Council Tax (High Value Dwellings etc.) (Scotland) Bill

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 Council Tax (High Value Dwellings etc.) (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 2–EN);
- a Financial Memorandum (SP Bill 2–FM);
- a Policy Memorandum (SP Bill 2–PM);
- statements on legislative competence made by the Presiding Officer and the Scottish Government (SP Bill 2–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 makes targeted amendments to Part 2 of the Local Government Finance Act 1992 ("the 1992 Act"). Sections 1 to 3 create Council Tax Bands I and J for dwellings valued at more than £1 million but no more than £2 million, and more than £2 million respectively, using market values at 1 April 2026. The policy intention is that the new bands take effect from 1 April 2028. Section 4 enables the Scottish Ministers, by regulations, to exclude specified descriptions of dwelling from Bands I and J.

5. Section 5 provides automatic transitional protection for eligible sole or main residences moving from Bands A to H into Band I or J. The annual increase in the

basic Council Tax amount, before discounts or reductions, is limited to the lower of 50% of the preceding protected amount or £1,500 until full liability is reached. Section 6 gives each local authority a discretionary power to reduce Council Tax liability through a locally determined scheme. Section 7 replaces the current severe mental impairment terminology with significant cognitive impairment, modernises the statutory test and provides for the relevant Council Tax disregard or exemption to have effect for the full period for which the medical certification has effect, once the qualifying-benefit entitlement or other qualifying condition is established.

6. Sections 8 to 11 make consequential provision about the exercise of regulation-making powers, ancillary provision, commencement and the short title.

Rationale for subordinate legislation

7. The Bill places the principal policy choices - including the new bands, thresholds, multipliers, valuation date and transitional protection - on the face of primary legislation. Delegated powers are used for detailed valuation rules, including the principles and assumptions on the basis of which valuations are to be undertaken, the exclusion of specified descriptions of dwelling, future changes to significant cognitive impairment terminology or its definition, ancillary provision and timing of coming into force. The Bill also confers a locally exercisable power so that local authorities can respond to particular local circumstances. In deciding to take powers to make provision by secondary legislation, account is taken of the need to ensure proper and efficient use of Parliamentary time, along with the possibility of a need to bring in certain changes as expeditiously as possible. By way of example, if a decision is made to exclude a particular category of dwelling from Bands I and J, where it would otherwise fall within one of those bands, this will be in response to a need identified to do so. The policy wish will likely be that the change take effect as expeditiously as possible. This speaks in favour of using secondary legislation. For the decision on whether to rely on the negative procedure or the affirmative procedure, careful consideration has been given to the level of scrutiny that is thought to be required for an instrument. This is with a view to ensuring that an appropriate balance is struck between the need for the appropriate level of scrutiny to take place and the need to avoid taking up Parliamentary time unnecessarily. The balance reflects the view taken of the importance of the matters being delegated by Parliament.

Delegated powers

Section 1: New valuation bands for high value dwellings

Section 1(2)(d)(i)

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

Provision

8. Section 1(2)(d)(i) expands the order-making power in section 74(3)(b) of the 1992 Act so that the valuation bands effective for the purposes of section 74(2A) of the 1992 Act can be substituted, as well as those effective for the purposes of section 74(2).

Reason for taking the power

9. The power is required so that any future change to the Council Tax valuation band structure can apply coherently both to the existing bands, which continue to be based on 1991 values, and to Bands I and J, which are based on 2026 values. There may be a wish to change the valuation bands effective for the purposes of section 74(2A) of the 1992 Act, in the same way as such a change may be wished for valuation bands effective for the purposes of section 74(2). This change to the order-making power allows for that.

Choice of procedure

10. Any order to change the valuation bands effective for the purposes of section 74(2A) of the 1992 Act will be subject to the affirmative procedure. This is consistent with section 74(3)(b) as it currently operates and seems to reflect the significance of the change an order under this section may give rise to.

Section 1(2)(d)(ii)

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

Provision

11. Section 1(2)(d)(ii) inserts a new paragraph (c) into section 74(3) of the 1992 Act. This will enable such amendments to be made to the 1992 Act, or provisions made under it, as are considered necessary or expedient as a result of changes to valuation bands or proportions made by order under section 74(3)(a) and (b) (as amended by this Bill).

Reason for taking power

12. The Bill introduces provisions designed around a targeted valuation of high-value dwellings while retaining the wider 1991 valuation framework. If an order made under section 74(3) later changes the national band structure or proportions, consequential changes may be needed so that the special provisions for Bands I and J and the remainder of Part 2 continue to operate coherently. Extending the existing power avoids the need for further primary legislation solely to make those consequential adjustments.

Choice of procedure

13. In common with the existing order-making powers under section 74(3)(a) and (b) of the 1992 Act, an order under section 74(3)(c) will be subject to the affirmative procedure[1]. Given that changes will be consequential on changes to the bands or proportions, and that any such changes will be subject to the affirmative procedure because of their significant nature, it seems appropriate that consequential changes should also be subject to that procedure.

Section 2: Valuation of dwellings for purposes of new valuation bands

Section 2(2)(b) (amendment of section 86 of the 1992 Act)

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

Provision

14. Section 2(2)(b) inserts a new subsection (2A) into section 86 of the 1992 Act. This provides that valuation for the purposes of new Bands I and J is to be carried out by reference to 1 April 2026 and on such assumptions and in accordance with such principles as may be prescribed by regulations.

Reason for taking power

15. The assumptions and principles on which valuations are carried out are detailed and technical and need to operate consistently with the established Council Tax valuation regime. They presently include, for example, valuation assumptions such as that the dwelling was sold free from any heritable security and that the dwelling had no development value other than value attributable to permitted

[1] The functions of the Secretary of State, in so far as exercisable within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.45). Accordingly, the power in section 113(3), as amended by the Bill, is exercisable by the Scottish Ministers. It is exercisable by Scottish Statutory Instrument subject to the affirmative procedure, applying sections 27 and 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10).

development. These assumptions and principles are considered to be too technical for inclusion in the Bill itself and may require adjustment in light of practical valuation experience, assessor advice or changes to the detailed valuation framework. The regulation-making power in new section 86(2A) will allow that detail to be maintained without reopening the core policy choices made by the Bill. Section 86(2A), although new, is essentially the same power as section 86(2), and so should be subject to the same procedure.

Choice of procedure

16. The negative procedure is to be used because any provisions made in exercise of the power will be designed to ensure that valuations are carried out in line with current conditions and principles. They will not make any alteration to council tax liability. The negative procedure is therefore considered to afford an appropriate level of scrutiny. Section 86(2) is subject to the negative procedure, and it is appropriate that 86(2A) should be consistent with that.

Section 2(3) (amendment of section 87 of the 1992 Act)

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

Provision

17. Section 2(3) amends the regulation-making power in section 87(3) of the 1992 Act, concerning alteration of valuation lists, so that regulations may provide for how an entry in a valuation list may be altered where it relates to a property in new Band I or J. This can include providing that a valuation to be carried out in connection with a proposed alteration of a valuation list, so far as it relates to a property in Band I or J, is to be carried out in accordance with the principles and assumptions set out in regulations made by virtue of section 86(2A) of the 1992 Act.

Reason for taking power

18. It is recognised that alterations may need to be made to council tax valuation lists, and that it is in the interests of consistency that principles and assumptions be set out as to the basis on which the alterations may be made. This change ensures that the relevant principles and assumptions can be applied where the alteration is to be made to an entry for a property in Band I or J.

Choice of procedure

19. Regulations made in exercise of this element of the power will be subject to the negative procedure. This is consistent with the other aspects of the power. It is considered to afford the appropriate level of scrutiny. It will govern the mechanics

of altering a valuation list; there will be no impact on the council tax liability of properties included in the list.

Section 2(4) (amendment of section 88 of the 1992 Act)

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

Provision

20. Section 2(4) amends the order-making power in section 88(3)(b) of the 1992 Act so that the dates with reference to which valuations are to be carried out, or copies of a proposed valuation list sent to a local authority, can be amended in relation to valuations or lists concerning properties in Band I or J.

Reason for taking the power

21. It is recognised that there may intermittently be a need to change the dates with reference to which valuations are to be carried out, or copies of proposed valuation lists are to be sent to local authorities. This change ensures that the dates can be updated where a valuation or list concerns a property in Band I or J.

Choice of procedure

22. Regulations made in exercise of this element of the power will be subject to the negative procedure. This is consistent with other aspects of the power. It is considered to afford the appropriate level of scrutiny. Its exercise will concern the timing of valuations and distribution of proposed valuation lists, which are elements of the mechanics of the valuation process, rather than substantively affecting council tax liability.

Section 4: Exclusion of certain dwellings from new valuation bands

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

Provision

23. Section 4(2) inserts new subsections (6C) and (6D) into section 86 of the 1992 Act. These new subsections provide that the Scottish Ministers may, by regulations, specify descriptions of dwelling to which the requirement to enter in Band I or J in a valuation list does not apply. A dwelling within a specified description will continue to be entered in one of Bands A to H or, as the case may be, may be moved back to Band A to H. The regulations may operate indefinitely

or for a specified period, may be subject to conditions and may make different provision for different areas (see section 113(1) of the 1992 Act).

Reason for taking power

24. It may not be appropriate to treat some kinds of dwelling, because of their nature or use, as high-value domestic property for the purposes of Bands I and J. The categories requiring exclusion may depend on specific legal and operational characteristics and may need to change as property uses, classifications or circumstances evolve. The power also allows exclusions to be tailored by duration, condition or area without requiring further primary legislation, while leaving the wider Council Tax valuation framework in place. The power may be exercised if it became evident that increased council tax liability was adversely affecting certain groups receiving services provided in particular premises. Whether an exclusion is appropriate may depend on the detailed operational characteristics of the accommodation, including how it is occupied. Regulations allow the descriptions, conditions and duration of an exclusion to be framed precisely and adjusted in light of operational experience.

Choice of procedure

25. The negative procedure is appropriate because the power is limited to disapplying Bands I and J for specified descriptions of dwelling, with the affected dwellings remaining within or being moved back to the existing Bands A to H framework. It cannot alter the thresholds or multipliers for Bands I and J or impose liability beyond that provided for by the Bill. Further, it cannot alter the fact that the dwellings which are excluded from the bands are subject to council tax. Reliance on the negative procedure mirrors the procedure attached to orders made under section 72(6) of the 1992 Act. This allows for classes of dwellings to be exempted from council tax liability altogether, which is of greater significance than being excluded from one of the new council tax bands, and taxed in one of the existing bands A to H instead. This further reflects that the negative procedure offers the appropriate level of scrutiny.

Section 6: Schemes for reduction of council tax

Power conferred on: Each local authority
Power exercisable by: A locally adopted scheme; not by Scottish statutory instrument
Parliamentary procedure: None

Provision

26. Section 6(3) inserts new section 80B into the 1992 Act. It enables each local authority to make a scheme reducing the amount of Council Tax which a person is liable to pay. A scheme may make provision about its publication, the dwellings or persons (or classes of dwelling or person) to which it applies, the relevant

circumstances, the period for which it applies, the amount and duration of a reduction and the review of decisions. A reduction may reduce liability to nil and is additional to any other statutory reduction or discount. In making a scheme, the authority must have regard to its income and expenditure and to the interests of persons liable to pay Council Tax set by the authority.

Reason for taking power

27. The power is intended to let councils respond promptly and proportionately to local circumstances, including exceptional events affecting particular dwellings or communities, without requiring a national scheme or further primary legislation. Schemes may allow liability to be reduced in response to local circumstances such as the effect of a fire or a weather-related event, or in response to the particular circumstances of a household, for example where illness leads to inability to work for a period. Local authorities are best placed to assess local evidence, affordability and the appropriate duration and targeting of support.

Choice of procedure

28. No Parliamentary procedure applies because the power is exercised by a local authority through a local scheme rather than by subordinate legislation. The scope of the power is set by the Bill, and decisions remain subject to local-authority internal governance. There will be an opportunity to bring an appeal in relation to a decision made under a local authority scheme to the Local Taxation Chamber of the First-tier Tribunal for Scotland. This will be done in reliance on section 81 of the 1992 Act and the First-tier Tribunal for Scotland Local Taxation Chamber (Rules of Procedure) Regulations 2022 made under it. It relates to the calculation made by a local authority as to the amount which a person is liable to pay to it by way of council tax.

Section 7: Exemptions and discounts: persons subject to significant cognitive impairment

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

Provision

29. Section 7 replaces the existing severe mental impairment terminology used for Council Tax disregards and exemptions with significant cognitive impairment and provides a modernised statutory definition. Section 7(5)(f) replaces the existing power in schedule 1, paragraph 2(3) of the 1992 Act with a new regulation-making power, allowing regulations to amend the expression or its definition and make consequential modifications to Part 2 of the 1992 Act. The power is intended to allow the statutory language and definition to remain aligned with accepted clinical and legal terminology.

Reason for taking power

30. Language and diagnostic practice concerning cognitive impairment may change over time. Requiring primary legislation for a limited terminological or definitional update could leave the Council Tax legislation using outdated or inappropriate language for a significant period of time. The power provides a controlled way to maintain clarity, dignity and operational consistency, informed by relevant medical evidence and engagement with disabled people and representative organisations.

Choice of procedure

31. The negative procedure is appropriate because it effectively replaces an existing power to modify definitions and that existing power is subject to the negative procedure. The power is confined to the statutory expression, its definition and consequential modifications to Part 2 of the 1992 Act. It provides flexibility to keep the terminology and definition current without reopening the wider structure of the disregard and exemption. The Parliament will retain the ability to annul the regulations.

Section 9: Ancillary provision

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations made by Scottish statutory instrument
Parliamentary procedure: Negative procedure (Affirmative if amending the text of an Act)

Provision

32. Section 9 enables the Scottish Ministers to make incidental, supplementary, consequential, transitional, transitory or saving provision which they consider appropriate for the purposes of, in connection with or for giving full effect to the Bill. Regulations may modify enactments, including the Bill once enacted.

Reason for taking power

33. The reforms interact with a long-established statutory framework in the 1992 Act and with subordinate legislation governing valuation, billing, reductions and appeals. Although known substantive changes are included in the Bill, limited further provision may be needed to deal with technical consequences identified during implementation, to preserve existing cases or to ensure an orderly transition. The power is not intended to alter the Bill’s core policy.

Choice of procedure

34. The Regulations will be subject to the affirmative procedure if they add to, replace or omit any part of an Act; otherwise they will be subject to the negative procedure. This is in common with the approach typically taken to such provision

and strikes an appropriate balance between ensuring that changes to primary legislation are subject to sufficient scrutiny, and enabling changes which do not impact primary legislation, and simply make modifications necessary to ensure that the changes made by the Bill are given effect to, to be undertaken with a proportionate level of scrutiny.

Section 10: Commencement

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations made by Scottish statutory instrument
Parliamentary procedure: Laid, no procedure

Provision

35. Section 10(2) enables the Scottish Ministers to appoint commencement dates by regulations, including different dates for different purposes, and to make transitional, transitory or saving provision in connection with commencement. The policy intention is for the Band I and Band J provisions, transitional protection and the local discretionary reduction power to operate from 1 April 2028. Commencement of the significant cognitive impairment provisions will be coordinated with operational readiness and any associated subordinate legislation.

Reason for taking power

36. A commencement power is required to coordinate implementation across the country. The ability to specify the dates on which particular provisions come into force is necessary to ensure all necessary arrangements to underpin their coming into effect can be put in place in advance.

Choice of procedure

37. In common with the approach typically adopted to commencement provisions, the power is not subject to either the negative or affirmative procedure. Accordingly, section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010 applies. Commencement regulations are to be laid before Parliament as soon as possible after they are made, and in any event before they come into force. This approach is considered appropriate, given that the detailed policy behind the provisions of the Bill will already have been considered by Parliament before it comes into force.

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