

Finance and Public Administration Committee
Tuesday 29 October 2024
29th Meeting, 2024 (Session 6)

The Scotland Act 1998 (Specification of Devolved Tax) (Building Safety) Order 2024 – Note by the Clerk

Overview

1. At this meeting, the Committee will take evidence from the Cabinet Secretary for Finance and Local Government and officials on the Scotland Act 1998 (Specification of Devolved Tax) (Building Safety) Order 2024 before debating a motion in the name of the Cabinet Secretary inviting the Committee to recommend approval of the instrument.
2. This is a draft Statutory Instrument (SI), which requires approval by resolution of the Parliament before it can become law. In this case, a draft of the instrument was also laid before the UK Parliament for approval by resolution of each House of Parliament. More information about the instrument is summarised below:

Title of instrument: [The Scotland Act 1998 \(Specification of Devolved Tax\) \(Building Safety\) Order 2024 \[draft\]](#)

Laid under: [The Scotland Act 1998](#)

Laid on: 10 September 2024

Procedure: Affirmative

Lead committee to report by: 4 November 2024

3. Following evidence-taking on the SI at agenda item 2, the Committee, as lead committee, will be invited at agenda item 3 to debate and vote on motion [S6M-14473](#), lodged in the name of the Cabinet Secretary for Finance and Local Government—

That the Finance and Public Administration Committee recommends that the Scotland Act 1998 (Specification of Devolved Tax) (Building Safety) Order 2024 [draft] be approved.

Procedure

4. Under the affirmative procedure, an instrument must be laid in draft and cannot be made (or come into force) unless it is approved by resolution of the Parliament. This instrument also requires approval by resolution of both Houses of the UK Parliament. Further detail about the affirmative procedure is included at Annexe A.

Delegated Powers and Law Reform Committee consideration

5. The DPLR Committee considered the instrument on [17 September 2024](#) and reported on it in its [53rd report, 2024](#). The DPLR Committee made no recommendations in relation to the instrument.

Background

6. This SI originates from a recognition that the UK and Scottish Governments face common challenges around remediating historical building safety defects, such as defective cladding, and are both committed to ensuring that the housing sector makes a fair contribution towards the associated costs.
7. In 2021, the UK Government announced that it would introduce a Building Safety Levy which would apply as a tax on any new development in England considered as “residential”.
8. In its 2023-24 Programme for Government, the Scottish Government then announced its intention to seek the transfer of powers to introduce a new tax in Scotland, equivalent to the UK Government’s Building Safety Levy for England.
9. The UK and Scottish Governments then undertook a joint consultation on devolving powers for a Scottish Building Safety Levy. The UK Government and Scottish Governments have used the views gathered to inform the decision to devolve and receive the power.

Purpose of the instrument

10. The Order, if approved, will devolve a power to the Scottish Parliament to legislate for a new Scottish tax or levy relating to building control approval for properties providing accommodation. Revenues from the levy would be used to fund building safety expenditure in Scotland.
11. The Policy Note explains that “the scale of the building safety cladding issue in Scotland is expected to be in proportion to that in England and the Scottish Government faces a similar challenge to the UK Government on how to fund the associated remediation works.”
12. The power to impose a Building Safety Levy in section 105C of the Building Safety Act 1984 extends only to England. The Policy Note explains that extending the English levy to Scotland would not be practical, owing to different systems of building control in England and Scotland. As such, the Scottish Government has requested the devolution of the requisite powers from the UK Government to allow the Scottish Parliament to legislate for an equivalent Building Safety Levy, adapted to building control systems in Scotland, in order to fund building safety expenditure.

Scottish and UK Government joint consultation

13. As noted above, the Scottish and UK Governments ran a joint public consultation between 8 January and 19 February 2024 which invited respondents to 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; and
 - that the power to introduce an equivalent tax or levy to the Building Safety Levy should be devolved to the Scottish Parliament.
14. A [response to the consultation](#) was subsequently published and includes a summary of the responses received. The summary notes that, of the responses received from organisations and individuals from across the property, accounting, and law sectors, eight were broadly in support of devolving powers for a Scottish Building Safety, six were opposed, and two expressed no opinion.
15. Respondents in favour of the devolution of tax powers for a Building Safety Levy in Scotland argued that, owing to the locality of building remediation, power should be relevant to the regulatory jurisdiction for the industries where it will be applied and that therefore, the Scottish Parliament is the appropriate authority to introduce a Scottish Building Safety Levy. Respondents also noted that the Scottish industry could benefit from a more efficient approach to a national tax via a central collection agency, as opposed to through local authorities (as is the case in England).
16. Responses to the consultation further suggested that, as there is no option to extend the Building Safety Levy in England to Scotland, the Scottish Government should be given powers to legislate for a Scottish Building Safety Levy in order to preserve the UK single market and prevent distortionary cross-border effects.
17. Other supportive respondents stated that a Scottish Building Safety Levy would support the Scottish Government's cladding remediation work and help to restore confidence in the housing market.
18. Respondents who were in opposition to the devolution of tax powers for a Building Safety Levy in Scotland noted concerns that a Scottish levy could have a disproportionate impact on housebuilders who have not built any housing requiring remediation, and that there may be a risk of "double taxation", as property developers already contribute to the Residential Property Developers Tax (RPDT), and some have already committed to paying for the remediation of buildings they are responsible for. Concerns were also raised that the introduction of a Scottish Building Safety Levy may increase the price of new properties.
19. The Governments' joint response to the consultation (referred to hereafter as 'the Governments' response') notes that modelling for the Building Safety Levy in England suggests that, rather than impacting property prices (which are largely set by the price of existing properties), the levy is expected to have a marginal

impact on land prices. They state that the potential economic impacts of all Building Safety Levies will be monitored in the years ahead.

20. Some consultation responses also highlighted concerns that the introduction of a Scottish Building Safety Levy would create additional complexity and administrative burden for housebuilders should the rates of the Scottish levy differ from those in England.
21. In response to this concern, the UK and Scottish Governments note that the design of a Scottish Building Safety Levy falls outwith the scope of the consultation on whether the powers to legislate for a levy should be devolved to the Scottish Parliament. However, they explain that “the Scottish Government has already committed to introducing a tax that is “equivalent” to the Building Safety Levy in England and will carry out a programme of engagement and consultation with those operating in residential property development sector and other stakeholders on the design of the Scottish Building Safety Levy.”
22. One response to the Governments’ joint consultation noted that “the process for introducing a Scottish Building Safety Levy has not followed the procedure set out in the Command Paper Strengthening Scotland’s Future (2010), and that the devolution proposal to the UK Government should have come from the Scottish Parliament. This would have allowed the Scottish Parliament to be able to draw on several years’ experience of the Building Safety Levy in England before deciding whether to seek the powers for a Scottish Building Safety Levy.”
23. The Governments’ response notes that it is not a requirement to have experience of an existing UK tax power before a new tax power is devolved. It states that legislating to devolve the requisite power and detailed policy development relating to the tax will need to overlap if the Scottish Government is to introduce a Scottish Building Safety Levy in a timeframe that mitigates risk to public safety.
24. The Policy Note accompanying the instrument is included at Annexe B. It includes a summary of the consultation undertaken on the instrument. The Policy Note explains that the Order has no financial effects in itself, but that revenues from any tax raised under the Order must be used for building safety expenditure, as provided for by the Order.

Next Steps

25. Following the evidence session with the Cabinet Secretary and the debate and vote on the motion to approve the instrument, the Committee will report to the Parliament setting out its recommendation on the Order by the deadline of 4 November 2024.

Clerks to the Committee
October 2024

The Affirmative Procedure

1. Once laid, an instrument is referred to:
 - The Delegated Powers and Law Reform (DPLR) Committee, for scrutiny on various technical grounds, and
 - a lead committee, whose remit includes the subject-matter of the instrument, for scrutiny on policy grounds.
2. The lead committee, taking account of any recommendations made by the DPLR Committee (or any other committee), must report within 40 days of the instrument being laid.
3. The normal practice is to have two agenda items when an affirmative instrument is considered by the lead committee:
 - an evidence session with the Minister and officials, followed by
 - a formal debate on a motion, lodged by the Minister, inviting the lead committee to recommend approval of the instrument.
4. Only MSPs may participate in the debate, which may not last for more than 90 minutes. If there is a division on the motion, only committee members may vote. If the motion is agreed to, it is for the Chamber to decide, at a later date, whether to approve the instrument.

Scottish Government Policy Note

POLICY NOTE

THE SCOTLAND ACT 1998 (SPECIFICATION OF DEVOLVED TAX) (BUILDING SAFETY) ORDER 2024

2024/XXX

This Order is made by His Majesty in Council in exercise of the powers conferred upon Him by section 80B of the Scotland Act 1998.

The instrument is, by virtue of section 113 and Schedule 7 of that Act, subject to affirmative procedure in both Houses of the UK Parliament and in the Scottish Parliament.

Summary Box

This Order devolves a power to the Scottish Parliament to legislate for a new Scottish tax or levy in connection with building control approval for property which provides accommodation to fund building safety expenditure in Scotland, akin to the Building Safety Levy in England.

Policy Objectives

In 2021, the UK Government announced that it would introduce a Building Safety Levy which would apply as a tax on any new development in England considered as “residential”, unless exempted. The revenues from the UK Government’s Building Safety Levy will be used to fund work to repair buildings across England with historical building safety defects.

The scale of the building safety cladding issue in Scotland is expected to be in proportion to that in England and the Scottish Government faces a similar challenge to the UK Government on how to fund the associated remediation works.

The power to impose a Building Safety Levy in section 105C of the Building Safety Act 1984 extends only to England. The systems of building control in England and Scotland are sufficiently different that it is impractical to extend the English levy to Scotland. The Scottish Government, therefore, requested from the UK Government the devolution of the requisite powers to allow the Scottish Parliament to legislate for an equivalent to the Building Safety Levy in Scotland.

A devolved power allows the Scottish Government to introduce legislation into the Scottish Parliament for a tax or levy adapted to their own building control system for the purposes of funding building safety expenditure.

Consultation

The UK and Scottish Governments ran a joint public consultation between 8 January and 19 February 2024. The consultation invited consultees to 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;
- that the power to introduce an equivalent tax or levy to the Building Safety Levy should be devolved to the Scottish Parliament.

The responses received were varied in focus, with some concentrating on the devolution of powers, some opining only on the merits of the potential levy itself, and others to a combination of both. Most responses were focused on the design of the proposed Scottish Building Safety Levy rather than the devolution proposal itself.

Most respondents, regardless of their views on the devolution of the powers or on the merits of a Scottish Building Safety Levy, were understanding of the need to raise revenue for building safety remediation.

Largely, objections raised against the devolution of tax powers argued so either on principle, or because of concerns about additional complexity and compliance burdens. On the other hand, support for devolution was occasionally coupled with either outright criticism of a levy (both in England and Scotland) or recommendations for engagement and communication from the Scottish Government when the policy is designed. At close, the majority of responses were in support of devolving tax powers to the Scottish Parliament to introduce a Scottish Building Safety Levy.

The full consultation response document was published on gov.uk¹.

Impact Assessments

This Order has no impact in itself. It allows the Scottish Government to introduce legislation for a tax or levy in connection with building control approval for property which provides accommodation, akin to the English Levy. Nevertheless, the consultation did invite evidence on potential impacts on the UK single market, macroeconomic impacts and other cross-border effects. It concluded that, if anything, a Scottish tax or levy would reduce any cross-border distortions.

The Scottish Government is required to consider the impacts of proposed policies, plans or strategic decisions in relation to equalities, various societal groups and sectors, data protection and the environment, under a range of legislation and commitments. The Scottish Government will carry out the relevant assessments as part of its work to develop policy and legislation for the Scottish tax or levy.

¹ [Response to the consultation on devolving powers for a Scottish Building Safety Levy](#)

FPA/S6/24/29/1

Financial Effects

This Order has no financial effects in itself. Revenues from any tax raised under the Order must be used for “building safety expenditure”, as provided for by the Order.

Scottish Government, Tax Directorate

9 September 2024