

# Building Safety Levy (Scotland) Bill

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## Delegated Powers Memorandum

### Introduction

1. This Delegated Powers Memorandum has been prepared by the Scottish Government in accordance with Rule 9.3.3B of the Parliament’s Standing Orders in relation to the Building Safety Levy (Scotland) Bill (“the Bill”). It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers.
2. The following other accompanying documents are published separately:
  - Explanatory Notes (SP Bill 73–EN);
  - a Financial Memorandum (SP Bill 73–FM);
  - a Policy Memorandum (SP Bill 73–PM);
  - statements on legislative competence made by the Presiding Officer and the Scottish Government (SP Bill 73–LC).
3. This Memorandum has been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Parliament.

### Outline of Bill provisions

4. The Bill makes provision for a Scottish Building Safety Levy (“SBSL”), a levy on the construction of residential property development in Scotland to fund building safety expenditure.
5. Revenue Scotland is the tax authority responsible for the collection and management of Scotland’s devolved taxes: Land and Buildings Transaction Tax (“LBTT”), Scottish Landfill Tax (“SLfT”) and, from 1 April 2026, Scottish Aggregates Tax (“SAT”).
6. The proposed legislative framework for the collection and management of SBSL consists of the provisions in Parts 4, 5 and 6 of the Bill and the Revenue Scotland and Tax Powers Act 2014 (“the 2014 Act”),<sup>1</sup> as amended by Part 5 of the Bill. The 2014 Act,

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<sup>1</sup> [Revenue Scotland and Tax Powers Act 2014 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

This document relates to the Building Safety Levy (Scotland) Bill (SP Bill 73) as introduced in the Scottish Parliament on 5 June 2025

amongst other things, provides the general collection and management framework for Scotland's devolved taxes.

## Rationale for subordinate legislation

7. When deciding what subordinate legislation powers and respective Parliamentary procedures are appropriate for the Bill, and whether provisions should be in primary or secondary legislation, the Scottish Government has had regard to:

- The need to strike a balance between the importance of the issue and providing flexibility to respond to changing circumstances (for example changing market conditions or government priorities, or in light of operational experience of the collection and management of the SBSL)
- The need to make proper use of valuable Parliamentary time; and
- The need to deal with the unexpected, which might otherwise frustrate the purpose of the provisions in primary legislation approved by the Parliament (for example, tax avoidance or economic shocks).

8. In Particular, the Scottish Government has considered the need for the delegated powers for the Bill to align with equivalent powers for the other devolved taxes for operational consistency. Where delegated powers have been drafted with significant flexibility (for example the power to modify types of buildings which may be taxable), this has been done so in order for the SBSL to adapt, where necessary, to changes and developments made to the UK Government's Building Safety Levy, which is anticipated to be legislated wholly through secondary legislation.<sup>2</sup>

9. The delegated powers provisions are listed below, with a short explanation of what each power allows, why the power has been taken in the Bill and why the selected form of Parliamentary procedure has been considered appropriate.

## Delegated 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

10. Section 4 of the Bill provides a definition of 'new residential unit' for the purposes of the SBSL. Section 5 of the Bill provides a definition of an 'exempt new residential unit' for the purposes of the SBSL. Section 6 of the Bill provides a power for Scottish

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<sup>2</sup> [Building Safety Levy: Statement made on 24 March 2025 \(Parliament.uk\)](#)

This document relates to the Building Safety Levy (Scotland) Bill (SP Bill 73) as introduced in the Scottish Parliament on 5 June 2025

Ministers to modify the list of cases set out in section 4 where a building or part of a building is to be taken as intended to be used as a dwelling or other accommodation as set out in section 4; to modify 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; and to modify the meaning of ‘exempt new residential unit’ in section 5. Before making regulations under this section, the Scottish Ministers must consult such persons as they consider appropriate.

11. The regulations may make different provision for adding, varying and removing a type of relevant building; different areas or classes of land; and may also make provision describing lands or buildings with reference to externally published documents.

### Reason for taking power

12. The Scottish Ministers’ view is that not all residential development should be subject to the SBSL, to ensure that the levy does not exacerbate the current challenges to disadvantaged housing sectors and avoids circularity of public funding where this has been provided. Section 5 provides a list of buildings that are to be exempt from the SBSL. This power allows Scottish Ministers to ensure that the list of buildings captured by the SBSL and the list of buildings considered exempt are kept up to date and takes account of current circumstances.

### Choice of procedure

13. Affirmative procedure is considered to be appropriate to the extent that the power allows for the amendment of primary legislation. This will allow for an appropriate level of scrutiny for a provision which is primarily intended to affect the type of development to which the SBSL applies, so goes to a key element of the tax.

## 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

14. Section 36 of the Building (Scotland) Act 2003<sup>3</sup> (“the 2003 Act”) provides a power for Scottish Ministers to, by regulations, make provision as to the form and content of any application, warrant, certificate, notice or document authorised or required to be used under or for the purposes of the 2003 Act. Section 7 of the Bill amends this power, allowing for regulations made under section 36 to make provision requiring any such application, warrant, certificate, notice or document to include such information as the Scottish Ministers consider appropriate to determine any liability to pay the SBSL.

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<sup>3</sup> [Building \(Scotland\) Act 2003 – section 36 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2003/36)

This document relates to the Building Safety Levy (Scotland) Bill (SP Bill 73) as introduced in the Scottish Parliament on 5 June 2025

## Reason for taking power

15. This provision amends the existing delegated power in section 36 of the 2003 Act. By allowing completion certificates (and other documents used in the building standards process) to require information relating to the SBSL to be included, these documents can be utilised as a record for verifying tax liability. Examples of information that could be included are the floorspace of the completed building or unit (to assist in verifying the tax calculation) and the intended use of the building or unit at completion (to verify whether the building or unit is exempt from the SBSL). Providing this information via existing statutory processes for this purpose will assist Revenue Scotland in its administration of the SBSL, whilst also minimising the administrative burden on taxpayers.

## Choice of procedure

16. Section 7 of the Bill does not change the procedure for section 36 of the 2003 Act, which is negative, as provided by section 54 of the 2003 Act.<sup>4</sup> Negative procedure is considered appropriate for a technical and administrative adjustment to the content of documents used in the building standards process.

## 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

17. Section 9 sets out that the SBSL is to be charged only on a taxable building control event. Subsection (2) provides a power for Scottish Ministers to make regulations specifying the rate (or rates) of the levy applicable to a taxable building control event. Regulations made under this power must set the rate (or rates) with reference to the area in square metres of the floorspace of the new residential unit in relation to which a taxable building control event occurs. Regulations made under this power may set different rates for different purposes, including for different geographical areas, different land types, and with reference to any other factor which the Scottish Ministers consider appropriate.

## Reason for taking power

18. This provision provides future flexibility to make further provision concerning tax rates and bands, rather than setting out rates on the face of primary legislation. The Scottish Government may wish to change the tax rate or rates in order to reflect changing market conditions, the level of expenditure for which the levy is intended to provided funding for or in light of operational experience of collecting and managing the tax.

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<sup>4</sup> [Building \(Scotland\) Act 2003 – section 54 \(legislation.gov.uk\)](#)

This document relates to the Building Safety Levy (Scotland) Bill (SP Bill 73) as introduced in the Scottish Parliament on 5 June 2025

19. This is consistent with the approach taken for the existing fully devolved taxes where tax rates are considered as part of the Scottish Budget process and set by secondary legislation.

### Choice of procedure

20. Once the tax has been established, it may be necessary to ensure that tax rates can be changed quickly to take account of changing circumstances. It is considered that affirmative procedure provides an appropriate level of Parliamentary scrutiny. As with Scottish Landfill Tax and Scottish Aggregates Tax, the Scottish Government would however normally expect to announce any rate or rate change as part of the Scottish Budget and for this to come into effect from 1 April of the relevant year.

## 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

21. Section 9(5) provides a power for Scottish Ministers to make regulations on the methodology used to determine the area in square metres of the floorspace of a new residential unit, for the purposes of calculating the amount of levy due for the new residential unit. The policy aim is for there to be a clear and unambiguous set of instructions on how the floorspace should be measured. This includes instructions on how Revenue Scotland will verify the floorspace of new residential units to which the levy has been paid. Regulations made under this power may specify a methodology that is to apply generally or to specified cases, disregards parts of a new residential unit from the determined area, and includes different ways in which measurements may be taken. This power also allows for provision to be made for the verification of the floorspace of a new residential unit.

### Reason for taking power

22. This power is required to ensure that taxpayers have a standardised set of rules in order to calculate their tax liability, in line with the rates as specified through the power provided by section 9(2) of the Bill. As with the power to set the rate of the levy, this provision provides flexibility for Scottish Ministers to ensure that the calculation methodology used for determining the floorspace of the property is kept up to date with current industry standards. The policy intention is that the SBSL should operate in a way that is as frictionless as possible on the residential construction industry, and therefore Scottish Ministers propose there is alignment with current measuring standards for new residential construction. These standards are subject to change, therefore it is appropriate for a power to be given to set and amend the levy calculation methodology accordingly. As a provision which sets out technical and detailed information, Scottish Ministers consider it appropriate to provide via secondary legislation. The power allows for provision on verification of floorspace to assist

This document relates to the Building Safety Levy (Scotland) Bill (SP Bill 73) as introduced in the Scottish Parliament on 5 June 2025

Revenue Scotland in its administration of the levy and in verifying payment made in respect of taxable building control events.

### Choice of procedure

23. The affirmative procedure has been chosen as this power will impact the responsibilities put on taxpayers, with penalties for non-compliance. Therefore, affirmative procedure is considered to provide the appropriate level of scrutiny.

### 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

24. Section 10 of the Bill sets out the steps to be taken by a person in calculating their liability to pay the levy and allows for payments of the SBSL to be calculated in the accounting periods for a financial year. For the purposes of the Bill, a financial year is defined as beginning on 1 April and ending on 31 March, or such other 12-month period as may be set by Ministers by regulations. Subsection (3)(b) provides a power to set a different 12-month period as the financial year for the SBSL.

### Reason for taking power

25. The policy aim for the administration of the SBSL is to operate as frictionless as possible on the housebuilding industry. The Bill supports this aim by utilising existing definitions, such as the commonly recognised definition of a financial year, running from 1 April to 31 March. Scottish Ministers consider this definition as an appropriate definition within which to contain accounting periods for the SBSL. However, as a novel tax, it is appropriate to review this to consider whether an alternative definition (such as the tax year running from 6 April to 5 April) would be more reflective of current industry practices.

### Choice of procedure

26. Negative procedure is considered appropriate for a technical and administrative adjustment to accounting practices for the SBSL.

### Section 11(1): Reliefs

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

This document relates to the Building Safety Levy (Scotland) Bill (SP Bill 73) as introduced in the Scottish Parliament on 5 June 2025

## Provision

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

## Reason for taking power

28. As noted with regards to the power on exemptions, it is the Scottish Ministers' view that not all residential development should be subject to the SBSL, to ensure that the levy does not exacerbate the current challenges to disadvantaged housing sectors and avoids circularity of public funding where this has been provided. Provision has been made in section 5 of the Bill to designate certain types of building as an 'exempt new residential unit', which would not be liable for the levy via exemption. The completion of exempt buildings would not trigger requirements to register or pay tax, and therefore no information will be provided to Revenue Scotland on these buildings. There may be other types of building which Scottish Ministers may wish to exclude from the SBSL, but for which it would be beneficial to administer as a relief. Reliefs would provide Revenue Scotland with information on the units that are to be excluded from the tax, giving Revenue Scotland greater certainty in their assessment of the tax base. In addition, administering reliefs would also provide Revenue Scotland and Scottish Government with additional data on the usage and cost of reliefs. The Scottish Government considers that types of residential development that are less distinguishable from one-another will be more suited to be treated as a relief, than as an exempted building, as the additional data collected will assist Revenue Scotland in validating the relief. Examples of these types include build-to-rent developments, or housing with specialist provision (such as wheelchair accessible homes). As with the power on exemptions, using a delegated power to introduce reliefs from the SBSL provides Scottish Ministers with an appropriate level of flexibility to ensure the SBSL takes account of current circumstances. This power is also consistent with delegated powers to make provision for reliefs in other devolved tax legislation.

## Choice of procedure

29. Affirmative procedure has been chosen for this power as it will impact liabilities and responsibilities on taxpayers with penalties for non-compliance. Therefore, affirmative procedure is considered to provide the appropriate level of scrutiny.

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

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

## Provision

30. Section 12(1) of the Bill provides a power to Scottish Ministers to, by regulations, make provision for and in connection with a 'levy-free allowance' – a quantity of building

This document relates to the Building Safety Levy (Scotland) Bill (SP Bill 73) as introduced in the Scottish Parliament on 5 June 2025

control events within a financial year which may be exempt from the levy. Regulations made under this power may set the number of building control events which constitute a levy-free allowance; set different numbers of building control events for different purposes; specify different periods for calculating the quantity of building control events; specify building control events which do not count towards a levy-free allowance; specify which building control events are to be treated as occurring earlier in the accounting period for the purposes of the allowance; the date from which the allowance applies; the treatment of groups of companies in relation to the allowance; the treatment of connected persons; and the accounting period or financial year in which the first allowance period commences.

### Reason for taking power

31. The levy-free allowance is to be an annual allowance of levy-free building control events that would otherwise be subject to the SBSL. The allowance is set for each individual taxpayer and is additional to any building control events that are exempted or relived. The policy intention of the levy-free allowance is to assist in mitigating impacts of the SBSL for smaller developers. Through provision of a levy-free allowance, developers who are building low annual numbers of relevant residential buildings will be protected from the costs associated with the SBSL.

32. In order for the levy-free allowance to deliver on its intention of protecting smaller developers, the setting of the allowance must be flexible enough to respond to changes in housebuilding market conditions. At times where housebuilders face higher or unexpected additional costs to development, the allowance threshold can be increased to support a broader range of developers. At points where development costs fall, the allowance threshold may be lowered to reflect developers' greater ability to pay. Providing for the levy-free allowance through secondary legislation provides Scottish Ministers the flexibility to achieve this aim.

### Choice of procedure

33. The affirmative procedure has been chosen for this power as it will impact the number of taxable building control events by a taxpayer. Therefore, affirmative procedure is considered to provide the appropriate level of scrutiny.

## 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

34. Section 15 of the Bill sets out a duty for a person who is the owner of a relevant residential property when a registrable event occurs, to register for the SBSL. Subsection (6) provides Scottish Ministers with the power to make regulations

This document relates to the Building Safety Levy (Scotland) Bill (SP Bill 73) as introduced in the Scottish Parliament on 5 June 2025

exempting persons from this requirement to register, subject to such conditions or restrictions as specified.

### Reason for taking power

35. This power is required to ensure that those who are normally undertaking relevant residential development but are exempt from paying the SBSL do not need to register for the SBSL. This is to be set out in secondary legislation rather than in the Bill to allow for adjustments in light of operational experience of administering the tax. There is an equivalent power in relation to SAT in section 18(5) of the Aggregates Tax and Devolved Taxes Administration (Scotland) Act 2024.<sup>5</sup>

### Choice of procedure

36. Affirmative procedure was selected for this power as it will impact responsibilities put on taxpayers with penalties for non-compliance. Therefore, affirmative procedure is considered to provide the appropriate level of scrutiny.

## Section 18: Registration: notification and compliance

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

### Provision

37. Section 15 of the Bill sets out that where a person is liable to be registered, then that person must notify Revenue Scotland at the same time as the person becomes liable to be registered, and Revenue Scotland must register the person. Section 16 of the Bill sets out that a person may also notify Revenue Scotland that they are, or are intending to, carry out a construction or conversion before they are liable to be registered.

38. Section 18 of the Bill provides Scottish Ministers with the power to make regulations for and in connection with specifying the period within which a notification under sections 15 or 16 must be made; the form and content of the notification; requiring a person who has made a notification to inform Revenue Scotland of any information provided in connection with the notification which has become inaccurate; and the correction of entries in the register.

### Reason for taking power

39. The requirement to notify is to be set out in secondary legislation rather than in the Bill in order to provide for maximum operational flexibility, and to allow for adjustment to requirements in light of operational experience administering the tax, but

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<sup>5</sup> [Aggregates Tax and Devolved Taxes Administration \(Scotland\) Act 2024 – section 18 \(legislation.gov.uk\)](https://legislation.gov.uk)

This document relates to the Building Safety Levy (Scotland) Bill (SP Bill 73) as introduced in the Scottish Parliament on 5 June 2025

it is not anticipated that there will be a need for frequent adjustments. There is an equivalent power in relation to SAT in section 22 of the Aggregates Tax and Devolved Taxes Administration (Scotland) Act 2024.<sup>6</sup>

## Choice of procedure

40. Negative procedure is considered appropriate for a technical and administrative power of this nature: for instance, setting the times of particular notifications under the Bill. This also aligns with the choice of negative procedure for section 22 of the Aggregates Tax and Devolved Taxes Administration (Scotland) Act 2024.

## 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

41. Section 8 of the Bill sets out the duty of the person liable to pay the levy and must be paid in accordance with the provisions in Part 4 of the Bill. Section 19 of the Bill provides Scottish Ministers with the power to set accounting periods and to require self-assessed SBSL returns to be submitted and tax paid in relation to those accounting periods.

## Reason for taking power

42. This power is required to allow Scottish Ministers to set out the frequency of returns to be submitted by the registered person. This approach is consistent with the approach taken to accounting periods in and tax returns in other devolved taxes: for example, section 23 of the Aggregates Tax and Devolved Taxes Administration (Scotland) Act 2024<sup>7</sup> and section 25 of the Landfill Tax (Scotland) Act 2014.<sup>8</sup>

## Choice of procedure

43. Negative procedure is considered appropriate for the technical and administrative matter of setting accounting periods and allowing for their adjustment in the light of operational experience administering the tax. Negative procedure is also consistent with the procedure taken for secondary legislation setting accounting periods in other devolved taxes.

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<sup>6</sup> [Aggregates Tax and Devolved Taxes Administration \(Scotland\) Act 2024 – section 22 \(legislation.gov.uk\)](#)

<sup>7</sup> [Aggregates Tax and Devolved Taxes Administration \(Scotland\) Act 2024 – section 23 \(legislation.gov.uk\)](#)

<sup>8</sup> [Landfill Tax \(Scotland\) Act 2014 – section 25 \(legislation.gov.uk\)](#)

This document relates to the Building Safety Levy (Scotland) Bill (SP Bill 73) as introduced in the Scottish Parliament on 5 June 2025

## 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

44. Section 22 relates to the appointment of tax representatives. Subsection (1) provides Scottish Ministers with the power to make regulations requiring that every non-resident taxpayer has a person resident in the United Kingdom to act as their tax representative (for example, an accountant or similar profession).

### Reason for taking power

45. The requirement for non-resident taxpayers to appoint a tax representative will encourage taxpayers to ensure that all obligations and liabilities in relation to the tax are met and will therefore reduce the risk of non-compliance, which is more challenging for a tax authority to combat in respect of non-resident taxpayers. This power enables Scottish Ministers to put in place the relevant administrative processes which will support SBSL compliance. There is an equivalent power in relation to SAT in section 26 of the Aggregates Tax and Devolved Taxes Administration (Scotland) Act 2024.<sup>9</sup>

### Choice of procedure

46. Negative procedure is considered appropriate for a technical and administrative matter setting out the processes and procedures for appointment of tax representatives. This matter does not amend the Bill or other primary legislation but allows for the making of more detailed administrative rules relating to tax representatives.

## 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

47. Section 23(2) of the Bill provides Scottish Ministers with the power to make regulations regarding the extent to which the tax representative of a non-resident taxpayer is required to secure the non-resident taxpayer's compliance with any requirements of this Bill or the 2014 Act.

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<sup>9</sup> [Aggregates Tax and Devolved Taxes Administration \(Scotland\) Act 2024 – section 26 \(legislation.gov.uk\)](https://legislation.gov.uk)

This document relates to the Building Safety Levy (Scotland) Bill (SP Bill 73) as introduced in the Scottish Parliament on 5 June 2025

## Reason for taking power

48. The requirement for non-resident taxpayers to appoint a tax representative will encourage taxpayers to ensure that all obligations and liabilities in relation to the tax are met. This power allows Scottish Ministers to put in place administrative rules regarding the extent to which the representatives are required to secure the non-resident taxpayers compliance. This allows Scottish Ministers to ensure that the requirements placed on tax representatives remain reasonable. Taking a power in regulations for these purposes is consistent with the approach taken in other devolved taxes: see the equivalent power in relation to SAT in section 27(2) of the Aggregates Tax and Devolved Taxes Administration (Scotland) Act 2024.<sup>10</sup>

## Choice of procedure

49. Negative procedure is considered appropriate for a technical and administrative matter which may only set the extent to which the requirements set out in section 23 of the Bill are placed on tax representatives.

## Section 29(1): Partnerships

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

## Provision

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

## Reason for taking power

51. This power is required to ensure that provisions of the levy apply in cases where the business responsible for certain building control events is a partnership or unincorporated body. This approach is consistent with the approach taken in other devolved taxes: for example, the equivalent power in relation to SAT is in section 33(1) of the Aggregates Tax and Devolved Taxes Administration (Scotland) Act 2024;<sup>11</sup> see also section 37 of the Landfill Tax (Scotland) Act 2014.<sup>12</sup>

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<sup>10</sup> [Aggregates Tax and Devolved Taxes Administration \(Scotland\) Act 2024 – section 27 \(legislation.gov.uk\)](#)

<sup>11</sup> [Aggregates Tax and Devolved Taxes Administration \(Scotland\) Act 2024 – section 33 \(legislation.gov.uk\)](#)

<sup>12</sup> [Landfill Tax \(Scotland\) Act 2014 – section 37 \(legislation.gov.uk\)](#)

This document relates to the Building Safety Levy (Scotland) Bill (SP Bill 73) as introduced in the Scottish Parliament on 5 June 2025

## Choice of procedure

52. Negative procedure is considered appropriate for a technical and administrative matter which does not amend the Bill or other primary legislation but allows for the making of administrative rules relating to partnerships and unincorporated bodies.

## Section 30(1): Bankruptcy etc

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

## Provision

53. Section 30(1) provides a power to Scottish Ministers to make regulations in relation to a person who is carrying on a business of a registerable person who has died, become bankrupt or become incapacitated.

## Reason for taking power

54. This power is to ensure that liability to pay the levy on certain building control events continues under set conditions should the business continue to be the liable party for taxable building control events after the original registered person is no longer a person connected to the business. There is an equivalent power in relation to SAT in section 34(1) of the Aggregates Tax and Devolved Taxes Administration (Scotland) Act 2024;<sup>13</sup> see also section 37 of the Landfill Tax (Scotland) Act 2014.<sup>14</sup>

## Choice of procedure

55. Negative procedure is considered appropriate for a technical and administrative matter which does not amend the Bill or other primary legislation but allows for the making of administrative rules to enable taxpayer continuity.

## 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

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<sup>13</sup> [Aggregates Tax and Devolved Taxes Administration \(Scotland\) Act 2024 – section 34 \(legislation.gov.uk\)](#)

<sup>14</sup> [Landfill Tax \(Scotland\) Act 2014 – section 37 \(legislation.gov.uk\)](#)

This document relates to the Building Safety Levy (Scotland) Bill (SP Bill 73) as introduced in the Scottish Parliament on 5 June 2025

## Provision

56. Section 31(1) provides Scottish Ministers with the power to make regulations regarding the transfer of a business as a going concern.

## Reason for taking power

57. This power is to ensure that liability to pay the levy on certain building control events continues under set conditions should the business be transferred as a going concern. This approach is consistent with regulation-making powers for other devolved taxes. There is an equivalent power in relation to SAT in section 35(1) of the Aggregates Tax and Devolved Taxes Administration (Scotland) Act 2024;<sup>15</sup> see also section 37 of the Landfill Tax (Scotland) Act 2014.<sup>16</sup>

## Choice of procedure

58. Negative procedure is considered appropriate for a technical and administrative matter, which does not amend the Bill or other primary legislation but allows for the making of administrative rules regarding the transfer of a business as a going concern and for these rules to be adjusted in light of operational experience.

## 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

59. Section 4 of the 2014 Act<sup>17</sup> allows for Revenue Scotland to delegate its functions relating to LBTT, SLfT and SAT. Section 34 of the Bill inserts a new section into the 2014 Act allowing Revenue Scotland to delegate its functions relating to the Scottish building safety levy to a person specified in regulations by the Scottish Ministers.

## Reason for taking power

60. This power mirrors the approach taken for LBTT and SLfT and SAT – see section 38 of the Aggregates Tax and Devolved Taxes Administration (Scotland) Act 2024.<sup>18</sup> In line with these taxes, this power enables Scottish Ministers to permit Revenue Scotland to delegate particular functions to specific organisations in the event that operational experience of administering SBSL identifies a relevant need to do so, without the need for further primary legislation.

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<sup>15</sup> [Aggregates Tax and Devolved Taxes Administration \(Scotland\) Act 2024 – section 35 \(legislation.gov.uk\)](#)

<sup>16</sup> [Landfill Tax \(Scotland\) Act 2014 – section 37 \(legislation.gov.uk\)](#)

<sup>17</sup> [Revenue Scotland and Tax Powers Act 2014 – section 4 \(legislation.gov.uk\)](#)

<sup>18</sup> [Aggregates Tax and Devolved Taxes Administration \(Scotland\) Act 2024 – section 38 \(legislation.gov.uk\)](#)

This document relates to the Building Safety Levy (Scotland) Bill (SP Bill 73) as introduced in the Scottish Parliament on 5 June 2025

## Choice of procedure

61. Affirmative procedure is considered appropriate as a delegation of Revenue Scotland's functions may impact responsibilities put on taxpayers with penalties for non-compliance. Therefore, affirmative procedure is considered to provide the appropriate level of scrutiny.

## 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

62. Section 43 inserts new penalties relating to SBSL into the 2014 Act. Included in these penalties is a power (inserted into the 2014 Act as section 216P) allowing Scottish Ministers to make provision about the new penalties relating to SBSL.

## Reason for taking power

63. This power is inserted into the 2014 Act in order to allow adjustments to those new penalties in light of operational experience of administering SBSL. This mirrors the power given to Scottish Ministers for penalties for SAT, as provided for under section 49 of the Aggregates Tax and Devolved Taxes Administration (Scotland) Act 2024,<sup>19</sup> ensuring consistency across the new devolved taxes. This approach is also consistent with the approach for other penalties for devolved taxes in Part 8 of the 2014 Act.

## Choice of procedure

64. Affirmative procedure is considered to be appropriate on the basis that the power allows for the amendment of primary legislation.

## 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

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<sup>19</sup> [Aggregates Tax and Devolved Taxes Administration \(Scotland\) Act 2024 – section 49 \(legislation.gov.uk\)](https://legislation.gov.uk)

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## Provision

65. This provision enables Scottish Ministers to make such incidental, supplementary, consequential, transitory, transitional or saving provision as they consider appropriate for the purposes of, in consequence of, or for giving full effect to, any provision of the Bill or made under the Bill.

## Reason for taking power

66. This power will enable Scottish Ministers to adequately give effect to the provisions of the Bill. Whilst the power is wide-ranging, it is vital that the SBSL interacts well with Scots law and practices and is implemented on the residential construction industry in a seamless manner. As a novel tax without equivalent in the UK, the power will enable unforeseen situations to be addressed as soon as it is practical for Scottish Ministers to bring forward regulations. For example, consequential provision may be required in order to make necessary changes to related legislation. The Scottish Ministers consider the power to be necessary to provide this flexibility and that it should extend to the modification of primary legislation. Otherwise, it might be necessary to return to Parliament for further primary legislation to make adjustments to another statute where it is obvious that the adjustment has to be made if the intentions of Parliament in passing this Bill are to be given effect.

## Choice of procedure

67. Regulations under this section which contains a provision which adds to, omits or replaces any part of an Act are subject to the affirmative procedure. Any other regulations made under this section are subject to the negative procedure. These procedures are typical for ancillary powers.

## Section 51: Commencement

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Laid, no procedure

## Provision

68. Section 51(2) of the Bill provides that the Scottish Ministers may, by regulations, appoint days on which the provisions in the Bill come into force. This is with the exception of sections 48, 49, 50 and 52, which 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.

## Reason for taking power

69. This power will enable the Scottish Ministers to bring the provisions of the Bill into force and to manage the effects of their commencement. Having the provisions come into force on a date appointed by regulations means that the Scottish Government can

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appoint a date having ensured that everyone who needs to prepare for the new levy has made the necessary preparation.

### Choice of procedure

70. As is usual for commencement regulations, the default laying requirement will apply, as provided for by section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010<sup>20</sup>. This is considered appropriate because the policy behind the provisions will already have been considered by the Parliament during the passage of the Bill.

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<sup>20</sup> [Interpretation and Legislative Reform \(Scotland\) Act 2010 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2010/12)

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# Building Safety Levy (Scotland) Bill

## Delegated Powers Memorandum

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