

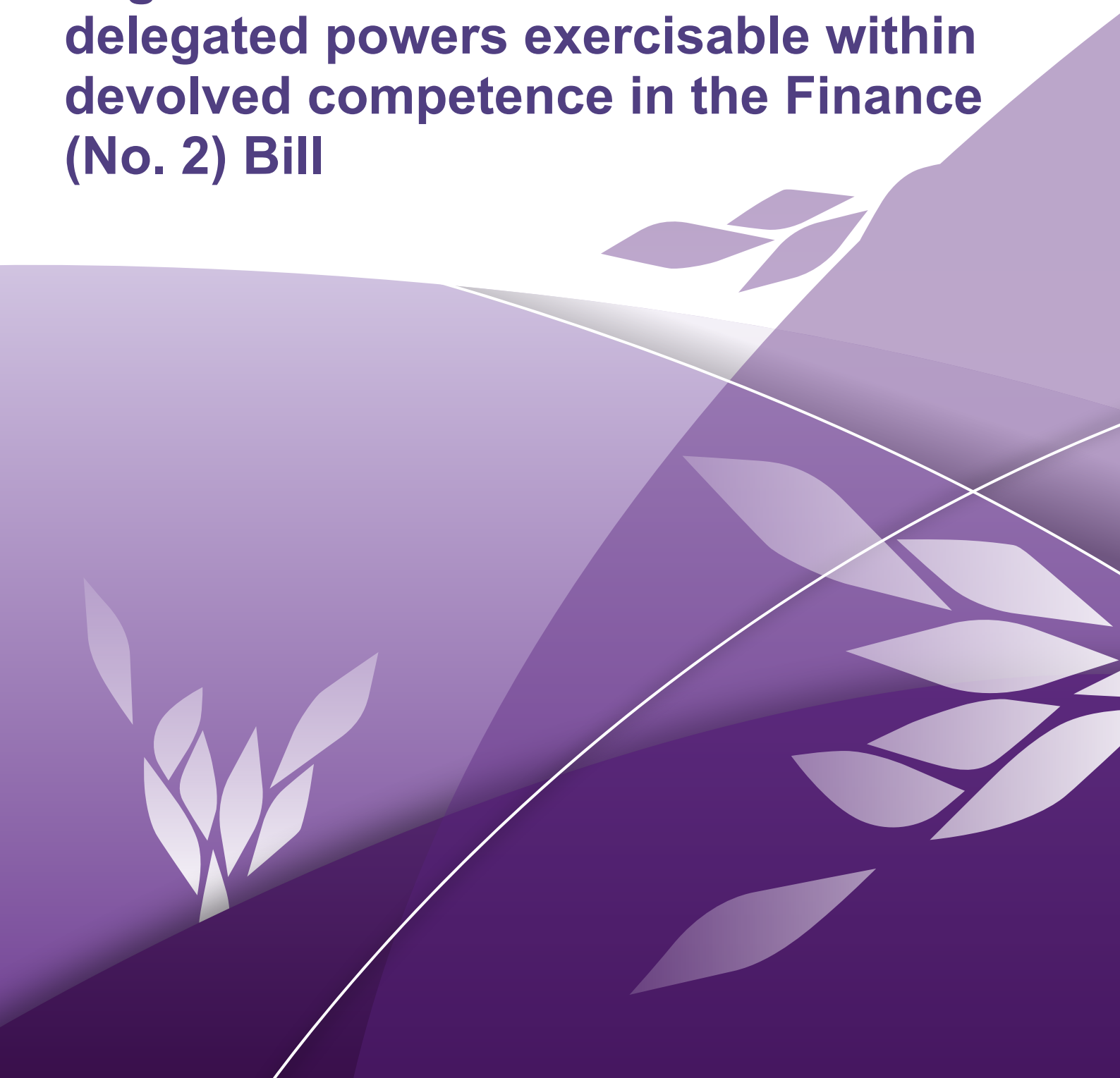


The Scottish Parliament
Pàrlamaid na h-Alba

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Delegated Powers and Law Reform Committee

Legislative Consent Memorandum: delegated powers exercisable within devolved competence in the Finance (No. 2) Bill



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For information on the Scottish Parliament contact
Public Information on:
Telephone: 0131 348 5000
Textphone: 0800 092 7100
Email: sp.info@parliament.scot

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Delegated Powers and Law Reform Committee

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;

(h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule; and

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



DPLR.Committee@parliament.scot



0131 348 5974

Committee Membership



Convener
Stuart McMillan
Scottish National Party



Deputy Convener
Bill Kidd
Scottish National Party



Katy Clark
Scottish Labour



Roz McCall
Scottish Conservative
and Unionist Party



Jeremy Balfour
Independent

Introduction

1. The purpose of this paper is to consider the delegated power that is exercisable within devolved competence in the [Finance \(No. 2\) Bill](#) (“the Bill”).
2. Parliament is considering the [Legislative Consent Memorandum](#) (“LCM”) for the Bill in terms of the Committee’s remit contained in Rule 9B.3.6 of the Parliament’s Standing Orders. Paragraph 6 of Rule 9B.3 provides that where the Bill that is the subject of an LCM contains provisions conferring on the Scottish Ministers powers to make subordinate legislation, the Delegated Powers and Law Reform Committee (“DPLRC”) shall consider and may report to the lead committee on those provisions.
3. The Committee is also considering the Bill under its wider remit in Rule 6.11.1(d) of the Standing Orders, which provides that its remit includes considering and reporting on “(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation”.
4. The lead committee for the Bill is the Finance and Public Administration Committee.

The Bill

5. The Bill was introduced in the House of Commons on 2 December 2025; Committee stage began on 21 January 2026. As the Bill is still progressing through the UK Parliament, it is subject to amendment. The Bill is a UK Finance Bill, and as such, there will be no amending stage in the House of Lords. The last amending stage will be Report Stage in the House of Commons, which is currently expected to take place some time in February.
6. The Bill seeks to enact the proposals for taxation made by the Chancellor of the Exchequer in the UK Budget statement. It will bring into law the proposals announced in the Budget on 26 November 2025. There are over 100 resolutions made as part of the UK Budget that make changes across a wide range of taxes including income tax, corporation tax, VAT, duties on alcohol and tobacco products, vehicle excise duties, landfill tax and aggregates levy.
7. The Legislative Consent process is engaged in respect of provisions in the Bill which alter the power of the Scottish Parliament to set a Scottish rate of income tax, under section 80C of the Scotland Act 1998. While the matter of income tax is reserved in terms of Schedule 5 to the Scotland Act 1998 (and accordingly could not be legislated for by the Scottish Parliament), section 80C confers a power on the Scottish Parliament by resolution to set the Scottish rate(s) and bands of income tax.
8. The following provisions accordingly engage the Legislative Consent process:
 1. Schedule 2: Scottish and Welsh property income rates, Part 1 – Scotland; and
 2. Clause 8: Scottish and Welsh property rates set by Scottish Parliament and Senedd, where it applies to Part 1 of Schedule 2.
9. This clause and the Schedule make provision for Scottish property income rates to be set by the Scottish Parliament, by amending section 80C of the Scotland Act 1998.
10. The Scottish Government recommends that the Parliament gives Legislative Consent for these provisions.

Delegated Powers

11. The Bill amends only one delegated power exercisable within devolved competence.

Review of relevant powers

Section 80C(1) of the Scotland Act 1998, as amended by Schedule 2, paragraph 1 of the Bill: power to set Scottish rates of income tax for Scottish taxpayers

Power conferred on: the Scottish Parliament on a motion of the Scottish Government

Power exercisable by: Resolution

Parliamentary procedure: Motion

Provision

12. The Scotland Act 2016 devolved power to the Scottish Parliament to set the rates and bands of Income Tax payable by Scottish taxpayers on their non-savings and non-dividend income for the purposes of section 11A of the Income Tax Act 2007. Under section 80C of the Scotland Act 1998, as amended by the 2016 Act, the parliamentary mechanism for setting those rates and bands is the Scottish rate resolution. The Scottish Parliament may only make a Scottish rate resolution on a motion moved by a member of the Scottish Governmentⁱ.
13. From April 2027, the UK Government plans to split out income tax paid on property income from “non-savings, non-dividend” (“NSND”) rates.
14. The Scottish Parliament does not currently have the power to vary the income tax rate for property income separately from other NSND rates. This is because of the restriction in section 80C(2B) of the 1998 Act, which states that a Scottish rate resolution may not provide for different rates to apply in relation to different type of income.
15. Schedule 2 to the Bill would amend the position, by allowing a Scottish rate resolution to establish different Scottish rates that apply to property income. This would give Scotland the same flexibility as the UK Government. Schedule 2 achieves this by replacing the existing section 80C(2B) with the following provisions:

ⁱ Scotland Act 1998, section 80C(8) and Standing Orders of the Scottish Parliament, Rule 8.10.

” (2B) A Scottish rate resolution—

(a) may provide for the rates applicable in relation to property income to be different from the rates applicable in relation to other income, but

(b) may not provide for different rates to apply in relation to different types of other income.

(2BA) But Scottish rates applicable in relation to property income must set the same limits or make the same other provision enabling those rates to be ascertained as are set or made in relation to rates applicable in relation to income other than property income.

Committee consideration

16. The LCM explains that the Scottish Government takes the view that, in the context of the UK Government's policy to separate out the way that income from property is taxed in the rest of the UK, it is reasonable to devolve a similar additional flexibility to Scotland.
17. The Committee considers that the proposed amendment of the power is appropriate. It notes that the Bill adjusts an existing power delegated to the Scottish Ministers and Scottish Parliament to set Scottish rates of income tax. When initially delegated, it gave effect to a policy that the power could not be exercised to apply different rates of tax to different types of income. That restriction is now being lifted, to enable a Scottish rate resolution to establish different Scottish rates that apply to property income as compared to other sorts of income.
18. There is no change to the position for non-property income. A Scottish rate resolution may not apply different rates to other income types besides property. In addition, new subsection (2BA) requires that Scottish rates for property income use the same limits, thresholds or bands as are applicable to the Scottish rates for other income. Only the rate itself may differ.
19. There are also no changes to the procedure for exercise of the power. It remains the case that the Scottish Government must move a motion for a Scottish rate resolution, which the Scottish Parliament may resolve to approve.
20. **The Committee is content with the power as it is proposed to be amended by the Bill, and is also content that it is subject to a motion and a resolution, but not otherwise subject to parliamentary procedure.**

