

Building Safety Levy (Scotland) Bill

Policy Memorandum

Introduction

1. As required under Rule 9.3.3 of the Parliament’s Standing Orders, this Policy Memorandum is published to accompany the Building Safety Levy (Scotland) Bill introduced in the Scottish Parliament on 5 June 2025.
2. The following other accompanying documents are published separately:
 - Explanatory Notes (SP Bill 73–EN);
 - a Financial Memorandum (SP Bill 73–FM);
 - a Delegated Powers Memorandum (SP Bill 73–DPM);
 - statements on legislative competence made by the Presiding Officer and the Scottish Government (SP 73–LC).
3. This Policy Memorandum has been prepared by the Scottish Government to set out the Government’s policy behind the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

Policy objectives of the Bill

4. The Bill makes provision for a Scottish Building Safety Levy (“SBSL”), a tax on the construction of residential property development in Scotland. Revenue raised from the SBSL will be used to fund building safety expenditure. The overarching policy aim is to seek a contribution from the housebuilding sector to support the funding of the Scottish Government’s Cladding Remediation Programme. The SBSL will complement the existing funding streams available and ensure that the associated costs of cladding remediation do not fall directly onto affected homeowners or disproportionately onto the general taxpayer. The policy objective of the SBSL mirrors the UK Government’s objective for its own Building Safety Levy, which is proposed for introduction in England in Autumn 2026¹.
5. Revenue Scotland was established by the Revenue Scotland and Tax Powers Act 2014² (“the 2014 Act”) and is the tax authority responsible for the collection and

¹ [Building Safety Levy: written statement made on 24 March 2025 \(parliament.uk\)](#)

² [Revenue Scotland and Tax Powers Act 2014 \(legislation.gov.uk\)](#)

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management of the devolved taxes, as specified in Part 4A of the Scotland Act 1998. Revenue Scotland currently collects and manages Land and Buildings Transaction Tax (“LBTT”), Scottish Landfill Tax (“SLfT”), and, from 1 April 2026, Scottish Aggregates Tax (“SAT”). Revenue Scotland will also be responsible for the collection and management of SBSL when introduced. A programme of activity to deliver the systems, processes and other requirements for SBSL is currently underway in Revenue Scotland.

6. The Bill has seven substantive parts which are summarised here and discussed at greater length throughout the policy memorandum. Details are provided in the material for each part of the Bill. 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 2014 Act, as amended by Parts 4, 5 and 6 of the Bill. The 2014 Act, amongst other things, provides the general collection and management framework for Scotland’s devolved taxes.

7. Part 1 defines the levy as a tax charged on certain building control events in accordance with the Bill and gives responsibility to Revenue Scotland to administer and collect the tax. It also contains an overview of the Bill.

8. Part 2 contains the key concepts underpinning the levy: it sets out the types of building control events in respect of which a levy may be imposed with reference to the defined terms “building control event” and “new residential unit”. This Part also provides for the person liable to pay the levy: this is the owner of the new residential unit when the application for the building control certificate or permission is made.

9. Part 3 deals with how the levy is to be calculated and used. The rate is an amount prescribed by the Scottish Ministers as it applies to each square metre of floorspace. A person calculates the amount of levy payable by taking the total number of building control events for which they are responsible and subtracting any reliefs and any building control events which fall under the levy-free allowance before calculating the levy payable on each remaining building control event (these are known as a taxable building control event). The sum of the levy calculated on each individual taxable building control event is the person’s tax liability for an accounting period. Part 3 also deals with how the proceeds of the levy are to be used by the Scottish ministers: for the purposes of improving the safety of persons in or about buildings in Scotland.

10. Part 4 deals with administrative matters. It contains various provisions on administration, including regarding registration, returns, and special cases.

11. Part 5 imposes penalties in relation to the levy, for instance for failure to make a return, failure to pay the levy, and failure to register for the levy. The penalties are similar to those for the other devolved taxes under Chapter 2 of Part 8 of the 2014 Act.

12. Part 6 makes provision on what decisions by Revenue Scotland in relation to the levy can be reviewed or appealed.

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17. Building construction and safety are devolved policy areas. In England, the UK Government established a Cladding Safety Scheme (formerly the Medium Rise Scheme) in November 2022. The aim of the scheme is to meet the costs of addressing life safety fire risks associated with cladding on residential buildings over 11 metres in height (11-18 metres in London only – buildings over 18 metres in London fall under the Building Safety Fund administered by the Greater London Authority). The Building Safety Act 2022⁷ (“The 2022 Act”) was introduced by the UK Government to strengthen the regulatory system for the construction and maintenance of residential buildings in England, including measures to protect certain leaseholders from the cost of works to remove cladding from external wall systems which pose a risk to life.

18. On 2 December 2024 the UK Government published its Remediation Acceleration Plan⁸ which set out measures for increasing the pace of remediation for buildings in England with unsafe cladding.

19. In Scotland, the Scottish Government established the Cladding Remediation Programme to identify, assess (through a Single Building Assessment) and address the safety risks for buildings within scope of the Programme. The Programme aims to improve the safety of residents and owners by addressing the risk to human life that is (directly or indirectly) created or exacerbated by a building’s external wall cladding system, as well as the consequential negative impacts which can currently exist in relation to the buying, selling and re-mortgaging of relevant flatted residential properties in Scotland. The Programme scope is limited to multi-residential domestic buildings (which may include commercial premises), constructed or refurbished between 1 June 1992 and 1 June 2022, 11 metres and over in height and incorporating a form of external wall cladding system. The Programme scope also includes single owner buildings, for example social housing which is wholly owned by a local authority or registered social landlord.

20. The Scottish Government introduced the Housing (Cladding Remediation) (Scotland) Act 2024⁹ (“the 2024 Act”) to facilitate the delivery of the Cladding Remediation Programme. The 2024 Act introduced the concepts of a Single Building Assessment (SBA) and Additional Work Assessment (AWA). A SBA is an assessment which results in a report on any risk to human life that is (directly or indirectly) created or exacerbated by a building’s external wall cladding system, and what work (if any) is needed to eliminate or mitigate this risk. An AWA is required where additional information comes to light in the period between an SBA being completed and the date on which Scottish Ministers were satisfied that any work identified in the SBA or a previous AWA had been completed. This may occur during opening of works, or in an unexpected situation where previously unobserved material is found. The Scottish Government published the standards that must be complied with when carrying out a SBA or an AWA on 6 January 2025¹⁰. The 2024 Act also requires Scottish Ministers to maintain a register of buildings (the Cladding Assurance Register), and that an entry for a building will be created once an SBA has been carried out in relation to it.

⁷ [Building Safety Act 2022 \(legislation.gov.uk\)](https://legislation.gov.uk)

⁸ [Remediation Acceleration Plan \(gov.uk\)](https://gov.uk)

⁹ [Housing \(Cladding Remediation\) \(Scotland\) Act 2024 \(legislation.gov.uk\)](https://legislation.gov.uk)

¹⁰ [Cladding - Single Building Assessments and additional work assessments: standards \(gov.scot\)](https://gov.scot)

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21. On 25 March 2025, the Scottish Government published its Cladding remediation plan of action¹¹, setting out the actions needed by partners to increase the pace and breadth of cladding remediation in Scotland. This included the launch of a 'Single Open Call' process for residential property owners (or their representatives) to notify Scottish Government of their concerns about cladding in their properties; work being undertaken to finalise the Developer Remediation Contract; and work being undertaken to take forward assessment, mitigation and remediation for properties for which the Scottish Government has taken the lead.

22. The costs associated with the cladding remediation programme are set out in the Financial Memorandum. In addition to drawing on funding through existing portfolio budgets, the following revenue streams for the Cladding Remediation Programme are available.

Developer-led Remediation

23. Where a developer has accepted responsibility for the assessment and remediation of a property, it will remain for that developer to take forward and fund the work. The Scottish Government is working with large developers to secure agreement on a remediation contract. The Scottish Government hopes that, once agreed, this contract will unlock a further programme of assessment and remediation in 2025. Draft terms of the contract were shared with developers in September 2024, with significant progress made towards agreement of key terms in principle. The Scottish Government continues to work constructively with developers that are taking steps to assess or remediate buildings of which they were the developer.

Residential Property Developer Tax

24. Residential Property Developer Tax (RPDT) is a Corporation Tax supplement levied by the UK Government on the UK's largest residential property developers, in operation since 1 April 2022. The UK Government's aim for the tax is to obtain a contribution towards the cost of dealing with defective cladding in the UK's high-rise housing stock. The RPDT is limited to the largest residential property developers by each group having an annual allowance of £25 million, with only profits from residential property development activities above this amount being subject to the tax. Only residential development companies liable for UK Corporation Tax fall within scope of the RPDT, which is charged at 4% on residential property development profits that exceed their annual allowance. The UK Government intends to raise at least £2 billion from the RPDT over a ten-year period¹². In its first year of operation (2022-23), the RPDT generated £200 million in revenue¹³.

25. As a UK-wide tax where revenues are used to fund spending on cladding remediation in England, the Scottish Government expects to receive Barnett consequential of around £194 million over the expected ten-year period. The Scottish

¹¹ [Cladding remediation: plan of action \(gov.scot\)](#)

¹² [Residential property developer tax: Consultation on policy design \(gov.uk\)](#)

¹³ [HMRC annual report and accounts: 2022 to 2023 \(gov.uk\)](#)

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Government has committed to spending the equivalent of all Barnett consequential generated from the RPDT on cladding remediation in Scotland.¹⁴ Where Government-led cladding costs cannot be met through a combination of revenues generated through SBSL and consequential in relation to the RPDT, funding will be required to be drawn from the overall Scottish Budget envelope in any given financial year.

The UK Levy and Devolution of Powers

26. The 2022 Act created provision for the UK Government to introduce a Building Safety Levy (“the England-only Levy”) on the development of new residential buildings in England through secondary legislation. Revenue raised through the England-only Levy would be required to fund building safety expenditure. The UK Government’s Remediation Acceleration Plan set out that this Levy will raise an estimated £3.4 billion over 12 years, providing funds to pay to remediate building safety defects. The England-only Levy is expected to come into effect in Autumn 2026. The UK Government is expected to lay regulations giving effect to the England-only Levy in 2025.

27. The UK Government’s proposals for the England-only Levy, as set out in its technical consultation,¹⁵ is to operate the England-only Levy as a billing-and-collection tax, where the relevant local authority will calculate the levy charge based on information supplied by the developer. This information is to be provided to the local authority from the point at which an application for building control approval is submitted to the local authority or the Building Safety Regulator (or an initial notice is submitted by a Registered Building Control Approver and the client to a local authority), to the point at which development is commenced. The collecting authority will then, within 5 weeks of submission of the levy information accompanying the first commencement notice by the client (or 8 weeks if a spot check is taking place), calculate the levy amount due based on the levy information. The collecting authority will issue the client with a notice of levy liability for the levy amount, or confirmation that the levy is not applicable and no payment is due.

28. The England-only Levy can be paid following receipt by the client of the levy liability notice and the client will then have some flexibility over when they pay the levy charge. The UK Government proposes the levy should be paid prior to the client applying for the first completion or final certificate for the works under the application or notice. The collecting authority will issue the client with a notification confirming the levy has been paid within two weeks of receipt of the payment.

29. The UK Government’s decision to create a levy in England only means that no consequential funding will come to Scotland as a result of its introduction. When the England-only Levy comes into effect, the only consequential funding the Scottish Government expects to receive in relation to cladding remediation is from the funding related to revenues from the RPDT. The decision to introduce an England-only levy, therefore, creates a gap in the funding options and powers available to the Scottish

¹⁴ [Housing \(Cladding Remediation\) \(Scotland\) Bill Financial Memorandum \(parliament.scot\)](#)

¹⁵ [Building Safety Levy: technical consultation \(gov.uk\)](#)

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(Building Safety) Order 2024¹⁹ (“the Order in Council”) was laid before and approved by both the Scottish and UK Parliaments, coming into force on 19 December 2024. The Order in Council was scrutinised by the Scottish Parliament’s Finance and Public Administration Committee on 29 October 2024²⁰, and by the House of Lords on 29 October 2024.²¹

34. The Order in Council inserts into the Scotland Act 1998 provision to introduce a tax in connection with the building control process for a relevant building, for the purpose of meeting any building safety expenditure. A ‘relevant building’ is defined as a building in Scotland consisting of or containing one or more dwellings, or other accommodation (including temporary accommodation). This power effectively mirrors the provision in the 2022 Act for UK Ministers, allowing Scottish Ministers to introduce a similar levy.

Framework for Tax and Tax Strategy

35. The Scottish Government’s Framework for Tax²² sets out the principles and strategic objectives that underpin the Scottish Approach to Taxation, as well as the approach to decision making, engagement and how the Scottish Government manages and sequences tax policy and delivery.

36. The Scottish Government’s approach to taxation continues to be underpinned by the four canons of taxation proposed by the renowned Scottish economist Adam Smith. These are Certainty, Proportionality to the ability to pay, Convenience and Efficiency. Two further principles (Engagement and Effectiveness) have been added to reflect the Scottish Government’s commitment to engaging and collaborating with stakeholders, and to reflect the approach to tackling tax avoidance. The policy development of the Bill, including the public consultation and programme of engagement has been informed by the principles and objectives set out in the Framework.

37. The Scottish Government published its Tax Strategy on 4 December 2024.²³ The strategy expands on the Framework for Tax and sets out the next steps in the evolution of the tax landscape in Scotland. The Strategy also sets out the Scottish Government’s medium-term ambitions for how the tax system will develop to support the delivery of the four government priorities: eradicating child poverty, growing the economy, tackling the climate emergency, and ensuring high quality and sustainable public services. The Scottish Government’s approach to the policy aims of the Bill have been underpinned by the priorities and fiscal and economic context set out in the Tax Strategy to deliver our vision for the Scottish tax system.

¹⁹ [The Scotland Act 1998 \(Specification of Devolved Tax\) \(Building Safety\) Order 2024 \(legislation.gov.uk\)](#)

²⁰ [Finance and Public Administration Committee: Official Report of October 29, 2024 \(parliament.scot\)](#)

²¹ [Hansard: Scotland Act 1998 \(Specification of Devolved Tax\) \(Building Safety\) Order 2024 \(hansard.parliament.uk\)](#)

²² [Framework for Tax 2021 \(gov.scot\)](#)

²³ [Scotland's Tax Strategy: Building on our Tax Principles \(gov.scot\)](#)

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Alternative approaches

38. An alternative approach would be to not implement the SBSL. This would mean a new tax applying to residential property development in England but not in Scotland and there would be no changes to the existing funding streams which support the delivery of the Scottish Government's Cladding Remediation Programme.

39. While Barnett consequential from UK Government spending related to revenues from the RPDT would still be available, it is estimated that the scale of the work required in Scotland will significantly exceed this amount and therefore additional revenue will be required.

40. On the basis that not fully funding the Cladding Remediation Programme is not an option, in lieu of the SBSL the Scottish Government would be required to fund the rest of the Programme entirely through its existing capital budget envelope or through changes to other devolved taxes.

41. In the context of the devolution settlement and the challenging fiscal context, funding the Cladding Remediation Programme exclusively from the existing capital budget envelope will require reprioritisation of existing spending commitments and/or through not allocating future capital funding to new projects or infrastructure. While the Scotland Act 1998 provides the Scottish Parliament with some powers over taxation, the incidence of these taxes falls largely onto the general taxpayer. As such, neither of these options would meet Scottish Ministers' objective of ensuring that there is parity in the funding arrangements between the Scottish and UK governments, and that the costs of cladding remediation do not fall directly onto homeowners or disproportionately onto the general taxpayer. It is against these options that the SBSL has been appraised as the best option to deliver Scottish Ministers' policy objectives.

42. It may have been possible to introduce the SBSL as a new form of local taxation, using existing powers with the Scotland Act 1998. However, the Cladding Remediation Programme is a national programme, and for the tax to meet the requirement of a local tax the responsibility for cladding remediation would need to fall to local authorities to undertake. This would be an additional burden for local authorities and require a significant change in the Programme at a time when the need for acceleration of work is high. In addition, the localised nature of such a tax may not lend itself to the concentration of high-rise buildings affected by cladding in Scotland's urban areas. Where local authorities find themselves with a higher proportion of buildings requiring remediation, a local tax may not be sufficient to support such work without additional funding measures in place.

Consultation and engagement

43. Consistent with the Framework for Tax, the Scottish Government has consulted and engaged with residential property, tax and local government stakeholders to inform the development of the Bill. The Scottish Government conducted a public consultation

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on proposals for the SBSL from 23 September to 18 November 2024.²⁴ A total of 78 responses were received, 69 from organisations and 9 from individuals, which were analysed by officials from the Scottish Government. Where permission has been given, responses have been published in full on the Scottish Government’s consultation webpage.²⁵ The public consultation was accompanied by a partial Business and Regulatory Impact Assessment (BRIA) which set out an overview of the costs, benefits and risks that the SBSL may have an impact on public, private or third sector or regulators.²⁶

44. The consultation asked a wide range of questions covering the context for a Scottish building safety levy, the scope of the tax, exemptions, calculation methods, tax administration, compliance and impacts on businesses, children, equalities and island communities.

45. The Scottish Government’s public consultation on the SBSL proposals was accompanied by a programme of stakeholder engagement, including a ministerial roundtable with housebuilders and policy-specific meetings that took place to help raise awareness of the proposals and assist stakeholders in responding to the consultation.

46. The public consultation on the SBSL should be seen in context with the larger, UK-wide level of engagement on funding cladding remediation efforts in both England and Scotland. An initial public consultation on the Building Safety Levy was undertaken by the UK Government from 15 July to 21 October 2021²⁷. In November 2022, the UK Government issued a second consultation seeking views on the delivery of the England-only Levy including how it would work; what the rates would be; who would pay; sanctions and enforcement as well as who would be responsible for collection. An analysis of this consultation was published in January 2024.²⁸

47. A further technical consultation was carried out by the UK Government in January 2024, which sought views on the methodology for levy calculation, the collection process, disputes and appeals and further exclusions. An analysis of responses to the technical consultation was published on 24 March 2025.²⁹ Although the differences in building control regimes mean that the English and Scottish levies will not be analogous, the policy aim for both remains the same. The Scottish Government has therefore taken into account the feedback provided on the UK consultations, and on the joint UK and Scottish Government consultation on the devolution of powers for a SBSL. The changes considered as a result of the feedback from the UK Government consultations are set out in the sections on defining the taxpayer and the tax authority below.

²⁴ [Scottish Building Safety Levy: consultation \(gov.scot\)](https://www.gov.scot/consult/FRM/2024/09/23/building-safety-levy-consultation)

²⁵ [Scottish Building Safety Levy: consultation on proposals – published responses \(consult.gov.scot\)](https://www.consult.gov.scot/consult/FRM/2024/09/23/building-safety-levy-consultation-on-proposals-published-responses)

²⁶ [Scottish Building Safety Levy: partial business and regulatory impact assessment \(gov.scot\)](https://www.gov.scot/consult/FRM/2024/09/23/building-safety-levy-partial-business-and-regulatory-impact-assessment)

²⁷ [Consultation on Building Safety Levy \(consult.communities.gov.uk\)](https://www.consult.communities.gov.uk/consultation-on-building-safety-levy)

²⁸ [Building Safety Levy: response to consultation \(gov.uk\)](https://www.gov.uk/building-safety-levy-response-to-consultation)

²⁹ [Building Safety Levy: Technical consultation response \(gov.uk\)](https://www.gov.uk/building-safety-levy-technical-consultation-response)

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48. Prior to the public consultation, the Scottish Government convened an expert advisory group (“the EAG”), comprised of representatives from the residential property industry, local government and tax stakeholders, and is chaired by a senior Scottish Government official.³⁰ The purpose of the EAG is to help shape the design of the SBSL and consultation, as well as to consider more detailed aspects of policy development.

49. The EAG has met on five occasions since its inception. Discussions on the first two meetings focussed on the principles and key elements of the tax design, as well as the public consultation and programme of engagement. The third meeting considered an initial analysis of the responses to the public consultation. The fourth meeting considered Scottish Government proposals for engaging with small businesses and other sectors of the residential development industry as part of the BRIA process. The fifth meeting considered two specific policy proposals – a floorspace calculation method and a levy-free allowance provision to support smaller developers. Subject to agreement by its membership, the EAG will continue to meet as the Bill progresses through Parliament.

50. The proposals set out throughout the Bill as a whole, but in particular in Part 4, reflect detailed discussions with Revenue Scotland and take account of existing relevant legislative provisions applying to the existing devolved taxes, including SAT, SLfT and LBTT.

Outcome of consultation and engagement

51. Between the formal consultation, stakeholder engagement programme and EAG, the Scottish Government heard views on the proposals for the SBSL from a wide variety of individual and organisational perspectives. A detailed overview of the consultation process and the feedback received is set out in a consultation analysis report.³¹

52. The following is a summary of the five key themes of the consultation and programme of engagement:

- Principle of the SBSL: 77% of those who responded to this question disagreed that the SBSL is a fair way to generate revenue to fund the Cladding Remediation Programme. The majority of respondents to the consultation were developers and organisations representing the residential property industry who were opposed to the introduction of the SBSL. Those respondents noted the SBSL would be an additional burden on developers, some of whom are already contributing to the cost of cladding remediation. Those supportive of the introduction of the SBSL were primarily non-developer organisations, including the National Fire Chiefs Council, the National Trust for Scotland and Local Authority Building Standards Scotland.
- Scope: there was strong support from respondents (75%) to exempt affordable housing from the SBSL, though some attendees at engagement

³⁰ [Building Safety Levy Expert Advisory Group \(gov.scot\)](https://www.gov.scot)

³¹ [Scottish Building Safety Levy: Consultation Analysis Report \(gov.scot\)](https://www.gov.scot) (available from 11am on 6 June 2025)

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sessions raised the importance of recognising the interconnectedness of the sector as a whole. Responses also indicated strong support for excluding smaller developers, noting that SME builders face unique challenges with cashflow, profit margins, development viability and administrative burdens relative to larger developers.

- **Calculation:** while respondents largely recognised the proportionate benefits of using a market value approach to calculation, the majority (62%) opposed using market value as the calculation method for the SBSL, with emphasis on the need for stability and certainty for developers in understanding their tax liability.
- **Administration:** a majority of respondents (76%) were in favour of the proposed approach for Revenue Scotland to administer the SBSL, and for Revenue Scotland to be granted the investigatory and enforcement powers that mirror provisions for existing devolved taxes. Developers, other housing stakeholders and local government bodies also strongly agreed with the proposals for dispute resolution.
- **Impacts:** respondents and attendees repeatedly raised the cumulative impact on housebuilding from a wider package of proposed policies and new regulatory burdens, emphasising the need to take a holistic approach and to consider any potential impacts from the SBSL through this lens.

53. Whilst there was general opposition from respondents to the Scottish Government consultation to the introduction of a SBSL to fund cladding remediation efforts, no immediate alternative solutions are being offered by respondents to address the funding challenge associated with cladding remediation. This is consistent with the responses to the consultation the Scottish Government ran jointly with the UK Government earlier in 2024 to inform the request for the transfer of powers for a SBSL.

Overview of the Bill – specific provisions

Part 1: The tax and overview

54. The Bill defines the levy as the Scottish Building Safety Levy and establishes that Revenue Scotland is responsible for the collection and management of the tax. The levy is to be charged on certain building control events, with section 10(1) relevant for identifying what building control events are taxable building control events. It also introduces the other parts of the Bill.

Part 2: Key concepts

55. This part sets out definitions for “building control event” and “new residential unit”, and sets out which buildings are to be “exempt new residential units”. This part also contains provisions on the person liable to pay the levy.

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56. The Order in Council devolved to the Scottish Parliament power to establish a tax in connection with building control. This power effectively replicates the power for UK Ministers set out in section 58 of the 2022 Act.³²

57. The scope of the Order in Council requires that the levy must be made in connection with building control approval. This may include:

- An application made in connection with the building control process;
- The issuing or submission of a document in connection with the building control process; or
- The taking of any other step in connection with the building control process

Meaning of “building control event”

58. The SBSL is to be a levy on the construction of residential properties. For the purposes of the levy, the Bill provides a definition of “building control event” as an event related to building completion.

59. The building standards system in Scotland is established by the Building (Scotland) Act 2003 (“the 2003 Act”).³³ The 2003 Act gives powers to Scottish Ministers to make building regulations, procedure regulations, fees regulations and other supporting legislation as necessary, to fulfil the purposes of the 2003 Act. Under section 17 of the 2003 Act, a completion certificate is needed to confirm that a building has been constructed, demolished or converted in accordance with the relevant building warrant and to comply with the building regulations. It is the responsibility of the relevant person (usually the owner or developer) to build correctly or to ensure building is done correctly. On completion of either work or conversion for which a warrant is required, the relevant person must submit a completion certificate. The owner must always be named on the completion certificate. The submission must be made to the verifier, on a form provided by the verifier. The verifier must accept a completion certificate if, after reasonable inquiry, they are satisfied the work certified complies with the relevant warrant and building regulations. If the work does not comply the completion certificate must be rejected. A verifier must provide a response as to whether a submitted completion certificate is acceptable within 14 days (or such longer period as has been agreed with the person making the submission).

60. It is an offence to occupy a new building, a conversion or an extension unless the relevant completion certificate has been accepted. It is, however, possible to obtain permission for temporary occupation or use, under section 21 of the 2003 Act, from the verifier.

61. For new dwellings, a completion certificate is required for each individual dwelling (in practice, completion certificate applications on developments are usually submitted in batches). On an estate of houses, a completion certificate must be submitted and

³² [Building Safety Act 2022 – Section 58 \(legislation.gov.uk\)](#)

³³ [Building \(Scotland\) Act 2003 \(legislation.gov\)](#)

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accepted for each dwelling, provided the common services required by the building regulations for that dwelling have been completed. In other words, a completion certificate should not be accepted for a dwelling until it is connected to a suitable drainage system or until access to a suitable road is complete.

62. Section 3 of the Bill sets out that a building control event occurs on the “completion date” following the construction or conversion of a “new residential unit”. A “building completion date” is defined in subsection (2) as occurring on when a completion certificate is accepted under section 18 of the 2003 Act, or if earlier, on the grant of temporary occupation permission under section 21 of the 2003 Act.

63. The Scottish Government considers the date of acceptance of a completion certificate to be a suitable tax point for the SBSL, due to its status as a legal requirement for each new dwelling prior to use. Using the completion certificate process will ensure that liability to the tax reflects what has been built, which may not be the case closer to the start of the building standards process.

64. Placing the tax point towards the end of the building standards process and closer to the point of sale will also assist in mitigating cash flow issues for developers, a key concern they cited in relation to the UK Government Levy. In addition, the majority of the tax base for the SBSL will comprise properties built for onward sale. Where this happens, the Scottish Government understands that the issuance of a completion certificate and the sale of the property generally take place in short order. This means that, in many cases, the developer will be in receipt of funds from the sale of the property by the time that the liability to the SBSL is due for payment.

65. In cases where temporary occupation is granted prior to the acceptance of a completion certificate, the Scottish Government considers the earlier granting of temporary occupation a suitable tax point in these cases, to ensure the tax point aligns with the end of the construction process and not with the utilisation of the building by the end user.

Consultation

66. The public consultation on the SBSL asked respondents for their views on the tax point for the SBSL being the issuance of acceptance of a completion certificate. 76% of those who responded agreed that liability for the SBSL should arise in relation to the issuance of acceptance of a completion certificate, while 24% of respondents disagreed. Of those who agreed, this included a majority of developers and councils, with several responses noting the use of this clearly defined milestone at completion would provide certainty around calculation of the SBSL.

Alternative approaches

67. An alternative option would be to use the application for a building warrant as the taxable event, which is required to be undertaken before construction can begin and therefore sits earlier in the building standards process. This option would broadly align

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with the UK Government proposals for its levy, which is for the levy to apply upon application for the building warrant.

68. While the building warrant process would also capture all relevant building works at the time it is submitted, property developments can undergo changes in their design and development between warrant granted and completion. If liability to the SBSL was calculated at an early point in the building warrant process, then any changes between the building warrant and the completed development would likely require an amended tax position at a later stage, and potentially on more than one occasion. This would provide less certainty and convenience for both taxpayer and revenue authority in knowing how much tax is to be collected. In addition, applying a tax in the period between building warrant application and developers receiving funds from homebuyers may exacerbate cash flow concerns and cause inconvenience for developers.

Meaning of “new residential unit”

69. Section 4 of the Bill defines what buildings are within the scope of the SBSL and what buildings are outwith scope. The policy intention for the SBSL is to be a levy on the construction of residential properties. There were two factors in determining the aim for the levy. Firstly, the Grenfell Tower fire, and the subsequent establishment of the Scottish Government’s Cladding Remediation Programme and its scope. As noted above, the Programme scope is limited to multi-residential domestic buildings. As the Scottish Government intends to use the fund raised from the SBSL to support the Programme, its view is that it is sensible for the scope of the SBSL to broadly align with the scope of the Programme. Where there is divergence in scope between the SBSL and the Programme, these are set out in the relevant paragraphs below.

70. Secondly, the UK Government proposals for its Building Safety Levy and its intentions around the aim, purpose and scope of that levy. In its 2022 consultation, the UK Government set out its aim for its levy to “ensure the taxpayer and leaseholders do not pay for the necessary remediation of building safety defects.” The scope of the proposed UK levy is to apply to all new residential developments in England (including existing buildings where there is a change of use) that require building control approval.

71. Reflecting on these factors, the Scottish Government has considered an appropriate definition of residential development that will provide alignment with its funding use and with UK Government proposals. For the purposes of the levy, section 4 provides a definition of new residential unit as a unit consisting of constructed or converted building which:

- The whole of a newly constructed or converted building which, on the building completion date, is intended to be (or is) used as a dwelling or other accommodation, or,
- Is part of a newly constructed or converted building which, on the building completion date, is intended to be (or is) used separately as a dwelling or other accommodation; and
- Is not considered an exempt residential unit.

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72. This definition reflects the policy intention of the need to capture dwellings and other relevant buildings (such as purpose-built student accommodation (PBSA)), whilst also ensuring that residential development created out of existing buildings is given equal weighting. Section 4 subsection (2) sets out the policy intention of both PBSA and build-to-rent (BTR) developments as within scope of the SBSL.

73. In contrast, section 4 subsection (3) of the Bill sets out those buildings that are considered outwith scope of the SBSL. These buildings are:

- Hotels, inns or similar establishments
- Residential accommodation for children
- Residential accommodation for persons in need of personal care, such as care homes, drug and alcohol treatment centres, and mental health facilities
- Hospitals and hospices
- Military barracks and other residential facilities provided to members of the armed forces and their families by or on behalf of the Secretary of State for Defence
- Prisons and similar establishments
- Residential accommodation for school pupils
- Places of worship which provide accommodation within it, and accommodation provided by a body registered in the Scottish Charity Register for persons employed full time to perform the work of a religious denomination where accommodation is provided as part of the duties of the employment
- Accommodation for asylum seekers and their dependents

74. It is the Scottish Government's view that the types of buildings listed above are not within scope of the policy aim for the SBSL. Hotels, inns or similar establishments (such as hostels and aparthotels) are commercial entities which provide temporary accommodation – usually for business or leisure purposes. These buildings are distinctly different from the long-term accommodation types the SBSL seeks to charge. While there are instances where hotels are utilised as a residence for persons (for example, use as emergency accommodation) these are exceptional cases and are not considered the primary use for these establishments. In addition, the Scottish Government's Cladding Remediation Programme is not intended to cover commercial entities such as hotels. The UK Government also proposes to exempt temporary accommodation (for example, in a hotel or hospital) from its levy.

75. The remaining exempted building types are what the Scottish Government considers to be 'residential institutions', where the provision of accommodation is for a purpose that is additional to a residence. These residential institutions provide accommodation to people in need of care or used as a residential education facility, or provide services to communities. The Scottish Government is not aware of instances where an existing residential facility requires remediation on cladding. The UK

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Government proposes to exempt residential institutions from its levy, and the list of exempted provisions in the Bill has been aligned to these proposals to ensure regulatory alignment between levies.

Consultation

76. The public consultation asked respondents for their views on removing hotels and residential institutions from scope of the SBSL. Respondents most commonly did not object to the proposed exemptions listed in the consultation. However, of the responses which disagreed with one or more of the proposed exemptions, the most common objection was to the exemption for hotels. One respondent noted that hotels are different to the other types of developments listed which are designed to support, for example, health and education. This respondent also expressed the view that an exemption for hotels may incentivise the building of hotels rather than housing, when the latter is much needed.

Alternative approaches

77. The Scottish Government has considered whether the scope of the SBSL should be widened to include hotels and similar establishments. Including hotels would see a policy divergence between the SBSL and the UK Government's England-only Levy, with the benefit of only a small increase in the tax base. The downside of this approach would be that hotel development in Scotland would face an additional cost compared to similar development in England. Hotels are also distinctly different from long-term residential accommodation and are not expected to be covered by the Cladding Remediation Programme. The Scottish Government, therefore, considers it appropriate to exclude hotels and similar developments from the SBSL.

Exempt new residential units

78. As noted in section 4 of the Bill, a new residential unit is within scope of the SBSL unless it is defined as outwith scope of the Bill as set out in section 4, or if it is classed as an exempt new residential unit. Section 5 of the Bill provides for certain buildings to be "exempt new residential units" – buildings (or parts of buildings) which would otherwise be classified as intended for use as a dwelling or other accommodation but are not to be liable for the SBSL on the basis of their intended use. The following units are considered exempt new residential units:

- A pre-existing residence, i.e. a building that had one or more parts capable of being used as dwellings, and at the building completion date had the same number of parts intended to be used as dwellings
- Housing intended to be used as social housing
- Affordable housing – or housing for which construction funding has been provided for under section 1 or 2 of the Housing (Scotland) Act 1988 or section 92 of the Housing (Scotland) Act 2001
- Any building on a Scottish island

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Conversions

79. New residential units that are created through the conversion of an existing building which previously was for a use other than as a dwelling are within scope of the SBSL. Examples of this work include the conversion of an office building, school or church into a series of dwellings or block of flats.

80. In cases where work has been undertaken on a building which was, prior to building work, wholly or partly used as a dwelling, the SBSL only applies where at completion of the work the building has a different number of parts intended to be used as dwellings. For example, if a large, multi-storey house is converted into a set of apartments, then as these apartments are intended to be used as dwellings, the completed units would be liable for the SBSL. Similarly, if a group of four flats is converted into a larger, single dwelling, then the completed unit would be liable for the SBSL. However, if work was undertaken on a block of six flats, which remained six flats at completion, then the completed units would not be liable for SBSL as the number of parts intended to be used as dwellings remains the same.

81. The policy intention for including both new buildings and conversions within scope of the SBSL is to ensure that developers who engage in new building or in conversions of existing buildings are treated equally with regards to the levy. This also aligns with the UK Government's proposals for its levy to apply to converted buildings. The Scottish Government recognises there may be benefits to including a reduced rate on previously developed land to support the reuse of buildings and are therefore considering setting a reduced rate for brownfield through the regulation-making powers provided in Part 3 of the Bill.

Consultation

82. Views from consultation respondents were mixed on the inclusion of conversions within scope. Some expressed the view that conversions should be exempt to encourage re-use of existing and historic buildings, given the positive environmental impact of these development projects. Others disagreed and considered that conversions should be within scope, given that these types of developments may have historically contributed to the problem of unsafe cladding, and to share the cost across the sector as a whole.

Alternative approaches

83. The Scottish Government has considered whether the scope of the SBSL should be restricted to the construction of new dwellings and other residences, and to remove conversions or alterations of existing buildings from the scope of the Bill. Excluding conversions from the SBSL would see a policy divergence between the English and Scottish levies.

84. Removing conversions from the scope of the SBSL may provide an incentive for developers to re-use existing building stock for residential purposes. This would support the Scottish Government's National Planning Framework 4 (NPF4) commitment to

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promote and facilitate the reuse of brownfield, vacant and derelict land and empty buildings.³⁴ However, doing so may confer an advantage to developers that undertake conversion work in comparison to those that do not. Removing conversions from scope would also restrict the SBSL's ability to raise revenue. On balance, the Scottish Government considers it appropriate to align with the UK Government proposals on including conversions within scope, but that any incentivisation of existing building stock may be delivered through a reduced levy rate (see paragraphs 114-118 below).

Social Housing

85. The Bill sets out an exemption for new housing that is to be for the purposes of social housing. Social housing in Scotland is housing owned and managed by public authorities (mainly councils) and housing associations (registered social landlords or RSLs). Section 5 of the Bill defines social housing based on tenure – social housing as a dwelling or accommodation to be let as a Scottish secure tenancy within the meaning of section 11 of the Housing (Scotland) Act 2001, or a short Scottish secure tenancy within the meaning of section 34 of the Housing (Scotland) Act 2001.

Other Affordable Housing

86. The Scottish Government's Affordable Housing Supply Programme (AHSP) aims to deliver a mix of social housing (rented housing let by councils and Registered Social Landlords (RSLs)) and other affordable housing (mid-market rent housing and low-cost home ownership properties).³⁵ These homes are delivered through a variety of different grant mechanisms and through loan and equity funding. The Scottish Government committed to delivering 110,000 affordable homes by 2032, of which at least 70% will be available for social rent and 10% will be in rural and island communities.

87. To support this commitment, the Bill provides for an exemption for affordable housing, which is any housing for which construction funding has been provided under the AHSP.

88. An exemption for affordable housing would mitigate concerns on local authorities acting as taxpayers for the SBSL and ensures that public funding provided for social and affordable housing is not then subsequently used to pay costs associated with the Levy. In addition, this exemption would mirror the UK Government proposals for exempting affordable housing in England, ensuring there is equal treatment of these developments north and south of the border.

89. Applying the SBSL at completion means that any social and affordable housing designated as such at completion will be able to be clearly marked. However, not all housing that becomes social and affordable housing is designated at completion. The Scottish Government is aware of instances where units initially completed for commercial onward sale have been subsequently sold to a local authority, RSL or other affordable housing provider to use for the provision of social or affordable housing. As

³⁴ [National Planning Framework 4 \(Gov.scot\)](#)

³⁵ [Affordable Housing Supply Programme \(gov.scot\)](#)

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the intention at the time of completion was for onward sale, the SBSL will be payable on these units and the Scottish Government anticipates developers may seek to pass the associated costs on in the price they ask the local authority, RSL or other affordable housing provider to pay. There is no data available on the number of these 'opportunistic' purchases post-completion, but the Scottish Government considers their numbers will be low and will vary between local authority areas. However, their inclusion within the scope of the tax will mean that a small portion of the AHSP could, in theory, be subject to the SBSL.

Consultation

90. The public consultation sought views on exempting affordable housing from the Bill. Responses to the public consultation indicated strong support overall (75%) for an exemption for new social and affordable homes, with residential property developers and other housing stakeholders noting that applying the SBSL would have an impact on the cost, viability, and delivery of these homes. Respondents noted the importance of affordable housing provision (particularly for rural areas) and the risk that the SBSL would add a further cost burden to the delivery of these developments which is already constrained. Responses also noted that the inclusion of affordable housing in the SBSL would create an issue of circularity in public funding. Overall support for excluding these developments from the SBSL was strong, with respondents emphasising the importance of adequately defining 'affordable housing' to ensure developments are captured as intended. However, some developers disagreed with the proposal to exclude affordable housing, raising issues of fairness and responsibility for unsafe cladding, and emphasising the interconnectedness of the sector and the dependencies between affordable and private housing.

Alternative approaches

91. The Scottish Government considered the inclusion of a rebate mechanism for developers to claim back the costs of the SBSL for 'opportunistic' purchases post-completion, which may ensure fairness of the application of the SBSL across the various methods of acquiring social and affordable housing. However, a rebate system would add significant administrative complexity and may result in developers seeking to pass on the cost of the SBSL to local authorities, RSLs and other affordable housing providers regardless of whether a rebate is provided.

Islands

92. The Scottish Government considers that all residential development on Scotland's islands should be exempt from the SBSL. The Bill provides an exemption for this, using the definition of island as set out in the Islands (Scotland) Act 2018.³⁶

93. An exemption for islands development would see housebuilding of all tenures (social, affordable and for profit) exempt from the SBSL. The annual number of houses built on islands is low, averaging approximately 1% of the total number of annual completed units in Scotland.

³⁶ [Islands \(Scotland\) Act 2018 \(legislation.gov.uk\)](https://legislation.gov.uk)

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94. Exempting all residential development on islands will assist in supporting the Scottish Government's commitments in the Rural and Islands Housing Action Plan³⁷ and would be in line with the objectives of the statutory National Islands Plan,³⁸ which is being refreshed and will be laid in Parliament later this year. An island exemption will also reflect the challenges currently facing a shrinking housebuilding sector. In contrast, including island developments within the scope of the SBSL may exacerbate these challenges.

95. The Islands (Scotland) Act 2018 requires the Scottish Government to carry out Island Communities Impact Assessments (ICIAs) in relation to any policy or service that could have a significant effect on island communities. In undertaking an ICIA for the SBSL Bill, the Scottish Government has considered an exemption for islands is the appropriate position to take in reflection of the potential impacts of the Bill on island communities.

Consultation

96. Respondents to the public consultation noted that island communities face a number of existing pressures on housing which would be exacerbated by the SBSL and lead to disproportionate impacts on these areas. Responses specifically raised the high construction costs associated with building on islands that makes the viability of these developments already marginal, noting that the application of the SBSL to these developments would add further constraints to delivery and would run counter to other Scottish Government initiatives seeking to boost population in these areas. Respondents additionally noted that island communities would not benefit from the revenue spend given the lack of buildings affected by unsafe cladding in these areas.

Alternative approaches

97. The alternative approach would be to not exclude island developments from the SBSL. This approach would see a small increase to the overall tax base but would risk exacerbating the existing challenges currently experienced by island housebuilders.

98. A further approach would be to extend the exemption for island developments to include mainland rural areas. Through discussions with rural stakeholders including Highlands and Islands Enterprise and South of Scotland Enterprise, the Scottish Government recognises that many of the issues which affect islands may also apply to development in mainland rural areas. However, discussions with island stakeholders including island local authorities have identified an element of greater complexity in housebuilding on islands, where contractors are largely restricted to those available on the islands themselves and supply chains are reliant on shipping arrangements. As such, the risk of market failure is more acute on islands. In addition, unlike islands, there is not a clear statutory definition of what constitutes a rural area, and rural stakeholders have raised concerns on the appropriateness of existing definitions in sufficiently capturing the challenges to rural housebuilding.

³⁷ [Rural and islands housing: action plan \(gov.scot\)](#)

³⁸ [The National Plan for Scotland's Islands \(gov.scot\)](#)

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99. The Scottish Government will continue to consider the merits of an exemption or relief for rural developments, in discussion with stakeholders, with a view to considering introducing this through the delegated powers provided in section 6 of the Bill. Consideration has also been given to use the Levy-free allowance power (as provided for in section 12 of the Bill) to provide a larger allowance for rural areas. This approach would be complex to administer, however, as developers that operate in both urban and rural areas would therefore be subject to multiple annual allowance thresholds. The Scottish Government proposes an exemption or relief for certain geographical areas would be administratively simpler.

Self-Builds

100. Self-builds are typically single-plot developments where an individual (whether acting alone or with other individuals) commissions or is personally involved in the design and construction of a dwelling that is intended to be the individual's main residence once it is built. They form a small part of housebuilding completions in Scotland, and costs for self-build homes will typically be higher per capita than for new build developments due to economies of scale.

101. As the policy intention of the SBSL is to generate funding from residential property developers, the Scottish Government do not consider owner-occupier self-builds as property developers, as there is typically no intention of development for the generation of profit. Section 5 of the Bill does not include a specific exemption for self-builds. Instead, the Bill excludes self-build developments by way of the levy-free allowance, provided for by section 12 of the Bill and covered below. Exempting all owner-occupier self-builds will also align the SBSL with the UK Government proposals of exempting self-builds from the English Levy.

Consultation

102. The public consultation proposed that self-build housing would be exempt from the SBSL. No respondents expressed disagreement with this proposition.

Alternative approaches

103. The alternative approach would be to not exempt self-build housing from the SBSL. While including self-builds within scope of the SBSL would increase the tax base by a small margin, it would risk creating a sense of unfairness if persons who wish to (or in certain cases, may be left with no choice but to) build their own homes become subject to the tax.

Power to modify definitions

104. Section 6 of the Bill provides a regulation-making power to Ministers allowing the list of buildings specifically included as “new residential units” in section 4(2), the list of buildings specifically excluded as “new residential units” in section 4(3) and the list of “exempt new residential units” in section 5 to be adjusted by secondary legislation.

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105. The policy intention for the SBSL is to be reflective of, and operate as frictionless as possible across, a housebuilding industry which is subject to change. While the SBSL aims to seek a contribution from across the industry, the Scottish Government has identified the types of development above as types that would benefit from being exempt from the SBSL. A regulation-making power to amend the list of buildings outwith scope of or exempt from the SBSL ensures that the SBSL can be kept up to date with the housebuilding sector and reflect its current circumstances.

Amendment of the Building (Scotland) Act 2003

106. Section 7 of the Bill amends section 36 of the Building (Scotland) Act 2003, inserting a subsection which allows 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.

107. This provision allows for documents relating to the building standards process to be utilised to provide information relating to liability for the SBSL. The policy aim of this provision is to aid both taxpayer and revenue authority by utilising existing statutory documentation (such as the completion certificate) as a 'single source of truth' for determining liability for the SBSL. It can enable completion certificates to include information relating to the calculation of the levy (for example, the square meterage of the property) as well as information designating buildings as exempt or relieved from the SBSL. Having this information recorded on official forms will assist Revenue Scotland in its administration of the SBSL. In addition, utilising existing statutory processes for this purpose will help minimise the administrative burden on taxpayers.

Person liable to pay levy

108. Section 8 of the Bill sets out the person liable to pay the SBSL is the owner of the new residential unit at the time of the submission to a verifier of a completion certificate. In cases where a person has applied for the granting of permission for temporary occupation before a submission for a completion certificate, then liability arises at the application for temporary occupation. The Bill goes on to define an owner as a person who has a right to the building or the land on which it is situated. In cases where the building or land is held by more than one person, then liability for the tax becomes joint and several.

109. The policy intention is that the SBSL should be paid by those responsible for residential development. By applying the SBSL to the residential development sector more widely, it ensures that the broad shoulders of the industry cover the cost of the levy. Sector-based levies have been used in the past to recover the costs of government intervention in a particular sector. Most recently, the UK Government's Bank Levy, introduced following the 2007-08 financial crisis.³⁹ Securing a contribution from the sector as a whole will also support the policy on revenue to be spent on remediating existing housing stock.

³⁹ [Bank Levy: Explanatory Note \(gov.uk\)](#)

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110. The UK Government proposes to use a definition of ‘the client’ as the person responsible to pay the England-only Levy. The UK Government’s second consultation on its levy sets out that “By ‘Client’ we mean any named person or organisation for whom a construction project is carried out, including as part of their business [...] The Client will usually be the industry/developers carrying out the building works. We consider that as the Client holds responsibility for the construction project, they should also be responsible for payment of the levy.”⁴⁰ The Scottish Government understands the UK Government’s intention is to use the definition of ‘client’ as set out in Regulation 2 of the Building Regulations 2010, as amended,⁴¹ to fulfil their policy intention.

111. The UK Government’s position on adopting the definition of the ‘client’ is that this term is a recognised term in the building control process in England. The definition of the ‘client’ does not exist in the Scottish building standards system. The closest definition to the ‘client’ is the relevant person, as defined in section 17 of the Building (Scotland) Act 2003⁴² as either:

- The person doing the building work;
- The person who ordered the person to do the building work; or
- If the owner is neither of these people and the person who falls into either category above has failed to submit the completion certificate for the work, then the owner.

112. The Scottish Government considers that it is not appropriate to use the ‘relevant person’ definition for the purposes of assigning tax liability for the SBSL. The nature of residential construction across the UK is such that in the life-cycle of a development there can be more than one person or business involved in the construction or management. There is a risk therefore that the definition of ‘the relevant person’ could fall onto one of many parties in the housing supply chain, and therefore create uncertainty over who bears liability for the tax. Industry stakeholders in England, such as the British Property Federation, have raised concerns about the UK Government’s proposal to tax the ‘client’, citing that such an entity will not always be easily identifiable in situations where there are Forward Fund Agreements, Purchase Agreements, or direct developments with multiple Special Purchase Vehicles.⁴³ These are common fund structures used in BTR and PBSA developments. Furthermore, the definition of a ‘relevant person’ was created for assigning responsibility for the construction of the building work, and may not be suitable in a taxation environment.

113. Instead, the Scottish Government proposes attaching liability to the owner of the property for several reasons. Firstly, there will be a clearly identifiable landowner(s) for the development, often (but not always) identifiable from public registers such as the land register. Applying liability to the owner will be most effective way to clearly identify a taxpayer, reducing complexity and providing certainty to the industry on who will bear responsibility for paying the tax. In addition, using this definition will allow Revenue

⁴⁰ [The Building Safety Levy: consultation \(gov.uk\)](https://www.gov.uk/government/consultations/building-safety-levy-consultation)

⁴¹ [The Building Regulations 2010 \(legislation.gov.uk\)](https://www.legislation.gov.uk/uksi/2010/1539/regs/2)

⁴² [Building \(Scotland\) Act 2003 – Section 17 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2003/17/section-17)

⁴³ [British Property Federation – response to the consultation on the Building Safety Levy \(bpf.org.uk\)](https://www.bpf.org.uk/industry-response-to-the-consultation-on-the-building-safety-levy)

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Scotland, as the revenue authority for the SBSL, to use existing data sources (e.g. LBTT data and the land register) to assist taxpayer verification in most cases. This information on ownership can be supplemented by data collected through the building standards process, which requires landowners to be ultimately responsible for the building standards process. Landowners must also be notified of decisions made on building warrant and building completion applications. Thirdly, while the adoption of the 'relevant person' definition would more closely align the taxpayer with the policy intention of the SBSL as a levy on the construction of new residential development, in most cases the owner and constructors will be the same entity – a residential property development company. In cases where the owner is not the constructor (for example, a property investor), the Scottish Government understands from engagement with the property industry that those landowners will still have an active role and interest in the development of a new residential unit, such as specification and design, financing, marketing, and profiting from the development.

Alternative approaches

114. As noted above, the Scottish Government has also considered mirroring the UK Government proposals for attaching liability for its levy to the 'client', by using the existing Scottish building standards definition of a 'relevant person'. This approach would provide closer alignment to the UK Government proposals; however the alignment would be relatively minimal given that for the majority of cases the landowner and the constructor are one and the same. The downside of this approach would be the lack of clarity on who the 'relevant person' would be for liability to the tax. In addition, the person constructing the development will not necessarily be the landowner, and so may not be responsible for the building standards process and, by extension, may not be involved in warrant and completion certificate processes. The lack of clear identification of the taxpayer in these cases may require additional work by Revenue Scotland to verify the identity of the taxpayer.

Part 3: Calculation of the levy

Amount and calculation of levy

115. Part 3 of the Bill makes provision about the calculation of the levy, including the amount of levy chargeable for each building control event, the calculation of the total levy payable per person, and instances where the levy is not to be charged.

116. The levy will be charged as a proportion of the total floorspace of the new residential unit, multiplied by the levy rate. In line with the approach taken for other devolved taxes, the Bill does not specify the levy rate. Rather, the Bill provides a regulation-making power to allow Scottish Ministers to specify the rate (or rates) of the levy applicable for each new residential unit. In line with the Framework for Tax, Scottish Ministers typically take decisions regarding applicable rates when the Scottish Budget is published.

117. The SBSL is to operate as a self-assessed tax – a person responsible for paying the levy will be required to calculate how much they owe and submit this to Revenue

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Scotland in a tax return. This process is in line with other devolved taxes, such as SAT and SLfT. Section 10 of the Bill sets out the steps to be taken by a person in calculating their liability to pay the SBSL, which are as follows:

- Step 1: the taxpayer calculates the total building control events (not including any exempt or excluded events) for new residential units owned by the taxpayer which have occurred in the accounting period
- Step 2: the taxpayer then deducts from this total all building control events which have occurred in the accounting period for which the taxpayer is entitled to relief
- Step 3: the taxpayer then deducts from the remaining total the appropriate levy-free allowance for the accounting period by (a) disregarding any part of the levy-free allowance for the whole tax year which has been used in an earlier accounting period for the same tax year and (b) applying the remaining amount of the allowance to the earliest building control events in the accounting period
- Step 4: the remaining building control events left over after step 3 are classified as the taxable building control events
- Step 5: The taxpayer then applies the rate set out under section 10 to each individual taxable building control event for the accounting period
- Step 6: the taxpayer then calculates the total of each of those calculations for the accounting period. This sum total is the amount the taxpayer is required to pay for the accounting period.

118. A floorspace approach to the calculation method mirrors the UK Government's proposals for its Building Safety Levy, although there are some differences. The UK proposals intend to calculate the levy based on the total chargeable floorspace of the whole development. A levy rate per square metre is then applied to the total chargeable floorspace to give the total cost of the levy per development. The UK Government proposes that levy rates will be set for each local authority area in legislation, calculated using average house prices in local authority areas, so that areas with the highest average house prices have the highest levy rates, and those with the lowest average house prices have the lowest levy rates. The England-only Levy will also include an additional discounted rate per local authority for development undertaken on previously developed land or 'brownfield'. The UK Government published rates for the UK levy on 24 March 2025, as part of an annex to its analysis of the technical consultation.⁴⁴ The provisions in the Bill mirror the UK Government's flexibility for the England-only Levy by allowing Scottish Ministers to set different rates for different purposes, including for geographical areas and for different types of land which the taxable building is built on.

119. For introduction, the Scottish Government intends to use this power to set a series of tax rates based on geographical areas. This matches the overall intent of the UK levy proposals, which will set a levy rate per local authority. The Scottish Government recognises that a per-local authority approach would not, however, capture

⁴⁴ [Building Safety Levy: Technical consultation response \(gov.uk\)](#)

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house price variations within a council boundary. Ahead of introducing regulations specifying the rates of the levy, the Scottish Government will consult with relevant parties, including residential property developers, on using the UK Government model and any other regional model proposals that may be beneficial to consider.

Consultation and engagement

120. The public consultation asked respondents for their views on a market value calculation approach, as well as alternative options of: a flat rate per unit, a rate based on size (per square metre) of the property, a rate based on the number of bedrooms of the property, and a rate based on the cost of building works of the property. 62% of respondents who answered disagreed with the market value calculation option with some respondents expressing that this would create uncertainty for developers given that market values can fluctuate over time and in response to economic changes. It was also raised that it would be complex to calculate particularly for developments not for onward sale (such as BTR), where an alternative valuation method to sale price would then be required. While some respondents highlighted the progressiveness and proportionality benefits of a market value approach, others disagreed, noting for example that higher build costs of rural developments mean that market value does not always indicate profitability.

121. Other calculation methods were also considered, including per unit and by number of bedrooms. Respondents to the consultation noted that a rate based on size (per square metre) would be a fair and equitable approach which would generally reflect the market value of the property. However, respondents also raised that this approach may generate some complexity in calculation and administration, and may incentivise the building of smaller homes. Respondents also expressed the importance of the tax calculation approach reflecting geographical variations and avoiding disproportionate impacts on certain areas.

122. The market value calculation methodology was considered through discussions with stakeholders, including the Law Society of Scotland, the Scottish Assessors Association and the Royal Institute of Chartered Surveyors.

123. The EAG considered the floorspace methodology in principle. Members noted the certainty provided as a calculation method (as the levy cost could be known as early as building warrant stage) when compared to the market value option. However, members also raised concerns that a floorspace-based methodology may have negative impacts on the size of new build houses.

Alternative approaches

124. The alternative approach as suggested in the public consultation was to charge the levy as a proportion of the market value of the property or unit at completion. By 'market value', the Scottish Government refers to the price expected to be paid for the property on the open market. As the majority of the tax base for the SBSL will be properties for onward sale, the final sale price paid for the property could be used to calculate the levy.

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125. Using market value has a number of advantages: in many circumstances it is easy for taxpayers to understand and calculate; it allows for a progressive approach to taxation; it will naturally reflect disparities in house prices across Scotland; and it will be proportionate to any revenue generated through sale of the property (where a property is sold), thereby minimising cashflow issues for the developer. However, not all new residential buildings will be sold on the open market and therefore will not have a sale price attached to them (for example, BTR and PBSA). In these cases, an alternative calculation methodology will be needed to determine the market value of a property. A methodology based on a proportion of a hypothetical sale at completion may not reflect the true market value for BTR and PBSA developments, which are designed for long-term investment purposes. Determining market value is also a matter of opinion and risks opening up the levy liability to dispute. In addition, developers have consistently raised the importance of having certainty on the total cost of the SBSL as early in the development process as possible. Applying a calculation method solely based on market conditions at a future date would, therefore, increase the risk of uncertainty of the final cost of the SBSL, although in a stable market any differences in projected vs actual costs are likely to be marginal.

126. With regard to the setting of tax rates, the main alternative considered was to set out a rate of tax in the Bill. However, such an approach would be inconsistent with the approach taken for other fully devolved taxes, and could reduce future flexibility to change the rate. This is particularly important for a tax on the housebuilding industry, which is sensitive to a range of external factors such as inflation, construction costs and land viability. The Scottish Government believes the SBSL must be flexible enough to take account of these factors in setting rates, in order to ensure the levy is as frictionless as possible on housebuilding activity.

Reliefs

127. Section 11 of the Bill allows the Scottish Ministers, by regulations, to make provision in connection with reliefs from the SBSL in relation to certain building control events.

Levy-free allowance

128. Section 12 of the Bill allows for Scottish Ministers, by regulations, to make provision for and in connection with a levy-free allowance. 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.

129. Regulations made under section 12 allow for Scottish Ministers to set the number of building control events which constitute the allowance, allow for the setting of different allowance numbers for different purposes, specifying different period for calculating the quantity of building control events, specifying building control events which do not count towards the allowance, the date on which the levy-free allowance applies, how groups of companies and connected persons are treated, and the accounting period of tax year in which the levy-free allowance commences.

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130. The policy intention of the levy-free allowance is to assist in mitigating impacts of the SBSL for smaller developers. The Scottish Government recognises that smaller developers may be disproportionately impacted by the introduction of the SBSL due to the resource needed by businesses to understand, plan, and absorb any additional costs. A study undertaken by the Competition and Markets Authority on the housebuilding industry noted that SME housebuilders face higher costs, in per-plot terms, than larger competitors, due to the small-scale nature of their developments.⁴⁵ Engagement with industry stakeholders has also highlighted cashflow concerns for small businesses. The levy-free allowance also gives effect to the policy intention of removing self-builds from the SBSL, by virtue of self-builds being single-plot developments and would therefore be exempt via an annual levy-free allowance threshold set as low as one residential unit.

131. Through provision of a levy-free allowance, developers who are building low annual numbers of new residential units will be protected from the costs associated with the SBSL. While the levy-free allowance would operate equally across all developers, its benefits will be more impactful for smaller developers, as a higher percentage of their developments will not be subject to the SBSL. In addition, the universal application of the allowance makes it easy and simple to understand for taxpayers, whilst also being easy to assess by the revenue authority, as Revenue Scotland will be able to assess liability to tax for each taxpayer based on annual production figures. The universality of the levy-free allowance to all taxpayers also addresses concerns raised on limiting the tax base to only larger developers, many of whom are also paying the RPDT and remediating buildings they were responsible for constructing.

132. 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.

Consultation and engagement

133. The public consultation on the SBSL asked respondents views on the principle of removing smaller developers from charge of the SBSL. A significant number of responses emphasised that the cost of the SBSL would have a substantial impact on smaller developers. These responses noted that smaller developers often have lower profit margins, higher build costs, and challenges with cash flow as they are typically unable to access funding models available to larger companies. Respondents expressed the view that smaller developers would be unable to afford the additional cost of the SBSL, with some raising that smaller developers are already struggling under current conditions and that there has been a decline in the number of smaller developers and housing provided by these companies. Some respondents reflected on the impact of the SBSL on smaller developers in the context of wider cumulative impacts of multiple existing or proposed policies and regulatory burdens. It was also

⁴⁵ [Competition and Markets Authority: Housebuilding market study \(gov.uk\)](https://www.gov.uk/government/research-data-and-analysis/publications/competition-and-markets-authority-housebuilding-market-study)

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noted in responses however that further consideration of the impacts of an exemption for SMEs would be needed, to ensure there is not a disproportionately high tax burden placed on larger developers.

134. The public consultation on the SBSL also asked respondents on the method of determining who is a smaller developer. Several respondents expressed the view that the exemption for small developers should be determined by the number of units built annually. Of those who suggested where the threshold should be set, a wide of possible figures were proposed, from 3 to 200 homes per year. A few respondents expressed that this definition would not be broad enough, and the threshold should instead be set at fewer than 100 units per year, or 200 units per year. One respondent noted that due to the extended timeframe of housebuilding and irregular flow of development might result in significant variability of number of developments between individual years, a longer-term measure (i.e. average completions over five years) may be more suitable than a per annum threshold. Another respondent noted that larger developers could seek to be included under this exemption by restructuring their businesses to appear as multiple small developers.

135. Some responses stated that the exemption should apply to small developments rather than small developers, by excluding developments based on size. Suggestions on where this threshold should be set varied, with a couple of respondents suggesting fewer than 10 units, and another couple suggesting fewer than 100 units. However, a few respondents expressed concern that an exemption by development size would not necessarily target those the exemption is intended to capture. It was raised that SMEs may take on larger development sites to reduce contact with the planning system, and that a larger site with permission for, for example, 80 homes, may only deliver 20 of those in one year. One respondent expressed the view that an exemption by development size may put larger developments needed in rural areas at risk, given that these developments are typically delivered by SMEs. It was also noted that larger developers may develop smaller sites (or attempt to restructure a larger site into smaller developments) and would then be covered by this exemption.

136. The use of a levy-free allowance to support smaller developers was considered by the EAG at its meeting on 18 March 2025. EAG members noted the potential for the levy-free allowance to support the policy aim and called on further information on the scope of the allowance in order to fully understand its impact on the industry. The Scottish Government will continue to consult with residential property developers and other housing stakeholders to develop an evidence-based approach to the setting of the levy-free allowance, ahead of the laying of any regulations made under section 12.

Alternative approaches

137. An alternative approach would be to adopt the UK Government's proposed exemption of sites that are under 10 units. This would allow for alignment between the Scottish and English levies, whilst also reflecting views from residential property developers and housing stakeholders which note that smaller sites are more difficult to develop due to economies of scale and a smaller profit made on the site as a whole. This method would also recognise the likelihood of smaller sites being situated in

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challenging parcels of land or in remote areas – and exemption from the SBSL may incentivise the utilisation of such sites.

138. However, the development of small sites is not restricted to small developers – large-scale developers can and do undertake development on small sites. Smaller sites may also be made up of high-value, high-end properties and therefore an exemption for small sites may not necessarily reflect a developer’s ability to pay for the SBSL. In addition, pursuing a site-based exemption creates a risk of avoidance due to the nature of property development. It is not uncommon for developers to parcel up a site into separate developments between other developers. It could be entirely possible for developers to bypass the SBSL entirely through segmenting a large site into a series of sites under 10 units. This issue was raised by respondents to the UK Government’s consultation on the England-only Levy, noting that a proposed exemption for sites under 10 units could create opportunities for gaming. The UK Government’s response noted that its levy arrangements, to be set out in regulations, “will aim to minimise the opportunities to game the system.”⁴⁶

139. Reflecting the alignment to the intention of protecting smaller developers and also in recognition of the risks of avoidance, the Scottish Government believes the levy-free allowance best delivers the policy intention whilst also ensuring the SBSL design is robust enough to protect revenues.

140. In proceeding with a levy-free allowance, consideration was given to setting out the provisions relating to the allowance in the Bill as opposed to using secondary legislation. This would provide greater certainty for stakeholders on the scope and the threshold limits for the allowance, allowing for this to be incorporated into costing for future residential development. Placing the provisions relating to the levy-free allowance into primary legislation would mean that the threshold could only be changed by primary legislation. This creates inflexibility in setting the threshold, and risks the allowance falling out-of-sync with changes in the housebuilding market. In addition, the annual nature of the levy-free allowance is connected to the provisions which bring the levy into force, and set the accounting periods for the levy, both of which are set in secondary legislation. The Scottish Government believes providing for the levy-free allowance through secondary legislation is both practicable and gives greater effect to the policy intention of protecting smaller developers.

Use of proceeds of levy

141. Section 13 sets out the use of proceeds of the SBSL by the Scottish Ministers, which must be for the purposes of improving the safety of persons in or about buildings in Scotland. The policy intention is to mirror, as closely as possible, the provisions for the use of funds for the UK Government’s Building Safety Levy, as set out in 2022 Act.

142. While the Order in Council would allow the revenues from the Levy to be used for wider “building safety expenditure”, Scottish Ministers’ current intention is that the Building Safety Levy (Scotland) Bill will introduce a tax to support the funding of the

⁴⁶ [Building Safety Levy: response to consultation \(gov.uk\)](#)

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Cladding Remediation Programme. This mirrors the UK Government's intentions for the use of funds from its England-only Building Safety Levy. The Scottish Government's Cladding Directorate have produced initial, indicative capital costs estimates indicating that to reduce the risks associated with unsafe external wall cladding systems in Scotland could require capital Scottish Government led funding in the range of £1.7 billion to £3.1 billion over a potential 15-year programme of works.

Part 4: Administration of levy

143. Revenue Scotland, the tax authority for Scotland, will manage the administration and compliance of the SBSL, drawing on its extensive experience of collecting and managing LBTT, SLfT, and, from 1 April 2026, SAT. The 2014 Act sets out the tax administration framework that underpins all devolved taxes in Scotland, along with the powers and duties of taxpayers and Revenue Scotland. Where necessary this Bill amends the 2014 Act, as required to account for the operation of SBSL.

144. The Bill makes provision for a levy that will be as simple and efficient as possible whilst also minimising the compliance burden for taxpayers, in line with the Framework for Tax and the principles of certainty, convenience and proportionality in particular. The minimisation of the administrative burden for taxpayers is balanced by the need for information that underpins an effective compliance regime and helps to ensure that Government policy is being maintained. The Scottish Government intends that, as far as possible, all tax returns and payments for SBSL should be electronic.

145. The Scottish Government intends that the person liable to pay the levy (i.e. the owner of a new residential unit at the time of submission of a completion certificate or earlier submission of temporary occupation) must be registered, and that registered persons must submit tax returns and pay tax in such periods and in such a manner as are determined by the Scottish Ministers in regulations.

146. Revenue Scotland will be required to keep and maintain a register of taxpayers for the purpose of collecting and managing the SBSL. Information from this register will be published, which will help provide transparency for Revenue Scotland, taxable persons and the public. Revenue Scotland will consult with stakeholders while determining the form and manner of the information to be published. This is in line with the consultation work being carried out by Revenue Scotland for the introduction of SAT and exemplifies the Scottish Government and Revenue Scotland's shared commitment to engagement.

147. Section 16 of the Bill provides an optional ability for taxpayers to voluntarily register for the SBSL ahead of any completed buildings, to provide flexibility and ease of administration for those developers who intend to undertake large-scale residential development and wish to register early.

Part 5: Penalties

153. The Scottish Government's objective is to design taxes that are as simple as possible, with a common approach to tax administration and penalties where possible. Revenue Scotland has the power to issue penalty notices to taxpayers and their agents for non-compliant behaviours with respect to the devolved taxes. There are three kinds of financial penalties for non-compliant behaviour: fixed penalties, daily penalties, and percentage-based penalties where the penalty is linked to the potential loss in tax. The penalties provided in the Bill mirror penalties for the existing devolved taxes, with penalties for failure to make a return and to pay the levy; to register for the SBSL; inaccuracies in taxpayer documents; approval of tax representatives; provision of security and in relation to group treatment.

154. Where penalties listed in the 2014 Act apply to all devolved taxes, they will also apply to SBSL. Where amendments are required to the 2014 Act for penalties to apply to SBSL they are set out in this Bill. The framework for the collection, administration and payment of penalties provided by the 2014 Act will apply to all SBSL penalties.

Consultation and engagement

155. The public consultation asked respondents for views on the proposed set of investigatory and enforcement powers. Developers, local government organisations, and other organisations strongly agreed with the proposals for investigatory and enforcement powers in relation to the SBSL. Views from individuals were more mixed. Some respondents expressed that the proposed investigatory and enforcement powers seem reasonable for compliance purposes and in line with what would be expected for any tax. Respondents noted the importance of clarity in this area for taxpayers, expressing that the investigatory and enforcement powers for the SBSL should mirror those of existing Scottish taxes or that any differences should be consulted on and made clear. In addition, some respondents focused on the need for taxpayers to be protected and for powers to be applied proportionally and fairly. Respondents who disagreed with the proposal for Revenue Scotland to act as the revenue authority for the SBSL therefore disagreed with the proposed investigatory and enforcement powers, expressing the view that compliance should be part of the local authority building control process.

Alternative approaches

156. An alternative approach to penalties would be to adopt the procedure for non-compliance proposed for the England-only levy. Under the proposals, person liable to pay the levy would be required to pay the amount due before the completion certificate could be issued. If the levy is not paid, acceptance of the completion certificate would be withheld, effectively making the building unusable. Additionally, because the England-only levy operates on a per-development basis rather than a per-unit basis, failure to pay the levy for the development would mean that completion would be withheld for each and every property contained within the development.

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157. The advantage to this approach would be a clear, hard edge to compliance, effectively compelling the taxpayer to pay in order to utilise its completed assets. However, this approach contains several drawbacks. It places an administrative burden on local authorities (and in particular, local authority building standards services) to undertake compliance checks on behalf of Revenue Scotland. The Scottish Government recognises the pressures that building standards services are under in order to verify the construction of buildings in a timely manner. In addition, the outsourcing of compliance measures to building standards services would require a consistent flow of data and information between Revenue Scotland and the relevant local authority building standards service, which is likely to increase resource costs and complexity for both partners.

Part 6: Reviews and Appeals

158. This part of the Bill modifies the 2014 Act to extend the list of decisions made by Revenue Scotland for which review by Revenue Scotland can be requested or an appeal made to the Scottish Tribunals. The effect is that the decisions would be subject to review by Revenue Scotland and appeal to the First-Tier Tribunal.

Consultation and engagement

159. The public consultation sought views on the Scottish Government's proposals for dispute resolution on decisions in relation to the SBSL. 81% of those who responded agreed with the Scottish Government's proposals. Developers, other housing/property stakeholders, and local government organisations strongly agreed with the proposals for dispute resolution. Views from individual respondents were more mixed. Respondents noted that the proposed dispute resolution processes would enable complexities, variations, and common issues arising during the implementation of the tax to be captured and allow for the Levy to be refined. Respondents also noted that mechanisms should be put in place to avoid disputes occurring, with one stating that the costs and processes of the Levy should be clear upfront, and another highlighting the importance of employing early intervention techniques to avoid escalation into disputes.

Alternative approaches

160. In relation to reviews and appeals, the Scottish Government did not consider any alternative options as the review and appeal system provided by the 2014 Act is a fundamental aspect of the Scottish tax administration system. The 2014 Act sets out the general administration system for Scotland's devolved taxes and diverging from the existing system would require significant changes to be made to the 2014 Act.

Part 7: Final provisions

161. As a novel tax, the Scottish Government is committed to reviewing the performance of the SBSL in relation to its objectives once it is in operation. Section 45 of the Bill places a requirement on the Scottish Ministers to report on the operation on the Act. The reports may occur at such intervals as Ministers consider appropriate and must set out how the proceeds of the levy have been used and anything else that the

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Scottish Ministers consider appropriate. This provides Scottish Ministers with the flexibility to align the reporting schedule to the outputs of the Cladding Remediation Programme, where more frequent reports can be issued for periods of high spending. The report must be published as soon as practicable after it has been prepared.

162. The approach broadly mirrors the UK Government proposals for its Building Safety Levy, which is to be reviewed every three years but with the ability to conduct more frequent reviews should the UK Ministers decide that they are warranted. It also mirrors reporting provisions in other novel taxes, for example the reporting requirements for the Visitor Levy, as set out in section 75 of the Visitor Levy (Scotland) Act 2024.⁴⁸

Consultation

163. The public consultation on the SBSL asked respondents for their views on including a regular review for the SBSL. Of those who responded, 86% agreed that there should be a regular review for the levy, with developers, other housing/property stakeholders, local government organisations, and other organisations strongly in favour. Many responses raised that regular reviews for the SBSL could be used to monitor the revenue raised and spent, to assess remediation progress and determine how much more funding may be required to be raised for the Cladding Remediation Programme. It was noted by respondents that this would ensure there is not an overaccumulation or a shortfall in the revenue needed for remediation.

Effects on equal opportunities, human rights, island communities, local government, sustainable development etc.

Equal opportunities

164. It is not expected that the Bill will have any impact on equal opportunities or fairness. Both the Equalities Impact Assessment and Fairer Scotland Duty Assessment processes were completed while developing the Bill, and each concluded that any potential impacts are likely to be indirect and minimal, resulting from either the impact of funding the Cladding Remediation Programme, or from impacts on the housebuilding sector. The Scottish Government intends to monitor and evaluate the potential impacts of the SBSL once the levy is operational, given that the SBSL is a new tax and the ability to comprehensively determine impacts at this stage is limited.

165. The SBSL will be a tax on the construction of residential property development. The tax will primarily and directly affect residential property developers who will be liable to register, make tax returns and pay tax to Revenue Scotland in relation to the SBSL. None of the proposed provisions of the Bill will have any impact on those who share a protected characteristic and nor is it expected to have any impacts on inequality for socio-economically disadvantaged groups, such as any workers on low incomes in this sector.

⁴⁸ [Visitor Levy \(Scotland\) Act 2024 \(legislation.gov.uk\)](https://legislation.gov.uk)

Human rights

166. European Court of Human Rights (“ECHR”) Jurisprudence (see *Ferrazzini v. Italy* [GC] 2001-VII, paragraphs 24-31)⁴⁹ affords the widest margin of appreciation to States in terms of their taxing function, save for cases where tax measures are of a penal, discriminatory or otherwise significantly disproportionate nature, and hence article 6 of ECHR is not engaged.

167. The Bill amends the 2014 Act to, amongst other things, provide for a range of additional civil penalties in relation to the SBSL and make minor modifications to the scope of SBSL-related decisions made by Revenue Scotland. However, a notice of review can be given to Revenue Scotland in relation to such decisions or a notice of appeal can be given to the independent and impartial First-tier Tribunal (Tax Chamber) and the Upper Tribunal. It is not therefore considered that there are any relevant human rights concerns.

Statement of compatibility under section 23(1) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024

168. The Cabinet Secretary for Finance and Local Government, Shona Robison MSP, has made the following statement regarding children’s rights:

“In accordance with [section 23\(1\) of the United Nations Convention on the Rights of the Child \(Incorporation\) \(Scotland\) Act 2024](#), in my view the provisions of the Building Safety Levy (Scotland) Bill are compatible with the UNCRC requirements as defined by [section 1\(2\) of that Act](#).”

Island communities

169. An Island Communities Impact Assessment (ICIA) has been undertaken to consider the potential impacts of the Bill on island communities and inform the development of policy. Information to support the ICIA was gathered from the public consultation, which prompted respondents for their views on potential islands impacts, and from engagement with island authorities and rural stakeholders, including rural local authorities and the enterprise agencies. The ICIA determined that the SBSL (if applied to island developments) would have a disproportionate impact on island communities compared to other communities.

170. In recognition of the particular challenges faced by housebuilders on islands, the Scottish Government concluded that applying the SBSL to developments on islands risked exacerbating existing issues. In light of this, the Bill provides an exemption for all residential development constructed on islands. The Scottish Government therefore considers that the application of the levy will not result in any additional impacts on

⁴⁹ [CASE OF FERRAZZINI v. ITALY \(hudoc.echr.coe.int\)](#)

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islands housebuilding, when compared to those elsewhere in Scotland, nor any differential impact between housebuilding on different islands.

Local government

171. Consultation and stakeholder engagement to help develop the Bill included engagement with local government, principally with the Convention of Scottish Local Authorities (COSLA), the body that represents Scotland's councils, and Local Authority Building Standards Scotland (LABSS), the body that represents council building standards services. Both COSLA and LABSS are full members of the EAG. In addition, some local authorities submitted their own response to the public consultation directly, and bilateral discussions took place with six local authorities to consider aspects of policy.

172. It is not expected that the Bill will result in any significant implications for local government. As noted in the provisions, the SBSL diverges from the UK Government's administrative approach of designating local government in England as the collection authority for the England-only levy. Instead, the Scottish Government's approach is to centralise collection of the SBSL to Revenue Scotland, removing the administrative burden from local authorities. Consideration has also been given to the role of local authorities as housebuilders for the purposes of social and other affordable housing. The Bill provides an exemption for these types of housing, ensuring that, unless councils are undertaking residential development for profit-making purposes, the SBSL will not apply to council housebuilding activity.

173. Building standards data is already collected by Scottish Government and other bodies for a variety of reasons. As the custodians of the building standards system in Scotland, consideration is being given as to whether there will be a need for a legal data sharing gateway between local authorities (and other bodies) and Revenue Scotland for the purpose of aiding administration of and compliance with the SBSL.

Sustainable development

174. The Environmental Assessment (Scotland) Act 2005 section 4(3)(b)⁵⁰ specifies that the Act does not apply to financial or budgetary plans and programmes. Therefore, no Strategic Environmental Assessment is required for this Bill.

175. The SBSL will provide funding for the Scottish Government's Cladding Remediation Programme, which is contributing to sustainable development by repairing fundamental flaws in the built environment. The policy objectives of the Bill align with UN Sustainable Development Goal 11 – making cities and human settlements inclusive, safe, resilient and sustainable.⁵¹

⁵⁰ [Environmental Assessment \(Scotland\) Act 2005 – section 4 \(legislation.gov.uk\)](https://legislation.gov.uk)

⁵¹ [Sustainable Development Goal 11 \(sdgs.un.org\)](https://sdgs.un.org)

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176. The Scottish Government has considered how the application of the SBSL can align with the Scottish Government's overall ambitions for sustainable economic growth and transition to a circular economy. As recognised in the National Strategy for Economic Transformation,⁵² Scotland has a unique opportunity over the next ten years to increase economic and social wellbeing, whilst respecting environmental limits and becoming one of the most prosperous nations in the world. Recognising the potential environmental impacts of the use of greenfield land for development, the Bill will allow for Scottish Ministers to set different rates of the SBSL for different land types. The policy intention here is to provide for a lower or discounted rate for previously developed land, akin to the UK Government's levy proposals, to support the Scottish Government's NPF4 goals and commitments on the sustainable reuse of land.

Crown consent

177. It is the Scottish Government's view that the Bill as introduced does not require Crown consent. Crown consent is required, and must be signified during a Bill's passage, where the Bill impacts the Royal prerogative, the hereditary revenues of the Crown or the personal property or interests of the Sovereign, the Prince and Steward of Scotland or the Duke of Cornwall. The Scottish Government's view is that this Bill does none of those things.

178. For the source of the requirement for Crown consent, see [paragraph 7 of schedule 3 of the Scotland Act 1998](#), and [rule 9.11 of the Parliament's Standing Orders](#). For further information about the considerations that go into determining whether Crown consent is required for a Bill see [Erskine May](#), the guide to procedure in the UK Parliament.

⁵² [Scotland's National Strategy for Economic Transformation \(gov.scot\)](#)

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Policy Memorandum

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