



The Scottish Parliament
Pàrlamaid na h-Alba

Published 19 September 2024
SP Paper 646
54th Report, 2024 (Session 6)

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 (as amended at Stage 2)



Published in Scotland by the Scottish Parliamentary Corporate Body.

All documents are available on the Scottish
Parliament website at:
[http://www.parliament.scot/abouttheparliament/
91279.aspx](http://www.parliament.scot/abouttheparliament/91279.aspx)

For information on the Scottish Parliament contact
Public Information on:
Telephone: 0131 348 5000
Textphone: 0800 092 7100
Email: sp.info@parliament.scot

Contents

Introduction	1
Delegated Powers	2
Review of powers	3

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.



dplr.committee@parliament.scot



0131 348 5212

Committee Membership



Stuart McMillan
Scottish National Party



Bill Kidd
Scottish National Party



Tim Eagle
Scottish Conservative
and Unionist Party



Jeremy Balfour
Scottish Conservative
and Unionist Party



Daniel Johnson
Scottish Labour

Introduction

1. At its meeting on 10 September 2024, the Delegated Powers and Law Reform Committee considered the delegated powers contained in the Aggregates Tax and Devolved Taxes Administration (Scotland) Bill following amendments made at Stage 2.
2. This Scottish Government Bill was introduced on 14 November 2023. The Lead Committee was the Finance and Public Administration Committee.
3. 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.
4. 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.

Delegated Powers

5. On introduction, the Bill conferred 20 delegated powers on the Scottish Ministers. The Committee previously considered the delegated powers in this Bill at Stage 1 on 30 January and 5 March, and published a [report](#) on 12 March 2024.
6. The Bill completed Stage 2 on 11 June 2024. The Scottish Government produced a [Supplementary Delegated Powers Memorandum](#) (“sDPM”) covering the delegated powers as amended at Stage 2. Four delegated powers have been altered at Stage 2.
7. The Committee is required by Rule 9.7.9(b) of the Standing Orders to consider and report to the Parliament on new or substantially altered delegated powers after Stage 2.

Review of powers

Section 4(4): Power to add or remove items from a list of relevant substances for the purpose of exempt processes

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative (amended from negative)

Provision

8. 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. Section 4(4) confers power on the Scottish Ministers, by regulations, to add or remove a relevant substance from this list in subsection (3).
9. On introduction section 4(4) was made subject to the negative procedure. Following amendments made during Stage 2 the power is now subject to the affirmative procedure.

Committee consideration

10. In its Stage 1 report, the Committee considered the power itself to be acceptable in principle, however, considered the affirmative procedure to be more appropriate. The power was described by the Scottish Government as minor and technical in nature, however, it allowed for the amendment of primary legislation. This was in contrast to the corresponding provision for the UKAL found in section 18 of the Finance Act 2001 which provides that where a substance is being removed from the list it is subject to the affirmative procedure, and where a substance is being added it would be subject to the negative procedure. In communication with the Committee the Scottish Government confirmed that it would support the amendment of the Bill for this power to be subject to the affirmative procedure.
11. The SDPM states that the amendment to the procedure is in direct response to the Committee's recommendations. The affirmative procedure would offer a higher level of scrutiny to be applied given the power allows for the modification of primary legislation and it will align more closely with the corresponding provision for the UKAL found in section 18 of the Finance Act 2001. The Committee is therefore content with the amendments made to the Bill and the parliamentary procedure this power is now subject to.

12. **The Committee accepts the power in principle and is content that it is now subject to the affirmative procedure.**

13. **The Committee also welcomes the Scottish Government's amendment to**

the Bill which takes account of the Committee's Stage 1 recommendation.

Section 12(3): Power to specify rates and bands

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: First use affirmative, subsequent uses provisional affirmative (amended from provisional affirmative for all uses)

Provision

14. 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.
15. Section 12(3) confers power on Scottish Ministers, by regulations, to specify the rate, or rates of SAT.
16. On introduction this power was subject to the provisional affirmative procedure, however, following amendments made during Stage 2 the power is now subject to the affirmative procedure on the first exercise of the power and the provisional affirmative procedure thereafter.

Committee consideration

17. In its Stage 1 report, the Committee considered the power itself to be acceptable in principle, however, considered the affirmative procedure to be more appropriate on the first exercise of the power.
18. This power is very similar to the corresponding power relating to the Scottish Landfill Tax which was subject to the affirmative procedure the first time the tax rates were set, and thereafter subject to the provisional affirmative procedure. In communication with the Committee the Scottish Government confirmed that it would support the amendment of the Bill for this power to be subject to the affirmative procedure on the first exercise of the power.
19. The SDPM states that the amendment to the procedure is in direct response to the Committee's recommendations. The procedure following the amendments being made to the Bill will now allow rates to be set and scrutinised by the Parliament before the tax is introduced, while enabling them to change the rates quickly at a later date if needed. The Committee is therefore content with the amendments made to the Bill and the parliamentary procedure it is now subject to.

20. **The Committee accepts the power in principle and is content that it is subject to the affirmative procedure on the first exercise of the power and provisional affirmative procedure thereafter.**

21. The Committee also welcomes the Scottish Government's amendment to the Bill which takes account of the Committee's Stage 1 recommendation.

The following two powers are very similar and are both being introduced in respect of all devolved taxes, not only SAT. As the questions asked, and responses received from the Scottish Government on both powers are similar, they have been grouped together for the purposes of the Committee's consideration and its recommendations.

Section 54(2) (newly inserted section 251A(2A): Communications from Revenue Scotland to Taxpayers

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

22. 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.
23. 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

24. 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.
25. Regulations made under this section can modify any enactment, including the Bill in making such provision.

Committee consideration

26. In its Stage 1 report the Committee considered the powers themselves to be acceptable in principle, however, considered that they should be subject to a consultation requirement before they are exercised.
27. These new powers 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. The powers will also make provision for the use of automation by Revenue Scotland to taxpayers in carrying out their functions.

28. There is no such provision within the devolved taxes regime currently and these sections are introducing them into the 2014 Act for all of the devolved taxes and the Committee considered that there should be a requirement to carry out a public consultation before exercising these powers. In communication with the Committee the Scottish Government stated that it was committed to consulting before exercising the powers.

29. The SDPM states that these amendments are

” to provide Parliament with additional reassurance about the safeguards in place for making secondary legislation in what is recognised to be a novel area with the potential to be broad in scope.

This will ensure that a full consultation exercise is carried out by any future Government to shape the regulations and ensure engagement with all affected stakeholders before any regulations under these powers can be made.

30. The Committee accepts both powers in principle and is content that they are now subject to a requirement to consult and subject to the affirmative procedure.

31. The Committee also welcomes the Scottish Government’s amendments to the Bill which takes account of the Committee's Stage 1 recommendations.

