

# **A Scottish Building Safety Levy: Consultation**

**September 2024**

# A Scottish Building Safety Levy: Consultation

## Ministerial Foreword

The Grenfell Tower fire was a tragedy that shocked us all and uncovered that many homeowners and leaseholders across the UK were living in buildings with serious fire and building safety defects. The Scottish Government has been clear that it will do what is right and necessary to fix this issue properly and fully from the outset.

We already have stringent safety regulations in Scotland to keep people safe and have made substantial progress on changes to fire safety standards and guidance, including legislation on smoke alarms, passage of the Housing (Cladding Remediation) (Scotland) Act 2024 and the ongoing delivery of the Cladding Remediation Programme. But we are not complacent. The Grenfell Tower Inquiry's phase two report makes further, important recommendations which we will carefully consider and, where appropriate, consider any further action required to address building safety.

Work to address unsafe cladding comes at a substantial cost. Many developers have engaged responsibly and positively with the Scottish Government on remediating buildings they were responsible for constructing. However, there are buildings where a developer no longer exists where significant costs may fall to the Scottish Government.

In England, the UK Government intends to raise the majority of the funding for its work to remediate these buildings through a Building Safety Levy, paid for by developers in the residential property development sector. The UK Government's decision to create this Levy in England-only means that we will receive no consequential funding from its introduction. This creates a gap in our funding arrangements, and the need to address this gap must be considered in the context of an incredibly challenging medium-term outlook for public finances.

We believe it is right that we seek a further contribution from the residential property development sector to support this funding challenge, just as the UK Government is proposing in England. That is why we committed in our 2023-24 Programme for Government to seek from the UK Government the transfer of powers to create a Building Safety Levy in Scotland. We have engaged constructively with successive UK Government's on the transfer of powers, and I am pleased that this process is on course to complete in the coming months.

This consultation marks the next step in this process. It seeks views and evidence on how a Building Safety Levy should be structured and operate in Scotland, taking account of the distinct characteristics and needs of the Scottish housing market.

Our approach to designing and delivering good tax policy continues to be guided by

our fair and progressive approach to taxation, underpinned by Adam Smith's four principles of taxation; Certainty, Convenience, Proportionality and Efficiency.

In line with our New Deal for Business principles, we have engaged openly and constructively with business and industry as part of our work to develop initial policy propositions for a Scottish Building Safety Levy, and we will continue to do so as we move through the consultation period and beyond.

I am keen to hear from a wide range of individuals and organisations in the housebuilding sector, particularly those involved in the construction of residential units, the procurement of land for development, and the sale of residential property. This consultation will also be accompanied by a programme of engagement, taking place over the next eight weeks, to ensure that all those who wish to comment and engage with us have every opportunity to do so.

I hope you find this document helpful, and I look forward to hearing your views on how we best design and develop a Scottish Building Safety Levy.

## 1. Introduction

The Grenfell Tower fire in London in June 2017 highlighted concerns about the safety of medium and high-rise buildings with external wall cladding across the UK. The Scottish Government has taken a range of actions following the tragic events at Grenfell, including changes to Scottish Fire Safety Standards in 2019 and then again in 2021. Changes to the requirements on the fire safety of cladding systems were introduced in June 2022, including banning highly combustible metal composite material panels on all buildings and a ban on combustible external wall cladding systems of residential and high-risk buildings over 11 metres.

In the wake of the Grenfell tower tragedy, the UK Government highlighted the need to bring an end to unsafe cladding. It introduced the Building Safety Act 2022 to strengthen the regulatory system for the construction and maintenance of residential buildings in England and Wales.

In Scotland, the Scottish Government established a 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 Scottish Government introduced the Housing (Cladding Remediation) (Scotland) Act 2024 to facilitate the delivery of the Cladding Remediation Programme.

### 1.1 Funding Cladding Remediation

In England, the costs of cladding remediation will be met through the following sources:

- Direct remediation by the housebuilding sector
- Revenues from the Residential Property Developer Tax (RPDT), which applies UK-wide
- Revenues from the England-only Building Safety Levy (UK Levy)

The UK Government legislated through the Building Safety Act 2022 for the introduction of a Building Safety Levy on the development of new residential buildings. Unlike RPDT, the UK Levy will only apply to developments in England. Further information on the UK Levy is available in Annex A

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 UK Levy goes live, the only consequential funding the Scottish Government expects

to receive in relating to cladding remediation is from the spending related to revenues from the RPDT<sup>1</sup>.

Discussions around direct sector contributions in Scotland are ongoing and Scottish Ministers have publicly committed to spending all relevant consequential funding received on cladding remediation. However, as the scale of cladding remediation required in Scotland is likely to be proportionate to that in England, the decision to introduce an England-only levy has created a gap in the funding options and powers available to the Scottish Government, relative to those available to the UK Government. This issue was noted in May 2022 by the then Cabinet Secretary for Social Justice, Housing and Local Government (Shona Robison MSP):

*“the UK Government announced the building safety levy a couple of weeks ago. That is an England-only levy that will be levied through local government. We will need to look at what equivalent we need to use here to bridge any gap, because we will spend the public money on buildings for which no developer can be found.”<sup>2</sup>*

## 1.2 Devolution of Powers

The Scottish Government set out in its Programme for Government 2023-2024 a commitment to pursue the devolution of powers to create a devolved Building Safety Levy (a Scottish BSL). The UK Government and the Scottish Government jointly held a consultation from 8 January 2024 to 19 February 2024, seeking views and evidence on the proposal to devolve powers to the Scottish Parliament for a Scottish BSL.

The consultation posed two questions:

1. The UK and Scottish Governments would welcome any observations and evidence addressing the criteria set out in the Command Paper. In particular, do you agree that devolving the proposed tax power would not impose a disproportionate negative impact on UK macroeconomic policy or impede the single UK market in house building?
2. Bearing in mind there is no option to extend the UK Building Safety Levy to Scotland, do you agree that the power to introduce a Building Safety Levy should be devolved to the Scottish Parliament?

The consultation received 17 written responses. Representations were received from organisations and individuals from across the property, accounting and law sectors: 8 were broadly in support of devolving powers for a Scottish BSL, 6 were opposed, and 2 expressed no opinion. A summary of responses to the consultation was published on the UK Government website.<sup>3</sup>

---

<sup>1</sup> The information the Scottish Government receives from HM Treasury regarding the composition of Scotland's Block Grant does not identify Scotland's share of spending related to revenues from the RPDT. However, on the basis of the UK Government's stated position that:

- the RPDT would seek to raise at least £2 billion over a decade; and
- the revenues from the RPDT will be used to fund cladding remediation work in England,

The Scottish Government could expect to receive an average of £19.4 million per annum in Barnett consequentials.

<sup>2</sup> [Meeting of the Parliament: 12/05/2022 | Scottish Parliament Website](#)

<sup>3</sup> [Consultation on devolving powers for a Scottish Building Safety Levy - GOV.UK \(www.gov.uk\)](#)

The UK and Scottish governments agreed that no evidence was surfaced to prevent the transfer of powers from proceeding and the UK Government has agreed to progress legislation to devolve powers to the Scottish Parliament.

On 19 April 2024, the Deputy First Minister and Cabinet Secretary for Finance, Shona Robison MSP, informed the Scottish Parliament of the outcome of the discussions with the UK Government<sup>4</sup>, and that the Scottish Government would proceed to engage with the residential property development sector and wider stakeholders to ensure that the design and delivery of the devolved Levy is informed by the widest possible range of views. The Cabinet Secretary provided a further update to Parliament on 5 September<sup>5</sup> that, following the General Election, the new UK Government administration has renewed the agreement to devolve powers. The Scotland Act 1998 (Specification of Devolved Tax) (Building Safety) Order 2024 ('the Order in Council') was laid before the Scottish and UK parliaments on 10 September 2024<sup>6</sup>.

### 1.3 Scottish Approach to Taxation

The Scottish Government's approach to taxation has developed over time and following the devolution of further tax powers in 2016. The Scottish Government has committed to publishing a Tax Strategy that will support more transparent and consistent decision-making on tax policy in Scotland and aims to increase public engagement around tax. This will be published alongside the 2025-26 Scottish Budget.

Tax has a vital role in achieving Scottish Government priorities and the Tax Strategy will set out the role of the tax system in supporting the medium-term fiscal outlook in Scotland by building on the Framework for Tax published in December 2021.<sup>7</sup> The Framework for Tax sets out the principles and strategic objectives that underpin the Scottish Approach to Taxation, as well as our approach to decision making, engagement and how we manage and sequence tax policy and delivery.

Our approach 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. We have added two further principles to reflect our commitment to engaging and collaborating with stakeholders, and to reflect our approach to tackling tax avoidance.

The Framework for Tax ensures that our decisions on tax policy are coherent and rooted in a defined set of principles and objectives, rigorously appraised and developed through an established policy cycle, which puts proactive engagement at the heart of tax policy making.

---

<sup>4</sup> [Written question and answer: S6W-26932 | Scottish Parliament Website](#)

<sup>5</sup> [Written question and answer: S6W-29000 | Scottish Parliament Website](#)

<sup>6</sup> [The Scotland Act 1998 \(Specification of Devolved Tax\) \(Building Safety\) Order 2024 \(legislation.gov.uk\)](#)

<sup>7</sup> [Framework for Tax 2021 - gov.scot \(www.gov.scot\)](#)

In carrying out this consultation and future work to develop the policy for a proposed Scottish BSL, we will take full account of the principles and objectives set out in the Framework. We will also undertake policy development and engagement in the spirit of the New Deal for Business and its four main pillars<sup>8</sup>.

A Partial Business and Regulatory Impact Assessment (BRIA) has been published alongside this consultation, to assist respondents in considering the estimated costs, benefits and risks to the introduction of a Scottish BSL. A full Business and Regulatory Impact Assessment will be undertaken in advance of any primary legislation laid before parliament.

## 2. Consultation Structure

This consultation document is comprised of four parts:

Part A – Principles – considers:

- The strategic context and case for a Scottish BSL to fund cladding remediation work in Scotland
- The scope of the levy on the residential development sector
- Consideration of exemptions and reliefs
- The method for calculating the levy

Part B – Operational Considerations – considers:

- The revenue authority
- Returns and payment
- Tax compliance and penalties
- Appeals and Reviews

Part C – Impacts – considers relevant impact assessments that are being or may be prepared as part of the process to develop a Bill providing for the Scottish BSL:

- Impact assessments
  - Business and Regulation
  - Child Rights and Wellbeing
  - Environment
  - Equality
  - Fairer Scotland Duty
  - Island Communities

Part D – Reference and Response – includes background information that may be helpful, a full list of consultation questions, and details of how to submit a response:

- Glossary of Terms
- Question List
- Responding to this Consultation

---

<sup>8</sup> [Business: New Deal for Business Group - gov.scot \(www.gov.scot\)](https://www.gov.scot/business/new-deal-for-business-group)

### 3. Next Steps

The Scottish Government's Framework for Tax sets out five key stages related to the development of tax policy:

- Stage 1: Engagement and Analysis
- Stage 2: Policy design
- Stage 3: Decision making
- Stage 4: Implementation
- Stage 5: Evaluation

This consultation marks the progression of stage one, with previous and ongoing evaluation of evidence and feedback helping to reach this point.

Responses to this consultation and the associated programme of engagement will support the policy development for a potential future levy. If the powers to allow Scottish Ministers to introduce a Scottish BSL are devolved to the Scottish Parliament, then responses will also support development of a future Bill that provides for a devolved tax. This will be introduced during the current session of the Scottish Parliament. Further details on the Bill proposal and progression process can be found on the Scottish Parliament website.

The Scottish Government expects that the Bill will set out the key provisions of the tax, such as scope, definitions, liability to pay, administration and so on.

As with other fully devolved national taxes in Scotland, in addition to an Act of the Scottish Parliament, secondary legislation will also be required before any tax could be formally introduced. This legislation may take the form of Scottish Statutory Instruments to set the rate or rates for the tax, exemptions and reliefs and so on.

Final decisions on rates for a Scottish BSL will be taken as part of secondary legislation, as has been the case with previous tax legislation (e.g. Land and Buildings Transaction Tax).



## Part A: Principles

### 4. Strategic context for a Scottish BSL

As with efforts to remediate cladding in England, Scottish Ministers are committed to ensuring that the financial burden does not fall directly on homeowners, or on the general taxpayer.

In a Parliamentary Statement on the Cladding Remediation Programme in May 2022<sup>9</sup>, the then Cabinet Secretary for Social Justice, Housing and Local Government, Shona Robinson MSP, set out this Scottish Government's position that "developers must play their part in making unsafe buildings safe wherever they are" and that "it is my clear expectation that developers linked to buildings with problematic cladding will fund remediation where this is identified".

Discussions around direct sector contributions are ongoing. Where there are buildings where a developer no longer exists then any significant remediation costs may fall to the Scottish Government. The Scottish Government's position is that it is appropriate to recover the costs of government intervention on cladding remediation from the sector where that intervention is required (i.e. the residential property development sector), consistent with the approach of the UK Government for intervention in England.

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 was introduced following the 2007-08 financial crisis<sup>10</sup>.

A Scottish BSL would seek to complement and accompany the two existing strands of funding for the Cladding Remediation Programme:

- Direct remediation by the housebuilding sector
- Barnett consequential funding from the spending related to revenues from the UK Government's RDPT

These strands are set out below.

#### 4.1 Direct Remediation by the Housebuilding Sector

Following the signing of the Developer Commitment Letter by nine developers in 2023, work has been ongoing on the development of the Developer Remediation Contract, which will be a formal legal contract between developers and the Scottish Government and will underpin the scope, scale of assessment and the Scottish standards required for remediation and mitigation on buildings in scope with potentially unsafe cladding. The Scottish Government will continue to work closely with Homes for Scotland and developers on this.

---

<sup>9</sup> [Update on cladding remediation programme: Cabinet Secretary's statement - gov.scot \(www.gov.scot\)](https://www.gov.scot/update-on-cladding-remediation-programme-cabinet-secretarys-statement)

<sup>10</sup> [Bank levy - Office for Budget Responsibility \(obr.uk\)](https://obr.uk/bank-levy/)

The costs to individual developers will depend on the number of their buildings within scope of the Programme and the level of remediation required for each of their buildings. The UK Government estimated in 2023 that their individual contracts with the 39 developers who had signed at the time were likely to lead to additional contribution of at least £2 billion to address cladding remediation in England. As of 31 January 2024, a total of 55 developers have signed the UK Government's developer remediation contract.

## 4.2 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 tax 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 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 RPDT over a ten-year period<sup>11</sup>. In its first year of operation (2022-23), RPDT generated £200 million in revenue<sup>12</sup>.

As a UK-wide tax where revenues are used to fund spending on cladding remediation in England, the Scottish Government will receive Barnett consequentials, expected to be £194 million over the expected ten-year period. The Scottish Government has committed to spending all Barnett consequentials generated from RPDT on cladding remediation in Scotland.

## 4.3 The Building Safety Levy in England

The UK Government's proposed Building Safety Levy is England only in scope. The powers to create and set the terms of the Levy are set out in Section 58 of the Building Safety Act 2022<sup>13</sup>.

Funding raised through a Scottish BSL will help to meet the costs of fixing historic building safety defects in buildings in England and ensure that the residential development sector makes a fair contribution to costs. The UK Government have publicly stated that the intention is to raise an estimated £3 billion from the Levy over a ten-year period.

In November 2022, the UK Government issued a consultation seeking views on the delivery of the Levy in England 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. A further technical consultation<sup>14</sup> was issued by the UK Government in

---

<sup>11</sup> [Residential property developer tax: Consultation on policy design \(gov.uk\)](#)

<sup>12</sup> [HMRC annual report and accounts: 2022 to 2023 - GOV.UK \(www.gov.uk\)](#)

<sup>13</sup> [Building Safety Act 2022 \(legislation.gov.uk\)](#)

<sup>14</sup> [Building Safety Levy: technical consultation - GOV.UK \(www.gov.uk\)](#)

January 2024 seeking views on methodology for levy calculation, the collection process, disputes and appeals and further exclusions. Further information on the UK proposal is set out in Annex A.

#### 4.4 Cost of Cladding Remediation in Scotland

The costs associated with the delivery of the Cladding Remediation Programme fall into a number of different categories: the cost of assessing risk; the cost of any urgent mitigations to manage that risk prior to remediation; and the cost of remediation. In addition, there are a number of associated costs, for example: the costs of engaging with residents and homeowners; costs associated with assurance of work undertaken; and costs of professional advice on mitigation measures.

It is estimated there are around 1,000 high rise and 5,000 medium rise buildings within the scope of the Programme based on data currently available. The Scottish Government is currently undertaking work to estimate the number of buildings within scope of the Programme. Until this exercise is completed the total cost for the Programme cannot be defined.

A Scottish BSL will not be introduced in Scotland before April 2026, by which point there will likely be greater clarity on the scale of the funding challenge.

As noted above, the UK Government has identified a need to introduce a Building Safety Levy in England in order to contribute to the funding needed to address building safety issues on buildings that require remediation. As the cladding remediation landscape in Scotland is broadly similar to the landscape in England, it is reasonable to expect that the Scottish Government will be required to meet an outstanding cost for its Cladding Remediation Programme, as has been identified for the UK's programme in England. We, therefore, estimate that a Scottish BSL would seek to raise £30 million per annum.

Given the pressing need for a fully funded Programme to remediate cladding that may present a risk to life, work to prepare a proposed Scottish BSL is proceeding on the basis that the associated revenues will be required. Should the highly unlikely scenario transpire that no additional funds are required, then Scottish Ministers would be in a position to take an informed view on the future of a Scottish BSL at that stage.

#### 4.5 Infrastructure Levy

The Planning (Scotland) Act 2019 ("the 2019 Act") provides powers for the Scottish Ministers to make regulations to introduce an Infrastructure Levy, that is, a charge payable to a local authority on development in that local authority's area, to be spent on the provision of infrastructure. This is intended to provide an additional stream of funding for infrastructure which is needed to support growth on a wider scale than individual developments.

The Scottish Government's Programme for Government 2023-24 committed to a discussion paper on options for an Infrastructure Levy was published in June 2024<sup>15</sup>, with a view to implementing new Infrastructure Levy regulations by Spring 2026 – in advance of the next Scottish Parliament election.

Given it is likely that new housing developments would be within scope for a future Infrastructure Levy, its potential impacts on the residential development sector and viability of sites should be taken into account when considering a Scottish BSL.

#### 4.6 Alternative Options

In assessing the need for a revenue stream for the Cladding Remediation Programme, the Scottish Government has considered alternative options to a Scottish BSL. The majority of taxes and duties remain reserved to the UK Government. No powers exist within the limited competence available to Scottish Ministers in respect of taxation which would meet the objective of ensuring that the costs of cladding remediation do not fall onto homeowners or the general taxpayer.

##### **Question 1**

Do you think a new tax on housebuilding, paid by developers, is a fair way to generate revenue to fund the Scottish Government's Cladding Remediation Programme?

Please give reasons for your answer

#### 5. Scope of the Tax

It is anticipated that the Order in Council will provide that a Scottish BSL can be applied to any step or application, or the issuing or submission of a document in connection with the building control process in relation to a relevant building or a proposed relevant building. For these purposes, "relevant building" is defined as a building in Scotland consisting of or containing (i) one or more dwellings, or (ii) other accommodation, (which includes temporary accommodation, for example in a hotel or hospital).

This definition, and therefore the potential scope of the tax will include, for example:

- new homes built by developers for onward sale
- purpose built accommodation, such as student accommodation or build-to-rent
- the redevelopment of existing buildings for the purposes of providing accommodation, irrespective of whether the existing building's current or past purpose is/was for non-residential use

While this definition could also include individual homeowners who are improving their property, the Scottish Government has no intention to include them within the scope of the tax. Further detail on the proposed treatment of smaller developers is

---

<sup>15</sup> [Infrastructure Levy for Scotland: Discussion Paper - Infrastructure levy for Scotland: discussion paper - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/discussion-papers/infrastructure-levy-for-scotland/discussion-paper-2024-06-10/pages/11)

set out below.

When introducing a Scottish BSL, it may be necessary to remove certain types of developments from the scope of the tax in order to support the Scottish Government's priority areas of:

- Eradicating child poverty
- Growing the economy
- Tackling the climate emergency
- Improving public services

### 5.1 Removing certain types of developments from charge

Although their effect can in essence be the same, there are important distinctions between an exemption and a relief. In general, the availability of an exemption means that tax is not due in the first instance and that a tax return may not need to be made, as such, the revenue authority does not have to be notified, unless this is specifically legislated for. In contrast, the availability of a relief, either partially or wholly, means that tax which would otherwise be due does not need to be paid or can be reclaimed, and needs to be claimed on a tax return (thereby notified to the revenue authority), even if no tax is ultimately due.

The UK Government's technical consultation on the UK Levy sets out proposals to exclude certain types of developments from charge to ensure the development of community facilities is not impacted by the additional cost of the tax.

The Scottish Government sees no reason to deviate from the approach taken by the UK Government to this aspect of the UK Levy and therefore intends to remove the following types of developments from charge:

- NHS Hospitals, NHS Medical Centres and NHS GP practices.
- non-NHS hospitals and hospices
- Supported Housing, Residential Care Homes, Children's Homes.
- Conversions, improvements to owner/occupied homes and refurbishments.
- Refuges and residential domestic abuse facilities for example, rape crisis centres.
- Criminal Justice Accommodation.
- Military Barracks and other Military establishments.
- Hotels.
- Monasteries, nunneries or similar establishments.
- Seminaries and other religious colleges which include accommodation.
- Drug and/ or alcohol treatment centres.
- Temporary accommodation for homeless people.
- School premises to be used for the sole or primary purpose of housing its students

### 5.2 Removing affordable homes from a Scottish Building Safety Levy

The Scottish Government is 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 our

rural and island communities. To support this commitment we propose to remove affordable housing delivered through the Scottish Government's Affordable Housing Supply Programme from charge under a Scottish BSL.

The Affordable Housing Supply Programme comprises a range of funding mechanisms to enable affordable housing providers to deliver homes for social rent, affordable rent, and affordable home ownership in communities across Scotland to support local authorities' Local Housing Strategies.

The Scottish Government wants to ensure that the Affordable Housing Supply Programme is not unduly impacted by the introduction of a Scottish BSL, and will seek to provide an exemption or relief to support this position.

### **Question 2**

Do you agree that homes delivered through the Scottish Government's Affordable Housing Supply Programme should be removed from the Scottish Building Safety Levy?

Please give reasons for your answer

## 5.3 Exclusions for small developers

The Scottish Government is mindful of introducing a new tax on business in the current economic climate. Any new tax will be developed by following the Better Regulation principles, ensuring that any regulation is:

- proportionate
- consistent
- accountable
- transparent
- targeted only where needed

In particular, we are aware that smaller housebuilding businesses may be disproportionately impacted by the introduction of a Scottish BSL, due to the resource needed by businesses to understand, plan, and absorb any additional costs. Initial engagement with industry stakeholders has also highlighted cashflow concerns for small businesses. In recognition of this, the Scottish Government believes it is appropriate to consider exemptions or reliefs to protect smaller businesses. In doing so, the Scottish Government is seeking views on the most appropriate way of removing smaller developers from charge.

### 5.3.1 Developers landscape in Scotland

According to research undertaken by Homes for Scotland (HfS) in 2024<sup>16</sup>, SME developers have since 2019 accounted for less than 20% of annual new home sales<sup>17</sup>. Crucially however, the HfS research notes that more than a third of

---

<sup>16</sup>[Homes for Scotland – Scotland's SME Homebuilders 2024: Data Review and Industry Insights \(homesforscotland.com\)](https://www.homesforscotland.com)

homebuilding in rural and remote areas are undertaken SME developers. In addition, over 90% of SME development is undertaken on brownfield sites in Scotland's main urban centres, compared to 70% for large homebuilders.

### 5.3.2 UK Government proposals to exempt small developments

In its most recent consultation for the UK Levy, the UK Government proposed an exemption for developments of fewer than 10 units and set out its rationale for this number:

“The intention here is to protect the smaller builders who work on small developments. This is a common differentiation and there are different rules under Building regulations for the planning of small developments. This will also cover individual homeowners who are improving their property. We are alive to the fact that excluding smaller developments may open opportunities for fraud and gaming, for example parcelling up sites into smaller blocks to avoid the levy being applied. We will consider how we can best mitigate that.”

The Scottish Government has considered whether an equivalent exemption for small developments could be applied to a Scottish BSL. In English planning law, housing developments are categorised into ‘major’ and ‘minor’ developments. Major developments are applications with provision of more than 10 units (or covers a site area of 0.5 hectares if the number of units is not known). A housing development application of 9 units or less is considered a minor development.

By contrast, in Scotland housing developments fall into two definitions:

- Major housing developments - those with 50 or more dwellings or with a site area of 2 hectares or more where the main use is for housing; or
- Local housing developments - those that have fewer than 50 dwellings and a site area that is less than 2 hectares

In 2022-23, there were 4,194 applications for local housing developments, compared to 97 applications for major housing developments. The Scottish Government does not currently hold information on the breakdown of the number of units by local and major housing development. Given that the vast majority of housing developments are local developments, it is likely that a large proportion of dwellings will be contained within local development applications. An exemption or relief on all local developments could therefore restrict the tax base to a minority of developments, which could significantly reduce the revenue generated from the levy, or place a higher tax burden on a small number of developers.

An exemption or relief based on site size could also incentivise behavioural changes from the housebuilding industry (such as the splitting up of sites) and reduce viability of larger sites. It is also not clear from our initial engagement whether an exemption or relief based on site size would sufficiently capture small developers as opposed to small developments, as large developers utilising small development sites would inadvertently be eligible for a relief or exemption under this method.

### 5.3.3 Alternative measures for excluding small developers

As noted above, the approach proposed in the last UK Government consultation for the UK Levy does not seek to exclude a developer from the charge but instead seeks to exclude small sized developments that the developer is undertaking.

An alternative measure would be to exclude small developers in totality. One option to achieve this would be to consider a relief or exemption based on the total number of units built annually by individual developers, independently of the size of developments. For the purposes of gathering research, Homes for Scotland define a small developer as one which builds between 3 and 49 units per year. A similar threshold based on annual units built may be a more appropriate way to identify and exclude small developers from a Scottish BSL. Another option would be to consider excluding developers using an annual operating profit threshold. The Scottish Government is, therefore, seeking views on using this alternative method for excluding small developers.

**Question 3**

What are your views on the principle of removing smaller developers from charge of the Scottish Building Safety Levy?

**Question 4**

If you agree that small developers should be removed from charge under a Scottish Building Safety Levy, what are your views on the method of determining who is a smaller developer?

5.4 Other exclusions

The Scottish Government is also seeking views on any other types of developments not listed above that it would be appropriate to remove from a Scottish BSL. For example, it may be considered appropriate to remove developments in rural areas and on islands, in recognition of the distinct housing delivery challenges in these areas of Scotland, and in support of the Scottish Government's commitments in our rural and islands housing action plan<sup>18</sup>. Other examples to consider could include specialist provision such as wheelchair accessible homes.

**Question 5**

Are there any other exemptions from the Scottish Building Safety Levy that you think should be considered by the Scottish Government?

**Question 6**

Are there any types of development listed in the exemptions above that you think should not be exempted from the Scottish Building Safety Levy?

**Question 7**

Do you have any comments on exemptions not covered by the previous questions that you wish to raise?

---

<sup>18</sup> [Ministerial Introduction - Rural and islands housing: action plan - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/ministerial-introduction-to-rural-and-islands-housing-action-plan/pages/20)



## 6. Calculation

The Scottish Government is seeking views on the most appropriate method of calculation for a Scottish BSL. In considering this, the principles of proportionality, certainty, efficiency and convenience will be of importance. The method should be easily understood and calculatable, allowing for accuracy in reporting information through tax returns and reducing the compliance risk. In considering a suitable approach, our aim is to base the calculation on an existing methodology or valuation, rather than to create a bespoke calculation process solely for a Scottish BSL.

### 6.1 The new house build landscape in Scotland

When considering a method of calculation for a Scottish BSL, it is important to consider the housebuilding landscape in Scotland.

In the 2023-24 financial year there were 19,632 all-sector new build home completions, a 17% decrease on completions compared to the previous financial year<sup>19</sup>. Of these, 14,589 were private sector led housebuilding completions, accounting for over two-thirds (74%) of all homes completed in 2023-24. The remainder of completions were by housing association and local authority (26%).

In terms of geographical spread, new housebuilding is concentrated in the Central Belt, with Edinburgh (2,049), Fife (1,440), West Lothian (1,258), and South Lanarkshire (899) accounting for just under 40% of all new build home completions in 2023-24. The local authorities with the highest proportion of new build completions per head were Midlothian and East Lothian, which had rates of more than 78 homes per 10,000 population.

Property sales also provide us with further insight into the housebuilding landscape. Data from the Registers of Scotland<sup>20</sup> tells us that in 2023-24 there were 9,867 new build properties sold in Scotland, making up 11% of total residential property sales. The median property price of a new build property in Scotland was £300,000 in 2023-24, which was 62% higher than the overall median for Scotland of £185,000.

### 6.2 UK Government proposals

The UK Government has considered the basis of the charge and regional differences in its proposals for a UK Levy. The UK Government's second consultation on the UK Levy asked respondents for their preference between a per unit basis and a per square metre basis. Of those that responded to the question, 66% supported a charge based on a per square metre basis, with the remaining 34% supporting a per unit basis. It is worth noting that the UK Government proposal for local authorities to act as collectors for the levy in England will have influenced their decision to consult on these two options, as both contain data linked to the English building control process.

---

<sup>19</sup> [Housing Statistics for Scotland Quarterly Update: New Housebuilding and Affordable Housing Supply to end March 2024 - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/housing-statistics-for-scotland-quarterly-update/new-housebuilding-and-affordable-housing-supply-to-end-march-2024/pages/11.aspx)

<sup>20</sup> [Property market report 2023-24 - Registers of Scotland \(ros.gov.uk\)](https://www.ros.gov.uk/property-market-report-2023-24)

The UK Government response to the second consultation proposes that a UK Levy is to be charged on a per square metre basis (subject to further work on how floorspace would be measured and levy rates set):

“We have carefully weighed the arguments and consider a per square metre charge is fairer as it will reflect the difference in value between different sizes of new developments and avoid for example a 5-bedroom house being charged the same levy amount as a 1-bedroom flat within the same area.”

The UK Government has also consulted on a proposal to include regional variation into a UK Levy. From the second consultation, 84% of those that responded to the question agreed on having differential levy rates based on geography based on the different land values and house prices in different areas. When offered the choice, 86% of respondents preferred differential levy rates to be based on local authority boundaries, compared to 14% who preferred a regional basis.

There are 32 local authorities in Scotland, a substantially smaller number than England’s 317 authorities. However, there are significant variances in average house prices within local authority areas in Scotland. A method of calculation which does not account for these variances risks disincentivising developments in areas where house prices are lower as the costs of the tax based on square meterage would represent a greater proportion of overall development costs.

### 6.3 Basis of the charge

To date, the Scottish Government has considered the following options for calculating a tax rate:

- Rate based on market value of the property
- Rate based on the size of the property
- Flat rate per unit
- Rate based on the number of bedrooms

These options are set out below.

#### 6.3.1 Rate based on market value of the property

The Scottish Government’s initial preference on the calculation is for a Scottish BSL to be calculated as a proportion of the market value of the property. In particular, for a Scottish BSL to be calculated as a proportion of the sale price where possible. Using market value has a number of advantages: 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, thereby minimising cashflow issues for the developer in the majority of cases. In addition, initial engagement with industry stakeholders has indicated a preference for a Scottish BSL to be calculated as a proportion of the market value.

Using sale price as the market valuation has additional benefits. As all residential property sales are recorded by the Registers of Scotland, using the sale price would

benefit from a comprehensive set of existing data to support administration and compliance of the tax. Using sale price would also align with the proposal to designate Revenue Scotland as the collection authority for the tax, as Revenue Scotland will hold data on residential property sales.

It is worth noting that not all new residential buildings will be sold on the open market, and therefore have a sale price attached to the property. This includes properties that are build-to-rent, as well as purpose-built student housing. The sale price may also not be known at the time of issuance of a completion certificate (which is one of the possible tax liability points). In these cases, an alternative method would be required to calculate a market value rate for those that are not sold or where a sale price is not known.

In recognition of the points above, the Scottish Government proposes that the lead option for calculating the tax should be based on the sale price of the property, or where no sale price is available, on the market value of the property. The Scottish Government is therefore seeking views on whether a tax based on the market value of a property is the most appropriate method of calculation. We propose the simplest way of achieving this would be to use the price as sold on the open market. Where the property is not sold (or the sale price is not known), the Scottish Government is seeking views on what alternative market valuation would be available, during the building standards process, that could be utilised in place of a sale price.

#### 6.3.2 Rate based on the size of the property

This option would see the rate of a Scottish BSL calculated using the size (per square metre) of the property. An example, for every square metre of floor space, a value could be attached, giving a formula which would result in a value relatively proportionate for the size of the property. This would be akin to the UK Government's approach as proposed in its consultations.

In comparison to a per-unit and a per-bedroom method, a per-square meterage calculation would be proportionately closer to market value, and therefore would help alleviate taxpayers' cashflow concerns. On the other hand, a per-square meterage method would require the floor space to be measured (and require a definition of eligible floor space), which could increase the risk of disagreement between taxpayer and the revenue authority.

#### 6.3.3 Rate based per unit

This option would see a Scottish BSL calculated on a per residential unit basis – i.e. for every unit of eligible housing built by a developer, a flat charge is applied. This option would be easy to calculate for the taxpayer, and easy to administer for the collection authority. On the other hand, a per-unit basis makes no adjustment for the size and value of the housing built, which could leave the tax burden disproportionately borne by volume builders. Such a calculation may also encourage a behavioural response from the housebuilding market.

#### 6.3.4 Rate based on the number of bedrooms

This option would see a Scottish BSL calculated based on the number of bedrooms an eligible housing unit has. This would result in units with a higher number of bedrooms paying a higher proportion of the levy. Consideration would need to be given on how bedrooms are defined and the appropriateness of excluding other types of rooms in a unit. Consideration would also be needed on any distortive effects from a per-bedroom charge, as house sizes, types and values can vary significantly between locations.

#### 6.4 Brownfield development

In addition to the basis of the charge, the Scottish Government is seeking views on a different rate for developments built on brownfield land (i.e. land which has been previously developed)<sup>21</sup>. For example a reduced rate may support the sustainable reuse of brownfield land including vacant and derelict land and empty buildings. The UK Government is also considering setting a differential levy rate based on brownfield developments.

**Question 8**

Do you agree that rate of the Scottish Building Safety Levy should be calculated as a proportion of the market value of the property?

Please give reasons for your answer

**Question 9**

In cases where a property is not sold on the open market, what alternative valuation could be used to calculate the Scottish Building Safety Levy to ensure proportionality with the market value of the property?

**Question 10**

In relation to Question 9, do you have any information on valuations undertaken during the building standards process that would be useful for the Scottish Government to consider?

**Question 11**

What are your views on using one of the following alternative methods of calculation for the Scottish Building Safety Levy:

- Flat rate per unit
- Rate based on the size (per square metre) of the property)
- Rate based on the number of bedrooms of the property
- Rate based on the cost of building works of the property

**Question 12**

Do you think there should be a different rate applied on brownfield developments?

---

<sup>21</sup>[Annex F – Glossary of definitions - National Planning Framework 4 - gov.scot \(www.gov.scot\)](#)

## Part B: Operational Considerations – Returns and Payment

### 7. Taxable event

In order to provide certainty to the taxpayer and revenue authority, any tax should have a clear taxable event at which the taxpayer becomes liable to pay the tax.

The Order in Council which it is anticipated will provide for the devolution of powers to allow Scottish Ministers to introduce a Scottish BSL requires the taxable event (i.e. the trigger point for determining whether a taxpayer is liable to pay the levy) to be within the building standards process. The building standards process is a statutory requirement for housebuilders, and is a well-established process undertaken consistently encompassing the Scottish house building sector's activity.

Alternative points, outwith the building standards process, such as the planning stage or certification of lawfulness were also considered but largely noted to not be as practical or efficient as if positioned in the building standards process. For example, applying the tax as part of the planning process could also exacerbate cashflow concerns in many residential property developments, an issue which was raised by stakeholders in response to the UK Government consultations.

Within the building standards process, the Scottish Government proposes the tax point for a Scottish BSL to be at acceptance of the completion certificate for relevant new construction work.

The completion certificate is a legal requirement that certifies that the work, or conversion, was carried out in accordance with the relevant building warrant, and the building, as constructed or converted, complies with the building regulations.

The process for submission and acceptance/rejection of a completion certificate is shown in Figure 1 and set out as follows: following completion of building work, the Relevant Person (usually the building owner) must complete, sign and submit a Completion Certificate, which is a statutory form, to the relevant local authority building standards department. The relevant local authority (as the verifier designated by Scottish Ministers) will then, after a processes to check compliance with the building warrant and regulations – known as 'reasonable enquiry', accept or reject the Completion Certificate. The local authority building standards department must notify the relevant person of their decision within 14 days.

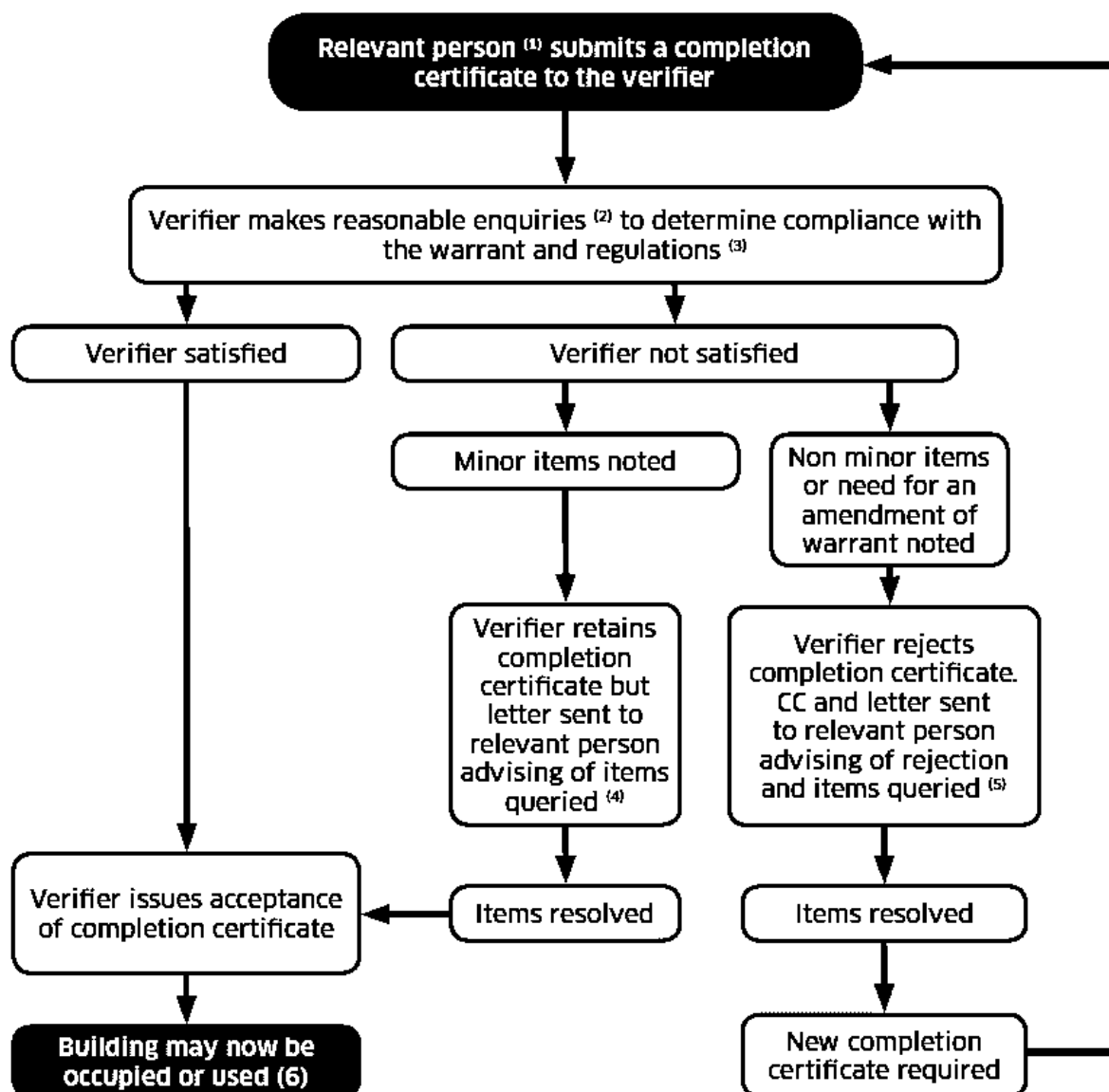


Figure 1: Process Of Obtaining Acceptance Of A Completion Certificate

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 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.

The Scottish Government considers the issuance of acceptance of a completion certificate to be a suitable tax point for a Scottish BSL, due to its status as a legal requirement for each new dwelling prior to use. Using the completion certificate process would also 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. In addition, 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.

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. 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 a Scottish BSL 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 homebuilders.

**Question 13**

Do you agree that liability for the Scottish Building Safety Levy should arise in relation to the issuance of acceptance of a completion certificate?

Please give reasons for your answer

8. Revenue authority

The Scottish Government is seeking views on which agency would be the most appropriate for collecting a Scottish BSL. The Scottish Government proposes that a Scottish BSL should operate on a self-assessed basis and as a national tax, whereas the UK Government proposals for its UK Levy would see a billing and collection method used.

Consideration has been given to designate local authorities as the collection agency for a Scottish BSL. This is the route proposed by the UK Government for its UK Levy. Although the Local Government Association in England is opposed to this, describing the proposal as “an unreasonable additional burden” for local authorities<sup>22</sup>.

As local authorities are currently appointed by Scottish Ministers as verifiers under the Building (Scotland) Act 2003, they already deliver the building standards process. They will hold information which developers require by developers to submit as part of the building warrant and completion certificate process. This information can be used to determine tax liability, as well as eligibility for any exemptions or reliefs. A local authority, operating as a collection agency for the levy, would therefore have access to relevant building standards information for verification purposes without recourse to a third party.

---

<sup>22</sup> [Letter to The Right Hon Michael Gove MP from the Chairman of the LGA | Local Government Association](#)

On the other hand, designating local authorities as the collection agency would place a new administrative burden on local government, with resourcing implications but without any further fiscal autonomy. This could have impacts on local authority building standards services to process building warrant and building completion certificate applications. As a national tax, a Scottish BSL would also require standardisation of collection and administration processes across 32 local authorities. Consideration would need to be given on whether this approach is consistent with the Verity House Agreement<sup>23</sup> and our shared priorities with local government. In addition, a new administrative burden on local government would need to be fully funded in light of the Scottish Public Finance Manual<sup>24</sup>. In addition, if a proportionate market value were to be used as the calculation for the levy, then local authorities may not have access to all of the relevant information in order to determine the liability at that point.

Consideration has been given to designate Revenue Scotland as the revenue authority for the tax. Revenue Scotland is the tax authority responsible for the administration and collection of Scotland's existing devolved taxes - Land and Buildings Transaction Tax (LBTT) and Scottish Landfill Tax (SLfT). Revenue Scotland will also have responsibility for Scottish Aggregates Tax (SAT). Both LBTT and SLfT are, and SAT will be self-assessed taxes, where the responsibility falls to the taxpayer to complete and submit an accurate return, where required, and pay any tax due.

Revenue Scotland provides an online system for submitting returns for both taxes, alongside guidance for taxpayers.

Designating Revenue Scotland as the revenue authority would support a standardised process across Scotland, providing certainty and convenience to businesses and other stakeholders in the building standards process. It would also allow for the utilisation of RS experience in collecting and administering self-assesses taxes. Revenue Scotland would also be able to use the existing administrative framework for collecting national taxes - the Revenue Scotland and Tax Powers Act 2014 - to underpin the collection of a Scottish BSL.

The Scottish Government proposes that a Scottish BSL should be collected and administered by Revenue Scotland, due to the requirement to use funds for a national programme and to allow Revenue Scotland to utilise its experience and data with existing devolved taxes.

**Question 14**

Do you agree that Revenue Scotland should act as the revenue authority for the Scottish Building Safety Levy?

Please give reasons for your answer

9. Returns

<sup>23</sup> [New Deal with Local Government – Verity House Agreement - gov.scot \(www.gov.scot\)](http://www.gov.scot)

<sup>24</sup> [Scottish Public Finance Manual - gov.scot \(www.gov.scot\)](http://www.gov.scot)



As a self-assessed tax, a Scottish BSL will require taxpayers to assess their liability via a tax return.

The Scottish Government is seeking views on the frequency of returns taxpayers would be required to adhere to when submitting a tax return to the collecting authority. On the one hand, more frequent returns may increase the administrative burden on both taxpayer and tax authority. On the other hand, more frequent returns would ensure the point at which the tax is paid is more closely aligned to the point at which the tax is due, and would also allow for any errors in assessments to be identified and corrected at an earlier opportunity.

The UK Government has considered the frequency of returns for its proposed UK Levy. Its most proposals would see receipts of the UK Levy being provided by local authorities in England to the UK Government at regular intervals. From the UK Government's second consultation on the UK Levy, 64% of respondents supported a quarterly timetable for submitting returns by local authorities, whilst 30% supported a six-monthly timetable. In its response to the consultation, the UK Government proposed to require returns on a quarterly basis, noting that this was also the timescale for many existing returns relating to planning and housing.

In considering return schedules for existing devolved taxes, the returns for the devolved SLfT are made quarterly, as is the proposed frequency for the to-be-devolved SAT.

**Question 15**

Which of the following schedules do you think is the most appropriate for the frequency of returns:

- a) Per unit
- b) Monthly
- c) Quarterly

Please give reasons for your answer.

10. Tax Compliance

In order to ensure that the correct amounts of tax are paid at the right time it is important that a range of investigative and enforcement powers, with appropriate safeguards in place, are available.

10.1 UK Government proposals

In its technical consultation on the UK Levy<sup>25</sup>, the UK Government proposed a conditional link between payment of tax and acceptance of the completion certificate for the relevant property:

---

<sup>25</sup> [Building Safety Levy: second consultation - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

“...that consequence for non-payment of the levy will be that the building control completion certificate will not be issued, or the final certificate accepted, by the building control authority.”

This compliance mechanism reflects the UK Government’s proposal for local authorities to act as the collection agency for the UK Levy, as they are also the building control authority in England.

As the Scottish Government is proposing that Revenue Scotland will administer a Scottish BSL, there is less rationale for including a conditional link with the completion certificate process as a compliance mechanism. Instead, the Scottish Government is proposing to utilise Revenue Scotland’s existing enforcement powers for compliance purposes.

## 10.2 Revenue Scotland powers

The Revenue Scotland and Tax Powers Act 2014 (RSTPA 2014) provides Revenue Scotland with a range of investigative and enforcement powers in relation to the two existing devolved taxes, including powers to open enquiries, issue determinations, make assessments and issue information notices, carry out inspections of business premises, and seek recovery of debt through the civil courts. These are in addition to the powers it has to impose civil penalties and interest.

These same investigatory and enforcement powers will also be available to Revenue Scotland in relation to a Scottish BSL. In relation to tax avoidance, the Scottish Government proposes that Revenue Scotland will utilise the Scottish General Anti-Avoidance Rule (GAAR), as established in RSTPA 2014. These powers are set out in Annex B.

The Scottish Government believes the use of these powers will reduce the need for an active conditional link between the issuance of a completion certificate and the payment of the levy, as is the case with the UK Levy. However, we recognise that in instances where there is persistent non-compliance from a developer in meeting its obligations under the Levy, there may be a need for additional sanctions to enforce these obligations.

One example of a sanction could be a process by which local authorities withhold access to the building standards system for developers that are persistently non-compliant. Such a measure of last resort would create an incentive for developers to comply with their obligations under the levy, or risk their ability to undertake future developments. However, such a measure would need careful consideration around the potential impacts on the building standards system and on the housebuilding sector more widely.

The Scottish Government is therefore seeking views on whether additional sanctions are needed in cases where there is persistent non-compliance.

### Question 16

Do you agree that, in relation to the Scottish Building Safety Levy, the tax authority should have the investigatory and enforcement powers set out in Annex B?

If you answered no, please give reasons for your answer.

**Question 17**

Do you agree that there should be no active conditionality between the issuance of each completion certificate and payment of the Scottish Building Safety Levy?

If you answered no, please give reasons for your answer.

**Question 18**

What are your views on introducing additional sanctions for taxpayers where Revenue Scotland deem there to be persistent or major non-compliance in paying the Scottish Building Safety Levy?

**Question 19**

Are there specific aspects of the housebuilding industry that may require a different approach to compliance than set out above?

11. Appeals

The Scottish Government proposes that taxpayers (and their fiscal or administrative representatives, should these be provided for) who disagree with certain decisions by Revenue Scotland in relation to a Scottish BSL will have the statutory right to request that the tax authority carries out an internal review of that decision and to also appeal to an independent tribunal.

The Scottish Government proposes to use the provisions of Part 11 of RSTPA 2014 to establish the legislative framework for disputing decisions made by Revenue Scotland in relation to that tax. This will ensure that the dispute resolution system and process for a Scottish BSL is consistent with the other devolved taxes, with reviews carried out by Revenue Scotland and appeals decided by the Tax Chamber of the First-tier Tribunal for Scotland and onwards to Upper Tribunal for Scotland. Guidance on the dispute resolution process is available on the Revenue Scotland website.

The RSTPA 2014 defines as "appealable decisions" the list of Revenue Scotland decisions against which a person aggrieved by that decision has the right to give a notice of review or appeal. The current list of appealable decisions is:

- a decision to make adjustments to counteract a tax advantage;
- a decision in relation to the registration of any person in relation to any taxable activity;
- a decision which affects whether a person is chargeable to tax;
- a decision which affects the amount of tax to which a person is chargeable;
- a decision which affects the amount of tax a person is required to pay;
- a decision which affects the date by which any amount by way of tax, penalty or interest must be paid;

- a decision in relation to a penalty;
- subject to certain conditions and exceptions, a decision in relation to the giving of an information notice or in relation to the use of any other investigatory powers; and
- subject to certain conditions, a decision in relation to the giving of a notice to a third party requiring them to supply the contact details of a debtor.

The current list of Revenue Scotland decisions which are not appealable decisions are:

- giving a notice of proposed counteraction of a tax advantage under the Scottish GAAR;
- making a Revenue Scotland determination in the event of no tax return being submitted; and
- a decision to give a notice of enquiry.

#### **Question 20**

Do you agree with our proposals for dispute resolution in relation to the Scottish Building Safety Levy?

If you answered no, please give reasons for your answer.

#### 12. Duration

The Scottish Government proposes that any revenue raised from a Scottish BSL should be used initially to support the funding of cladding remediation in Scotland. Once cladding remediation has been resolved in totality, the current rationale for a Scottish BSL to fund such measures would end. However, as it is not yet known how long the Cladding Remediation Programme will operate for, indicating an end date for a Scottish BSL may result in the revenue stream concluding before all remediation works are undertaken, with the risk of underfunding the Programme. The Scottish Government is therefore seeking views on a sunset clause for a Scottish BSL.

The Scottish Government is also considering the appropriateness of a regular review for a Scottish BSL, once implemented. A statutory review requirement can offer the opportunity to ensure the scheme is operating as intended against its objectives. When considering a review period, it is important to consider the length of time needed between implementation and the first review period, and the length of time in between review periods, as there should be sufficient time to allow for outputs to be meaningful.

The UK Government's current proposals for the UK Levy do not include a sunset clause, but do propose to include a regular review every three years. The UK Government's rationale for the three-yearly review is to ensure the UK Levy reflects the differences in house prices across English council areas, which the proposed UK Levy is based on. From the UK Government's second consultation, 90% of who answered the question agreed there should be a regular review point. In terms of timescales, 53% of respondents who answered believed this should be annually, with 31% supporting 3-yearly and 15% supporting 5-yearly. The Scottish

Government is therefore seeking views on whether a regular review of a Scottish BSL would be appropriate.

**Question 21**

What are your views on having a sunset clause or end date for the Scottish Building Safety Levy?

**Question 22**

Do you think there should be a regular review for the Scottish Building Safety Levy?

Please give reasons for your answer

## Part C: Impacts

### 13. Impact Assessments

In accordance with legislative requirements, a number of Impact Assessments will be completed as part of work to develop the Bill.

### 14. Business and Regulation

The Scottish Government recognises that a Scottish BSL on new residential buildings would place a new financial and compliance burden on homebuilders, who would be required to assess liability, submit returns and pay tax on new residential developments they are responsible for. In addition to those homebuilders who will be liable to pay tax, there may be indirect impacts to businesses that work in the housing supply chain, including contractors, tradesmen and estates services. Other parties that could see impacts from a Scottish BSL include Revenue Scotland and local authorities (as building verifiers).

In addition, it is possible that a Scottish BSL on new residential buildings would have an impact on the residential construction sector more widely. An additional tax on homebuilders could impact the following:

- house prices of new build properties
- the number of new build properties completed
- changes in the number of planning applications, building warrants and completion certificates
- changes in land values
- changes in revenues from property-related taxes, including RPDT, LBTT and Council Tax

The Scottish Government is therefore seeking views from a wide range of stakeholders on the potential impact of a Scottish BSL on the sector as a whole.

In developing proposals for legislation, a Business and Regulatory Impact Assessment (BRIA) analyses whether a policy is likely to increase or reduce the costs and burdens placed on businesses, the public sector, voluntary and community organisations. We have published a Partial BRIA alongside this consultation, to assist respondents in considering the estimated costs, benefits and risks to the introduction of a Scottish BSL.

Your comments will help support work on the Final BRIA, which will be published at the same time as the proposed Bill. Secondary legislation that flows from the proposed Bill's primary powers will be subject to a BRIA and consultation at that time as necessary.

#### **Question 23**

Do you have any information which could inform any final Business and Regulatory Impact Assessment (BRIA) relating to the Bill?

## 15. Child Rights and Wellbeing

The Articles of the UN Convention on the Rights of the Child and the child wellbeing indicators under the Children and Young People (Scotland) Act 2014 apply to all children and young people up to the age of 18, including non-citizen and undocumented children and young people.

We have considered the proposed provisions against the requirements of a Children's Rights and Wellbeing Impact Assessment and concluded that there will likely be no impact – direct or indirect – of a Scottish BSL on children and young people.

However, this assessment will be revisited following the public consultation, to ensure that any issues raised are taken into consideration.

### **Question 24**

Are you aware of any examples of particular current or future impacts, positive or negative, on young people, (children, pupils, and young adults up to the age of 26) of any aspect of the proposals in this consultation?

## 16. Environment

The Environmental Assessment (Scotland) Act 2005 requires those preparing public plans and programmes to undertake a Strategic Environmental Assessment (SEA) if they are likely to result in significant environmental effects when implemented.

At this stage it is our view that, as per Section 7 of the 2005 Act, the policy around a Scottish BSL would be exempt from the 2005 Act as it is likely to have no or minimal effects on the environment.

It is our intention to submit a notification, as per Section 7(3) of the 2005 Act, following the consultation. This approach is to help ensure our opinion on the likely environmental effects does not shift as a result of the consultation.

### **Question 25**

Are you aware of any examples of potential impacts, either positive or negative, that you consider any of the proposals in this consultation may have on the environment?

## 17. Equality

In developing proposals for a Scottish BSL, the public sector equality duty requires the Scottish Government to pay due regard to the need to:

- eliminate discrimination, victimisation, harassment or other unlawful conduct that is prohibited under the Equality Act 2010;
- advance equality of opportunity between people who share a protected characteristic and those who do not; and
- foster good relations between people who share a relevant protected characteristic.

These three requirements apply across the 'protected characteristics' of:

- age;
- disability;
- gender reassignment;
- marriage and civil partnership;
- pregnancy and maternity;
- race;
- religion and belief;
- sex and sexual orientation.

We have considered the proposals against the needs of the general equality duty as set out in section 149 of the Equality Act 2010, and have considered whether the measures could constitute direct and/or indirect discrimination.

Based on present evidence, we do not assess that a Scottish BSL will have any impact on those who share a protected characteristic. This assessment will be updated following the public consultation, and associated engagement, to reflect any new evidence.

**Question 26**

Are you aware of any examples of how the proposals in this consultation may impact, either positively or negatively, on those with protected characteristics (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation)?

18. Fairer Scotland Duty

The Fairer Scotland Duty is set out in legislation in Part 1 of the Equality Act 2010 and came into force in Scotland from April 2018. It requires Scottish Ministers and named public bodies to actively consider what more can be done to reduce the 'inequalities of outcome' caused by 'socio-economic disadvantage' when making 'strategic decisions'.

After consideration, our view is that a Scottish BSL will not directly impact on those experiencing socio-economic disadvantage and will be paid only by aggregates producers.

However, this assessment will be revisited following the public consultation, to ensure that any issues raised there are addressed.

**Question 27**

Are you aware of any examples of potential impacts, either positive or negative that you consider any of the proposals in this consultation may have on groups or areas at socio-economic disadvantage (such as income, low wealth or area deprivation)?

19. Island Communities



The Islands (Scotland) Act 2018 provides for a duty on Scottish Ministers and other relevant public bodies that they must have regard to island communities in exercising their functions and in the development of legislation.

Section 13 of the 2018 Act obliges the Scottish Ministers to prepare an Islands Communities Impact Assessment (ICIA) in relation to legislation which, in their opinion, is likely to influence an island community that is significantly different from its effect on other communities in Scotland.

**Question 28**

Are you aware of any examples of how the proposals in this consultation might impact, positively or negatively, on island communities in a way that is different from the impact on mainland areas?

## Part D – Reference and Response

### 20. Glossary of Terms

Term	Meaning
Building Safety Levy (BSL)	A tax applied during the construction of new residential properties, to fund building safety expenditure
Dwelling	A unit of residential accommodation occupied (whether or not as a sole or main residence): <ol style="list-style-type: none"> <li>a. by an individual or by individuals living together as a family; or</li> <li>b. by not more than six individuals living together as a single household (including a household where care is provided for residents)</li> </ol>
Land and Buildings Transaction Tax (LBTT)	A tax applied to residential and commercial land and buildings transactions (including commercial properties and commercial leases) where a chargeable interest is acquired
Mid Market Rent	Homes for rent to households on low to middle incomes
New Supply Shared Equity Scheme	A scheme which helps people on low to moderate incomes to buy an affordable new build home
Open Market Shared Equity Scheme	A scheme which helps first time buyers on low to moderate incomes to buy a home on the open market (within a certain price threshold) where this is sensible and sustainable for them to do so
Order in Council (OiC)	An Order in Council is a type of legislation made by the King acting on the advice of the Privy Council and approved in person by the monarch
Residential Property Developer Tax (RPDT)	A UK-wide a new tax on profits earned by companies or groups of companies undertaking UK residential property development with
Revenue Scotland	Revenue Scotland is the tax authority with responsibility for the collection and management of Scotland’s devolved taxes
Revenue Scotland Tax Powers Act 2014	Makes provision for a Scottish Tax System to enable the collection and management of devolved tax.  It puts in place a statutory framework which applies to the devolved taxes and sets out in clear terms the relationship between the tax authority and taxpayers in Scotland, including the relevant powers, rights and duties.
Registered Social Landlords (RSLs)	A society or company who provides housing and does not trade for profit
Revenue/Tax authority	A body responsible for collecting and managing taxes
Scottish Landfill Tax (SLfT)	A tax on the disposal of waste to landfill, paid by site operators

Scottish Aggregates Tax (SAT)	A tax which will replace the UK Aggregates Levy in Scotland, and will be a tax on the use of rock, sand, and gravel for commercial purposes like building roads and houses
Shared Ownership Scheme	A scheme which allows people to buy a share of a property, with the remainder being owned by a housing association
Single Building Assessment	An assessment of a building which identifies life critical fire safety risks, and any mitigation or remediation that is required to move risks to a building from high risk to low risk
Tax point	A point in time at which a transaction becomes liable for a tax

## 21. Question List

### 21.1 Part A - Principles

#### **Question 1**

Do you think a new tax on housebuilding, paid by developers, is a fair way to generate revenue to fund the Scottish Government's cladding remediation programme?

#### **Question 2**

Do you agree that homes delivered through the Scottish Government's Affordable Housing Supply Programme should be removed from the Scottish Building Safety levy?

Please give reasons for your answer

#### **Question 3**

What are your views on the principle of removing smaller developers from charge of the Scottish Building Safety Levy?

#### **Question 4**

If you agree that small developers should be removed from charge under a Scottish Building Safety Levy, what are your views on the method of determining who is a smaller developer?

#### **Question 5**

Are there any other exemptions from a Scottish Building Safety levy that you think should be considered by the Scottish Government?

#### **Question 6**

Are there any types of development listed in the exemptions above that you think should not be exempted from a Scottish Building Safety Levy?

#### **Question 7**

Do you have any comments on exemptions not covered by the previous questions that you wish to raise?

**Question 8**

Do you agree that rate of the Scottish Building Safety Levy should be calculated as a proportion of the market value of the property?

Please give reasons for your answer

**Question 9**

In cases where a property is not sold on the open market, what alternative valuation could be used to calculate the Scottish Building Safety Levy, to ensure proportionality with the market value of the property?

**Question 10**

In relation to Question 9, Do you have any information on valuations undertaken during the building standards process that would be useful for the Scottish Government to consider?

**Question 11**

What are your views on using one of the following alternative methods of calculation for the Scottish Building Safety Levy:

- Flat rate per unit
- Rate based on the size (per square metre) of the property
- Rate based on the number of bedrooms of the property
- Rate based on the cost of building works of the property

**Question 12**

Do you think there should be a different rate applied on brownfield developments?

21.2 Part B – Operational Considerations

**Question 13**

Do you agree that liability for the Scottish Building Safety Levy should arise in relation to the issuance of acceptance of a completion certificate?

Please give reasons for your answer

**Question 14**

Do you agree that Revenue Scotland should act as the revenue authority for the Scottish Building Safety Levy?

Please give reasons for your answer

**Question 15**

Which of the following schedules do you think is the most appropriate for the frequency of returns:

- a) Per unit
- b) Monthly
- c) Quarterly

Please give reasons for your answer.

**Question 16**

Do you agree that, in relation to the Scottish Building Safety Levy, the tax authority should have the investigatory and enforcement powers set out in Annex B?

If you answered no, please give reasons for your answer.

**Question 17**

Do you agree that there should be no active conditionality between the issuance of each completion certificate and payment of the Scottish Building Safety Levy?

If you answered no, please give reasons for your answer.

**Question 18**

What are your views on introducing additional sanctions for taxpayers where Revenue Scotland deem there to be persistent or major non-compliance in paying the Scottish Building Safety Levy?

**Question 19**

Are there specific aspects of the housebuilding industry that may require a different approach to compliance than set out above?

**Question 20**

Do you agree with our proposals for dispute resolution in relation to the Scottish Building Safety Levy?

If you answered no, please give reasons for your answer.

**Question 21**

What are your views on having a sunset clause or end date for the Scottish Building Safety Levy?

**Question 22**

Do you think there should be a regular review for a Scottish Building Safety Levy?

Please give reasons for your answer

21.3 Part C - Impacts

**Question 23**

Do you have any information which could inform any final Business and Regulatory Impact Assessment (BRIA) relating to the Bill?

**Question 24**

Are you aware of any examples of particular current or future impacts, positive or negative, on young people, (children, pupils, and young adults up to the age of 26) of any aspect of the proposals in this consultation?

**Question 25**

Are you aware of any examples of potential impacts, either positive or negative, that you consider any of the proposals in this consultation may have on the environment?

**Question 26**

Are you aware of any examples of how the proposals in this consultation may impact, either positively or negatively, on those with protected characteristics (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation)?

**Question 27**

Are you aware of any examples of potential impacts, either positive or negative that you consider any of the proposals in this consultation may have on groups or areas at socio-economic disadvantage (such as income, low wealth or area deprivation)?

**Question 28**

Are you aware of any examples of how the proposals in this consultation might impact, positively or negatively, on island communities in a way that is different from the impact on mainland areas?

**22. Responding to this consultation**

We are inviting responses to this consultation by 18 November 2024

Please respond to this consultation using the [Scottish Government's consultation hub, Citizen Space](#). Access to this consultation is available online at: [Scottish Building Safety Levy Consultation \(consult.gov.scot\)](#). You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 18 November 2024.

If you are unable to respond using our consultation hub, please complete the Respondent Information Form, and send it with your response:

By email to: [taxdivisionengagement@gov.scot](mailto:taxdivisionengagement@gov.scot)

Or by post to:  
Building Safety Levy Consultation  
Directorate for Tax  
Area 3D North  
Victoria Quay  
Edinburgh EH6 6QQ

**23. Handling your response**

If you respond using the consultation hub, you will be directed to the About You page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document.

To find out how we handle your personal data, please see our [privacy policy](#).

## 24. Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public on the [Scottish Government's consultation hub, Citizen Space](#). If you use the consultation hub to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so. An analysis report will also be made available.

## 25. Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above or at: [taxdivisionengagement@gov.scot](mailto:taxdivisionengagement@gov.scot)

### 25.1 Scottish Government consultation process

Consultation is an essential part of the policymaking process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online at the [Scottish Government's consultation hub, Citizen Space](#). Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review;
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot

address individual concerns and comments, which should be directed to the relevant public body.



## UK Government Proposals for a Building Safety Levy in England

The Building Safety Act 2022 gave powers to the UK Government to introduce a BSL on new residential buildings requiring certain building control approvals in England, to raise revenue to be spent on building safety.

Following the introduction of the 2022 Act, the previous UK Government Department for Levelling Up, Housing and Communities (DLUHC) (now the Ministry of Housing, Communities and Local Government) published three public consultations on the England only Building Safety Levy (UK Levy)– the first in [July 2021](#), the second in [November 2022](#) and the third (a technical consultation) in [January 2024](#). No formal Government response to the first consultation was published. A response to the second consultation was published in [January 2024](#).

### Overview of UK Levy proposals from the consultations:

- It is intended that the Levy will be collected by local authorities.
- Levy rates will vary by local authority boundaries in England to take account of different house values.
- It is proposed there will be a differential levy rate for new build on “brownfield land”.
- There are a number of proposed exemptions to the levy including affordable housing.
- It is proposed the levy will be charged on floorspace of developments rather than per unit.
- The UK Government also proposed to exclude small developments (under 10 units) as a means of protecting small businesses.
- There is no intention to charge the levy on owner/occupiers who wish to improve their property.

Note that while the UK Levy proposal provides an illustrative basis upon which a Scottish tax could be established, the creation of a separate tax in Scotland provides an opportunity to consider how the tax could be aligned with Scottish Government priorities and objectives, as well as the Scottish housing sector and economy.

## **Overview of Revenue Scotland's Investigatory and Enforcement Powers Provided Through the Revenue Scotland Tax Powers Act 2014**

### Investigatory powers

The Scottish Government considers it appropriate to provide the revenue authority (provisionally Revenue Scotland) with the following investigatory powers:

- Power to open enquiries
- Power to issue determinations, assessments and information notices
- Power to obtain information and documents from taxpayers and third parties
- Power to inspect business premises of taxpayers and third parties
- Power to inspect property for valuation
- Power to mark assets and to record information
- Power to copy and remove documents
- Through the Scottish General Anti-Avoidance Rule (GAAR), the power to take counteraction against tax avoidance arrangements in relation to devolved taxes which it considers to be artificial, even if the arrangements otherwise operate within the letter of the law

These powers mirror the investigatory powers for existing taxes (LBTT and SLFT). The Scottish Government proposes that the same legislative provisions on inspections which currently apply to the existing devolved taxes will also apply to a building safety levy in Scotland.

Most people will co-operate fully when an inspection is carried out. Where this is not the case, a person deliberately obstructing an officer in the course of carrying out an inspection, including in exercising any of the officer's powers, will be liable to a penalty if the inspection has been approved beforehand by the Tax Chamber of the First-tier Tribunal for Scotland.

### Enquiries

The Scottish Government proposes that, subject to certain conditions and the time limits set out under Part 6 Chapter 4 of the RSTPA 2014, Revenue Scotland will have the power to open an enquiry into a tax return. The enquiry will be able to cover anything contained (or required to be contained) in the tax return relating to whether the taxpayer is liable to pay tax and/or the amount of tax which is liable to be paid.

Revenue Scotland will, if it considers it necessary, have the power to amend the self-assessment contained in the tax return either during or at the end of the enquiry (for example if not enough, or too much, tax has been paid).

Revenue Scotland will also have the power at any point during the enquiry to exercise any of its other investigative powers, such as issuing an information notice, carrying out an inspection etc.

### Tax determinations, assessments and corrections

The Scottish Government proposes that, subject to certain time limits and conditions set out under Part 6 Chapter 5 of the RSTPA 2014, Revenue Scotland will have the power to issue a determination to a taxpayer where it has reason to believe that the taxpayer is liable to pay tax but has not made a tax return by the due date.

Consistent with current arrangements for LBTT and SLfT, the taxpayer will not be able to request a review or appeal in relation to the decision to issue them with the determination but they will be able to request a review or appeal in relation to the determination itself (see the Dispute Resolution section) or displace it by submitting a tax return within the time period allowed.

The Scottish Government also proposes that, subject to certain time limits and conditions set out under Part 6 Chapter 6 of the RSTPA 2014, Revenue Scotland will have the power to issue an assessment to a taxpayer.

In both cases the determination or assessment would state, to the best of Revenue Scotland's information and belief, the amount of tax, penalties and interest which the taxpayer is liable to pay. This amount will be recoverable in the same manner as if it were unpaid tax.

If the determination or assessment contains an under-statement of the taxpayer's tax liability, and the taxpayer is aware of this, the taxpayer may be liable to a penalty for failing to take reasonable steps to notify Revenue Scotland.

The Scottish Government also proposes that, up to 12 months after receiving a tax return, Revenue Scotland will have the power under section 84 of the RSTPA 2014 to amend the return to correct an obvious error or omission.

#### Information notices

The Scottish Government proposes that Revenue Scotland will have the power, in certain situations and subject to specified rules set out in legislation under Part 7 Chapters 2-3 of the RSTPA 2014, to issue a legal notice (an "information notice") to a person requiring them to provide information and/or produce documents in relation to a Scottish BSL. The Scottish Government proposes that the same legislative provisions on information notices which currently apply to the existing devolved taxes will also apply to a Scottish BSL.

Additional safeguards will also be provided which prevent or restrict an information notice requiring the provision or production of certain types of sensitive information and documents, such as personal records, journalistic material, legally privileged information, and statutory audit information held by auditors.

Most people will comply with the requirements of an information notice. Where this is not the case, however, the person will be liable to a penalty. It will also be a criminal offence to conceal, destroy or otherwise dispose of (or arrange for the concealment, destruction or disposal of) any document after it has been required to be produced following an information notice which has been approved by the Tax Chamber of the First-tier Tribunal for Scotland.

## Inspections

The Scottish Government proposes that Revenue Scotland will have the power, in certain situations and subject to specified rules set out in legislation under Part 7 Chapters 4-5 of the RSTPA 2014, to enter and carry out an inspection of the business premises of either a taxpayer or an “involved third party” in order to check a person’s tax position. This does not include the power to enter or inspect any part of premises used solely as a dwelling.

The Scottish Government proposes that the same legislative provisions on inspections which currently apply to the existing devolved taxes will also apply to a Scottish BSL.

Most people will co-operate fully when an inspection is carried out. Where this is not the case, a person deliberately obstructing an officer in the course of carrying out an inspection, including in exercising any of the officer's powers, will be liable to a penalty if the inspection has been approved beforehand by the Tax Chamber of the First-tier Tribunal for Scotland.

## Debt pursuit

The majority of taxpayers will pay the correct amount of money they owe in relation to a Scottish BSL. Some taxpayers may, however, be unable to pay the sum of money on time or will choose not to pay it upon demand.

Where associated companies have registered as group for the tax all members of the group will be jointly and individually liable for any debts relating to the tax.

In cases where a taxpayer has real difficulty paying any money that is due but is willing to find a way of paying, the Scottish Government proposes that Revenue Scotland will have the flexibility (as it does already) to work with the person to find a payment arrangement acceptable to both parties.

There will however be cases where, given the circumstances, it is not possible or appropriate to enter into such arrangements. In such cases, the Scottish Government proposes that Revenue Scotland will be able (as it does already) to undertake civil court proceedings to recover the debt by either:

- applying to the Sheriff Court for a summary warrant to be issued; or
- for particular types of cases, seeking recovery through proceedings before
- either the Sheriff Court or the Court of Session.

## Interest

We propose that interest will be charged on any amount of unpaid tax or penalties in relation to a Scottish BSL. This is intended to compensate the tax authority (and therefore the public purse) or the taxpayer for the loss of the use of money, and is not to be viewed as a penalty or other sanction.

To provide for this, the Scottish Government proposes to use the provisions of Part 9 of the RSTPA 2014 and to modify the Revenue Scotland and Tax Powers Act (Interest on Unpaid Tax and Interest Rates in General) Regulations 2015.

### Powers to issue penalties

It is important that the system for Scotland's devolved taxes operates fairly and efficiently. The Scottish Government recognises that the vast majority of taxpayers want to comply with their obligations.

To encourage compliance and deter non-compliance, a range of fixed, daily and tax-gearred (or percentage-calculated) civil penalties apply to the devolved taxes. Revenue Scotland has the power in certain circumstances, and for certain penalties, to suspend, reduce or even waive a penalty. The Revenue Scotland website provides guidance on the penalty system for the devolved taxes<sup>26</sup>.

The Scottish Government proposes to adopt the penalty framework provided for in the RSTPA 2014 (see further below), with minor modifications to some penalty provisions to ensure they also cover a levy on new residential development. This will ensure that the civil penalty system for a Scottish building safety levy is consistent with the other devolved taxes.

The Scottish Government considers it appropriate to provide the revenue authority (provisionally Revenue Scotland) with the following powers on penalties:

- Penalties for failure to make a return
- Penalties for failure to pay tax
- Penalties for inaccuracies in taxpayer documents
- In relation to investigations, penalties for failure to comply or obstruction, including failure to comply with the time limit
- Penalties for failure to register for the tax

These powers mirror the powers of penalties for existing taxes (LBTT and SLFT).

### Tax Avoidance and Evasion

Where it has the power to do so, the Scottish Government wishes to take the toughest possible approach to tackling tax avoidance in relation to Scotland's devolved taxes.

The Scottish General Anti-Avoidance Rule (GAAR) is established in Part 5 of the RSTPA 2014. It allows Revenue Scotland to take counteraction against tax avoidance arrangements in relation to devolved taxes which it considers to be artificial, even if the arrangements otherwise operate within the letter of the law.

The Scottish GAAR is significantly wider than the corresponding UK General Anti-Abuse Rule which is based on a narrower test of "abuse" rather than "artificiality".

---

<sup>26</sup> [Chapter 3 of the RSTPA 2014 legislation guidance covering the range of civil penalties which apply to Scotland's devolved taxes](#)

The Scottish Government intends that the Scottish GAAR will also apply to a Scottish Building Safety Levy.

Tax evasion (also known as tax fraud) is the illegal non-payment or underpayment of tax, for example by deliberately misrepresenting or withholding information. Fraud (including fraud by agents) is already a common law offence in Scots law, for which the sanction can be an unlimited fine and/or an unlimited term of imprisonment.

For this reason the Scottish Government did not introduce legislation via the RSTPA 2014 for a new offence of evasion of devolved taxes, and new legislation is not therefore considered to be required to ensure that evasion of a Scottish BSL will be an offence. Where it is suspected that evasion of the devolved tax either has taken or is taking place, the matter will be referred to the appropriate authorities by Revenue Scotland for consideration.



© Crown copyright 2024



This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit [nationalarchives.gov.uk/doc/open-government-licence/version/3](https://nationalarchives.gov.uk/doc/open-government-licence/version/3) or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: [psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk).

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at [www.gov.scot](http://www.gov.scot)

Any enquiries regarding this publication should be sent to us at

The Scottish Government  
St Andrew's House  
Edinburgh  
EH1 3DG

ISBN: 978-1-83601-799-8 (web only)

Published by The Scottish Government, September 2024

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA  
PPDAS1504650 (09/24)

W W W . g o v . s c o t