EXPLANATORY MEMORANDUM TO

THE SCOTLAND ACT 1998 (SPECIFICATION OF DEVOLVED TAX) (BUILDING SAFETY) ORDER 2024

2024 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Office of Secretary of State for Scotland and is laid before the Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Declaration

2.1 **Ian Murray, The Secretary of State for Scotland at the Scotland Office** confirms that this Explanatory Memorandum meets the required standard.

2.2 **Louise Nicholls, Deputy Director for Constitutional Policy** confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Cat Carrigan at the Scotland Office, Email: Cat.Carrigan1@ukgovscotland.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The 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.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of is part of the UK.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is Scotland only.

5. Policy Context

What is being done and why?

5.1 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", unless exempted. The revenues from the Building Safety Levy will be used to fund work to repair buildings across England with historical building safety defects.

5.2 The scale of the building safety cladding issue in Scotland is in proportion to that in England and the Scottish Government faces a similar challenge to the UK Government on how to fund the associated remediation works. The Scottish Government, therefore, requested from the UK Government the devolution of the requisite powers to allow the Scottish Parliament to legislate for an equivalent to the Building Safety Levy in Scotland.

5.3 The power to levy the tax needs to be devolved in a timely fashion to enable the tax or levy to be legislated and implemented with a view to funding the building safety works.

What was the previous policy, how is this different?

5.4 The power to impose a Building Safety Levy in s.105C of the Building Safety Act 1984 extends only to England. The systems of building control in England and Scotland are sufficiently different that it is impractical to extend the English levy to Scotland. A devolved power allows the Scottish Government to introduce into the Scottish Parliament a tax or levy adapted to their own building control system for the purposes of funding building safety expenditure.

6. Legislative and Legal Context

How has the law changed?

6.1 The power for the Scottish Parliament to legislate for a tax or levy in connection with building control approval for property which provides accommodation is a newly devolved tax power.

Why was this approach taken to change the law?

6.2 S.80B of the Scotland Act 1998 makes provision for devolving tax powers to the Scottish Parliament by Statutory Instrument made under that Act. This Order exercises that provision. The powers in s.80B have been exercised for the purposes for which they were conferred.

6.3 The same outcome could be achieved by primary legislation, however there is no alternative primary legislative vehicle available to implement at this time and s80B has been used for the purpose it was conferred.

7. Consultation

7.1 The UK and Scottish Governments ran a joint public consultation between 8 January and 19 February 2024. The consultation invited consultees 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.
- that the power to introduce an equivalent tax or levy to the Building Safety Levy should be devolved to the Scottish Parliament.

7.2 The responses received were varied in focus, with some concentrating on the devolution of powers, some opining only on the merits of the potential levy itself, and others to a combination of both. Most responses were focused on the design of the proposed Scottish Building Safety Levy rather than the devolution proposal itself.

7.3 Most respondents, regardless of their views on the devolution of the powers or on the merits of a Scottish Building Safety Levy, were understanding of the need to raise revenue for building safety remediation.

7.4 Largely, objections raised against the devolution of tax powers argued so either on principle, or because of concerns about additional complexity and compliance burdens. On the other hand, support for devolution was occasionally coupled with either outright criticism of a levy (both in England and Scotland) or recommendations for engagement and communication from the Scottish Government when the policy is designed. At close, the majority of responses were in support of devolving tax powers to the Scottish Parliament to introduce a Scottish Building Safety Levy.

7.5 The full consultation response document was published on the gov.uk website at this link https://www.gov.uk/government/consultations/consultation-on-devolving-powers-for-a-scottish-building-safety-levy.

8. Applicable Guidance

8.1 Not applicable. This Order devolves a power to the Scottish Parliament so that it can legislate for a new tax, rather than create the tax in itself. Guidance on any tax the Scottish Government may bring forward under this power will be developed as appropriate.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 This Order has no impact in itself. It allows the Scottish Government to introduce legislation for a tax or levy in connection with building control approval for property which provides accommodation akin to the English Levy. Nevertheless, the consultation did invite evidence on potential impacts on the UK single market, macroeconomic impacts and other cross-border effects. It concluded that, if anything, a Scottish tax or levy would reduce any cross-border distortions.

9.2 The Scottish Government is required to consider the impacts of proposed policies, plans or strategic decisions in relation to equalities, various societal groups and sectors, data protection and the environment, under a range of legislation and commitments. The Scottish Government will carry out the relevant assessments as part of its work to develop policy and legislation for the Scottish tax or levy.

Impact on businesses, charities and voluntary bodies

9.3 There is no, or no significant, impact on business, charities or voluntary bodies because the devolution of the power will have no immediate impact until the Scottish Government enact the power. The Scottish Government will be responsible, at that stage, to make considerations of this impact.

9.4 Neither does the legislation impact small or micro businesses.

9.5 There is no, or no significant, impact on the public sector because the devolution of the power will have no immediate impact until the Scottish Government enact and use the power. The Scottish Government will be responsible, at that stage, to make considerations of this impact.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The Order is executing a one-off step of devolving a power to the Scottish Parliament. No monitoring or review of the legislation is appropriate [although the Office of the

Secretary of State for Scotland publish and annual report on the implementation of the Scotland Act which provides for the devolution of additional tax powers].

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 The policy and drafting of the Order have been agreed by the UK and the Scottish Government.

12. European Convention on Human Rights

12.1 The Secretary of State for Scotland has made the following statement regarding Human Rights: "In my view the provisions of the Scotland Act 1998 (Specification of Devolved Tax) (Building Safety) Order 2024 are compatible with the Convention rights.".

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").