

Written Evidence

Building Safety Levy (Scotland) Bill

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Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

We welcome the opportunity to consider and respond to the Finance and Public Administration Committee of the Scottish Parliament's call for views¹ on the Building Safety Levy (Scotland) Bill ("the Bill").² We have the following comments to put forward for consideration.

Questions in the call for views

1. Do you agree, in principle, that a levy should be introduced on the construction of residential property in Scotland?

We do not take a view on the policy principle of the introduction of a Scottish Building Safety Levy (SBSL).

We note that revenue raised from the SBSL will be used to fund building safety expenditure, and that the overarching policy aim as set out in the Policy Memorandum is to seek a contribution from the housebuilding sector to support the funding of the Scottish Government's Cladding Remediation Programme.³

In our previous engagement with the Housing (Cladding Remediation) (Scotland) Act 2024⁴ and in our response to the Scottish Government's consultation on proposals for a Scottish Building Safety Levy⁵ we welcomed measures to improve the safety of residents and owners of buildings with an external wall cladding system in Scotland, and recognised the importance of rapid progress being made as a priority, given the urgent need to remediate the safety issues posed by cladding.

¹ <https://yourviews.parliament.scot/finance/building-safety-levy-bill/>

² <https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/building-safety-levy-scotland-bill/introduced/spbill73s062025.pdf>

³ Policy Memorandum at para 4 <https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/building-safety-levy-scotland-bill/introduced/spbill73pms062025accessible.pdf>

⁴ <https://www.lawscot.org.uk/research-and-policy/influencing-the-law-and-policy/our-input-to-parliamentary-bills/bills-202324/housing-cladding-remediation-scotland-bill/>

⁵ <https://www.lawscot.org.uk/media/2ptaidnq/24-11-18-tax-pllr-scottish-building-safety-levy-consultation-on-proposals-002.pdf>

2. To what extent does the proposed Scottish Building Safety Levy (SBSL) align with the [Scottish Government's 2024 Tax Strategy](#) and with the principles of good tax policy making included in the [Framework for Tax 2021](#) (namely: proportionality, certainty, convenience, engagement, effectiveness and efficiency)?

It is important that there is clarity and certainty in the law in order that individuals and businesses can guide their conduct appropriately.

Our overarching concern regarding the Bill is that substantial detail is left to secondary legislation.

Matters which will be determined by regulation include the tax rate, the detail of the definition of a residential unit, and how floorspace will be verified for the purposes of the Bill. These matters are fundamental to how any levy will work in practice, and clarity on these aspects will be particularly important to developers including those providing purpose-built student accommodation and build to rent. Other matters which will be left to regulations include reliefs, accounting periods, connected persons and group companies, and tax free allowances for tax payers.

Whilst we recognise that some level of flexibility is appropriate, the need for such flexibility has to be appropriately balanced against ensuring there is clarity in the law, appropriate levels of parliamentary scrutiny underpinning legislative and policy developments, and meaningful stakeholder consultation. We consider that the Bill as introduced creates a significant amount uncertainty, and that meaningful scrutiny is challenging when so much of the relevant detail is left to regulations.

Such uncertainty can also have economic impacts, and as contracts for the purchase of land for development are often agreed years in advance we understand that this uncertainty is already having an impact on purchase negotiations. It is therefore imperative that regulations are brought forward as soon as possible, to mitigate uncertainty and to avoid adverse economic impacts.

It is also important that the proposed levy is proportionate and avoids unfairness. The Bill at section 13 provides that the levy must be used by the Scottish Ministers “for the purposes of improving the safety of persons in or about buildings in Scotland”. This would appear to be much broader than cladding remediation. We would welcome clarification on whether “the purposes of improving the safety of persons in or about buildings in Scotland” will be further defined. We consider this important in determining whether the Bill is fair and proportionate, and will be effective in achieving its stated policy aims.

We also note that the Bill as introduced does not include a sunset clause. In our previous response we noted that it would be appropriate for the SBSL to cease to operate once its objective in relation to cladding remediation has been fulfilled and suggested that the end date could be linked to progress of the Cladding Remediation Programme, or the requirement of the SBSL as a source of funding.

However, we also highlighted the risk economic impacts and unintended consequences of the inclusion of a sunset clause. Whilst we recognise that there are arguments both in favour of and against the inclusion of a sunset clause in this legislation, in the absence of such a clause we would welcome clarification on what safeguards are in place to ensure that the levy does not remain in place indefinitely. We consider that this is relevant to the proportionality of the proposed levy.

In terms of engagement, we note that there is limited provision for consultation within the Bill. Whilst we welcome the consultation requirements imposed by section 6(4), we consider that consultation requirements could be strengthened throughout the Bill to ensure meaningful engagement with stakeholders who have expertise in the building sector and will be best placed to identify potential unintended consequences.

It is important that the SBSL is accompanied by an appropriate awareness-raising campaign and clear guidance to assist taxpayers and their professional advisers. We consider it essential that guidance is published in advance of the introduction of the SBSL, to allow a sufficient lead-in time for taxpayers and their professional advisers to familiarise themselves with the requirements.

3. What would be the impacts of the SBSL for the housing market, if any?

Other organisations will be better placed to comment on likely impacts on the housing market. We refer to our comments in response to question 2 regarding the current lack of meaningful detail within the Bill. This lack of detail makes it difficult to anticipate likely impacts on the housing market generally, or any differential impacts on specific geographical or sectoral markets. As above, consultation and engagement with stakeholders on the detail of the levy will be crucial in avoiding unintended consequences.

4. Do you foresee any behavioural changes or impacts arising as a result of the implementation of the SBSL?

Other organisations will be better placed to comment on the potential for any behavioural changes or impacts arising as a result of the implementation of the SBSL. As above, we understand that the Bill is already having some impact on commercial behaviour in purchase negotiations. We refer to our comments in response to question 2 regarding the current lack of meaningful detail within the Bill. This lack of detail makes it difficult to anticipate likely behavioural changes or impacts. As above, consultation and engagement with stakeholders on the detail of the levy will be crucial in avoiding unintended consequences.

We would welcome clarification on whether developers will have the option to defer payment of the levy or pay in instalments in certain circumstances. This may be particularly relevant in purpose-built student accommodation and build to rent developments, where the full levy could be due for all units in a development at completion.

5. Are there any provisions in the draft legislation that may give rise to unintended effects, including to opportunities for tax avoidance?

See our comments in response to questions 2, 3 and 4, above. The effects of the Bill will be largely determined by secondary legislation, the detail of which is not yet available.

We note that section 22 of the Bill would allow Scottish Ministers to make regulations for securing that every non-resident taxpayer, for the purposes of paying the levy, appoints a person resident in the United Kingdom to act as the taxpayer's tax representative. Such a representative would be responsible for securing the non-resident taxpayer's compliance with the levy, and would be personally liable for any failure of compliance or other requirement under the Bill.⁶ Whilst there may be persuasive policy reasons for this approach, the result may be that it is difficult to find suitable persons willing to act as tax representatives.

6. The Bill sets out: (i) the buildings that are specifically included and excluded from SBSL (section 4(2) & (3)) and (ii) the buildings that are exempt from SBSL (section 5). Do you have any views on these inclusions, exclusions and exemptions?

Section 4 defines a "new residential unit" within the scope of the levy for the purposes of the Bill.

Section 4(2) provides a non-exhaustive list of buildings which are to be taken as intended to be used as a dwelling or other accommodation for the purposes of the definition. This includes residential accommodation for students, halls of residence for students in further or higher education and residential accommodation built for the purpose of occupation by a tenant (commonly known as "build-to-rent").⁷

Section 4(3) provides a non-exhaustive list of types of building which are not to be considered as suitable for use as a dwelling or other accommodation and therefore not included in the definition of "new residential unit" or the scope of the levy.⁸ Temporary residential accommodation such as hotels are excluded, as are residential institutions such as residential accommodation for children, hospitals or hospices, prisons and military accommodation.

Section 5 provides for certain buildings to be "exempt new residential units" which will be outwith the scope of the levy. This includes:⁹

- pre-existing residences, provided the works have not resulted in a different number of dwellings than were in existence beforehand;

⁶ Section 23

⁷ Policy Memo, para 21

⁸ Policy memo, para 22

⁹ Policy memo, para 25

- social housing, that is a building to be let under a Scottish secure tenancy by any party such as local authority, registered social landlord or private developer;
- affordable housing, that is a building built using affordable housing funding provided by Scottish Ministers under section 1 or 2 of the Housing (Scotland) Act 1988 or local authorities under section 92 of the Housing (Scotland) Act 2001; and
- any building on a Scottish island.

The SBSL's scope must be clear so that individuals and businesses can guide their conduct accordingly. It is important that those who are subject to an exemption can be easily identified. Consideration requires to be given as to the need for evidence to be produced and the practical arrangements for this.

The exemption in section 5(a) is confusing- it is not clear how a building can be a 'pre-existing residence' before it is constructed (although we note the definition of construction in section 3(3)). If the intention is to cover situations where a home has been demolished and replaced with a new home, that should be clarified.

The exemptions in sections 5(b) and 5(c) limit the scope of social and affordable housing for the purposes of the exemption by reference to other legislative provisions. Consideration could be given to extending this exemption to any affordable housing built in fulfilment of an agreement under section 75 of the Town and Country Planning (Scotland) Act 1997.

We also note that the exemptions in section 5 may lead to apparently anomalous results- for example the conversion of a single house into multiple flats or of multiple flats into a single house will be within the scope of the levy, but extensive works to a block of flats where there is no change to the overall number of flats in the block will be exempt. The exemption is also lost entirely if the number of homes changes. An alternative approach may be to link the levy to the number of new residential units- for example, if one house is replaced with 4 flats then the levy would be payable on 3 new residential units, and if two houses were converted into one, this would be exempt.

[7. Are the arrangements for penalties and appeals as set out in the Bill appropriate?](#)

Provisions relating to penalties are set out in Part 5 of the Bill.

The Bill allows penalties to be applied in various circumstances. In the interests of fairness and proportionality, penalties should not be applied in a way that is disproportionate to the amount at stake and the level of culpability involved. It may be appropriate for Revenue Scotland to consider adopting a 'light touch' approach during the initial implementation of the legislation.

We note that the Bill as introduced does not include provision for tax refunds or reclaims if a property changes status after the application for completion/temporary habitation, for example if an opportunistic sale is agreed.

8. Do you consider that the estimated costs set out in the Financial Memorandum for the Bill are reasonable and accurate? If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill?

Other organisations will be better placed to comment on the financial impacts of the Bill.

9. Do you have any other comments regarding the Bill which have not been captured by the previous questions?

In our previous response we welcomed the suggestion of a regular review of the operation of the SBSL. We therefore welcome the reporting requirements in section 45 of the Bill, but note that they do leave a significant degree of discretion to the Scottish Ministers.

In light of our comments, above, on the potential for uncertainty to have adverse economic impacts, we would welcome clarity on proposed transitional arrangements. As noted above, contracts for the purchase of land for development are often agreed years in advance.



For further information, please contact:

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