

# Stage 1 Briefing

## Building Safety Levy (Scotland) Bill

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## Introduction

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

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

The Building Safety Levy (Scotland) Bill<sup>1</sup> (“the Bill”) was introduced by the Cabinet Secretary for Finance and Local Government, Shona Robison MSP, on 5 June 2025. The Bill’s introduction followed previous consultation by the Scottish Government on proposals for a Scottish Building Safety Levy in November 2024, which we responded to.<sup>2</sup> We submitted written evidence on the Bill to the Finance and Public Administration Committee of the Scottish Parliament (“the lead committee”) in August 2025.<sup>3</sup> The Finance and Public Administration Committee’s Stage 1 Report on the Building Safety Levy (Scotland) Bill (“the Stage 1 Report”) was published on 11 December 2025.<sup>4</sup> We note that the lead committee makes no recommendation on the general principles of the Bill.<sup>5</sup>

We welcome the opportunity to consider and provide comment on the Bill ahead of the Stage 1 debate scheduled for 8 January 2026.

This briefing includes the following key points:

- There is a need for greater clarity and certainty on the face of the Bill, and for detailed regulations to be brought forward at an early stage. At present, too much detail is left to future regulations, impacting commercial negotiations and creating uncertainty for the sector.
- It is essential that the levy is proportionate and avoids unfairness. We call for clarity on the extent to which the proceeds of the levy will be used beyond cladding remediation; further consideration of the legal options that would enable housebuilders to seek contributions for remediation work from others in the sector; and clarification on what safeguards are in place to ensure that the levy does not remain in place indefinitely.

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<sup>1</sup> <https://www.parliament.scot/bills-and-laws/bills/s6/building-safety-levy-scotland-bill>

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

<sup>3</sup> <https://www.lawscot.org.uk/media/gemjdf11/25-08-15-tax-pllr-plc-building-safety-levy-s-bill-written-evidence.pdf>

<sup>4</sup> [Stage 1 report on the Building Safety Levy \(Scotland\) Bill](#)

<sup>5</sup> Stage 1 Report, para 175

- Consultation requirements should be strengthened throughout the Bill to ensure meaningful engagement with stakeholders who have expertise in the building sector and will be best placed to identify potential unintended consequences.
- We welcome the lead committee's recommendation that the reporting requirements in section 45 of the Bill are strengthened so that the Scottish Government is required to report at mandatory intervals on the operation of the Bill.
- We remain concerned about the absence of transitional arrangements within the Bill.
- It is important that the introduction of any levy is accompanied by an appropriate awareness-raising campaign and clear guidance to assist taxpayers and their professional advisers.

## General Comments

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

We note that revenue raised from the SBSL will be used to fund building safety expenditure, and that the overarching policy aim as set out in the Policy Memorandum is to seek a contribution from the housebuilding sector to support the funding of the Scottish Government's Cladding Remediation Programme.<sup>6</sup>

In our previous engagement with the Housing (Cladding Remediation) (Scotland) Act 2024<sup>7</sup> and in our response to the Scottish Government's consultation on proposals for a Scottish Building Safety Levy<sup>8</sup> we welcomed measures to improve the safety of residents and owners of buildings with an external wall cladding system in Scotland, and recognised the importance of rapid progress being made as a priority, given the urgent need to remediate the safety issues posed by cladding.

## Need for clarity and certainty on the face of the Bill

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

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

Matters which will be determined by regulation include the tax rate, the detail of the definition of a residential unit, and how floorspace will be verified for the

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<sup>6</sup> Policy Memorandum at para 4 <https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/building-safety-levy-scotland-bill/introduced/spbill73pms062025accessible.pdf>

<sup>7</sup> <https://www.lawscot.org.uk/research-and-policy/influencing-the-law-and-policy/our-input-to-parliamentary-bills/bills-202324/housing-cladding-remediation-scotland-bill/>

<sup>8</sup> <https://www.lawscot.org.uk/media/2ptaidnq/24-11-18-tax-pllr-scottish-building-safety-levy-consultation-on-proposals-002.pdf>



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

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

Such uncertainty can also have economic impacts, and as contracts for the purchase of land for development are often agreed years in advance we understand that this uncertainty is already having an impact on purchase negotiations. From a commercial perspective, the levy is a cost that should be factored into the price/market value of each development site. However, that cost cannot be factored in unless and until:

- there is enough certainty about the rates and methodology of the levy, to allow the cost to be calculated; and
- the legislation (and subsequent regulations) has been passed: until then there is no legal basis for the deduction of a levy.

The lead committee concluded that the SBSL will have a ‘macroeconomic affect’ on the Scottish housing market.<sup>9</sup> It is therefore imperative that regulations are brought forward as soon as possible, to mitigate uncertainty and to avoid adverse economic impacts.

We note that the Scottish Government has announced that it will delay the implementation of the levy in order to provide the housing industry with sufficient lead in time to prepare for its introduction.<sup>10</sup> Whilst we consider this decision sensible in the circumstances, the ability of the housing industry to prepare will depend on the legislation and the detail which is to be set out in regulations being available at an early stage- and well in advance of the commencement date. Until such time as detail is available, purchase negotiations will continue to be impacted by the current uncertainty.

## Proportionality and fairness

It is also important that the proposed levy is proportionate and avoids unfairness. The Bill at section 13 provides that the levy must be used by the Scottish Ministers “for the purposes of improving the safety of persons in or about buildings in Scotland”. This would appear to be much broader than cladding remediation. We

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<sup>9</sup> Stage 1 Report, para 79

<sup>10</sup> Stage 1 Report, para 130

would welcome clarification on whether “the purposes of improving the safety of persons in or about buildings in Scotland” will be further defined. We consider this important in determining whether the Bill is fair and proportionate, and will be effective in achieving its stated policy aims. We note that the lead committee has recommended that the Scottish Government gives further consideration to amending the Bill to restrict the proceeds of the levy to cladding remediation only, and that it reports back to the Committee on its findings on this at the earliest opportunity.<sup>11</sup>

We also note the discussion within the Stage 1 Report regarding the “polluter pays” principle<sup>12</sup> and the lead committee’s conclusion that the levy should not be considered a ‘polluter pays tax’ given that it applies to all housebuilders some of whom were not involved with, or were unaware of, using unsafe cladding.<sup>13</sup> We welcome the lead committee’s recommendation that the Scottish Government considers legal options that would enable housebuilders to seek contributions for remediation work from others in the sector<sup>14</sup> and would welcome further detail on how this may work in practice.

We also note that the Bill as introduced does not include a sunset clause. In our previous response we noted that it would be appropriate for the SBSL to cease to operate once its objective in relation to cladding remediation has been fulfilled and suggested that the end date could be linked to progress of the Cladding Remediation Programme, or the requirement of the SBSL as a source of funding. However, we also highlighted the risk economic impacts and unintended consequences of the inclusion of a sunset clause. Whilst we recognise that there are arguments both in favour of and against the inclusion of a sunset clause in this legislation, in the absence of such a clause we would welcome clarification on what safeguards are in place to ensure that the levy does not remain in place indefinitely. We consider that this is relevant to the proportionality of the proposed levy. We note that the lead committee has recommended the inclusion of a sunset clause within the Bill.<sup>15</sup>

If a sunset clause is to be included, then this would have the scope for adverse uncertainty in the valuation of development sites if the sunset clause were to operate so that the levy could be extended shortly before the sunset date. We think that it is important that if there is to be a sunset clause, then any provision for extending the duration of the levy should be telegraphed with a significant period of notice (e.g. 2 years or longer). This could be implemented in part by the Scottish Ministers report (per section 45 of the Bill) being required to include an assessment of whether or not the levy would be likely to be extended.

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<sup>11</sup> Stage 1 Report, para 147

<sup>12</sup> Stage 1 Report, paras 113-123

<sup>13</sup> Stage 1 Report, para 122

<sup>14</sup> Stage 1 Report, para 123

<sup>15</sup> Stage 1 Report, para 148

## Strengthening consultation requirements

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

We therefore welcome the lead committee's agreement<sup>16</sup> with the Delegated Powers and Law Reform Committee's calls to extend the requirements for the Scottish Ministers to consult before passing further regulations.

## Awareness-raising and guidance

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

## Comments on Sections of the Bill

### Part 1- Scottish Building Safety Levy (Sections 1-2)

Part 1 defines the levy as a tax charged on certain building control events in accordance with the Bill and gives responsibility to Revenue Scotland to administer and collect the tax,<sup>17</sup> as well as providing an overview of the Bill.

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

### Part 2- Key Concepts

#### Building control events (Section 3)

Section 3 sets out the meaning of "building control event" for the purposes of the Bill. A "building control event" occurs on the building completion date in respect of the construction of, or conversion works creating, a new residential unit (Section 3(1)).

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<sup>16</sup> Stage 1 Report, para 171

<sup>17</sup> Explanatory Notes, <https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/building-safety-levy-scotland-bill/introduced/spbill73ens062025accessible.pdf>, at para 11

We have no specific comments on this section.

## Types of new building which may be taxable (Sections 4-7)

Section 4 defines the meaning of “new residential unit”.

Section 4(2) provides a non-exhaustive list of buildings which are to be taken as intended to be used as a dwelling or other accommodation for the purposes of the definition. This includes residential accommodation for students, halls of residence for students in further or higher education and residential accommodation built for the purpose of occupation by a tenant (commonly known as “build-to-rent”).<sup>18</sup>

Section 4(3) provides a non-exhaustive list of types of building which are not to be considered as suitable for use as a dwelling or other accommodation and therefore not included in the definition of “new residential unit” or the scope of the levy.<sup>19</sup> Temporary residential accommodation such as hotels are excluded, as are residential institutions such as residential accommodation for children, hospitals or hospices, prisons and military accommodation.

Section 5 makes provision for exempt new residential units, which are outwith the scope of the levy. This includes:<sup>20</sup>

- pre-existing residences, provided the works have not resulted in a different number of dwellings than were in existence beforehand;
- social housing, that is a building to be let under a Scottish secure tenancy by any party such as local authority, registered social landlord or private developer;
- affordable housing, that is a building built using affordable housing funding provided by Scottish Ministers under section 1 or 2 of the Housing (Scotland) Act 1988 or local authorities under section 92 of the Housing (Scotland) Act 2001; and
- any building on a Scottish island.

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

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

The exemptions in sections 5(b) and 5(c) limit the scope of social and affordable housing for the purposes of the exemption by reference to other legislative

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<sup>18</sup> Policy Memo, para 21

<sup>19</sup> Policy memo, para 22

<sup>20</sup> Policy memo, para 25



provisions. We note that the lead committee recommends that affordable homes funded by local authorities should not be subject to the levy.<sup>21</sup> We are supportive of this recommendation and would welcome further stakeholder engagement on the detail of such an exemption should the Bill proceed to stage 2.

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

Section 6 gives the Scottish Ministers powers to modify, by regulations, the types of buildings which may be taxable. Such regulations may modify any enactment (so-called Henry VIII powers) (Section 6(3)) and are subject to the affirmative procedure (section 48(1)). Before making regulations under this section, the Scottish Ministers must consult such persons as they consider appropriate (Section 6(4)). We note that the Delegated Powers and Law Reform Committee concluded that “the Scottish Government has not provided an appropriate justification for taking the power in section 6(3)”.<sup>22</sup> The DPLR Committee recommended that the power to modify enactments in section 6(3) is removed at Stage 2.

Section 7 amends Section 36 of the Building (Scotland) Act 2003 for the purpose of allowing the person applying for a completion certificate or temporary occupation permission under that Act to be required to provide information for the purposes of the levy.<sup>23</sup> We have no specific comments on Section 7.

### Liability to pay levy (Section 8)

Section 8 provides that the person liable to pay the levy is the owner of the new residential unit on the date of either (a) the submission to a verifier of a completion certificate under section 17 of the Building (Scotland) Act 2003, if the subsequent building control event for that unit occurred on the acceptance of such a certificate, or (b) if earlier, the application for the grant of permission for the temporary occupation under section 21(3) of that Act, if the subsequent building control event for that unit occurred on the grant of such permission.

Section 8(2) provides that for the purposes of the Bill, the owner is a person who has a right to the unit, whether or not that person has completed title to it, or the

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<sup>21</sup> Stage 1 Report, para 101

<sup>22</sup> Stage 1 Report, para 170

<sup>23</sup> Explanatory Notes, para 29

land on which it is situated. Ownership may be held jointly and severally. We have no specific comments on Section 8.

## Part 3- Calculation and use of levy

### Amount of Levy (Section 9)

Section 9 makes provisions regarding charging and rate of levy. The rate or rates of the levy are to be set by Scottish Ministers by regulation, and with reference to the area in square meters of the floorspace of the new residential unit in relation to which a taxable building control event occurs (Section 9(3)), with the methodology for determining and verifying floorspace to be set out in regulations. Regulations may set different rates for different purposes (Section 9(4)). Regulations made under this section are subject to the affirmative procedure.

We note the lead committee's request that the Scottish Government considers calculating the levy based on market value of the property rather than total surface as a way of taking into account the particular features of local housing markets.<sup>24</sup> We are supportive of further consideration being given to the basis for calculating the levy. We recognise that there are difficulties with market value as a basis for calculating the levy, but given the structure of the Scottish levy compared to the English levy (i.e. the levy is charged at the later point of completion of the dwelling), there will be more clarity as to the price to be achieved/market value at the time that the levy liability is triggered.

### Calculation of levy payable (Section 10)

Section 10 sets out the steps to be followed to determine the amount of levy payable in respect of a taxable building control event and the corresponding liability of a person ("the taxpayer") for the levy for an accounting period.

We have no specific comments on this section.

### Reliefs and allowances (Sections 11-12)

Section 11 allows the Scottish Ministers to, by regulations, make provision for reliefs from the levy. Regulations made under this section are subject to the affirmative procedure.

Section 12 allows the Scottish Ministers to, by regulations, make provision for a "levy free allowance", being a quantity of building control events within a financial year which may be deducted in the process set out in Section 10. Regulations made under this section are subject to the affirmative procedure.

We have no specific comments on these sections, although see our comments below on transitional arrangements.

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<sup>24</sup> Stage 1 Report, para 83

## Proceeds of levy (Section 13)

Section 13 provides that the proceeds of the levy must be used by the Scottish Ministers for the purposes of improving the safety of persons in or about buildings in Scotland.

See our general comments, above, regarding the broad nature of this definition.

## Part 4- Administration of levy

### Registration (Sections 14-18)

Section 14-18 makes provisions relating to the register to be known as the Scottish building safety levy register, which will be kept by Revenue Scotland.

We have no specific comments on these sections.

### Accounting for levy and record-keeping (Sections 19-21)

Sections 19-21 make provisions about accounting and recording-keeping in relation to the levy. Significant details, including accounting periods and timing and manner of payment, are left to regulations.

### Non-resident taxpayers (Sections 22-24)

Section 22 allows Scottish Ministers, by regulation, to make provision for securing that every non-resident taxpayer, for the purposes of paying the levy, appoints a person resident in the United Kingdom to act as the taxpayer's tax representative. Such a representative is entitled to act on the non-resident taxpayer's behalf (Section 23(1)) and must- except to such extent as the Scottish Ministers by regulations provide otherwise- secure the non-resident taxpayer's compliance with the levy (Section 23(2)). The representative has personal liability for any non-compliance by the non-resident tax-payer, on a joint and several basis (Section 23(3)). Section 24 amends the Revenue Scotland and Tax Powers Act 2014 to exclude the premises of any tax representative within the meaning of this Bill from the definition of 'business premises' in the 2014 Act for the purposes of the levy.

Whilst there may be persuasive policy reasons for imposing personal liability on such representatives, the result may be that it is difficult to find suitable persons willing to act in these circumstances.

### Special cases (Sections 25-31)

Sections 25-28 make provisions for groups of companies.

Section 29 makes provision for partnerships and unincorporated bodies.

Section 30 gives a regulation-making power to the Scottish Ministers to make provision requiring persons who are carrying on the business of someone who has died, become bankrupt or become incapacitated, or whose business is in

liquidation, receivership or administration, to inform Revenue Scotland that they are doing so.<sup>25</sup> Such regulations are subject to the negative procedure.

Section 31 gives Scottish Ministers powers to make regulations for the transfer of a business as a going concern. Such regulations are subject to the negative procedure.

We have no specific comments on these sections.

### Provision of security (Sections 32-33)

Section 32 makes provisions regarding security required by individual direction, and Section 33 makes provisions regarding security required by general direction.

We have no specific comments on these sections.

### Delegation of functions (Section 34)

Section 34 amends the Revenue Scotland and Tax Powers Act 2014 to allow Revenue Scotland to delegate its functions relating to the Scottish building safety levy to a person specified in regulations by the Scottish Ministers. Such regulations are subject to the affirmative procedure.<sup>26</sup>

We have no specific comments on this section.

### Part 5- Penalties (Sections 35-43)

Part 5 of the Bill imposes penalties in relation to the levy.

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

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

### Part 6- Reviews and Appeals (Section 44)

Part 6 provides for reviews and appeals in respect of the levy.

We have no specific comments on this section.

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<sup>25</sup> Explanatory Notes, para 81

<sup>26</sup> Explanatory Notes, para 86

## Part 7- Final Provisions (Sections 45-52)

Section 45 requires the Scottish Ministers to report on the operation of the Bill. The interval for reporting is to be determined by the Scottish Ministers. The report must be published.

In our previous response we welcomed the suggestion of a regular review of the operation of the SBSL. We therefore welcome the reporting requirements in section 45 of the Bill, but note that they do leave a significant degree of discretion to the Scottish Ministers. We therefore welcome the lead committee's recommendation that the reporting requirements in section 45 of the Bill are strengthened so that the Scottish Government is required to report at mandatory intervals on the operation of the Bill. We consider that the three-year interval proposed by the lead committee is appropriate.

Section 46 is an interpretation provision.

Section 47 modifies the interpretation provisions in the Revenue Scotland and Tax Powers Act 2014.

Section 48 relates to the regulation-making powers within the Bill. See our comments above about the very extensive delegated powers within this Bill and the potential adverse impacts of this.

Sections 49-52 relate to ancillary provisions, Crown application, commencement and short title. In respect of commencement, and in light of our comments above on the potential for uncertainty to have adverse economic impacts, we would welcome clarity on proposed transitional arrangements. There is no detail on this within the Bill. As noted above, contracts for the purchase of land for development are often agreed years in advance and uncertainty will continue to have an impact even with implementation delayed. This may have a bigger impact on SMEs than on larger-scale builders. Potential transitional options to mitigate these impacts may include:

- setting the Section 12 levy free allowance at a slightly higher level for the first two years to provide a buffer against the commencement of liability for the levy, which would assist SMEs;
- allowing the levy free allowance to be carried forward to subsequent years, which would assist SMEs by reducing pressure to delay completion of units from one year to the next.





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