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Finance and Public Administration Committee

Subordinate Legislation: The Land and Buildings Transaction Tax (additional amount: transactions relating to second homes etc.) (Scotland) Amendment Order 2022

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Finance and Public Administration Committee

To consider and report on the following (and any additional matter added under Rule 6.1.5A)—

(a) any report or other document containing proposals for, or budgets of, public revenue or expenditure or proposals for the making of a Scottish rate resolution, taking into account any report or recommendations concerning such documents made by any other committee with power to consider such documents or any part of them;

(b) any report made by a committee setting out proposals concerning public revenue or expenditure;

(c) Budget Bills; and

(d) any other matter relating to or affecting the revenue or expenditure of the Scottish Administration or other monies payable into or expenditure payable out of the Scottish Consolidated Fund.

(e) matters relating to public service reform and the National Performance Framework within the responsibilities of the Deputy First Minister and public administration.

2. The Committee may also consider and, where it sees fit, report to the Parliament on the timetable for the Stages of Budget Bills and on the handling of financial business.

3. In these Rules, “public expenditure” means expenditure of the Scottish Administration, other expenditure payable out of the Scottish Consolidated Fund and any other expenditure met out of taxes, charges and other public revenue.



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Introduction

1. At our meeting on 17 January 2023, the Committee considered the following item of subordinate legislation:
 - The Land and Buildings Transaction Tax (additional amount: transactions relating to second homes etc.) (Scotland) Amendment Order 2022
2. The Committee took evidence from the Minister for Public Finance, Planning and Community Wealth (“the Minister”) on the instrument at the meeting and reports to the Parliament as follows.

The Land and Buildings Transaction Tax (additional amount: transactions relating to second homes etc.) (Scotland) Amendment Order 2022

3. The Order ¹, which was laid before Parliament on 15 December 2022 and came into force on 16 December 2022, amends schedule 2A of the Land and Buildings Transaction Tax (Scotland) Act 2013. It provides for an increase in the rate of the Land and Buildings Transaction Tax (LBTT) Additional Dwelling Supplement (ADS) from 4% to 6% as announced in the Scottish Budget 2023-24 on 15 December and applies to transactions with an effective date of on or after 16 December.^[i]The Land and Buildings Transaction Tax (additional amount: transactions relating to second homes etc.) (Scotland) Amendment Order 2022 (legislation.gov.uk)
4. The Additional Dwelling Supplement is only payable on residential transactions above £40,000 where the acquiring party owns more than one residence once the transaction is complete. The amendment does not apply to transactions with an effective date on or after 16 December 2022 where the contract for the transaction was entered into prior to 16 December 2022.
5. The Order is subject to the provisional affirmative procedure, which requires Parliament to approve it within a 28-day periodⁱ in order for it to remain in effect. The Minister wrote to the Presiding Officer on 15 December stating that the use of the provisional affirmative procedure is “intended to prevent forestalling of transactions, which would be expected to arise should the date of introduction be later”. On 10 January 2023, the Delegated Powers and Law Reform (DPLR) Committee, which considers the technical aspects of the instrument, considered the Order. It determined that, in terms of its remit, it did not need to draw the Parliament's attention to the Order. ²
6. The Committee invited views ³ on the Order on 21 December 2022 and received six responses, which were published as part of our meeting papers for 17 January 2023. ⁴
7. On 17 January 2023, the Committee took evidence on the Regulations from:
 - Tom Arthur, Minister for Public Finance, Planning and Community Wealth; and
 - Ewan Cameron-Nielsen, Head of Fully Devolved Taxes Unit, Scottish Government.
8. During evidence, the Committee raised a number of issues with the Minister. These exchanges can be found in full in the Official Report. ⁵

ⁱ Under Standing Order Rule 10.11.1 ‘no account shall be taken of any time during which the Parliament is dissolved or is in recess for more than 4 days’.

Policy intent

9. The policy note ⁶ in relation to the instrument states that “this increase in the ADS is intended to support the Scottish Government’s drive to protect opportunities for first-time buyers in Scotland, reinforcing the progressive approach in place for LBTT rates and bands.”
10. The policy intent was further explained during oral evidence by the Minister, who stated that the amendment will allow first-time buyers and home-movers, who are not liable for ADS, to compete more effectively financially with buy-to-let investors and second-home owners (who are liable for ADS), therefore increasing parity within the system. He added that “the change is forecast to raise much-needed revenue at a time when public finances are under significant pressure.”
11. The Scottish Fiscal Commission (SFC) has set out its assessment of the impact of the increase on overall LBTT revenues in Scotland’s Economic and Fiscal Forecasts December 2022, published on 15 December 2022. ⁷ According to the SFC, the policy is expected to raise £188 million over the forecast period (to 2027-28) with £34 million forecast for 2023-24. The SFC expects that the increase in ADS will produce a behavioural effect whereby some individuals may decide not to purchase a property that would qualify for ADS. It notes a further impact in that ADS-liable transactions also pay residential LBTT, but that, “home movers and first-time buyers are in a position to absorb most of the lost ADS transactions so we expect some of the lost residential LBTT to be recouped by them”.

Impact on local authorities

12. Written evidence received from COSLA, South Lanarkshire Council and Clackmannanshire Council highlights that increasing the ADS rate to 6% will have a significant impact on local authorities housing programmes. COSLA explained that this is because there are “no general exemptions from LBTT or ADS for local authorities seeking to buy homes or land to meet housing need. As a result, local authorities pay these taxes on the same basis as private sector developers and land speculators”. Clackmannanshire Council explained that “the increase in ADS from 4% to 6% will add a further £50,000 to the cost of our house purchase programme this year and an estimated £204,000 in 2023/24.”
13. South Lanarkshire Council and others explained that, as a consequence, there would be a potential “reduction in the scale of the programme overall; or higher levels of borrowing by local authorities on their Housing Revenue Accounts with the consequential additional pressure on rents that these costs would give rise to; or to require higher levels of grant support from the Scottish Government for any given number of acquisitions.” COSLA called for a general exemption from LBTT and ADS for local authorities purchasing land or homes as part of their affordable housing programmes. This was also echoed in submissions received from both South Lanarkshire Council and Clackmannanshire Council.
14. The different arrangements for the payment of LBTT and ADS whereby local authorities are liable for ADS and hence the increase to 6% but registered social landlords (RSLs) are fully exempt was explored by the Committee. The Scottish

Government official supporting the Minister explained that this difference arose as a legacy of the policy at the time of the introduction of LBTT, which provided specific reliefs for RSLs, in a slightly different way than the reliefs originally in place for local authorities at that time". He added "in that context, there is no specific ADS relief for RSLs; it is more a reflection of the overarching arrangements that were put in place when the LBTT legislation was agreed." ⁵

15. The Minister confirmed that this specific issue has been explored as part of the ongoing wider consultation on ADS – more on which is set out later in this report. He advised that "I am not currently in a position to go into any further detail on what the outcome of the review will be, but that issue has been considered as part of the review."
16. In relation to the £34 million that the policy is expected to raise during 2023-24, the Minister undertook to write to the Committee with a detailed breakdown reflecting the proportion of revenue raised from local authorities.

Impact on the housing market

17. In their written submission to the Committee, the Scottish Association of Landlords (SAL) expressed concerns that the increase "will lead to a decrease in investment and fewer high quality homes being available for rent", and would "place unsustainable demand on providers of social housing". SAL's submission states that "there is evidence of landlords choosing to exit the sector due to the plethora of regulation which has been introduced in the last decade" and points to member surveys conducted in December 2022 which show that 44% of landlords are planning to reduce their portfolio size in the next five years, resulting in 10% of tenants in Scotland potentially facing eviction during the same period.
18. Similar concerns were raised by the Scottish Property Federation (SPF), who argued that such recent measures have resulted in an overall reduction of the supply of rented private accommodation in Scotland. Their submission highlights that there were 29% fewer properties listed for rent in 2022 compared to 2016 and warns that "the combination of increasing demand and loss of supply of rented accommodation will inevitably result in further upwards pressure on rents in the private rented sector for the foreseeable future".
19. The Committee explored the potential for the increase to act as a "deterrent to people investing in the sector", which will invariably impact on available supply and rents. Members queried whether "a more fundamental economic modelling to look at where the investment in housing stock comes from and to what extent buy-to-let results in direct investment" was needed.
20. The Minister was asked if the Scottish Government would consider exemptions in relation to investment in empty and new build properties in order to increase the supply of housing stock, as highlighted in evidence we received. He responded that "we will always keep our policies on tax, and more general policies, under review". He said he was happy to hear suggestions about any changes that should be made and asked that such proposals be consistent with the Scottish Government's Framework for Tax.

21. Another potential impact highlighted by the Committee relates to the withdrawal of landlords from the market, particularly in rural areas, which could have “a damaging effect on the mobility of the working population and repopulating difficult areas for the rural economy”, as well as the potential impact on tourism. The impact of the policy on the availability of student accommodation was also discussed, with the University of Glasgow identified as having a particular lack of housing provision.
22. Responding to the above concerns, the Minister explained that the ADS changes do not apply to already purchased buy to let and second home properties and therefore there will be no impact on the existing market. He said it will, however, raise vital revenue from future relevant purchases which can be used to support services including ensuring Scottish students don’t pay tuition fees. The Minister also emphasised that the ADS applies not only to the private rented sector, but also to second homes and holiday homes, to address challenges such as population retention and affordability. ADS therefore sits alongside other measures to address these issues such as enhancing “local authorities’ ability to respond to such issues, including, for example, through the additional council tax supplement for second homes.”
23. He recognised “there is a role for the private rented sector to play” but the supply of housing is determined by a wide range of factors including macroeconomic factors that are outwith the control of the Parliament or the Government “whether that be as a consequence of the challenges that we face in the supply chain, the inflated costs of raw materials, issues around recruitment and retention in the construction sector, the availability of financial products following the mini-budget or rising interest rates. All those come to bear and have an impact.”
24. The Minister recognised that the housing sector is currently facing challenges, however, he argued that:
 - ” It is important to recognise that the role of tax in shaping supply and demand in housing cannot be seen in isolation; it sits in a much broader set of factors. I would suggest that those factors, when combined, are significantly more impactful.”
25. The Committee further heard that the Scottish Government specifically supports the larger-scale private rented sector, which benefits from an exemption from the LBTT ADS where six or more properties are acquired in a single transaction.

Assessment of longer-term risk

26. Another area explored by the Committee was how the Government had assessed any longer-term negative impacts that the increase in ADS to 6% would have on the housing market. The Committee queried whether there would be a longer-term effect on the wider market that will disproportionately affect those who rent (as a result of rent increases) as landlords exit the market.
27. In response, the Minister explained that the Scottish Government’s tax policy decisions are based on the Scottish Government’s Framework for Tax, taking into account factors such as raising revenue, economic stimulus, behavioural change and redistribution:

” “We seek to implement tax policy changes in a way that is consistent with the six principles that we have set out—the four Adam Smith principles plus effectiveness and engagement. That is to contribute towards meeting our four strategic objectives: maintaining stability of revenues, responding to societal shift, national outcomes, and a wellbeing economy.”

28. The Minister argued that the policy cannot be seen in isolation – it is consistent and in line with the Scottish Government’s wider strategic objectives, as set out in the ‘Housing to 2040’ route map.
29. The Minister explained that LBTT is a transactional tax in that “The SFC has forecast that what will be lost in core LBTT revenue due to behavioural change will reach 50 per cent recovery, and it has anticipated 75 per cent recovery beyond that. That implies that transactions that were lost to the ADS will be made up for over time through first-time buyers and home movers.”
30. The Committee expressed concerns in relation to the lack of data and evidence regarding the behavioural effects of the policy, calling on the Scottish Government to “look at the housing market as a market”.
31. While emphasising the importance of revenue raising alongside consideration of behavioural aspects, the Minister committed, during oral evidence to the Committee, to consider the points raised about information and data on the behavioural impact of tax policies going forward. Meanwhile, the performance of LBTT is being monitored via monthly updates from Revenue Scotland.

Review of the Additional Dwelling Supplement

32. The Minister highlighted the ongoing review of ADS which was first announced in the 2021-22 Programme for Government. The Scottish Government ran a consultation between December 2021 and March 2022, on a number of issues relating to the application of the ADS in certain circumstances and an analysis of responses was due to be published in “early summer 2022”.
33. The differential approach to LBTT for RSLs and local authorities, as mentioned above, is one of the areas which the Minister confirmed is being considered as part of the review. The Committee further argued that the application of ADS for people buying empty or derelict houses in order to upgrade and occupy them should also be reviewed. The Chartered Institute of Taxation expressed disappointment at the timing of the Order in relation to the anticipated reforms to ADS given they had highlighted “several flaws” with the current approach to ADS. The Committee queried why the review had not been concluded before the ADS increase was announced, for example, in order to provide certainty over the extent to which Councils will remain liable for it in future.
34. Responding, the Minister explained that “It had been our intention to have progressed further on the ADS review. However, given the complexity of the ADS review and the importance of being able to provide certainty and get it right, we have taken a bit more time.”

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35. The Minister confirmed that the Scottish Government will publish a response to the review “relatively soon”, clarifying that “we are in the realm of weeks rather than months”. Following the evidence session on 17 January, the Committee wrote to the Scottish Government to seek further details on the expected publication of the ADS review.

36. Following the discussion in Committee, the Minister moved motion S6M-07288—

That the Finance and Public Administration Committee recommends that the Land and Buildings Transaction Tax (additional amount: transactions relating to second homes etc.) (Scotland) Amendment Order 2022 (SSI 2022/375) be approved.

After debate, the motion was agreed to by division: For 5, Against 0, Abstentions 2.ⁱⁱ

The Finance and Public Administration Committee therefore recommends that the Land and Buildings Transaction Tax (additional amount: transactions relating to second homes etc.) (Scotland) Amendment Order 2022 be approved.

ⁱⁱ Members voted as follows: For: Kenneth Gibson, Daniel Johnson, Michelle Thomson, John Mason, Ross Greer, Against 0, Abstentions: Liz Smith and Douglas Lumsden.

- [1] The Land and Buildings Transaction Tax (additional amount: transactions relating to second homes etc.) (Scotland) Amendment Order 2022. (2022). Retrieved from <https://www.legislation.gov.uk/ssi/2022/375/contents/made>
- [2] Scottish Parliament. (2023). Subordinate Legislation Considered by the Delegated Powers and Law Reform Committee on 10 January 2023. Retrieved from <https://digitalpublications.parliament.scot/Committees/Report/DPLR/2023/1/12/ccc8d418-42e7-419b-875c-fd22d2075801-1#Introduction>
- [3] Scottish Parliament. (2022). Subordinate Legislation - Call for Views on the Land and Buildings Transaction Tax Amendment Order 2022. Retrieved from <https://www.parliament.scot/chamber-and-committees/committees/current-and-previous-committees/session-6-finance-and-public-administration-committee/correspondence/2022/subordinate-legislation-call-for-views-on-land-buildings-transaction-tax-amendment-order-2022>
- [4] Scottish Parliament. (2023). Agenda and Papers for Finance and Public Administration Committee 2nd Meeting, 2023, Tuesday 17 January, 2023. Retrieved from <https://www.parliament.scot/chamber-and-committees/committees/current-and-previous-committees/session-6-finance-and-public-administration-committee/meetings/2023/fpas6232/agenda>
- [5] Scottish Parliament. (2023). Official Report of Finance and Public Administration Committee, Tuesday, 17 January, 2023. Retrieved from <https://www.parliament.scot/chamber-and-committees/official-report/search-what-was-said-in-parliament/FPA-17-01-2023?meeting=14095>
- [6] Policy Note. The Land and Buildings Transaction Tax (additional amount: transactions relating to second homes etc.) (Scotland) Amendment Order 2022. (2022). Retrieved from https://www.legislation.gov.uk/ssi/2022/375/pdfs/ssipn_20220375_en.pdf
- [7] Scottish Fiscal Commission. (2022, December). Scotland's Economic and Fiscal Forecasts. Retrieved from <https://www.fiscalcommission.scot/publications/scotlands-economic-and-fiscal-forecasts-december-2022/>

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