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31 October 2025

Dear Stuart

Building Safety Levy (Scotland) Bill

I am writing to you in relation to the Building Safety Levy (Scotland) Bill and the Delegated Powers and Law Reform Committee request for further information on certain sections of the Bill, sent to the Cabinet Secretary for Finance on 28 October 2025.

In order to provide further clarity on the Scottish Government's position on delegated powers for the Scottish Building Safety Levy, it may be helpful to summarise the legislative context in relation to the UK Government's position.

Section 58 of The Building Safety Act 2022 provides UK Government ministers with the power, through regulations, to introduce a levy on applications for building control in England - the England-only Building Safety Levy. This power is significantly broad, with provisions on the taxpayer, the point of payment and administrative and compliance processes left to be determined through secondary legislation. The UK Government subsequently laid draft regulations on 10 July 2025, which set out the detail of its Levy. The England-only Building Safety Levy, in effect, has been delivered substantially through secondary legislation.

The Scottish Government recognises that utilising the UK Government's approach (to introduce an enabling power in primary legislation and detail of the Levy through secondary legislation) would not provide the Scottish Parliament with sufficient ability to scrutinise the proposals. The Scottish Government has therefore chosen a balanced approach in legislating for the Scottish Building Safety Levy. The Building Safety Levy (Scotland) Bill contains provisions relating to taxpayer and tax point, administration, compliance and enforcement. Setting these provisions out in primary legislation provides greater opportunity for parliamentary scrutiny, greater certainty for stakeholders and aligns with the legislative approach taken for Scotland's other devolved taxes.

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Alignment between the English and Scottish levies has been a key message from industry stakeholders who operate cross-border, in order to minimise any regulatory burden and avoid market distortions. To ensure that the two levies are broadly aligned, delegated powers have been taken so that Ministers and Parliament have the option to respond flexibly via regulations to changes made to the England-only levy.

The Scottish Government's responses to the Committee's questions are set out below.

Section 6: Power to modify types of buildings which may be taxable

The Committee asks the Scottish Government why it is necessary to include a power, in section 6(3), to modify any enactment?

The power in section 6 provides for the modification of the list of cases in section 4(2) and 4(3), and the meaning of "exempt new residential unit" in section 5. Section 5 contains several exemptions that are defined through reference to existing statutes, for example the definition of a Scottish Secure Tenancy as set out in section 34 of the Housing (Scotland) Act 2001.

As noted above, alignment with the UK Government's England-only levy has been a key ask of stakeholders. In order to allow for alignment (where necessary) to future changes in the UK regulations, the Scottish Government recognises it may be necessary to amend other statutes to achieve the desired alignment. The scope of the power in section 6(3) therefore allows Scottish Ministers to adjust primary legislation promptly to avoid market distortion and administrative challenges for cross-border developers.

The Committee asks the Scottish Government:

- (i) Which persons or bodies might be considered as appropriate to consult under section 6(4) before regulations are made under section 6(1)?**
- (ii) Can any bodies or persons be specified in section 6(4)?**

Residential units and dwellings are constructed for a wide range of purposes and uses. When considering an exemption from the Levy for a particular unit or dwelling, the Scottish Government will consult with those persons or bodies that best interact or represent that use. Due to the varied nature of residential property development, the Scottish Government considers it appropriate to consult a wide range of stakeholders when undertaking policy development on modifying exemptions for the Levy. In considering the exemptions as set out in section 5 of the Bill, the Scottish Government has consulted with industry bodies, local government, enterprise agencies and third sector organisations. The Scottish Government's Expert Advisory Group on the Scottish Building Safety Levy, established in May 2024, brings together representatives from the residential property industry, local government and tax stakeholders to help shape the design and implementation of the Levy.

The Scottish Government notes the committee's views and will consider whether there are particular stakeholders, such as industry bodies and local government, that should always be specified when consulting under section 6(4).

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

The Committee asks the Scottish Government whether it considers there should be a requirement to consult with representatives from the house building sector and with Revenue Scotland before making regulations under this section?

The Scottish Government can confirm that any secondary legislation brought forward in future in relation to these sections will be informed by full public consultation and by partnership working with Revenue Scotland and any other relevant organisation.

In line with this, the Scottish Government would be content to consider amending the Bill to include a requirement to consult with representatives of the housebuilding sector, Revenue Scotland, and any other persons as Scottish Ministers consider appropriate, before making regulations under this section.

Section 11(1): Reliefs

The Committee asks for further detail from the Scottish Government on:

- (i) How the Scottish Ministers anticipate that they would identify residential developments that should be eligible for reliefs?**
- (ii) Whether the power could be more narrowly drawn to restrict the granting of relief to certain circumstances?**

The residential property development sector is varied and subject to a wide variety of factors which can affect build-out rates of different development types. In order for the Levy to operate as frictionless as possible over the sector, the Scottish Government considers it appropriate for the power in section 11(1) to be drawn widely, to ensure that any reliefs can be used to address changes in the sector as effectively as possible.

The power in section 11 has also been drafted in line with similar powers to create reliefs for Land and Buildings Transaction Tax (section 27 of the Land and Buildings Transaction Tax (Scotland) Act 2013,) which is a tax concerned with a broadly similar tax base.

Given the above, and in light of the Levy as a novel tax in Scotland, the Scottish Government is satisfied that the scope of this power is appropriate. I would however be happy to consider any further limiting criteria that Parliament suggests as appropriate.

Section 12(1): Levy-free allowance

the Committee asks the Scottish Government:

- (i) How it intends to identify building control events which do not count toward a levy-free allowance?**
- (ii) Whether there should be a requirement to consult with representatives of the housebuilding sector before making regulations under section 12?**

The Scottish Building Safety Levy is designed as a self-assessed tax, where liable taxpayers will assess and calculate their liability for the Levy and submit this to Revenue Scotland in regular return periods. The levy-free allowance is intended to operate on two levels: 1) those developers operating under the annual allowance threshold will be exempt from the tax and its requirements entirely, and 2) those operating over the annual allowance threshold will be

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able to deduct from their taxable units the number of 'levy-free' units set by the allowance threshold.

To support Revenue Scotland's administration of the Levy, the Scottish Government is working with Revenue Scotland and local government to consider options for a data-sharing agreement, which would allow Revenue Scotland access to completions data from local authority building standards systems. This data would be used by Revenue Scotland to verify information contained in the levy returns against residential building completions. This information would be supplementary to the existing publicly available data on building completions through the building standards system.

The Scottish Government recognises the importance of the levy-free allowance as a mechanism for protecting smaller developers from disproportionate costs associated with the Levy. The Scottish Government is committed to ensuring that tax policy is developed collaboratively with stakeholders and in line with the Scottish Approach to Taxation, as set out in the Framework for Tax.

In recognition of this, the Scottish Government will consider amending the Bill to include a requirement to consult with representatives of the housebuilding sector, and any other persons as Scottish Ministers consider appropriate, before making regulations.

Section 34: Delegation of functions by Revenue Scotland

The Committee asks the Scottish Government:

- (i) Whether there is a person or body at present that it considers may be able to carry out those functions, and why it is not able to specify them on the face of the Bill; and**
- (ii) For an explanation, in the event that the power is considered necessary, of what consideration it 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 the Levy delegated to it?**

The Revenue Scotland and Tax Powers Act 2014 allows Revenue Scotland to delegate any of its functions in relation to Scottish Landfill Tax to the Scottish Environment Protection Agency (SEPA) and in relation to Land and Buildings Transactions Tax to Registers of Scotland. Section 38 of The Aggregates Tax and Devolved Taxes Administration (Scotland) Act 2024 modified this position, allowing Revenue Scotland to delegate any of its functions to SEPA or another relevant person. The power in section 34 has been drafted in line with the power for Scottish Aggregates Tax, ensuring there is parity between tax statutes.

For the purposes of the power in section 37(2) of the Bill, the Scottish Government recognises that some functions relating to the verification of new residential units may be appropriate to delegate to local authorities, who, as the custodians of the building standards system, have duties in relation to the verification of completed buildings. For example, it may be beneficial for local authorities, in conducting their duties at completion stage, to verify the floorspace of any chargeable new residential unit. This information could then be sent to Revenue Scotland to ascertain whether the correct levy (which is based on a per-square metre approach) has been paid.

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While local authorities currently operate as verifiers, Scottish Ministers may appoint other individuals or bodies, either public or private, to verify applications for building warrants and completion certificate submissions. At present the only bodies appointed as verifiers are the 32 Scottish local authorities for all work in their own area. In light of this, the Scottish Government considers it appropriate to ensure the scope of the power is set wide to capture all present and potential building standards verifiers, where there is an identified operational requirement to delegate particular functions. A need for delegation of verification may be unnecessary if there is a robust data-sharing agreement between Revenue Scotland and local authorities, therefore it would not be appropriate to delegate any functions at this time.

The Scottish Government does however wish to maintain scope for future delegation of functions to a body. Although no delegated function is currently considered as appropriate, it could be a desired option for Revenue Scotland at a later stage when experience is gained in administering the Scottish Building Safety Levy.

The Revenue Scotland and Tax Powers Act 2014 requires that Revenue Scotland must publish information regarding any delegations made and any directions given to delegated bodies (save where Revenue Scotland considers that publication would prejudice the effective exercise of its functions). Revenue Scotland is also required to lay before parliament copies of any information published. The 2014 Act provides that delegation of a function does not affect Revenue Scotland's responsibility for that function.

Given the above, and given any order made using these powers would be subject to Parliamentary scrutiny, the Scottish Government is satisfied that the scope of this power is appropriate. I would however be happy to consider any further limiting criteria that Parliament suggests as appropriate.

I hope these responses are helpful for the Committee in its scrutiny of the Bill.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ivan McKee', with a long horizontal flourish extending to the right.

IVAN MCKEE