

Additional Dwelling Supplement: Proposals for Change

**Consultation Analysis and the Scottish
Government Response**

January 2024

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1. Introduction

1.1 This report sets out an overview of findings and summary of responses to the Scottish Government consultation titled 'Additional Dwelling Supplement: Proposals for Change' (hereafter referred to as 'the consultation'). In addition, it sets out the Scottish Government's response to the consultation and a summary of next steps.

1.2 The Scottish Government would like to thank all respondents for their contributions.

1.3 Views were invited as part of an eight-week consultation period between 8 February 2023 and 5 March 2023. The consultation invited comments on draft legislation designed to amend a number of existing ADS provisions, including specific issues which stakeholders have previously raised with the Scottish Government through earlier consultation.

1.4 Respondents were invited to respond by post, via CitizenSpace, or by email to the Scottish Government's Fully Devolved Taxes Unit mailbox.

1.5 The Scottish Government held several virtual stakeholder engagement events during the consultation period.

1.6 In total, 52 responses to the consultation were received from various stakeholder groups (see Table 1).

1.7 Respondents provided a range of comments on each of the draft clauses. While there is evidence of consensus in some areas, a number of unique concerns and proposed next steps were highlighted.

1.8 Ten respondents requested that their responses not be published. A further ten respondents requested that their identities not be shared, and their identities are therefore anonymised throughout.

1.9 A list of respondents is available in Annex A. Where permission has been given, responses have been published in full at www.consult.gov.scot.

Table 1: Breakdown of respondents by Category

Category	Number	%
Individuals	19	36
Housing Providers	14	27
Legal, Tax and Accountancy	13	25
Other Organisations	6	12

2. Summary of Responses

The Timelines for the ADS

2.1 This section of the consultation sought views on draft legislation amending the timeframes in which a new main residence must be purchased following the disposal of a previous main residence (PMR) for the ADS not to apply, or within which a PMR must be disposed of after the ADS is paid, in order for it to be reclaimed.

2.2 The consultation posed the following questions:

Questions

1. Do you think that the proposed amendments provide for the Scottish Government's intended change?
2. If not, what amendments would you propose to the draft legislation and on what basis?

2.3 32 of the 36 respondents who answered Question 1 considered that the proposed amendments would provide for the Scottish Government's intended change.

2.4 The 4 respondents who disagreed did so on different grounds, including that no timeline for disposal should be in place, or that the disposal of any property (a former main residence or otherwise) within the relevant timelines should be in scope.

2.5 Turning to the second question, there was a broad consensus that the draft legislation as proposed would achieve the desired outcomes and did not need further amendment.

2.6 In particular, several responses were supportive of the parity that the legislation would deliver between the ADS timelines and comparable provisions in Stamp Duty Land Tax (SDLT) in England and Northern Ireland, and Land Transaction Tax (LTT) in Wales. Another response considered that the proposed changes would "reduce the number of cases where taxpayers cannot benefit from the replacement of main residence rules due to delays in purchasing a new main residence or selling a former main residence".

2.7 However, one response argued that the ADS should not apply in any circumstances when a buyer, who owns other property, purchases a new main residence and a previous main residence has already been disposed of at any previous point.

2.8 Another response, whilst supportive of the intended change, suggested that the timeline for reclaiming the ADS "should be able to be extended longer if no new residence is ready".

2.9 Scottish Government Response

The Scottish Government notes the high response rate to this section of the consultation regarding potential amendments to the ADS timelines.

Having reviewed these responses and following consideration of all available data, the Scottish Government proposes no changes to the draft legislative provisions.

As such, the legislation laid in Parliament will include provisions to increase all relevant timelines for the ADS from 18 to 36 months.

Inherited Property

2.10 This section of the consultation sought views on draft legislation in respect of inherited property, which are intended to achieve two aims:

- To provide that properties inherited in the period between the conclusion of missives on, and the purchase of, a new main residence are disregarded for the purposes of the ADS.
- To clarify the legislation in respect of the point of ownership of an inherited property.

2.11 The consultation posed the following questions:

Questions

3. Do you think that the proposed amendments provide for the Scottish Government's intended change?
4. If not, what amendments would you propose to the draft legislation and on what basis?
5. Over and above existing legislative arrangements, are there any targeted anti-avoidance measures that the Scottish Government should consider in respect of this proposed amendment?

2.12 27 of the 33 respondents who answered question 3 agreed with the Scottish Government's proposed approach. 6 respondents considered that the proposed amendments did not provide for the intended change and provided additional detail in response to question 4.

2.13 A limited number of comments were provided in response to question 4. One response confirmed that the "proposed amendments provide for the intended change" and that "the point at which an inherited interest becomes owned has been clarified by the addition of 9B(2) of Schedule 2A of LBTT(S)A2013".

2.14 A number of responses argued for the introduction of a three-year grace period from ADS consideration following an inheritance. Reasons for this included affording buyers "sufficient time to sell their share in the inherited property which may be a lengthy process involving multiple joint owners", the risk of "further complexity and delays for executors" due to beneficiaries deferring their inheritance until after a

property transaction had been commenced, and on the basis that the assertion that “the time between entering into [...] and completing the purchase can be quite short”.

2.15 One response suggested that specific consideration should be given in scenarios where property is inherited under the law of another territory, so as to “provide clarity in respect of the precise point at which inherited property is treated as owned” and account for differing processes of inheritance in various jurisdictions.

2.16 In relation to question 5, no specific anti-avoidance measures were proposed. One response considered that targeted anti-avoidance measures would be “complex to design and administer”, whereas another concluded that there “are already extensive anti-avoidance provisions available under LBTT legislation”.

Scottish Government Response

The Scottish Government notes the responses received to the questions in respect of the proposed changes to provisions for inherited property.

Following a review of the responses, the Scottish Government has amended paragraph 9B of the draft legislation to include scenarios whereby property is transferred by means other than straightforward inheritance following the death of a person.

A minor amendment has also been made to the draft clauses at paragraph 9B(2) in order to further clarify the point of ownership of an inherited property for the purposes of the ADS legislation.

Further to the published response to the previous Call for Evidence and Views, the Scottish Government does not intend to provide for a grace period in respect of inherited property.

Small Shares

2.17 This section of the consultation sought views on draft legislation in respect of small shares. This had the intended effect of disregarding property shares from consideration for ADS purposes where the individual taxpayer's share value is less than £40,000, in the context of deemed ownership provisions.

2.18 The consultation posed the following questions:

Questions

6. Do you think that the proposed amendments provide for the Scottish Government’s intended change?
7. If not, what amendments would you propose to the draft legislation and on what basis?
8. Over and above existing legislative arrangements, are there any targeted anti-avoidance measures that the Scottish Government should consider in respect of this proposed amendment?

2.19 30 of the 34 responses received to question 6 agreed that the proposed clauses provided for the Scottish Government's intended change, whereas 4 respondents disagreed.

2.20 There were 12 responses to question 7. Reflecting the broad consensus of the responses to the previous question, one response considered that "the proposed amendments achieve the Scottish Government's stated intention". Another stated that the Scottish Government has "set the correct framework to deal with the issue of relatively small shares in additional dwellings".

2.21 However, most other respondents highlighted a potential risk and unintended consequence of the draft clauses in relation to small shares. One response advised that "acquiring a further share in a jointly owned property could become subject to ADS, if the initial share has a value of less than £40,000". They added that, under current provisions, "there is no ADS charge if an additional share in a jointly owned property is acquired, and that position should be preserved".

2.22 This was echoed by another response, which stated that "if the value of a part share is less than £40,000, acquisition of additional shares in that dwelling would presumably be subject to ADS as a result of this proposed change", leading to "anomalous results".

2.23 Question 8 received 9 responses. The majority of these did not consider targeted anti-avoidance measures to be necessary in relation to the proposed provisions for small shares. One response warned that such measures could be "extremely cumbersome", whereas another highlighted a risk that response thought they could "risk over-complicating the changes and making it difficult for taxpayers to establish whether ADS is payable or not".

2.24 However, one response did flag two potential issues with the proposed clauses which may require targeted anti-avoidance measures. This highlighted the need for a firm definition of the date of the valuation of the small share, and advocated for further clarity in relation to how a small share is to be valued and by who. The response also suggested that a "review timeframe or trigger and a method of review" should be established to account for the potential of fluctuating property prices.

Scottish Government Response

The Scottish Government is grateful for responses to the questions in respect of the proposed legislative clauses concerning small shares.

Having carefully considered the responses to the consultation, the Scottish Government intends to legislate to disregard property shares for ADS purposes where the individual taxpayer's share value is less than £40,000. A minor change has been made to the draft legislation to clarify that the owner of a small share will be treated as such under Schedule 2A, but that the share will be exempt from the wider provisions of the Schedule.

In relation to the potential for anti-avoidance, the Scottish Government considers that the general anti-avoidance rules set out in the Revenue Scotland and Tax Powers Act 2014 would address the scenarios highlighted in response to the consultation.

Divorce or Separation

2.25 This section of the consultation sought views on draft legislation to provide relief from the ADS on a purchase of a main residence where an interest in a PMR is required to be retained by court order or a comparable legal document.

2.26 The consultation posed the following questions:

Questions

9. Do you think that the proposed amendments provide for the Scottish Government's intended change?
10. If not, what amendments would you propose to the draft legislation and on what basis?

2.27 25 of the 34 responses received to question 9 considered that the proposed clauses achieved the intended aim, and 9 respondents disagreed.

2.28 In relation to question 10, a number of proposals were put forward in respect of the draft legislative provisions. One respondent argued that the ADS should not apply in scenarios featuring 'live' divorce or separation proceedings, or where there is an informal separation agreement in place. The response suggested that applying the ADS in these circumstances could "force the sale of a main property, causing disruption for school aged children", as "one party leaving the marital home cannot afford to get a mortgage to live separately".

2.29 Another response requested that the relief be backdated, because "there [are] a lot of matrimonial disputes which last many years over properties".

2.30 One response suggested that the relief be extended "to those couples who choose not to go through the courts on separation, but nevertheless enter into a binding legal agreement that they will both retain an interest in the family home for an agreed period of time, albeit that only one of the two will reside there". The intent of this would be to "avoid unfairly penalising couples who manage their separation outside of the courts".

2.31 In relation to paragraph 9C(d) of the draft clauses, another response recommended that some of the wording be further defined "to prevent a temporary physical separation from resulting in avoidance of the ADS" and in the interests of avoiding ambiguity.

2.32 A number of responses highlighted a potential gap in paragraph 9C(e) of the draft clauses, which referred solely to paragraph 5 of Schedule 1 (the dissolution of civil partnerships), whereas divorce is covered in paragraph 4 of the same Schedule.

2.33 Other responses suggested that the proposed relief be extended to cohabitants in general, rather than be specifically limited to cases featuring married couples or civil partnerships. In particular, it was pointed out that individuals can apply for an award under Section 28 of the Family Law (Scotland) Act 2006 following the termination of a cohabiting relationship, and that properties included in these scenarios could also be excluded from ADS consideration.

2.34 The interaction of the proposed clauses in relation to divorce and separation with those pertaining to joint buyers was also raised by some respondents. One response noted that if Buyer A (a departing spouse or civil partner) buys a new main residence in joint names with Buyer B (a new partner), the ADS would still be payable as the new partner would not be able to claim the proposed new relief.

Scottish Government Response

The Scottish Government notes the range of responses received to the questions regarding the proposed amendments to the provisions for divorce or separation and is mindful of the potential sensitivities of this subject for some taxpayers.

Having carefully considered responses to the consultation, the draft paragraph 9C(e) has been amended to include a reference to paragraph 4 of Schedule 1. This change is to clarify the equal treatment of divorces and the dissolution of civil partnerships in the legislation. The clauses will otherwise remain as initially drafted, noting the proposed changes to the relevant provisions for joint buyers and economic units detailed below.

Although the Scottish Government acknowledges that a range of scenarios can occur in relation to the interaction of divorce or separation with the ADS, maintaining the requirement for taxpayers to present documentary evidence of a court order or comparable legal agreement is considered to be essential for compliance purposes. Furthermore, extending the relief to include cohabitants would represent a significant departure from the policy aim of the legislation, and could result in unintended outcomes.

Joint Buyers and Economic Unit Provisions

2.35 This section of the consultation sought views on draft legislation in respect of the joint buyers and economic unit provisions. The provisions as initially drafted were intended to achieve three specific aims:

- Firstly, in scenarios whereby a main residence is purchased jointly, and only one buyer can meet the relevant conditions (disposal of PMR that was their only main residence) and no additional relevant properties are held, to treat both buyers as meeting the repayment conditions at the time that the PMR is disposed of.
- Secondly, to provide that disposals of a PMR in the 36 months prior to the purchase of a new main residence may be considered in determining whether the ADS is repayable.

- Thirdly, to provide that the disposal of a property in which a buyer is deemed to have an interest, by virtue of the economic unit provisions, is to be treated as a disposal by the buyer.

2.36 The consultation posed the following questions:

Questions

11. Do you think that the proposed amendments provide for the Scottish Government's intended changes?
 12. If not, what amendments would you propose to the draft legislation and on what basis?

2.37 28 of the 34 responses received to question 11 agreed that the draft clauses achieve the Scottish Government's intended changes in respect of the provisions for joint buyers and economic units. 6 responses disagreed.

2.38 In relation to question 12, the majority of responses either supported the proposed draft clauses or did not offer further comment.

2.39 However, two responses considered that confusion may arise based on the proposed changes to paragraph 8 and their impact on paragraph 8A. One response argued that the proposed changes make the latter paragraph "difficult to understand", whilst another considered that the provisions of paragraph 8A (2) (a), (b) and (c) would "no longer make sense" if introduced as drafted.

2.40 The same two responses also pointed out that the proposed draft clauses could allow the ADS to be repaid in scenarios whereby the second joint buyer does not have a previous main residence but does own other property.

2.41 Separately, another response suggested that the existing sub-paragraph 6(4), which includes the definition of cohabitants, "should also be amended to reflect the insertion of new sub-para (1A)".

2.42 Lastly, one response suggested amending the draft paragraph 6(1) to read "For the purposes of this Schedule" rather than "For the purposes of paragraph 2(1)(c)". However, the response acknowledged the potential for this to result in "unintended consequences which [they] have not been able to fully consider".

Scottish Government Response

The Scottish Government thanks respondents for their answers to the questions regarding the proposed legislative amendments to the provisions for joint buyers and economic units.

Having carefully considered responses to the consultation, the Scottish Government intends to make two changes to the relevant draft legislative provisions.

A new paragraph has been added to the draft provisions which seeks to ensure that in joint purchases where two or more buyers independently have an interest in a

dwelling or dwellings other than the subject-matter, then all buyers must meet the conditions to qualify for a repayment.

Separately, a number of minor amendments will be made to the draft clauses to remove some duplicated or redundant text.

Local Authorities

2.43 This section of the consultation sought views on draft legislation in respect of the ADS provisions for local authorities. These were intended to provide relief for local authorities from LBTT and the ADS where purchases are funded under Section 2 of the Housing (Scotland) Act 1988, on the basis that this approach would be in line with wider Scottish Government policy to support the provision of affordable housing.

2.44 The consultation posed the following questions:

Questions

13. Do you think that the proposed amendments provide for the Scottish Government's intended change?
14. If not, what amendments would you propose to the draft legislation and on what basis?

2.45 33 of the 46 respondents to question 13 agreed that the proposed clauses would achieve the Scottish Government's aim as drafted. 13 respondents did not agree that the draft clauses would provide for the intended change.

2.46 A wide variety of suggestions and comments were included in the 30 responses received to question 14.

2.47 15 responses called for a broader relief to be available than what was initially proposed, including many of those received from local authorities. One respondent considered that requiring councils to pay the ADS in any scenario ran contrary to its ethos, whilst another argued that local authorities should be relieved from the ADS in respect of all acquisitions, whether or not funded under Section 2 of the Housing (Scotland) Act 1988.

2.48 Several responses considered that the proposed relief would be better linked to Section 2 of the Housing (Scotland) Act 1987, so as to encourage local authorities to "buy property to meet locally agreed housing needs that aren't fully reflected in the Scottish Government's funding frame", such as temporary accommodation for homeless applicants or gypsy traveller sites.

2.49 Other points raised in responses included: a call for a relief to cover provision by local authorities of residential-based services, such as rehabilitation support for alcohol and drugs; the expression of concern that there is no formalised definition of 'affordable housing' for the purposes of LBTT and the ADS; a proposal that relief should be available for purchases of housing stock for affordable housing by special purpose vehicles controlled by local authorities; and a recommendation that the

revenue saved by local authorities through the relief “could meet the needs of larger families, households with disabled members, to support Ukrainian displaced persons currently in temporary accommodation”. It could also “help find suitable homes for families with young children at risk of harm from dampness and mould”.

2.50 Finally, one organisation queried why the proposed relief was not extended to include private landlords, who are “assisting local authorities with housing stock”.

Scottish Government Response

The Scottish Government notes the range of opinion expressed in the various responses to the questions regarding the interaction of the ADS with local authorities.

Following careful consideration, the Scottish Government intends to legislate to extend the scope of the proposed relief to include all purchases of land or buildings by local authorities in pursuance of powers granted under Section 2 of the Housing (Scotland) Act 1987.

This change will exempt such purchases from residential LBTT and the ADS and will assist local authorities in purchasing residential property for localised housing needs. This will also support local authorities in acquiring housing which is not otherwise funded under Section 2 of the Housing (Scotland) Act 1988. The reference to the 1988 Act will be retained for completeness.

Given the nature of the intended change, the Scottish Government does not intend to provide a formal definition of ‘affordable housing’ for tax purposes.

Other Issues

2.51 There were no specific questions which gave respondents an opportunity to raise other issues which were not directly covered in the consultation document.

2.52 However, one response suggested that a relief or exemption from the ADS should be applied to property purchases by the Scottish Police Authority when they are specifically performed in the provision for staff accommodation. The Scottish Government intends to keep this proposal under review.

2.53 Any other issues which were raised by correspondents, and which do not fall under any of the topic headings listed above, are not considered to be within the scope of the consultation and are therefore not addressed in this document.

3. Summary of Amendments

The Scottish Government intends to provide for the following amendments to the Land and Buildings Transaction Tax (Scotland) Act 2013:

3.1 Extend the relevant timelines from 18 to 36 months, namely:

- The time available to purchase a new main residence after disposing of a previous main residence.
- The time available to dispose of a previous main residence after purchasing a new main residence, and therefore claim a repayment of the ADS.
- The time period for considering whether a property was a buyer's only or main residence in the period prior to the purchase of a new main residence.

3.2 That a property inherited in the period between the conclusion of missives on, and the purchase of, a new main residence is disregarded for the purposes of the ADS, and to clarify the point in time at which an inherited property is owned.

3.3 In the context of deemed ownership provisions, that property shares are disregarded for ADS purposes where the relevant taxpayer's share value is less than £40,000.

3.4 Provide relief from the ADS on the purchase of a main residence where an interest in a previous main residence (PMR) is required to be retained by court order.

3.5 Introduce amendments to the joint buyer and economic unit provisions which seek to achieve the following:

- Where a main residence is purchased jointly, and only one buyer can meet the relevant conditions (disposal of a PMR that was their only main residence) and no additional relevant properties are held, both buyers are treated as meeting the repayment conditions.
- Disposals of a PMR in the 36 months prior to the purchase of a new main residence may be considered in determining if the ADS is repayable.
- The disposal of a property in which a buyer is deemed to have an interest, by virtue of the economic unit provisions, is to be treated as a disposal by the buyer.

3.6 Provide relief for local authorities from LBTT and ADS where the purchase relates to activities carried out under the powers conferred by Section 2 of the Housing (Scotland) Act 1987, and/or is funded under Section 2 of the Housing (Scotland) Act 1988.

4. Next Steps

4.1 On the basis of responses to the consultation and available data, the Scottish Government intends to introduce legislation to the Scottish Parliament to provide for the changes to the Land and Buildings Transaction Tax (Scotland) Act 2013 summarised above.

5. Annex A: List of Respondents

	Respondent	Category
1	Anonymous	Individual
2	Martin Rooney	Individual
3	Convener of Housing & Communities Committee	Other Organisation
4	Alan Sillence	Individual
5	Angus Spence	Individual
6	Anonymous	Individual
7	Anonymous	Individual
8	Anonymous	Individual
9	Anonymous	Individual
10	William Mennie	Individual
11	Anonymous	Individual
12	Anonymous	Individual
13	Anonymous	Individual
14	West Dunbartonshire Council	Housing Provider
15	Murray Beith Murray	Legal, Tax and Accountancy
16	Coulters	Legal, Tax and Accountancy
17	Falkirk Council	Housing Provider
18	Angus Council	Housing Provider
19	Anonymous	Individual
20	Fairwind Property Ltd	Other Organisation
21	Azets	Legal, Tax and Accountancy
22	Clackmannanshire Council	Housing Provider
23	Fords Daly Legal Limited	Legal, Tax and Accountancy
24	The Mortgage Hub	Other Organisation
25	Perth and Kinross Council	Housing Provider
26	Chartered Institute of Housing (CIH) Scotland	Legal, Tax and Accountancy
27	Ernst & Young LLP	Legal, Tax and Accountancy
28	Anonymous	Individual
29	Aberdeenshire Council	Housing Provider
30	Renfrewshire Council's Housing Service	Housing Provider
31	East Lothian Council	Housing Provider
32	Anonymous	Individual
33	Anonymous	Individual
34	Bryan Gray	Individual
35	The Association of Taxation Technicians	Legal, Tax and Accountancy
36	Anonymous	Individual
37	Scottish Police Authority	Other Organisation
38	North Lanarkshire Council	Housing Provider
39	South Lanarkshire Council	Housing Provider
40	West Dunbartonshire Council	Housing Provider
41	Scottish Property Federation	Legal, Tax and Accountancy

42	Moray Council	Housing Provider
43	Anonymous	Individual
44	Institute of Chartered Accountants of Scotland	Legal, Tax and Accountancy
45	Stirling Council	Housing Provider
46	Institute of Chartered Accountants in England and Wales	Legal, Tax and Accountancy
47	Chartered Institute of Taxation	Legal, Tax and Accountancy
48	Stamp Taxes Practitioners Group	Legal, Tax and Accountancy
49	Law Society of Scotland	Legal, Tax and Accountancy
50	East Renfrewshire Council	Housing Provider
51	Propertymark	Other Organisation
52	Convention of Scottish Local Authorities	Other Organisation



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