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## **Delegated Powers and Law Reform Committee Comataidh Cumhachdan Tiomnaichte is Ath-leasachadh Lagh**

# **Delegated powers in the Aggregates Tax and Devolved Taxes Administration (Scotland) Bill at Stage 1**



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# Delegated Powers and Law Reform Committee

The remit of the Delegated Powers and Law Reform Committee is to consider and report on the following (and any additional matter added under Rule 6.1.5A)—

(a) any—

(i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;

(ii) [deleted]

(iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

(e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act;

(f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject;

(g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and

(h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.

(i) any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.



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**Foyso Choudhury**  
Scottish Labour

# Introduction

1. At its meetings on 30 January and 5 March<sup>i</sup> 2024, the Delegated Powers and Law Reform Committee considered the delegated powers contained in the [Aggregates Tax and Devolved Taxes Administration \(Scotland\) Bill](#) ("the Bill") at Stage 1.
2. The Committee submits this report to the lead Committee for the Bill under Rule 9.6.2 of Standing Orders.

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<sup>i</sup> Foyso Choudhury MSP was absent from this meeting.

# Overview of the Bill

3. This Scottish Government Bill was introduced on 14 November 2023. The Lead Committee is the Finance and Public Administration Committee.
4. The UK Aggregates Levy (“UKAL”), is an environmental tax aimed at reducing the extraction of primary aggregate which is crushed rock, gravel and sand used in construction. It was introduced in 2002, by virtue of the Finance Act 2001. The Scotland Act 2016 made amendments to the Scotland Act 1998 by inserting section 80M to give the Scottish Parliament the power to legislate for a Scottish Aggregates Tax (“SAT”) to replace the UKAL in Scotland. The Scottish Government has stated that the Bill seeks to create a statutory framework for the devolved SAT which will be the Scottish equivalent of the UKAL from 1 April 2026, with the UKAL being disapplied at the same time in Scotland.
5. The Scottish Government's [policy memorandum](#) states that aggregate is important to Scotland's economy by providing materials for housing, construction, road building and other uses with aggregate being extracted and sourced across the country. The intention is to legislate for the SAT to align with the Scottish Government's ambitions for the creation of a circular economy in Scotland. This Bill is to be supplemented by secondary legislation to support its implementation and to complement other circular construction measures.
6. The tax itself will be administered by Revenue Scotland. Revenue Scotland already administers other devolved taxes, namely the Scottish Landfill Tax (“SLfT”) and the Land and Buildings Transaction Tax (“LBTT”).
7. The Scottish Government states that consultation took place with stakeholders on the proposals for the SAT between 26 September and 5 December 2022, followed by a programme of stakeholder engagement meetings and site visits. Following the consultation process the Scottish Government carried out further evidence gathering through an expert advisory group made up of industry representatives, corporate stakeholders and environmental organisations. There was strong support for close alignment between the UKAL and the SAT and a plan for continued dialogue with stakeholders following implementation of the Bill's provisions.

# Delegated powers

8. The Bill confers 20 delegated powers on the Scottish Ministers.
9. The Scottish Government has produced a [Delegated Powers Memorandum](#) (“DPM”) which sets out its reasons for taking the delegated powers in the Bill and for the procedure chosen.
10. The Committee first considered the delegated powers in the Bill at its meeting on Tuesday, 30 January 2024. At that meeting, the Committee did not raise any queries in relation to the following delegated powers:
  - Section 7(10) - Power to make regulations regarding the circumstances in which the exploitation of commercial aggregate is taken to occur in Scotland or Scottish waters
  - Section 11(1) - Power to determine how aggregate is weighed for the purpose of calculating the tax
  - Section 15(1) - Power to make regulations regarding the application of tax credits
  - Section 18(5) - Power to make regulations exempting persons from the requirement to register
  - Section 22 - Power to make further regulations relating to registration
  - Section 23(1) - Power to set accounting periods, require tax returns to be submitted in relation to those accounting periods and require tax to be paid
  - Section 26(1): Power to make regulations to ensure that every non-resident taxpayer has a person resident in the United Kingdom to act as the person’s tax representative for the purpose of paying the tax
  - Section 27(2) - Power to make regulations regarding the extent to which the tax representative of a non-resident taxpayer is required to secure the non-resident taxpayer’s compliance with any requirements
  - Section 32(1): Power to make regulations regarding the application of requirements to partnerships and unincorporated bodies
  - Section 33(1): Power to make regulations regarding carrying on of a business following death, bankruptcy or incapacity
  - Section 34(1): Power to make regulations regarding the transfer of a business as a going concern
  - Section 47(2) inserting new section 216G(1) in the 2014 Act - Power to change penalty provisions relating to SAT
  - Section 59(1) - Power to make ancillary provisions
  - Section 61(2) – Commencement



11. However, at that meeting, the Committee agreed to [write to](#) the Scottish Government to raise questions in relation to the following delegated powers:
  - Section 4(4) – Power to add or remove items from a list of relevant substances for the purposes of excepted processes
  - Section 12(3) - Power to specify the rate(s) of tax
  - Section 20 - Power to make regulations requiring notification of production of exempt aggregate
  - Section 37(2)(a) - Power to specify a relevant person to which Revenue Scotland may delegate any of its functions relating to SAT
  - Section 54(2) - inserting new section 251A(1) in the 2014 Act - Communications from Revenue Scotland to taxpayers
  - Section 55(2) - inserting new section 251B(1) in the 2014 Act - Use of automation by Revenue Scotland
12. Further, the Committee noted that the supporting documentation for the Bill states that there is a plan for continued dialogue with stakeholders following the Bill's implementation. However, there is no formal mechanism or requirement in the Bill for there to be consultation with any person or body before exercising any of these powers. The Committee therefore also agreed to ask the Scottish Government for further details on its consultation plans.
13. The Scottish Government [responded](#) on 16 February 2024
14. The Committee's consideration of these questions, and the other delegated powers contained in the Bill, are set out in the next section of the report.

# Review of relevant powers

## Section 4(4) – Power to add or remove items from a list of relevant substances for the purposes of excepted processes

**Power conferred on: the Scottish Ministers**

**Power exercisable by: regulations made by Scottish statutory instrument**

**Parliamentary procedure: negative**

### *Provision*

15. Section 4 sets out the definition of excepted processes, the products of which are not considered to be aggregate for the purposes of SAT. Any process by which a 'relevant substance', listed in section 4(3), is extracted or otherwise separated from aggregate is an excepted process.
16. Section 4(4) confers power on the Scottish Ministers, by regulations, to add or remove a relevant substance from this list in subsection (3). The power is subject to the negative procedure.

### *Committee consideration*

17. The Committee asked the Scottish Government for further information on why the negative procedure was considered appropriate in this case given that the power permitted the modification of primary legislation. The response from the Scottish Government explains that the negative procedure had been considered appropriate as it was anticipated that the impact of these modifications on the scope of the tax would be minimal, the list of relevant substances would change infrequently, and any modification would be expected to have a limited impact on the scope of the tax. The Scottish Government further noted that it would support the amendment of the Bill, so that where this power is exercised, it would be subject to the affirmative procedure.
18. The Scottish Government is content to support the Bill being amended for regulations made under this section to be subject to the affirmative procedure. Although the power is described as technical and minor by the Scottish Government in the DPM, it will be used to make changes to the list of substances in the Bill that, if they are extracted from aggregate, will be an excepted process and so not subject to SAT.
19. The Committee considers the affirmative procedure would offer a higher level of scrutiny to be applied to such regulations given the power allows for the modification of primary legislation and will make it more closely aligned with the corresponding provision for the UKAL found in section 18 of the Finance Act 2001.

20. **The Committee is content with the power in principle, but recommends that it is amended so it is subject to the affirmative procedure.**

## Section 7(10) - Power to make regulations regarding the circumstances in which the

**exploitation of commercial aggregate is taken to occur in Scotland or Scottish waters****Power conferred on: the Scottish Ministers****Power exercisable by: regulations made by Scottish statutory instrument  
Parliamentary procedure: affirmative***Provision*

21. Section 7 defines, for the purposes of Part 1 of the Bill, when aggregate is considered to have been commercially exploited. Subsection (5) sets out when commercial exploitation is considered to have taken place in Scotland. Subsection (8) provides that the exploitation of a quantity of aggregate is taken to occur in Scotland if the aggregate is in Scotland at the time when it is subjected to exploitation, or where aggregate is subjected to exploitation under subsection (1)(a) or (b) as a result of the movement of aggregate to Scotland from elsewhere in the UK.

*Committee consideration*

22. The DPM states:

” ...the need to take account of cross-border movements of aggregate is a novel part of the Bill. The Scottish Government closely considered the relevant issues and chose to align with the UKAL definition of commercial exploitation with additional clarification regarding the treatment of aggregate sold or moved to Scotland from the rest of the UK.

23. The Scottish Government considers that the power is required to make refinements, should this be necessary, to support the effective administration and enforcement of SAT and protect Scottish revenues in relation to the intra-UK transfers.
24. The Policy Memorandum gives further information explaining that the least onerous and administratively straightforward approach to intra-UK transfers would be for the aggregate producer to account for the tax as they would in a purely Scottish located transaction. It further explains that whilst this would mean some aggregate producers based in the rest of the UK may have to register for SAT, this would only be the case where they are responsible for commercially exploiting aggregate moving to Scotland, for instance, by selling or delivering to a Scottish based customer. It is also noted that this approach aims to minimise the overall regulatory burden on businesses.
25. Section 7(8) creates a clear link between the physical location of aggregate in Scotland and the application of SAT. The power in section 7(10) is narrowly confined to making further provision about the circumstances in which the exploitation of a quantity of aggregate is taken to occur in Scotland for the purposes of subsection (8) so cannot be exercised in a way that would introduce any element of extraterritoriality to the application of the tax.

26. **The Committee finds the power acceptable in principle and is content that it is subject to the affirmative procedure.**

## **Section 11(1) - Power to determine how aggregate is weighed for the purpose of calculating the tax**

**Power conferred on: the Scottish Ministers**

**Power exercisable by: regulations made by Scottish statutory instrument**

**Parliamentary procedure: negative**

### *Provision*

27. Section 11 confers power on Scottish Ministers, by regulations, to make provision determining the weight of any aggregate for the purposes of calculating SAT. Regulations made under this section may specify rules for determining the weight, the time by reference to which the weight is to be determined, and the discounting of constituent ingredients amongst other things.

### *Committee consideration*

28. The DPM explains that whilst the weight will be determined by weighing the aggregate at the time of commercial exploitation, this power is required to allow flexibility to adjust how material is to be weighed in the future, ensuring all circumstances are accounted for. This approach is consistent with other devolved taxes, specifically for determining weight of material for the purposes of SLfT.
29. The Scottish Government considers the negative procedure is appropriate as the power concerns technical and administrative adjustments rather than any substantial adjustments affecting the scope of SAT or the circumstances in which it is payable.
30. It is appropriate that a power be taken to regulate these matters by subordinate legislation, rather than including them on the face of the Bill. Section 11 makes detailed provision as to the content of the regulations, which gives a clear indication of the scope of the power and how it will be exercised.
31. The negative procedure is appropriate for what is a technical and administrative instrument that, in the Committee's view, would not affect the scope of the tax and does not enable the modification of primary legislation.

32. **The Committee finds the power acceptable in principle and is content that it is subject to the negative procedure.**

## **Section 12(3) - Power to specify the rate(s) of tax**

**Power conferred on: the Scottish Ministers**

**Power exercisable by: regulations made by Scottish statutory instrument**

**Parliamentary procedure: provisional affirmative**

### *Provision*

33. Section 12 sets out how the amount of tax charged on taxable aggregate should be calculated with section 12(1) providing that the amount of tax charged on taxable

aggregate is calculated by multiplying the applicable rate of tax by the weight in tonnes of the taxable aggregate.

34. Section 12(3) confers power on Scottish Ministers, by regulations, to specify the rate, or rates of SAT.

#### *Committee consideration*

35. The Committee asked the Scottish Government for an explanation why it does not consider the affirmative procedure to be more appropriate for the first exercise of the power when setting the initial tax rates to provide for appropriate time for parliamentary scrutiny prior to them coming into force and thereafter subject to the provisional affirmative procedure.
36. In its response, the Scottish Government accepts that such an approach would be consistent with other fully devolved taxes and therefore supports the Bill being amended so the first exercise of the power would to be subject to the affirmative procedure.
37. Section 12 prescribes how SAT is to be calculated, however, the Bill itself does not specify any rate to be charged on SAT. It instead confers a power for the tax rate, or rates, to be set which will allow the setting and adjustment of the rates of tax without resorting to primary legislation. This appears reasonable as tax rates can often change and it would represent a considerable expenditure of parliamentary time and resources were a fresh Bill required every time a rate was required to change.
38. The Committee considers it appears reasonable for there to be a power to set tax rates for the calculation of SAT given it is not specified on the face of the Bill, it is clear how the power will be exercised and in what circumstances allowing for rates to be changed quickly. This approach is generally consistent with other devolved taxes allowing changes to be made quickly when required, however, this means that the Parliament could be carrying out retrospective scrutiny where the rates have been changed quickly.
39. The Scottish Government is supportive of amendments being made to the Bill so the first exercise of the power would be subject to the affirmative procedure, similar to that of the other devolved taxes. This means that the first tax rate setting would allow an appropriate opportunity for parliamentary scrutiny before it comes into force, whilst also allowing subsequent changes to the rates to take place quickly if necessary, subject to the provisional affirmative procedure, which appears reasonable.

- 40. The Committee is content with the power in principle but recommends that it is amended so that it is subject to the affirmative procedure on the first exercise of the power, and subject to the provisional affirmative procedure thereafter.**

#### **Section 15(1) - Power to make regulations regarding the application of tax credits**

**Power conferred on: Scottish Ministers**

**Power exercisable by: regulations made by Scottish statutory instrument**

## **Parliamentary procedure: negative**

### *Provision*

41. Section 15(1) confers power on Scottish Ministers, by regulations, to create tax credits in relation to the payment of SAT as well as regulations regarding the administration and value of these credits. Such tax credits would be offset against a taxpayer's liability to pay SAT.

### *Committee consideration*

42. The DPM explains that this power is required to enable Scottish Ministers to specify when and how a tax credit claim can be made and the evidential requirements to support these claims. The Scottish Government explains that there is precedent of this approach in existing devolved taxes and that the negative procedure provides for the appropriate level of scrutiny given that this power does not determine the credits which can be claimed, but rather enables the making of administrative rules regarding tax credits which are specified on the face of the Bill.
43. This power would be exercised to set out the technical and administrative requirements of tax credits to the payments of SAT, which is common in primary legislation. The detail of how this would be administered could be lengthy and technical and it would not be expected that such detail would appear on the face of the Bill. The Committee's view is that the negative procedure will provide for the appropriate level of scrutiny for this power.

44. **The Committee finds the power acceptable in principle and is content that it is subject to the negative procedure.**

## **Section 18(5) - Power to make regulations exempting persons from the requirement to register**

### **Power conferred on: the Scottish Ministers**

### **Power exercisable by: regulations made by Scottish statutory instrument**

## **Parliamentary procedure: affirmative**

### *Provision*

45. Section 18 of the Bill provides that a person who is responsible for subjecting a quantity of aggregate to commercial exploitation is liable to register for SAT.
46. Section 18(5) confers power on Scottish Ministers, by regulations, exempting persons carrying out taxable activity from requirements to register, subject to such conditions or restrictions as specified.

### *Committee consideration*

47. The DPM explains that this power is necessary to ensure those producing aggregate which would usually be considered taxable, but is exempted under section 6 (exempt aggregate) of the Bill, do not need to register for SAT.

48. The Scottish Government considers that providing this power in secondary legislation rather than on the face of the Bill will enable adjustments in light of operational experience of administering the tax to be made. This requires a degree of flexibility. It also considers that the affirmative procedure is appropriate given that it will affect the responsibilities of taxpayers with penalties for non-compliance.
49. This power will specify when and in what circumstances registration for SAT will not be required and there are penalties for failing to register when required to do so. As the SAT is introduced and administered, there may require to be changes made to the registration requirements. Therefore, it is the Committee's view that it appears appropriate that this be done by secondary legislation which provides for a better use of parliamentary time, and that the affirmative procedure is appropriate.
50. **The Committee finds the power acceptable in principle and is content that it is subject to the affirmative procedure.**

## **Section 20 - Power to make regulations requiring notification of production of exempt aggregate**

**Power conferred on: the Scottish Ministers**

**Power exercisable by: regulations made by Scottish statutory instrument**

**Parliamentary procedure: affirmative**

### *Provision*

51. Section 20 places a duty on a person who is not registered for SAT and is subject to an exemption under section 18(5) as they carry out the production of exempt aggregate, to provide a notification to Revenue Scotland of that fact in accordance with regulations made by the Scottish Ministers under this section.

### *Committee consideration*

52. The Committee asked the Scottish Government for further information on the necessity of the power and how it would be exercised given the lack of information available in the DPM and supporting documentation. The additional information was requested to allow the Committee to be able to make an assessment of the appropriateness of the power.
53. In its response, the Scottish Government notes that the scope of the tax will initially be broad and then narrowed through the operation of the exemptions and credits provided for removing products that are not normally used as aggregate from being subject to SAT. Further, there are similarities in production of both aggregate subject to SAT and production of other particulates that are exempt from SAT. The similarities in production of aggregate and exempt aggregate are considered to create a risk of under, or non-declaration of tax and notification requirements in the Bill will make the processes visible to Revenue Scotland and so reduce the risks of non-compliance with SAT. The response also notes that similar notification requirements apply to the UKAL.
54. The Scottish Government also provided the following information on how it is



expected the power will be exercised:

” it is likely that the notification will require the producer to provide details of the business carrying out the extraction, location of the extraction site, type of material extracted, likely dates of extraction and an estimate of tonnage of material produced. Details of the notification will be subject to further consultation and engagement.

55. The Scottish Government has provided significantly more information in the response on the necessity of the power and how it is likely that it will be exercised in the future. Given the information provided, it would appear appropriate for the Bill to contain such a provision, with the exact detail of a notification under this section being outlined in regulations subject to the affirmative procedure.
56. The power appears appropriate due to the similarity between the production of aggregate captured by SAT and exempt aggregate, that a similar power is in place relating to the UKAL, and that the power is to support the administration and management of SAT. The power is narrow in that it will provide specific information notification requirements for those producing exempt aggregate and it is clear how it will be exercised.
57. The power will help ensure compliance with SAT and assist Revenue Scotland in carrying out its functions under the Bill by creating responsibilities on those producing exempt aggregate, for which there are penalties for non-compliance. It is therefore the Committee's view that it is appropriate that the power be subject to the affirmative procedure, offering a high level of scrutiny to the exercise of the power.

58. **The Committee is content with the power in principle and is content that it is subject to the affirmative procedure.**

## **Section 22 - Power to make further regulations relating to registration**

### **Power conferred on: the Scottish Ministers**

### **Power exercisable by: regulations made by Scottish statutory instrument**

### **Parliamentary procedure: negative**

#### *Provision*

59. Section 22 confers power on Scottish Ministers, by regulations, to make provision specifying the period for notifications under sections 18, 19 or 20, specifying the form and content of a notification, requiring a person who has made a notification to notify Revenue Scotland of inaccurate information or changes in circumstances and requiring corrections in the register.

#### *Committee consideration*

60. The DPM states this power is necessary to specify the administrative requirements of making notifications. The Scottish Government is of the view that specifying these details in secondary legislation rather than on the face of the Bill will provide operational flexibility and accommodate adjustments needed in light of the



operational experience of administering the tax.

61. The DPM further states that “this approach is common in tax law because secondary legislation can be more suitable for operational detail at this level.” The negative procedure is considered appropriate for a technical and administrative power.
62. Powers to specify forms and the technical detail of the administrative management of matters, in this case notifications to Revenue Scotland, would not normally appear on the face of a Bill and so, such a power appears appropriate. The scope of the power is limited in that it can only be exercised in relation to specific sections of the Bill and cannot be exercised more widely.

**63. The Committee finds the power acceptable in principle and is content that it is subject to the negative procedure.**

**Section 23(1) - Power to set accounting periods, require tax returns to be submitted in relation to those accounting periods and require tax to be paid**

**Power conferred on: the Scottish Ministers**

**Power exercisable by: regulations made by Scottish statutory instrument**

**Parliamentary procedure: negative**

*Provision*

64. Section 23 confers power on Scottish Ministers, by regulations, to provide that a registered person must account for the payment of SAT, make self-assessed SAT returns and pay tax by the deadlines and in the manner set out in the regulations.

*Committee consideration*

65. The DPM provides that this power is necessary to enable the Scottish Ministers to set out the frequency of returns to be submitted by the registered person and is consistent with the approach taken to accounting periods and tax returns for other devolved taxes.
66. The Scottish Government is of the view the matter of setting accounting periods and allowing for their adjustment is technical and administrative in nature and therefore that the negative procedure is considered appropriate.
67. These are administrative matters which are suitable for being dealt with in this way and the negative procedure affords an adequate level of parliamentary scrutiny.

**68. The Committee finds the power acceptable in principle and is content that it is subject to the negative procedure.**

**Section 26(1): Power to make regulations to ensure that every non-resident taxpayer has a person resident in the United Kingdom to act as the person's tax representative for the purpose of paying the tax**

**Power conferred on: the Scottish Ministers**

**Power exercisable by: regulations made by Scottish statutory instrument**

**Parliamentary procedure: negative**

*Provision*

69. Section 26(1) confers power on Scottish Ministers, by regulations, to make provision requiring non-resident UK taxpayers to appoint a person resident in the UK to act as their tax representative for the purposes of paying SAT.

*Committee consideration*

70. The DPM states that this power is necessary to encourage non-resident taxpayers to comply with their obligations and liabilities in relation to SAT as it is a challenge for a tax authority to ensure compliance in respect of non-resident taxpayers.
71. The Scottish Government is of the view that given the technical and administrative nature of this power, the negative procedure is considered appropriate.
72. This power is related to the administrative processes that are required to support SAT compliance and so the negative procedure is appropriate given the power does not allow for the amendment of any other primary legislation. It is also consistent with the current provisions in the UKAL.

73. **The Committee finds the power acceptable in principle and is content that it is subject to the negative procedure.**

**Section 27(2) - Power to make regulations regarding the extent to which the tax representative of a non-resident taxpayer is required to secure the non-resident taxpayer's compliance with any requirements**

**Power conferred on: the Scottish Ministers**

**Power exercisable by: regulations made by Scottish statutory instrument**

**Parliamentary procedure: negative**

*Provision*

74. Section 27(2) confers power on Scottish Ministers, by regulations, regarding the extent to which the tax representative of the non-resident taxpayer is required to secure their compliance with the requirements of the Bill, the Revenue Scotland and Tax Powers Act 2014, or any regulations made under the 2014 Act.

*Committee consideration*

75. The DPM states that this power is necessary to place reasonable requirements on tax representatives to ensure that SAT obligations and liabilities are met and to secure the compliance of the non-resident taxpayer. The Scottish Government describes this power as technical and administrative and so the negative procedure is to apply.

76. Tax representatives have the responsibility to ensure compliance unless otherwise provided for in any regulations made under this section, so it is the Committee's view that it appears appropriate to have a power to put in place reasonable requirements upon them and for the negative procedure to apply as it is a power which is administrative in nature.

- 77. The Committee finds the power acceptable in principle and is content that it is subject to the negative procedure.**

### **Section 32(1): Power to make regulations regarding the application of requirements to partnerships and unincorporated bodies**

**Power conferred on: the Scottish Ministers**

**Power exercisable by: regulations made by Scottish statutory instrument**

**Parliamentary procedure: negative**

#### *Provision*

78. Section 32(1) confers power on Scottish Ministers, by regulations, to make provision applying the requirements of Part 4 of the Bill (administration) to cases where a business is carried on in partnership, or by an unincorporated body.

#### *Committee consideration*

79. The DPM states that this power is necessary to ensure the tax provisions apply to partnerships and unincorporated bodies and is consistent with the approach taken to accounting periods and tax returns for other devolved taxes. The Scottish Government considers this to be a technical and administrative matter and so the negative procedure is to apply.
80. A similar power is contained in section 31(1) of the Landfill Tax (Scotland) Act 2014 relating to SLfT. Although the wording used is slightly different in the 2014 Act, it has the same effect, which is to be able to set out the administrative arrangements for part 4 of the Bill applying to partnerships and unincorporated bodies. The Committee therefore agrees that such a power is necessary and that the negative procedure offers an appropriate level of parliamentary scrutiny.

- 81. The Committee finds the power acceptable in principle and is content that it is subject to the negative procedure.**

### **Section 33(1): Power to make regulations regarding carrying on of a business following death, bankruptcy or incapacity**

**Power conferred on: the Scottish Ministers**

**Power exercisable by: regulations made by Scottish statutory instrument**

**Parliamentary procedure: negative**

*Provision*

82. Section 33(1) confers power on Scottish Ministers, by regulations, in relation to a person carrying on a business of another person who has died, become bankrupt, become incapacitated, been sequestrated or gone into liquidation, administration or receivership, to make provision for them to notify Revenue Scotland of that fact, the events leading up to it and allowing them to continue to operate.

*Committee consideration*

83. The DPM notes only that this power is considered a technical and administrative power necessary to ensure liability continues should business operate following the original registered person no longer being the operator to enable taxpayer continuity and that the negative procedure is to apply.
84. As outlined above, similar provision is made with regards to SLfT and is subject to the same procedure. Therefore, the Committee agrees that the power is necessary and the negative procedure is appropriate.

85. **The Committee finds the power acceptable in principle and is content that it is subject to the negative procedure.**

**Section 34(1): Power to make regulations regarding the transfer of a business as a going concern**

**Power conferred on: the Scottish Ministers**

**Power exercisable by: regulations made by Scottish statutory instrument**

**Parliamentary procedure: negative**

*Provision*

86. Section 34(1) confers power on Scottish Ministers, by regulations, to make provision for securing continuity in the application of Part 4 of the Bill (administration) in cases where a business carried on by a person is transferred to another person as a going concern.
87. Regulations made under this section may require informing Revenue Scotland of the transfer, provide for duties and liabilities to become those of the transferee, and provide for rights and liabilities for credit to be satisfied by making a repayment or allowing a credit.

*Committee consideration*

88. The DPM states only that this power is a technical and administrative power necessary to ensure liability continues under set conditions should the business be transferred as a going concern and negative procedure is to apply.
89. As outlined above, similar provision is made with regards to SLfT and is subject to the same procedure. Therefore, the Committee agrees that the power is necessary and the negative procedure appropriate.

90. **The Committee finds the power acceptable in principle and is content that it is subject to the negative procedure.**

**Section 37(2)(a) - Power to specify a relevant person to which Revenue Scotland may delegate any of its functions relating to SAT**

**Power conferred on: the Scottish Ministers**

**Power exercisable by: regulations made by Scottish statutory instrument**

**Parliamentary procedure: negative**

*Provision*

91. Section 37(2)(a) confers power on Scottish Ministers, by regulations, to specify a “relevant person” that Revenue Scotland can delegate any of its functions relating to SAT to.

*Committee consideration*

92. The Committee asked the Scottish Government whether there is an identified body that may be delegated Revenue Scotland functions relating to SAT presently, why they are not named on the face of the Bill and for further information on whether the scope of the power is appropriate.
93. In its response, the Scottish Government explains that there is no one body that has complete regulatory oversight of the primary aggregate sector at this time and, whilst discussions have taken place with SEPA about some functions being delegated to them relating to SAT, their expertise on aggregates is limited and Revenue Scotland do not consider it appropriate to delegate any functions at this time.
94. The Scottish Government further states that it considers the scope of the power appropriate as it will allow scope for such delegation in the future if necessary. It also notes that there would be parliamentary scrutiny of such regulations in that Revenue Scotland must publish information regarding delegations made and directions given, and also lay copies of the published information before Parliament. However, it notes that it would be happy to consider any further limiting criteria that the Parliament suggests as appropriate.
95. Revenue Scotland can currently delegate its functions in relation to the other devolved taxes to specified bodies via section 4 of the Revenue Scotland and Tax Powers Act 2014. This section makes provision for Revenue Scotland to delegate any of its functions in relation to Land and Buildings Transaction Tax to the Keeper of the Registers for Scotland and any of its functions in relation to Scottish Landfill Tax to the Scottish Environment Protection Agency. Both bodies have a particular expertise and knowledge in their respective areas and so it is appropriate that they be delegated specified functions to carry out on behalf of Revenue Scotland.
96. The Scottish Government accepts that currently there is no body identified to be delegated Revenue Scotland functions in relation to SAT. Despite no particular body being identified presently, the power, as currently drafted, is wide in scope and

allows for any functions of Revenue Scotland in relation to SAT to be delegated to any person. There are no limitations or criteria placed on the body that could be delegated those functions.

97. The provision made here is different to that for the other devolved taxes in that it is a delegated power to be able to specify a “relevant person” to whom Revenue Scotland can delegate any of its functions in relation to SAT. The person, or body to which those functions may be delegated, is not specified on the face of the Bill, which was the case with the other devolved taxes, and there are no criteria outlined in the Bill to be applied when considering whether someone would be appropriate or able to carry out those functions.
98. In order to allow an additional body to carry out the functions relating to other devolved taxes, primary legislation would have to be made as there is no delegated power in respect of them, although the intention is for a body to be added in relation to SAT through secondary legislation. Additionally, while there are various publication requirements, that only provides a level of oversight for the Parliament, and any regulations would be subject to negative procedure.

99. **The Committee draws this power to the attention of the lead committee to consider its necessity and scope.**

**If the lead committee considers it is necessary to delegate to ministers, then the Committee asks the lead committee to consider how the power might be better limited, what level of parliamentary scrutiny would be appropriate and whether it should be subject to a consultation requirement.**

## **Section 47(2) inserting new section 216G(1) in the 2014 Act - Power to change penalty provisions relating to SAT**

### **Power conferred on: the Scottish Ministers**

### **Power exercisable by: regulations made by Scottish statutory instrument**

### **Parliamentary procedure: affirmative**

#### *Provision*

100. Section 47 sets out general provisions for penalties relating to SAT by modifying the Revenue Scotland and Tax Powers Act 2014. Section 47 inserts section 216G into the 2014 Act with section 216G(1) conferring power on Scottish Ministers, by regulations, to make provision, or further provision, relating to the penalties under chapter 5A of Part 9 of the 2014 Act. Section 216G(2) lists the types of provision that may be made.
101. Regulations made under this section cannot create criminal offences but can modify any enactment, including the Bill in making such provision.

#### *Committee consideration*

102. The DPM notes that several new penalties relating to SAT are inserted into the 2014 Act by the Bill with the power in section 216G(1) being necessary to allow

changes to be made in light of operational experience.

103. The power is limited in nature and can only be used to make further provision about offences that are already provided for within the Bill, which is once again in line with other devolved taxes. The types of provision that can be made are listed providing clarity on how it is likely that the power will be exercised. Additionally, the power specifically relates to SAT and so cannot be exercised more widely to make changes to other types of penalties.
104. Whilst provision made under this section cannot create criminal offences, it does permit the modification of primary legislation. Therefore, it is the Committee's view that it is appropriate that the affirmative procedure should apply to offer a high level of scrutiny.

**105. The Committee finds the power acceptable in principle and is content that it is subject to the affirmative procedure.**

### **Section 54(2) inserting new section 251A(1) in the 2014 Act - Communications from Revenue Scotland to taxpayers**

**Power conferred on: the Scottish Ministers**

**Power exercisable by: regulations made by Scottish statutory instrument**

**Parliamentary procedure: affirmative**

#### *Provision*

106. Section 54 of the Bill makes modifications to the Revenue Scotland and Tax Powers Act 2014 with section 54(2) inserting section 251A into the 2014 Act. Newly inserted section 251A(1) confers power on Scottish Ministers, by regulations, to make provision about communications from Revenue Scotland to any person. Regulations made under this section may include provision about electronic communications and can modify any enactment, including the Bill in making such provision.

### **Section 55(2) inserting new section 251B(1) in the 2014 Act - Use of automation by Revenue Scotland**

**Power conferred on: the Scottish Ministers**

**Power exercisable by: regulations made by Scottish statutory instrument**

**Parliamentary procedure: affirmative**

#### *Provision*

107. Section 55 of the Bill makes further modifications to the Revenue Scotland and Tax Powers Act 2014 with section 55(2) inserting section 251B into the 2014 Act. Newly inserted section 251B(1) confers power on Scottish Ministers, by regulations, to make provision about the use by Revenue Scotland of automation in carrying out their functions. Regulations made under this section can modify any enactment, including the Bill in making such provision.



*Committee consideration*

108. The Committee asked the Scottish Government whether there should be a requirement to consult with Revenue Scotland or any other person before exercising the powers in sections 54 and 55.
109. In its response, the Scottish Government states that all the Bill's provisions are supported by Revenue Scotland, following detailed discussions, and that there is a commitment to consult with them. It goes on to note that no other subordinate legislation powers relating to devolved taxes have such a provision and any regulations made under these sections will be informed by full public consultation and partnership working, so no formal consultation requirement is needed.
110. There is provision already in the 2014 Act for communications from taxpayers to Revenue Scotland. This power will allow provision to be made about communication from Revenue Scotland to taxpayers and will extend beyond electronic communication, in relation to postal communication too. There is currently no such provision within the devolved taxes regime for consultation. However, there is currently no provision specifying communication between Revenue Scotland and taxpayers or the use of automation by Revenue Scotland. These sections are introducing them into the 2014 Act for all of the devolved taxes.
111. It is clear from the Scottish Government's response that implementation of regulations under these sections is clearly intended to follow a full public consultation and there is a political commitment to consult. However, it does not bind any future Government to carry out a consultation exercise before making provision under these sections. If consultation is to be carried out prior to regulations being made, then it is difficult to see why consultation is not a pre-requisite to the exercise of the power. This would also ensure that a full consultation exercise is carried out by any future Government to shape the regulations and ensure engagement with all affected stakeholders.
112. **The Committee recommends that there should be a requirement to conduct a public consultation prior to the exercise of the powers in sections 54 and 55. Otherwise, the Committee is content with the powers in principle and is content that they are subject to the affirmative procedure.**

**Section 59(1) - Power to make ancillary provisions**

**Power conferred on: the Scottish Ministers**

**Power exercisable by: regulations made by Scottish statutory instrument**

**Parliamentary procedure: affirmative procedure if amending primary legislation, otherwise negative**

*Provision*

113. Section 59(1) confers power on Scottish Ministers, by regulations to make any incidental, supplementary, consequential, transitional, transitory or savings provision as they consider appropriate for the purposes of, or in connection with, or for giving full effect to the Bill or any provision made under it. Subsection (2)



provides that any such regulations may modify any enactment (including the Bill) and may also make different provision for different purposes.

114. Regulations made under this provision are subject to the affirmative procedure if modifying primary legislation, otherwise they will be subject to the negative procedure.

#### *Committee consideration*

115. The power to make stand-alone ancillary provision by regulations is common in modern primary legislation. The power is limited to the extent that it can only be used if the Scottish Ministers consider it appropriate for the purposes of, in connection with, or for giving full effect to the Bill.
116. The reason given in the DPM for taking this power is that it is necessary to provide flexibility to give effect to the provisions of the Bill and enable unforeseen situations to be addressed to ensure the Bill can interact well with other Scots law and practices. The DPM also states otherwise unforeseen modifications would require to be made thorough primary legislation when the intention of the Parliament and the Bill was clear.
117. The power can be exercised to make ancillary provision to allow (for example) consequential changes to related legislation to be dealt with by secondary rather than further primary legislation. The power is significantly limited to giving full effect to the Act so the power can only be used to make provision that was within the scope and intention of the Act as passed, however, may still permit the amendment of primary legislation depending on how the power is exercised. Where primary legislation is modified in the exercise of this power then the affirmative procedure will apply to ensure the highest level of scrutiny, otherwise the negative procedure will apply, as is standard for ancillary powers.

118. **The Committee finds the power acceptable in principle and is content that the affirmative procedure applies to any provision which modifies primary legislation and that otherwise the negative procedure applies.**

### **Section 61(2) – Commencement**

#### **Power conferred on: the Scottish Ministers**

#### **Power exercisable by: regulations made by Scottish statutory instrument**

#### **Parliamentary procedure: laid, no procedure**

#### *Provision*

119. Section 61(2) confers power on Scottish Ministers, by regulations, to appoint a day when the provisions of the Bill will come into force, excluding this section and sections 59, 60 and 62 which will come into force the day after Royal Assent. Regulations made under this provision may include transitional, transitory or saving provision and may make different provision for different purposes.
120. Regulations made under this provision will be laid before the Parliament but will not

be subject to any further parliamentary procedure.

### *Committee consideration*

121. The power to commence provisions by regulations is standard practice in modern primary legislation. The DPM provides that the power is appropriate to commence the provisions of the Bill in this way to ensure that necessary preparations can be made for the law changing and to manage the effects of the commencement.
122. This is a narrow power that is limited in how it may be exercised. It is subject to the laid only procedure, which is standard in commencement regulations.

**123. The Committee finds the power acceptable in principle and is content that it is not subject to any parliamentary procedure.**

### **Consultation**

124. The Bill contains a significant number of delegated powers with subordinate legislation being required to support the implementation of the Bill. The supporting documents note that there is an intention for continued dialogue with stakeholders following the Bill's implementation. However, there is no requirement to consult with any specific body, stakeholder or the public generally in the exercise of any of the 20 powers in the Bill.

### *Committee consideration*

125. The Committee asked the Scottish Government about its plans for consultation on the exercise of the powers in general, given that much of the detail of the Bill is to be implemented through regulations and whether there has been consideration given to adding consultation requirements to the face of the Bill.
126. In its response, the Scottish Government states that it is committed to consulting on the exercise of the powers in the Bill. It also states it will continue to work closely with Revenue Scotland, the Expert Advisory Group and stakeholders to develop the regulations, which in the case of sections 54 and 55 will be via a full public consultation.
127. The Scottish Government is of the view that, given the commitment to consult is a core feature of the strategic policy landscape, and the position in the Bill is consistent with arrangements for other devolved taxes consultation requirements, it has not been included on the face of the Bill.
128. There are a significant number of delegated powers in the Bill that will underpin its implementation. The Scottish Government states that it is committed to consulting with the public and others in the development of these regulations. However, given there are no formal consultation requirements provided for in the Bill, the Committee wishes to draw this fact to the attention of the lead committee to consider whether there should be any formal consultation mechanisms, and how that should operate from a policy perspective.

**129. The Committee highlights to the lead committee that there is no formal**

**consultation requirement provided for in the exercise of any of the delegated powers relating to the SAT, or the devolved taxes administration dealt with in the Bill.**

130. **While the Scottish Government has stated that it is committed to consultation in the development of its tax policies, this does not bind any future governments. As such, the Committee asks the lead committee to give consideration to whether any such requirements should be introduced in the implementation of the Bill.**

