



The Scottish Parliament  
Pàrlamaid na h-Alba

## Delegated Powers and Law Reform Committee

Shona Robison MSP  
Deputy First Minister and Cabinet  
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*Via email*

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1 February 2024

Dear Shona

### **Aggregates Tax and Devolved Taxes Administration (Scotland) Bill**

The Delegated Powers and Law Reform Committee considered the above Bill at its meeting of Tuesday, 30 January, and agreed to write to you to ask the following questions in relation to delegated powers contained in the Bill.

#### **Section 4(4) – Power to add or remove items from a list of relevant substances for the purposes of excepted processes**

This power, subject to the negative procedure, confers on Scottish Ministers the ability to add or remove a relevant substance from the list of substances, the products of which are not considered to be aggregate for the purposes of Scottish Aggregates Tax (“SAT”), as set out at section 4(3).

The [Delegated Powers Memorandum](#) (“the DPM”) states that “the list of relevant substances set out in the Bill replicate those available for the UKAL (“UK Aggregates Levy”), such as, talc, sodium chloride, pumice, vermiculate and other minerals”. This power is described as minor and technical in nature, however, it does allow for the amendment of primary legislation, specifically through the modification of the list of substances in section 4(3) of the Bill, as noted above.

The corresponding provision for the UKAL, found in section 18 of the Finance Act 2001, provides that where a substance is being removed from the list it is subject to the affirmative procedure, and where a substance is being added it would be subject to the negative procedure.

As the DPM does not directly address this, the Committee asks **for further detail on why the affirmative procedure is not considered appropriate as the power permits the modification of primary legislation.**

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

The Committee noted that section 12 prescribes how SAT is to be calculated. However, the Bill itself does not specify any rate to be charged on SAT. 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 further noted that Scottish Landfill Tax (“SLfT”) has a very similar power contained in section 13. However, the procedure that applies to such an Order made on the first setting of the standard or lower tax rates is the affirmative procedure, and thereafter subject to the provisional affirmative procedure. This allows for rates to be set and scrutinised by the Parliament before the tax is introduced, while enabling them to change the rates quickly at a later date if needed.

The Committee asks **for an explanation as to why the Scottish Government does not consider the affirmative procedure to be more appropriate for the first exercise of the power when setting the initial tax rates to provide for appropriate parliamentary scrutiny before they come into force.**

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

The Bill is introducing a devolved tax and this power permits regulations to be made for notification requirements for those who are exempt from SAT, so not commercially exploiting aggregate in Scotland. In addition, there are penalties for failing to comply with any regulations made. The Committee considered that the DPM provides little information and context about why the above power is necessary or how it will be exercised. It therefore asks **for further detail why this power is necessary and how it is anticipated it would be exercised.**

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

The DPM states that this power is necessary to delegate certain functions of Revenue Scotland to other organisations to enable effective administration of the tax in response to operational experience without the need for further primary legislation. It also notes that Revenue Scotland currently delegates functions in this way in administering other devolved taxes including the SLfT.

In relation to other devolved taxes functions of the Land and Buildings Transaction Tax are delegated to the Keeper of the Registers for Scotland and functions of the SLfT to the Scottish Environment Protection Agency. The Committee considered the power itself is wider in scope than is provided for in relation to other devolved taxes, in that any person or body can be delegated any of Revenue Scotland's functions. There is no limitation placed on it and no criteria on how it would be assessed that the person could carry out the delegated functions of Revenue Scotland.

The Committee therefore asks:

- 1. for an explanation as to whether there is a body at present that the Scottish Government considers may be able to carry out those functions and why a body or person is not able to be specified on the face of the Bill; and**
- 2. for an explanation, in the event that the power is considered necessary, of what consideration the Scottish Government has given to whether the scope of the power is appropriate, or whether the Bill should limit the scope of the power by specifying criteria that should be met for a body to be suitable to have the functions of Revenue Scotland in relation to SAT delegated to it.**

#### **Section 54(2) inserting new section 251A(1) in the 2014 Act - Communications from Revenue Scotland to taxpayers**

The DPM states that the power is necessary for regulations to provide additional detail of arrangements on communication, electronically or otherwise, between Revenue Scotland and taxpayers and to be able to update such arrangements over time as technology develops to provide additional certainty for everyone's benefit.

#### **Section 55(2) inserting new section 251B(1) in the 2014 Act - Use of automation by Revenue Scotland**

The DPM states that the power is necessary for regulations to future proof the legislation to take account of developments in technology and the impact that they may have on tax administration to support the efficient administration of devolved taxes.

The Committee noted that the above powers in both sections 54(2) and 55(2) can be exercised to make provision about communication generally between Revenue Scotland and taxpayers and use of automation by Revenue Scotland, and are not specific to SAT. It considered that these powers are wide in that there are no restrictions or limitations placed upon their exercise specified within the Bill, they extend to Revenue Scotland generally in their functions, which can be delegated to other persons, and the powers also permit the modification of primary legislation.

The Committee therefore asks **whether the Scottish Government considers there should be a requirement to consult with Revenue Scotland, any person who is delegated Revenue Scotland functions, or any other appropriate person before making regulations under these sections.**

Finally, the supporting documentation for the Bill states that the Bill will be supplemented by subordinate legislation and there is a plan for continued dialogue with stakeholders following the Bill's implementation. There are a significant number of delegated powers in the Bill and a plan for dialogue, however, the Committee noted there is no formal mechanism or requirement in the Bill for there to be consultation with any person or body before exercising any of these powers.

The Committee therefore asks:

- 1. what are the plans for consultation on the exercise of the powers in general, given that much of the detail of the Bill is to be implemented through regulations; and**
- 2. what consideration has been given to adding any such requirements to the face of the Bill.**

I would be grateful if you could please email your response to [dplr.committee@parliament.scot](mailto:dplr.committee@parliament.scot) by **Monday, 19 February 2024**. The Committee will then consider your response at a future meeting and report on the delegated powers in the Bill to the lead committee.

Yours sincerely

Stuart McMillan MSP  
Convener of the Delegated Powers and Law Reform Committee