

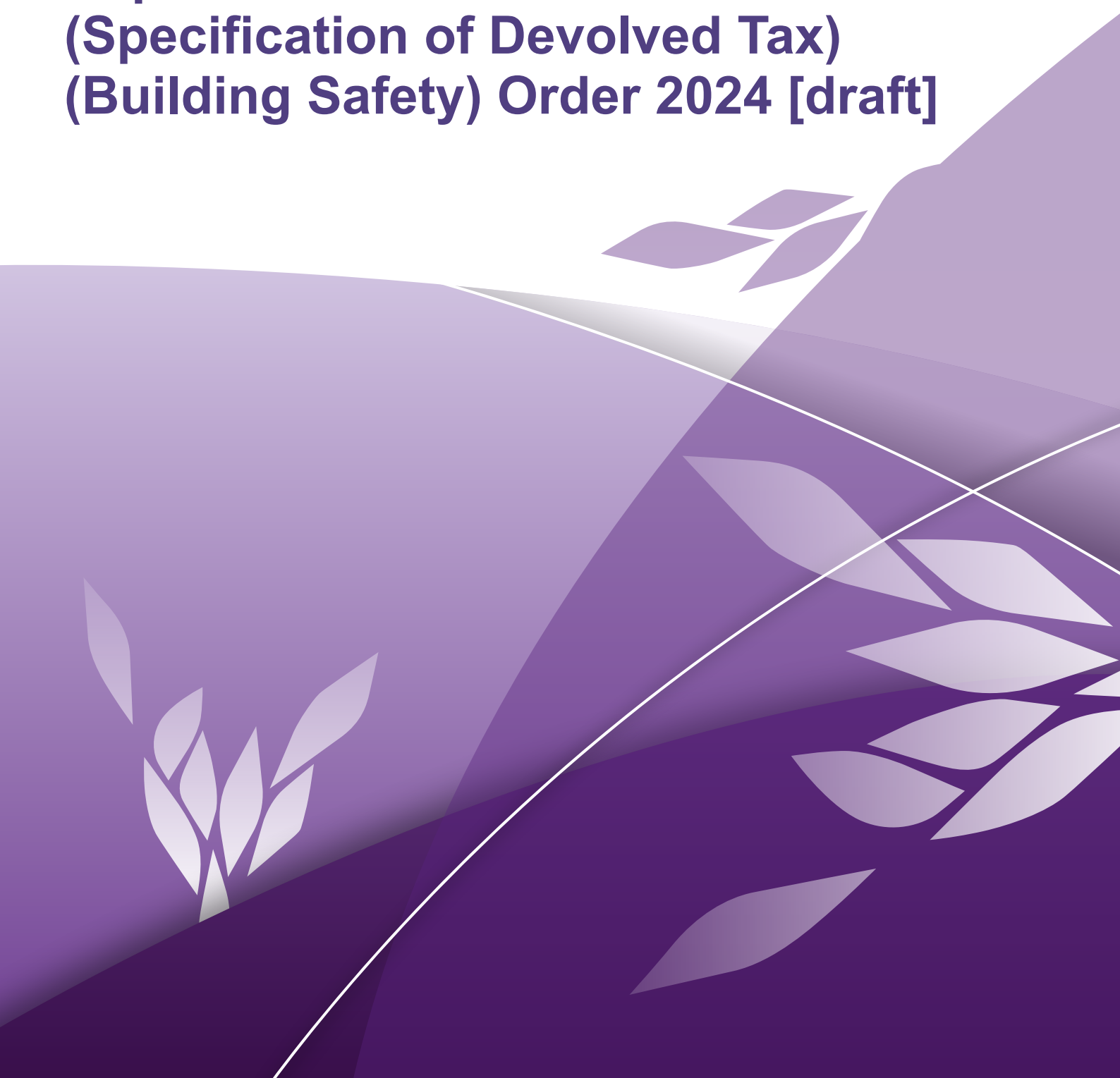


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Finance and Public Administration Committee

Report on the Scotland Act 1998 (Specification of Devolved Tax) (Building Safety) Order 2024 [draft]



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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 the National Performance Framework within the responsibilities of the Deputy First Minister, public service reform within the responsibility of the Cabinet Secretary for Finance and Local Government, and public administration.



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The Draft Order

1. The [Scotland Act 1998 \(Specification of Devolved Tax\) \(Building Safety\) Order 2024 \[draft\]](#) was laid in the Scottish Parliament on 10 September 2024. The draft Order was referred to the Finance and Public Administration (FPA) Committee for consideration and is subject to the affirmative procedure.
2. The draft Order originates from a recognition that the UK and Scottish Governments face common challenges around remediating historical building safety defects, such as defective cladding, and are both committed to ensuring that the housing sector makes a fair contribution towards the associated costs.
3. The Policy Note explains that “this Order devolves a power to the Scottish Parliament to legislate for a new Scottish tax or levy in connection with building control approval for property which provides accommodation to fund building safety expenditure in Scotland, akin to the Building Safety Levy in England.”
4. The draft Order is subject to the affirmative procedure, meaning that it requires approval by the resolution of the Scottish Parliament before it can become law. On 12 September 2024 the Cabinet Secretary for Finance and Local Government lodged motion [S6M-14473](#) proposing that the FPA Committee recommends the draft Order be approved.
5. A draft of the Order was also laid before the UK Parliament for approval by resolution of each House of Parliament. If approved by the Scottish Parliament and both Houses of the UK Parliament, the devolved power allows the Scottish Government to introduce legislation into the Scottish Parliament for a tax or levy adapted to their own building control system for the purposes of funding building safety expenditure. Revenues from the levy must be used to fund building safety expenditure in Scotland.

Background

6. In 2021, the UK Government announced that it would introduce a Building Safety Levy which would apply as a tax on any new development in England considered as “residential”. In its 2023-24 Programme for Government, the Scottish Government then announced its intention to seek the transfer of powers to introduce a new tax in Scotland, equivalent to the UK Government’s Building Safety Levy. As the Cabinet Secretary explained—

 ...as the Scottish Parliament cannot legislate for a new national tax in Scotland without the consent of the UK Parliament, the Scottish Government requested the transfer of powers from the UK Government under section 80B of the Scotland Act 1998.¹
7. The UK and Scottish Governments then undertook a joint consultation on devolving powers for a Scottish Building Safety Levy. The consultation asked respondents to agree—
 - that devolving the proposed tax power would not impose a disproportionate negative impact on UK macroeconomic policy or impede the single UK market

in house building; and

- that the power to introduce an equivalent tax or levy to the Building Safety Levy should be devolved to the Scottish Parliament.
8. The UK and Scottish Governments subsequently published a [response to the consultation](#). The response document, which includes a summary of the responses received, explains that the Governments have used the views gathered to inform the decision to devolve and receive the power.

Delegated Powers and Law Reform Committee consideration

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

Finance and Public Administration Committee consideration

10. At its meeting on 29 October 2024, the Finance and Public Administration Committee took evidence on the draft Order from—
 - Shona Robison, Cabinet Secretary for Finance and Local Government;
 - Hugh Angus, Lawyer, Scottish Government;
 - Hannah Taylor, Building Safety Levy Team Leader, Scottish Government; and
 - Stephen Lea-Ross, Director for Cladding, Scottish Government
11. In her opening remarks to the Committee, the Cabinet Secretary explained that the draft Order sets out high level criteria for the devolved tax. She noted that the draft Order “provides that a Scottish building safety levy must be charged at a point in the building standards process and that revenue that is raised through any levy must be spent on building safety expenditure.” The Cabinet Secretary stated that this means that “the order, in effect, matches the powers that were taken by the UK Government in the Building Safety Act 2022”.
12. The Cabinet Secretary noted that the draft Order does not make further specifications about a Scottish building safety levy and that, should the draft Order be agreed, decisions on all other aspects of the devolved tax policy will be set out in the Building Safety Levy Bill. The Scottish Government intends to introduce this Bill as part of its year 4 legislative programme.
13. The Policy Note explains that “The systems of building control in England and Scotland are sufficiently different that it is impractical to extend the English levy to Scotland.” During our evidence-taking, the Cabinet Secretary explained that, though initially it was thought that legislating for a whole-of-UK levy would have been a quicker and easier route, there was no agreement around doing so. There were also some complications owing to significant differences in the ownership and freeholder legislation in Scotland.¹
14. The Cabinet Secretary noted that, as the UK Government could not legislate for a UK-wide levy, the Scottish Government “had to craft legislation that was in line with UK legislation but that could take account of the differences.”
15. When asked about responses received to the joint Governments’ consultation that were opposed to the idea of a Scottish building safety levy altogether, the Cabinet Secretary stated that—

” We could not have a situation in which developers contributed to the cost of remediation of orphan buildings in England and Wales but not in Scotland. ... someone has to pay for the remediation of buildings where there is no developer, and it is not fair that that falls exclusively on the public purse. It is important that there is a developer contribution in recognition of the fact that there is a problem and that a solution must be found to remediate those buildings.¹

16. A number of the concerns raised to the Governments' joint consultation related to how the levy or tax might work in practice such as whether some housebuilders would be asked to contribute even if their work would not require remediation. Also highlighted was the risk of "double taxation", as property developers already contribute to the Residential Property Developers Tax (RPDT), and some have already committed to paying for the remediation of buildings they are responsible for.
17. Responding, the Cabinet Secretary noted that, where buildings that developers have responsibility for require remediation, the Scottish Government would expect them to undertake and meet the cost of any necessary remediation work. She highlighted that the Scottish Building Safety Levy would concern the remediation of 'orphan buildings', where there is no identified developer with responsibility for remediation. The Cabinet Secretary stated that—

” It is not fair for that cost to fall on taxpayers and the public purse. It will, of course, require an element of funding from the public purse, and we have set out that we will meet our obligations there. However, a contribution from the sector is important, given that those buildings will require remediation. ¹
18. Other issues relating to a potential Scottish Building Safety Levy explored in evidence included—
 - the overall scale and estimated cost of the building remediation work required in Scotland;
 - issues surrounding the design of a future levy, including the Scottish Government's use of Single Building Assessments to determine the degree of remediation work required for properties;
 - the pacing of remediation work, skills requirements and estimated timescales for completion;
 - the use of funds already allocated to the Scottish Government through Barnett consequential for cladding remediation work;
 - the Scottish Government's plans for revenue collection, including whether a central national collection agency should be responsible for collecting the levy, rather than Local Authorities, as is the case in England; and
 - potential impacts of a Scottish building safety levy on developers, and on land and house prices.
19. The Cabinet Secretary explained that "decisions on all other aspects of the devolved tax policy will be set out in the building safety levy bill". She added that the Scottish Government "has commenced a consultation and programme of engagement with stakeholders, including people who operate in the residential property development sector, on the design of a Scottish levy". As such the issues noted above will be examined further by the Scottish Parliament as part of its consideration of the Scottish Government's forthcoming Scottish Building Safety Levy Bill, anticipated in May 2025.
20. On 30 October 2024 the Cabinet Secretary [wrote to the Committee](#) responding to some of the concerns raised during the meeting.

21. A full account of the evidence taken at the meeting can be read in the [Official Report](#).
22. Following evidence to the Finance and Public Administration Committee on 29 October 2024, the Cabinet Secretary for Finance and Local Government moved motion S6M-14473—

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

23. Motion S6M-14473 was agreed to without division. The Finance and Public Administration Committee therefore recommends that the Scotland Act 1998 (Specification of Devolved Tax) (Building Safety) Order 2024 [draft] be approved.

Finance and Public Administration Committee

Report on the Scotland Act 1998 (Specification of Devolved Tax) (Building Safety) Order 2024 [draft], 8th Report, 2024 (Session 6)

- [1] Finance and Public Administration Committee . (2024, October 29). Official Report. Retrieved from <https://www.parliament.scot/chamber-and-committees/official-report/search-what-was-said-in-parliament/FPA-29-10-2024?meeting=16059> [accessed 1 November 2024]

