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Convener
Delegated Powers and Law Reform Committee

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Dear Convener,

Building Safety Levy (Scotland) Bill – Section 6(3)

Thank you for the Committee's continued engagement with the Building Safety Levy (Scotland) Bill and for your letter highlighting concerns regarding section 6(3). I welcome the opportunity to provide further detail, building on the explanation provided in the Scottish Government's Stage 1 Report Response.

Subsection 6(3) allows for regulations under subsection 6(1) to modify any enactment, including the Building Safety Levy (Scotland) Bill. Subsection 6(1) provides for regulations on whether a building or part thereof is subject to the levy (under sections 4(2) and (3)) as well as the meaning of a "exempt new residential unit" (under section 5). Those sections reference other primary legislation, such as, accommodation to asylum seekers under the Immigration and Asylum Act 1999, housing under certain sections of the Housing (Scotland) Act 1988 and 2001, and the definition of an island within the meaning of the Islands (Scotland) Act 2018. As the determinations of what's included or excluded from the levy rely on both the Building Safety Levy (Scotland) Bill and other Acts, a regulation-making power that allows for modification of both the Building Safety Levy (Scotland) Bill and other Acts is appropriate.

When these core definitions are updated, either to reflect emerging evidence in Scotland or to maintain alignment with the UK Government's England-only levy, consequential amendments to other enactments may be needed to ensure consistency. Without the power in section 6(3), even minor definitional changes could unintentionally create misalignment across the wider legislative framework, including building standards and housing law.

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Stakeholders operating across the UK have been clear that alignment with the English levy is important to avoid market distortion. The detailed provisions of the England-only levy has been brought in by regulations, and so can be amended very quickly. The ability to make consequential amendments at the same time as adjusting the section 6(1) lists ensures Scotland can respond promptly if the UK Government revises its own regulations, maintaining a coherent approach for developers and verifiers.

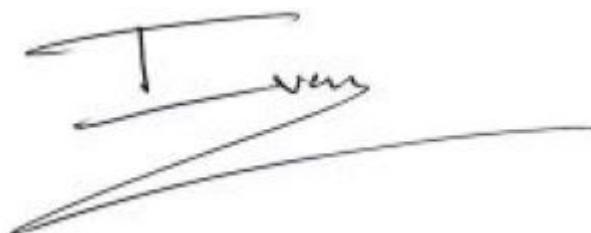
As noted in my letter to the Committee of 3 February, the Scottish Government has already brought forward amendments to section 6 in line with the Committee's Stage 1 recommendations, specifically to strengthen consultation requirements before modifying the lists in sections 4 and 5. However, those amendments did not concern section 6(3), which serves a distinct and necessary function, and the reasoning for retaining that provision is set out above.

I recognise the Committee's concern that this is a Henry VIII power. The scope of section 6(3) is narrow and directly tied to the use of section 6(1); it cannot be exercised independently. All regulations made under section 6 are subject to the affirmative procedure, ensuring full parliamentary oversight, and Stage 2 amendments strengthened the statutory consultation requirements placed on Ministers before any regulations are brought forward.

For these reasons, and consistent with the explanation set out in the Scottish Government's Stage 1 Report Response, we consider section 6(3) to be a necessary and proportionate mechanism to maintain legal coherence, support alignment with the UK levy, and ensure clarity for developers and verifiers.

I trust this provides reassurance to the Committee. I would be happy to provide further information if that would assist.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Ivan McKee', written over a horizontal line.

IVAN MCKEE

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