

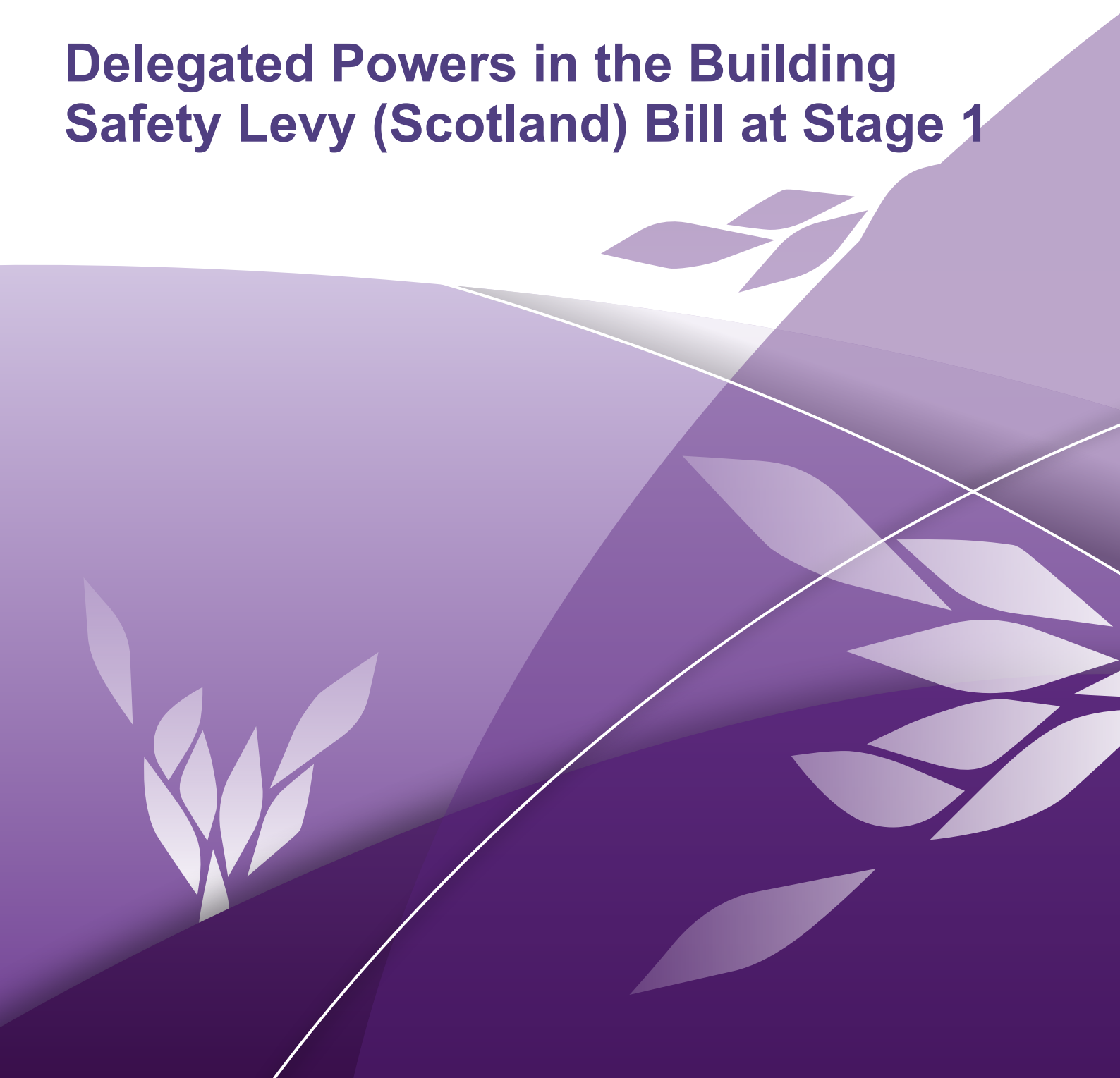


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# **Delegated Powers and Law Reform Committee Comataidh Cumhachdan Tiomnaichte is Ath-leasachadh Lagh**

## **Delegated Powers in the Building Safety Levy (Scotland) Bill at Stage 1**



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# Delegated Powers and Law Reform Committee

The remit of the Delegated Powers and Law Reform Committee is to consider and report on the following (and any additional matter added under Rule 6.1.5A)—

(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;

(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.

(i) any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.



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# Committee Membership



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**Jeremy Balfour**  
Independent



**Roz McCall**  
Scottish Conservative  
and Unionist Party



**Katy Clark**  
Scottish Labour

# Overview of the Bill

1. The [Building Safety Levy \(Scotland\) Bill](#) ("the Bill") was introduced on 5 June 2025 by the Scottish Government. The lead committee is the Finance and Public Administration Committee.
2. The Bill makes provision for a new devolved tax, the Scottish Building Safety Levy ("the Levy"). The Policy Memorandum provides that the aim is to seek a contribution from the housebuilding sector to support the funding of the Scottish Government's Cladding Remediation Programme. The Programme was established in response to the Grenfell Tower fire. The fire safety of cladding attached to medium and high rise buildings has been subject to inspection and combustible cladding has been identified as in need of remediation.
3. Paragraph 4 of the Policy Memorandum summarises the policy objective as follows:
  - ” The overarching policy aim is to seek a contribution from the housebuilding sector to support the funding of the Scottish Government's Cladding Remediation Programme. The Scottish Building Safety Levy (SBSL) will complement the existing funding streams available and ensure that the associated costs of cladding remediation do not fall directly onto affected homeowners or disproportionately onto the general taxpayer. The policy objective of the SBSL mirrors the UK Government's objective for its own Building Safety Levy, which is proposed for introduction in England in Autumn 2026.
4. The tax itself will be administered by Revenue Scotland. Revenue Scotland already administers other devolved taxes, namely the Scottish Landfill Tax and the Land and Buildings Transaction Tax.

# Delegated Powers

5. The Bill confers 19 powers to make subordinate legislation on the Scottish Ministers.
6. The Scottish Government has produced a [Delegated Powers Memorandum](#) (“DPM”), which sets out the reasons for taking the delegated powers in the Bill and the procedure chosen.
7. The Committee considered this Bill at its meetings on 28 October<sup>i</sup> and 11 November October<sup>ii</sup> 2025. At its meeting on 28 October, it agreed to [write to the Scottish Government](#). It considered the [Scottish Government's response](#) on 11 November.

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<sup>i</sup> Katy Clark MSP submitted apologies for this meeting.

<sup>ii</sup> Stuart McMillan MSP and Jeremy Balfour MSP submitted apologies for this meeting.

# Review of relevant powers

## Section 6(1): 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

### Provision

8. Section 6(1) confers power on the Scottish Ministers, by regulations, to add or remove to the list of cases set out in section 4(2) and section 4(3) where a building or part of a building is intended to be used as accommodation which is subject to the Levy. Section 6(1) also enables the Scottish Ministers to modify the meaning of “exempt new residential unit”. Section 5 sets out the meaning of an “exempt new residential unit” and excludes accommodation such as social housing, affordable housing and island accommodation.
9. Section 6(3) provides that the power in section 6(1) can modify other enactments, including the Act that will result in the Bill being passed. Section 6(4) provides for consultation with those persons that the Scottish Ministers consider appropriate before making the regulations. The power is subject to affirmative procedure.

### Committee consideration

10. The Committee asked the Scottish Government why it is necessary to include a power in section 6(3) to modify any enactment.
11. In its response, the Scottish Government states that alignment with the UK Government’s England-only levy has been a key ask of stakeholders. It states that “in order to allow for alignment (where necessary) to future changes in the UK regulations, the Scottish Government recognises that it may be necessary to amend other statutes to achieve the desired alignment”. It also states that the power in section 6(3) of the Bill “allows Scottish Ministers to adjust primary legislation promptly to avoid market distortion and administrative challenges for cross-border developers”.
12. The power in section 6(1) only permits regulations to modify:
  - section 4(2): the list of cases where a building or part of a building is to be taken as intended to be used as a dwelling or other accommodation
  - section 4(3): 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
  - section 5: the meaning of “exempt new residential unit”
13. The power does not affect any enactment other than this Bill. The response from the Scottish Government does not provide any example of the type of change that might be required to any other enactment. The response only asserts the need to align with the UK Government’s levy. Section 105C of the Building Act 1984 (as

inserted by section 58 of the Building Safety Act 2022) is the enabling power for the equivalent UK Government levy. Section 105C does not include a specific power to modify enactment.

14. In absence of a clear explanation of why the power is needed, the Committee recommends to the lead committee that the power to modify enactments in section 6(3) is removed at Stage 2. The Committee also highlights to the lead committee that the Bill contains a power to modify enactments in the ancillary power in section 49, and that the Scottish Government has not explained why that provision is insufficient for their purposes. Further, the Committee highlights that in its recent inquiry into framework legislation and Henry VIII powers that it reported that the Committee expects to see Henry VIII powers appropriately limited in scope.

15. **The Committee highlights to the lead committee that the Scottish Government has not provided an appropriate justification for taking the power in section 6(3) to allow the modification of other enactments. The power to make regulations in section 6(1) is restricted to making modifications to the lists in sections 4(2) and 4(3) of the Bill, and to the definition of “exempt new residential unit” in section 5 of the Bill. It is not clear why regulations under section 6(1) would be required to modify any other part of the Bill or any other enactment as currently provided for in section 6(3).**

16. **The Committee draws the attention of the lead committee to the separate ancillary power in the Bill that allows modification of other enactments should the Scottish Government consider it necessary to do so.**

17. **The Committee also highlights to the lead committee that in its report on framework legislation and Henry VIII powers that it stated it expects to see Henry VIII powers appropriately limited in scope, and that it considers the Scottish Government has not done so in section 6(3) of this Bill. As such, it recommends that section 6(3) be removed, but otherwise the Committee accepts the rest of the power contained in section 6 and that it is subject to the affirmative procedure.**

## **Section 7: Amendment of the Building (Scotland) Act 2003**

**Power conferred on: Scottish Ministers**

**Power exercisable by: Regulations made by Scottish statutory instrument**

**Parliamentary procedure: Negative**

### **Provision**

18. Section 7 of the Bill amends the existing delegated power contained in section 36 of the Building Safety (Scotland) Act 2003. The Bill inserts a new subsection (3) to give the Scottish Ministers the power to make provision related to the form and

content of any application, warrant, certificate notice or other document related to liability for the Levy.

### Committee consideration

19. The DPM states that the power is expected be used to require documents, such as completion certificates, relating to the Levy to be used as a record for verifying the tax liability of taxpayers.
20. While this power makes amendment to primary legislation, it is limited to administrative matters. The Committee therefore considers that the negative procedure is appropriate for the technical and administrative matters including the form and content of documents used in the building standards process. It is also further limited by the reference to the liability to pay the Levy under section 1 of the Bill.

21. **The Committee is content with the power in principle, and that it is subject to negative procedure.**

### Section 9(2): Charging and rate of levy – rates

#### Power conferred on: Scottish Ministers

#### Power exercisable by: Regulations made by Scottish statutory instrument

#### Parliamentary procedure: Affirmative

#### Provision

22. Section 9 sets out that the Levy is to be charged only on a “taxable building control event”. The regulations made under subsection (2) must set the rate with reference to the square metres of floorspace of the residential unit. Subsection (4) provides that the regulations may set different rates for different purposes including geographical areas, land types and any other factor which the Scottish Ministers consider appropriate.

### Committee consideration

23. The DPM provides that the Scottish Ministers may wish to change the tax rate of the Levy to reflect changing market conditions, the level of receipts for the tax or occupational experience.
24. The Bill itself does not specify the rate of the Levy. It instead confers a power for the tax rate, or rates, to be set which will allow the setting and adjustment of the rates of tax without resorting to primary legislation. The Committee considers this appears reasonable as tax rates can often change and it would represent a considerable expenditure of parliamentary time and resources were a fresh Bill required every time a rate was required to change. The approach adopted is consistent with similar powers for fully devolved taxes such as the Aggregates Tax and Scottish Landfill Tax and there will be further scrutiny when the rates are considered as part of the budget process.

**25. The Committee is content with the power in principle, and that it is subject to affirmative procedure.**

**Section 9(5): Charging and rate of the levy – methodology**

**Power conferred on: Scottish Ministers**

**Power exercisable by: Regulations made by Scottish statutory instrument**

**Parliamentary procedure: Affirmative**

**Provision**

26. Section 9(5) provides the Scottish Ministers with a power to make regulations about the methodology to be used to determine the floorspace of a new residential unit when calculating the amount of the Levy payable.

**Committee consideration**

27. The DPM provides that the power is needed to have a standardised set of rules to determine tax liability for the Levy. The DPM also points to the need have flexibility to ensure that the calculation methodology used for determining floorspace is up to date with industry standards.

28. Regulations under section 9(5) are likely to include a high level of technical detail which would not normally be expected to appear on the face of a Bill. The scope of the power is limited in that it can only be exercised in relation to the methodology and verification of the floorspace of a new residential unit and cannot be exercised more widely. The power is subject to the higher level of scrutiny by the Parliament which is provided for by the affirmative procedure.

**29. The Committee is content with the power in principle, and that it is subject to affirmative procedure.**

**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**

**Provision**

30. Section 10 provides for the calculation of the total Levy payable by the taxpayer. Section 10(3)(b) contains a power to set a different 12 month period as the financial year for the Levy.

**Committee consideration**

31. The Committee asked the Scottish Government whether it considers there should be a requirement to consult with representatives of the housebuilding sector and

with Revenue Scotland before making regulations under section 10(3)(b).

32. In its response, the Scottish Government confirms that any regulations would be “informed by full public consultation and by partnership working with Revenue Scotland and any other relevant organisation”. The Scottish Government commits to consider amending the Bill to include a requirement to consult with representatives of the housebuilding sector, Revenue Scotland, and any other persons as the Scottish Ministers consider appropriate.
33. Adding a requirement to consult representatives of the housebuilding sector, Revenue Scotland, and any other persons as the Scottish Ministers consider appropriate before regulations are made under section 10(3)(b) will place the Scottish Ministers under a statutory duty to do so. Any regulations which are made without that consultation duty being complied with would risk those regulations being *ultra vires* the power.

**34. The Committee welcomes the commitment from the Scottish Government to consider amending the Bill to include a requirement to consult with representatives of the housebuilding sector, Revenue Scotland, and any other persons as the Scottish Ministers consider appropriate, and calls upon the Scottish Government to bring forward those amendments at Stage 2.**

## **Section 11(1): Reliefs**

### **Power conferred on: Scottish Ministers**

### **Power exercisable by: Regulations made by Scottish statutory instrument**

### **Parliamentary procedure: Affirmative**

### **Provision**

35. Section 11(1) of the Bill provides a power to Scottish Ministers to make provision for and in connection with reliefs from the Levy in relation to certain building control events.

### **Committee consideration**

36. The Committee asked the Scottish Government how the Scottish Ministers would identify residential developments that should be eligible for reliefs; and whether the power could be more narrowly drawn to restrict the granting of relief to certain circumstances.
37. The Scottish Government’s response explains that “the residential property development sector is varied and subject to a wide variety of factors which can affect the build-out rates of different development types”. The response indicates that the power in the Bill is important to ensure that the Scottish Government can ensure that reliefs can be used to address changes in the sector as quickly as possible. It also refers to the similarity of the power with that provided to grant reliefs for the Land and Buildings Transaction Tax.

38. The Committee accepts that the Scottish Government will require flexibility in the power to be able to respond to the demands on the housebuilding sector by providing for types of relief which will reduce the levy payable. The Committee also notes that the Scottish Government is prepared to consider any further limiting criteria which the Parliament might suggest as appropriate.

39. **The Committee accepts the further explanation and justification for the power in section 11(1). It also notes that the Scottish Government is prepared to consider any further limiting criteria which the Parliament might suggest as appropriate, and that this may be a relevant issue which the lead committee may wish to consider from a policy perspective.**

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

#### **Power conferred on: Scottish Ministers**

#### **Power exercisable by: Regulations made by Scottish statutory instrument**

#### **Parliamentary procedure: Affirmative**

#### **Provision**

40. Section 12(1) of the Bill provides a power to Scottish Ministers to make 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. The allowance is set for each individual taxpayer and is additional to any building control events that are exempted or relieved.

#### **Committee consideration**

41. The Committee asked the Scottish Government how it intended to identify building control events which do not count towards a levy-free allowance; and whether there should be a requirement to consult with representatives of the housebuilding sector before making regulations under section 12.
42. In its response, the Scottish Government explains that it is working with Revenue Scotland and local government to identify options for data-sharing which will allow Revenue Scotland access to completions data from local authority building standards systems. This will supplement the publicly available information.
43. The Scottish Government also states in its response that it will consider amending the Bill to include a requirement to consult with representatives of the housebuilding sector and other appropriate persons before making regulations under this section.
44. The Committee accepts that collating and sharing of data about new builds is important for the assessment of the new Levy and any allowance provided for it. The further information provided by the Scottish Government indicates that it is taking steps to engage with existing data systems to enable verification of information in self-assessed levy returns, which will allow for the levy-free allowance to be properly assessed.
45. Adding a requirement to consult representatives of the housebuilding sector, and

any other persons as the Scottish Ministers consider appropriate, before regulations are made under section 12(1) will place the Scottish Ministers under a statutory duty to do so. Any regulations which are made without that consultation duty being complied with would risk those regulations being *ultra vires* the power.

**46. The Committee accepts the explanation provided by the Scottish Government about the steps it is taking to identify and share data about new builds which may be relevant to the Levy and the levy-free allowance.**

**47. The Committee welcomes the commitment from the Scottish Government to consider amending the Bill to include a requirement to consult with representatives of the housebuilding sector and any other persons as the Scottish Ministers consider appropriate, and calls upon the Scottish Government to bring forward those amendments at Stage 2.**

### **Section 15(6): Duty to register for the levy**

**Power conferred on: Scottish Ministers**

**Power exercisable by: Regulations made by Scottish statutory instrument**

**Parliamentary procedure: Affirmative**

#### **Provision**

48. Section 15 sets out a duty for the owner of a relevant residential property to register for the Levy. Subsection (6) provides Scottish Ministers with the power to exempt persons from this requirement.

#### **Committee consideration**

49. The Scottish Government considers that providing this power in secondary legislation rather than on the face of the Bill will enable adjustments to take account of operational experience of administering the tax to be made. This requires a degree of flexibility. It also considers that the affirmative procedure is appropriate given that it will affect the responsibilities of taxpayers with penalties for non-compliance.

50. This power will specify when and in what circumstances registration for the Levy will not be required and there are penalties for failing to register when required to do so. As the Levy is introduced and administered, there may require to be changes made to the registration requirements and the Committee considers it appropriate that this be done by secondary legislation which provides for a better use of parliamentary time, and that the affirmative procedure is appropriate.

**51. The Committee finds the power acceptable in principle and is content that it is subject to the affirmative procedure.**

### **Section 18: Registration – notification and compliance**

**Power conferred on: Scottish Ministers**

**Power exercisable by: Regulations made by Scottish statutory instrument**

**Parliamentary procedure: Negative**

**Provision**

52. Section 18 of the Bill provides Scottish Ministers with the power to make regulations for an in connection with:

- Notification under section 15 (duty to register for levy) and section 16 (voluntary registration);
- Form and content of the notification;
- To rectify inaccuracies;
- To make corrections of entries in the register.

**Committee consideration**

53. The Scottish Ministers explain in the DPM that the requirement to notify is to be set out in secondary legislation rather than in the Bill to provide for maximum operational flexibility. It will also allow for adjustment to requirements where that appears necessary from operational experience of operating the Levy. The DPM also notes that it is not expected that there will be a need for frequent adjustments.

54. Powers to specify forms and the technical detail of the administrative management of matters, in this case notifications to Revenue Scotland, would not normally be expected to appear on the face of a Bill and so, such a power appears appropriate for this to be done by subordinate legislation. The scope of the power is limited in that it can only be exercised in relation to sections 15 and 16 of the Bill and cannot be exercised more widely.

**55. The Committee finds the power acceptable in principle and is content that it is subject to the negative procedure.**

**Section 19: Accounting for levy and time for payment**

**Power conferred on: Scottish Ministers**

**Power exercisable by: Regulations made by Scottish statutory instrument**

**Parliamentary procedure: Negative**

**Provision**

56. Section 19 provides the Scottish Ministers with the power to set accounting periods and require self-assessed tax returns to be made and the tax due under the Bill to be paid in relation to those periods.

**Committee consideration**

57. The DPM provides that this power is necessary to enable the Scottish Ministers to set out the frequency of returns to be submitted by the registered person (i.e. the taxpayer) and is consistent with the approach taken to accounting periods and tax returns for other devolved taxes.
58. The Scottish Ministers are of the view that the matter of setting accounting periods and allowing for their adjustment is technical and administrative in nature and therefore that the negative procedure is considered appropriate.
59. These are administrative matters which are suitable for being dealt with by regulations rather than on the face of the Bill. The negative procedure affords an adequate level of parliamentary scrutiny.

**60. The Committee finds the power acceptable in principle and is content that it is subject to the negative procedure.**

### **Section 22(1): Appointment of tax representatives**

#### **Power conferred on: Scottish Ministers**

#### **Power exercisable by: Regulations made by Scottish statutory instrument**

#### **Parliamentary procedure: Negative**

#### **Provision**

61. Section 22(1) confers power on Scottish Ministers, by regulations, to make provision requiring non-resident UK taxpayers to appoint a person (i.e. an accountant) resident in the UK to act as their tax representative for the purposes of paying the Levy.

#### **Committee consideration**

62. The DPM states that this power is necessary to encourage non-resident taxpayers to comply with their obligations and liabilities in relation to the Levy as it is a challenge for a tax authority to ensure compliance in respect of non-resident taxpayers.
63. The Scottish Ministers are of the view that given the technical and administrative nature of this power, the negative procedure is considered appropriate.
64. Since this power is related to the administrative processes that are required to support compliance, the negative procedure is appropriate given the power does not allow for the amendment of any other primary legislation. It is also consistent with the approach adopted in the case of the Aggregates Tax.

**65. The Committee finds the power acceptable in principle and is content that it is subject to the negative procedure.**

### **Section 23(2): Effect of appointment of tax representatives**

**Power conferred on: Scottish Ministers**

**Power exercisable by: Regulations made by Scottish statutory instrument**

**Parliamentary procedure: Negative**

**Provision**

66. Section 23(2) confers power on Scottish Ministers, by regulations, regarding the extent to which the tax representative of the non-resident taxpayer is required to secure their compliance with the requirements of the Bill, the Revenue Scotland and Tax Powers Act 2014, or any regulations made under the 2014 Act.

**Committee consideration**

67. The DPM states that this power is necessary to place reasonable requirements on tax representatives to ensure that their obligations and liabilities are met and to secure the compliance of the non-resident taxpayer. The Scottish Government describes this power as technical and administrative and so the negative procedure is to apply.
68. Tax representatives have the responsibility to ensure compliance with the obligations of the taxpayer unless otherwise provided for in any regulations made under this section. It appears appropriate to have a power to put in place reasonable requirements upon them in subordinate legislation, as is the case for the Aggregates Tax. It is also appropriate for the negative procedure to apply as it is a power which is administrative in nature.

69. **The Committee finds the power acceptable in principle and is content that it is subject to the negative procedure.**

**Section 29(1): Partnerships**

**Power conferred on: Scottish Ministers**

**Power exercisable by: Regulations made by Scottish statutory instrument**

**Parliamentary procedure: Negative**

**Provision**

70. Section 29(1) confers power on Scottish Ministers to make regulations applying the requirements of the Bill to cases where a business is carried on in partnership, or by an unincorporated body.

**Committee consideration**

71. The DPM states that this power is necessary to ensure the tax provisions apply to partnerships and unincorporated bodies and is consistent with the approach taken to accounting periods and tax returns for other devolved taxes. The Scottish Government considers this to be a technical and administrative matter and so the negative procedure is to apply.

72. The effect of this delegated power is set out the administrative arrangements for the Bill applying to partnerships and unincorporated bodies. The Committee therefore considers that such a power is appropriate and that the negative procedure offers an appropriate level of parliamentary scrutiny.

**73. The Committee finds the power acceptable in principle and is content that it is subject to the negative procedure.**

### **Section 30(1): Bankruptcy etc**

#### **Power conferred on: Scottish Ministers**

#### **Power exercisable by: Regulations made by Scottish statutory instrument**

#### **Parliamentary procedure: Negative**

#### **Provision**

74. Section 30(1) confers power on Scottish Ministers to make regulations in relation to a person carrying on a business of another person who has died, become bankrupt, become incapacitated, been sequestrated or gone into liquidation, administration or receivership, to make provision for them to notify Revenue Scotland of that fact, the events leading up to it and allowing them to continue to operate.

#### **Committee consideration**

75. The DPM notes only that this power is considered a technical and administrative power necessary to ensure liability continues should business operate following the original registered person no longer being the operator to enable taxpayer continuity and that the negative procedure is to apply.

76. This is an administrative power which enables the Scottish Ministers to establish liability for the Levy in certain specific circumstances. The Committee therefore considers the use of the negative procedure appropriate.

**77. The Committee finds the power acceptable in principle and is content that it is subject to the negative procedure.**

### **Section 31(1): Transfer of business as a going concern**

#### **Power conferred on: Scottish Ministers**

#### **Power exercisable by: Regulations made by Scottish statutory instrument**

#### **Parliamentary procedure: Negative**

#### **Provision**

78. Section 31(1) confers power on Scottish Ministers, by regulations, to make provision for securing continuity in the application of the Bill in cases where a business carried on by a person is transferred to another person as a going

concern.

79. Regulations made under this section may require informing Revenue Scotland of the transfer, provide for duties and liabilities to become those of the transferee, and provide for rights and liabilities for credit to be satisfied by making a repayment or allowing a credit.

### **Committee consideration**

80. The DPM states that this power is a technical and administrative power which is necessary to ensure liability for payment of the Levy continues under set conditions should the business be transferred as a going concern. The Scottish Ministers explain that the negative procedure applies so that they can make such technical changes in light of their operational experience.

- 81. The Committee finds the power acceptable in principle and is content that it is subject to the negative procedure.**

## **Section 34: Delegation of functions by Revenue Scotland**

**Power conferred on: Scottish Ministers**

**Power exercisable by: Regulations made by Scottish statutory instrument**

**Parliamentary procedure: Affirmative**

### **Provision**

82. Section 34 modifies an existing delegated power contained in section 4 of the Revenue Scotland and Tax Powers Act 2014. Like the position for other devolved taxes, the amendment to section 4 allows Revenue Scotland to delegate its functions relating to the Levy to a person specified in regulations.

### **Committee consideration**

83. The Committee asked the Scottish Government whether there is person or body that it considers may be able to carry out the functions of Revenue Scotland and, if so, why they are not specified on the face of the Bill. The Committee also asked whether the power should be limited by specifying criteria that must be met before a delegation of functions can take place.
84. In its response, the Scottish Government highlights that the power has been drafted in line with an existing power to delegate functions in relation to the Scottish Aggregates Tax. The Scottish Government indicates that some functions may be appropriately delegated to local authorities. It also indicates that there may be other public or private bodies who can perform delegated functions in the future. The Scottish Government also highlights that delegation may not be necessary “if there is a robust data-sharing agreement between Revenue Scotland and local authorities”.
85. The Scottish Government’s view, in its response, is that it wishes to maintain scope for future delegation of functions, but that no delegation is currently considered appropriate. The Scottish Government also highlights the publication requirements

that follow on from any delegation of functions, and that a delegation of a function does not affect the responsibility of Revenue Scotland for that function.

86. The response from the Scottish Government helpfully explains why the Bill takes a similar approach to delegation as that for the Scottish Aggregates Tax. That contrasts with the provisions in the Revenue Scotland and Tax Powers Act 2014 which allow for delegation of functions to specified bodies for the Scottish Landfill Tax and for the Land and Buildings Transaction Tax.
87. The Scottish Government also highlights that while local authorities appear to be the appropriate bodies for any delegation, it would prefer to maintain the flexibility to delegate to another public or private person or body, if appropriate to do so, as experience is gained about in administering the new Levy. It is also significant that the response highlights that there is no current intention to delegate the functions of Revenue Scotland.
- 88. The Committee accepts the further explanation of the reason for the power to delegate functions of Revenue Scotland. It also draws attention to the detail of the response from the Scottish Government about the position at present that a delegation may not be necessary.**

### **Section 43: General provisions for penalties relating to the Scottish building safety levy**

#### **Power conferred on: Scottish Ministers**

#### **Power exercisable by: Regulations made by Scottish statutory instrument**

#### **Parliamentary procedure: Affirmative**

#### **Provision**

89. Section 43 inserts several new sections into the Revenue Scotland and Tax Powers Act 2014 related to Levy penalties. The section also inserts a new delegated power, section 216P, which provides the Scottish Ministers with a power to make changes to the applicable penalties.

#### **Committee consideration**

90. The DPM explains that the power is required to allow adjustment to be made to the penalties in light of the operational experience of administering the Levy.
91. The power is limited in nature and can only be used to make further provision about offences that are already provided for within the Bill, which is in line with other devolved taxes. The types of provision that can be made are listed in new section 216P(2) which offers clarity on how it is likely that the power will be exercised. Additionally, the power specifically relates to the Levy and so cannot be exercised more widely to make changes to other types of penalties.
92. Whilst provision made under this section cannot create criminal offences, it does permit the modification of primary legislation and so it is appropriate that the affirmative procedure should apply to offer a high level of scrutiny.

**93. The Committee finds the power acceptable in principle and is content that it is subject to the affirmative procedure.**

#### **Section 49: Power to make ancillary provisions**

**Power conferred on: Scottish Ministers**

**Power exercisable by: Regulations made by Scottish statutory instrument**

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

#### **Provision**

94. Section 49 provides that the Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with or for giving full effect to this Bill.
95. The Bill, if enacted in this form, will allow regulations made under this section to be subject to the negative procedure, unless they add to, replace or omit any part of the text of an Act in which case they are subject to the affirmative procedure.

#### **Committee consideration**

96. The DPM explains that the power is necessary to deal with unforeseen circumstances, for a novel tax without a UK equivalent, without needing to make primary legislation.
97. This power is similar in terms to other ancillary powers that the Committee has scrutinised in most Bills. The extent of the power is restricted as it can only be used for the purposes of giving full effect to the Bill as enacted and any provision made under it. The power allows issues of an ancillary nature which may arise to be dealt with effectively by the Scottish Ministers. Without such a power, any changes would require to be made by primary legislation, which the Committee considers would not be an effective use of either the Parliament's time or the Scottish Government's resources.

**98. The Committee finds the power acceptable in principle and is content with the specified parliamentary procedures which are dependent on whether or not the power is exercised to amend primary legislation.**

#### **Section 51: Commencement**

**Power conferred on: Scottish Ministers**

**Power exercisable by: Regulations made by Scottish statutory instrument**

**Parliamentary procedure: Laid, no procedure**

#### **Provision**

99. Section 51(2) of the Bill provides that the Scottish Ministers may by regulations appoint days on which provisions of the Bill will come into force. Sections 48, 49, 50, 51 and 52 come into force on the day after Royal Assent. Regulations under 51(2) may include transitional, transitory or saving provisions and may also make provision for different purposes

### **Committee consideration**

100. The DPM explains that the Scottish Ministers consider it appropriate to bring the substantive provisions of the Bill into force at a date that they consider suitable. The Scottish Ministers add that having the substantive provisions come into force by regulations ensures that everyone who needs to prepare for the new Levy has made the necessary preparation.
101. It is standard to take a power at the end of a Bill to commence those sections of the Bill where provision has not been made in the Bill for commencement. This allows the Scottish Ministers to appoint the day on which those sections are to be commenced. The Committee is therefore content with the power in principle. It is also standard that commencement regulations are laid before the Parliament but not subject to further parliamentary procedure.

- 102. The Committee is content with the power in principle, and that it is not subject to any parliamentary procedure.**

