate level of scrutiny.

## Section 12(1): Levy-free allowance

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Revised or new power: Revised

## Provision

15. Section 12(1) of the Bill, as amended, provides a power to Scottish Ministers to, by regulations, make further provision for and in connection with a 'levy-free allowance' – a quantity of building control events within a financial year which may be exempt from the levy. At Stage 2, a new subsection (A1) was inserted, providing that a levy-free allowance of 29 units must be deducted from the calculation of total levy payable by a person (Step 3 of section 10(1)).

16. Regulations made under this power may:

- set the number of building control events which constitute a levy-free allowance;
- set different numbers of building control events constituting levy-free allowances for different purposes;
- specify different periods for calculating the quantity of building control events;
- specify building control events which do not count towards a levy-free allowance;
- specify which building control events are to be treated as occurring earlier in the accounting period for the purposes of the allowance;
- specify the date from which a levy-free allowance applies;
- provide for the treatment of groups of companies in relation to levy-free allowances;
- the treatment of connected persons within the meaning of section 1122 of the Corporation Tax Act 2010;
- specify the accounting period or financial year in which the first allowance period commences; and
- include provision for carrying forward unused levy-free allowance from the two accounting periods or financial years preceding the accounting period or financial year.

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17. Subsection (3) provides that before making regulations, the Scottish Ministers must consult with persons whom they consider represent the interests of the residential property development sector, and such other persons as they consider appropriate.

### Reason for taking power

18. At Stage 2, section 12 was amended to set out that a levy-free allowance of 29 units is to be deducted from the calculation of total levy payable by a person (Step 3 of section 10(1)). Subsection (1) was amended to clarify that the power for the Scottish Ministers is now to make **further** provision on the levy-free allowance through regulations. Subsection (3) was also inserted, requiring the Scottish Ministers to consult with persons they consider as representing the interests of the residential property development sector and any such other persons as the Scottish Ministers consider appropriate, before making regulations. This amendment is in line with the recommendation of the Delegated Powers and Law Reform committee during Stage 1 scrutiny of the Bill.

### Choice of procedure

19. As stated in the Delegated Powers Memorandum at introduction, the affirmative procedure has been chosen for this power as it will impact the number of taxable building control events by a taxpayer. Therefore, affirmative procedure is considered to provide the appropriate level of scrutiny.

## Section 21A: Information sharing

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Revised or new power: New power

### Provision

20. New section 21A of the Bill allows for the Scottish Ministers to make provision by regulations for information sharing between Revenue Scotland and a relevant entity for the purposes of administering the SBSL. Regulations made under section 21A would allow Revenue Scotland to collect, disclose and access protected taxpayer information from and with a relevant entity.

21. Subsection (2) provides for regulations made under section 21A to make provision for the keeping, maintenance and protection of the information; the enforcement of an obligation and appeals against any decision taken or obligation imposed; powers in relation to penalties or compensation for a failure to comply with an obligation; and the designation of disclosures by Revenue Scotland as being permitted disclosures for the purposes of section 15 of the Revenue Scotland and Tax Powers Act 2014 (“RSTPA”).

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22. Subsection (3) lists the relevant entities as local authorities, Registers of Scotland and the Scottish Ministers. Regulations made under this section may specify further persons as relevant entities. Subsection (4) sets out that regulations made under this section may make provision for the type of information; the form, time and manner in which the information is to be disclosed; and the disclosure of information in bulk.

23. Subsection (5) requires the Scottish Ministers, before making regulations under section 21A in relation to the matters described in subsection (4), to consult with Revenue Scotland and any such other persons as the Scottish Ministers consider appropriate.

### Reason for taking power

24. The power was taken in order to provide a clear, proportionate and legally necessary statutory gateway for information sharing to support the administration of the SBSL, while preserving the strong taxpayer confidentiality framework that applies to devolved taxes. While the SBSL operates as a self-assessed tax, Revenue Scotland does not hold the building standards and completion data needed to support the validation of levy returns. Without the ability to query relevant entities, Revenue Scotland would be unable to provide effective assurance that returns are accurate. However, any querying or information exchange must take place within a clear statutory gateway.

25. The relevant entities listed in subsection (3) are those entities which currently hold information relating to the construction and completion of new residential units. Local authorities are designated by ministers as building verifiers and are keepers of the building standards process. Registers of Scotland collect and hold information relevant on ownership of land and property, which is relevant for identifying persons liable for the tax. The Scottish Ministers hold information on the Scottish Government's Affordable Housing Programme, which is relevant to the management of exemptions from the SBSL. It is possible that the functions of these entities may change, or that information held by other entities would assist in Revenue Scotland's administration of the SBSL. Subsection (3) therefore allows the list of relevant entities to be amended through the regulation-making power.

26. Section 15 of the RSTPA imposes a statutory duty of confidentiality on Revenue Scotland concerning protected taxpayer information. Unlawful disclosure of taxpayer information under section 15 is a criminal offence, and an explicit statutory authorization clarifies that Revenue Scotland staff are not at risk of breaching those requirements simply by sharing information needed to administer the Levy. The power in section 21A expressly designates SBSL-related disclosures as "permitted disclosures" for the purposes of section 15 RSTPA, ensuring that compliance activity undertaken in through use of information sharing is lawful.

27. A regulation-making power to give effect to information sharing agreements is commonplace due to the technical and administrative nature of such an arrangement. This approach is in line with similar information sharing gateways in other statutes, for

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example the information-sharing power in section 85 of the Social Security Scotland Act 2018.

### Choice of procedure

28. The sharing, management and disclosure of information between entities is considered to be an important issue and it is appropriate that the Parliament be given a high degree of scrutiny of any regulations made under section 21A. This is in addition to the consultation requirements as set out in subsection (5) to ensure that those parties impacted by an information sharing agreement are appropriately engaged with. Therefore the affirmative procedure is considered to provide the appropriate level of scrutiny.

### Section 51A: Expiry

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Revised or new power: New Power

### Provision

29. Section 51A provides for the Act to expire after a period of 15 years. This period begins on the day on which this section comes into force. Subsection (2) allows for the Scottish Ministers, by regulations, to extend the period of 15 years. Where the Scottish Ministers lay draft regulations under subsection (2), subsection (3) requires Ministers to also lay before Parliament a statement of reasons why it is necessary to extend the operation of the Act.

### Reason for taking power

30. The power was taken so that, if it was deemed necessary or appropriate, the Scottish Ministers could extend the lifespan of the SBSL in the event that its expiry threatens the funding of the Scottish Government's Cladding Remediation Programme, which the proceeds from the SBSL are intended to support. To ensure that Parliament and stakeholders are fully informed of the Government's rationale for an extension, the power requires that a statement of reasons be laid in order to present the case for further funding to support the Programme.

### Choice of procedure

31. As the decision to extend the lifespan of the SBSL would have significant implications for those affected by its operation, a high degree of Parliamentary scrutiny, provided by the affirmative procedure, is considered appropriate. This procedure also aligns with the Finance and Public Administration Committee's recommendation in its Stage 1 report on the Bill, which called for the Parliament to decide, after 15 years, whether the SBSL should remain in place.

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