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The Building Safety Levy (Scotland) Bill

SPF Consultation Response

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SCOTTISH PROPERTY FEDERATION

The Scottish Property Federation (SPF) is the voice for the real estate industry in Scotland. As a part of the wider British Property Federation, we include among our members: property investors, including major institutional pension and life funds; developers; landlords of commercial and residential property; and professional property consultants and advisers. Our members build Scotland's workplaces, homes, shops, schools and other facilities and the infrastructure that serves them. Our industry is therefore a core component of the Scottish economy.

CONSULTATION SUMMARY

The Building Safety Levy (Scotland) Bill

The Scottish Government is intending to bring forward a new levy on all new forms of residential development. The aim of this levy is to support the funding of the Cladding Remediation Programme, which addresses building safety concerns linked to unsafe cladding materials.

Through this proposed Building Safety Levy, the Scottish Government seeks to raise up to £30 million per year to accelerate remediation efforts which is part of a pool of additional funding where estimated total costs for the programme as of June 2025 are between £1.5-£3.1bn.

This consultation invites views from key stakeholders on various aspects of the levy such as the impacts on the market, the potential for unintended consequences, the types of exemptions and the penalty regime.

OUR RESPONSE

Key issues from our response

Viability and Impact on Housing Supply: The levy is being proposed during a declared housing emergency, at a time when development viability is already under severe strain. Introducing a new cost risk delaying or cancelling projects, worsening the supply shortage across all tenures.

Cumulative costs of development: The housing industry is already contributing via tax and voluntary means towards cladding remediation. The development sector itself already makes significant tax and regulatory contributions via s75 planning obligations towards affordable housing, transport, education, water, community and other necessary infrastructure. With construction and financing costs continuing to be high, the cumulative impact of the levy on top of the range of existing contributions will continue to undermine the ability of the sector to bring forward critically needed new residential development in this period of a

housing emergency. It could also lead investors to choose locations outside Scotland where development is deemed to be more viable which would represent a significant opportunity cost to Scotland.

Unfair Burden on BTR: As a nascent sector in Scotland, Build-to-Rent (BTR) is already facing viability challenges due to rent controls and high construction costs. The levy disproportionately impacts BTR developments because they generate no upfront sales revenue to offset costs, making the charge harder to absorb. BTR schemes are also large-scale, include significant communal space, and rely on long-term investment models that are highly sensitive to additional costs and policy uncertainty.

Exemptions needed: We are urging the Scottish Government to exempt BTR, SMEs, and all forms of affordable housing including mid-market and discounted rent model (provided by the private sector) to avoid disincentivising critical parts of the housing market.

A level-playing field is need for private and public capital investment into affordable housing: We are particularly concerned at the failure to recognise the need to support private investment in all forms of affordable housing which appears to be in contradiction to the recent report of the Housing Investment Task Force which seeks to explore how to attract private investment for affordable housing investment. The current BSL proposals establish a divide between exempted public sector driven affordable Housing investment and private sector originated investment for affordable housing that is misplaced and could drive away private investment in this crucially needed housing sector to other locations.

Lack of clarity: We have asked for greater detail is needed on:

- How transitional arrangements will work
- Indicative costs
- Whether communal space will be included in the chargeable area
- Whether and how indexation will apply
- Definition of affordable housing
- Whether exemptions will apply for BTR
- The exempt threshold for SME developers

Consultation Questions

QUESTION 1 Do you agree, in principle, that a levy should be introduced on the construction of residential property in Scotland?

No, we believe that the timing is wrong and that the industry is already making significant contributions both voluntarily and via UK taxation to remediate cladding that they were led to believe was safe at the time of application. There is a housing emergency, and these costs will impair the ability of new housing supply to be brought forward because it will negatively impact the development viability of projects. Our industry members note that there are already many major demands on developers for taxation or financial contributions – the UK Residential Property Development Tax, s75 contributions covering affordable housing, education, transport and wider contributions. This is on top of LBTT and wider business taxation. We would add that there must surely be a question of fairness too as many housebuilders who may potentially be subject to BSL liability may have had nothing to do with cladding at all. In short, we do not believe that government policy should be designed to constrain the supply of new homes at this time. New homes have strict and well-founded criteria for safety and standards in Scotland, so this concern is already covered for new build properties. By making development harder, the government will also undermine the ability of the private sector to support new forms of housing and support for the delivery of all forms of tenure, including affordable housing.

QUESTION 2 To what extent does the proposed Scottish Building Safety Levy (SBSL) align with the Scottish Government's 2024 Tax Strategy and with the principles of good tax policy making included in the Framework for Tax 2021 (namely: proportionality, certainty, convenience, engagement, effectiveness and efficiency)?

While we appreciate the necessity and urgency to rectify buildings with unsafe cladding and understand the motivations behind the levy, we do not think that the Bill aligns with the principle of 'fairness'. There is a lack of differentiation between different housing models e.g., for sale vs for rent which may result in disproportionate impacts on Build-to-Rent sector. This sector operates under fundamentally different financial structures and long-term investment models and is also a sector which has been significantly undermined by other policy interventions.

It is worth noting that we welcome the engagement thus far with the Scottish Government and other key stakeholders including the opportunity for an early consultation period in November 2024. It is also encouraging that steps have already been taken to address some of the issues previously highlighted such as delaying the 'go-live' date until 2027 and considering potential exemptions for BTR, MMR and SMEs.

QUESTION 3 What would be the impacts of the SBSL for the housing market, if any?

Our members have strongly relayed their concerns about the negative impact of the Scottish Building Safety Levy (SBSL) on the housing market. They believe that by further taxing developers, the levy will make it harder for projects to proceed by seriously impacting their viability. Developers have raised specific concerns about the timing of levy payments and the effect on cash flow. Significant upfront investment is required to acquire land, install infrastructure, and construct homes. Developers often only realise profit near project completion, so early-stage levy payments could render some developments unviable by creating a financial strain before any return on investment is achieved.

In the context of this consultation, we are speaking for two crucial segments of our membership: those who develop and own Build-to-Rent (BTR) buildings and Purpose-Built Student Accommodation (PBSA). Both sectors play a vital role in expanding housing supply. Build-to-Rent, in particular, serves as an additional source of housing by attracting new capital investment and developers to deliver large-scale rental housing, thereby accelerating the supply pipeline. Similarly, PBSA adds to the overall housing supply and helps to alleviate pressure on other housing stock in towns and cities with higher education institutions.

Furthermore, rental products such as Build-to-Rent serve a vital purpose in the housing market by providing quality homes to individuals whose access to homeownership or social housing is limited. By placing greater taxes on Build-to-Rent homes, which is still nascent in Scotland, the sector's ability to serve these people will be diminished. This could result in a reduced number of homes available for those with significant housing needs.

If the intention of the levy is to raise funds from those who are at fault for historic defective buildings, then the current proposals are failing to achieve this objective. The levy, as it stands, seems to be a tax on all new developments rather than a specific measure to target those responsible for past failures.

QUESTION 4 Do you foresee any behavioural changes or impacts arising as a result of the implementation of the SBSL?

The Scottish Building Safety Levy (SBSL) is also likely to create significant changes in the housing market concerning rent and house prices, ultimately intensifying the country's housing emergency. The financial burden of the levy, which will be an additional cost to developers, will have to be absorbed or passed on. It is here that we foresee the most significant repercussions for consumers. Build to Rent is already struggling with viability challenges as a result of policy uncertainty with the Housing Bill in recent years. It is a nascent market in Scotland with only 4000 units and with over 13,000 units in pipeline that could be impacted by this levy.

Developers will be under pressure to recoup the costs of the levy, which could lead them to increase the prices of new homes. While the market for new builds is often constrained by the wider second-hand market, in areas with high demand, developers may be able to pass on at least some of the cost. The impact on rent is equally worrying. As the levy will apply to Build-to-Rent (BTR) and Purpose-Built Student Accommodation (PBSA) developments, it will add a new cost to the delivery of these vital housing types. In a market where demand for rental properties already outstrips supply, this reduction in new homes would undoubtedly put upward pressure on rents, making housing less affordable for tenants.

It has been more than 15 months of nationally declared housing emergency and government has already acknowledged the seriousness of this situation, and yet the SBSL, as currently proposed, risks undermining the very goal of increasing housing supply. By adding thousands of pounds to the cost of new homes and rental properties, it could deter investment and development at a time when Scotland desperately needs more of both.

QUESTION 5 Are there any provisions in the draft legislation that may give rise to unintended effects, including to opportunities for tax avoidance?

If the threshold for exempt properties is set too low, there is potential for developers to deliberately slow down housing delivery or some SMEs on the cusp of the threshold may choose to reduce their scale of delivery to avoid eligibility for the levy. The unintended consequence is that fewer houses could be delivered by SMEs who are a crucial element of Scotland's various housing delivery models particularly in rural areas. If the levy applies to Build-to-Rent, there is the potential for the costs to be transferred onto tenants, resulting in higher rents as explained in Question 4.

QUESTION 6 The Bill sets out: (i) the buildings that are specifically included and excluded from SBSL (section 4(2) & (3)) and (ii) the buildings that are exempt from SBSL (section 5). Do you have any views on these inclusions, exclusions and exemptions?

We strongly urge Built-to-Rent, SMEs and affordable housing providers to be excluded from the levy to ensure the delivery of much-needed housing and to protect the viability of smaller scale housing providers who operate on much tighter margins. While we welcome the proposed exemptions for social and affordable housing, the current drafting does not go far enough to protect the viability of essential housing delivery models. Below we identify several considerations:

Built-to-Rent

We urge Build-to-Rent to be exempt from the levy to encourage its growth at a crucial time to assist in tackling Scotland's housing emergency. Moreover, the unique nature of BtR developments also mean they are particularly disadvantaged by the proposed levy in ways such as having a:

- Higher levy burden - even if the levy is based on floor space, BtR will incur higher levy bills, because they typically have larger communal spaces (e.g. lounges, gyms, co-working spaces), which will inflate the chargeable floor space.
- High density and accelerated build-out rate - BtR can deliver between 300-400 units per development and is typically completed over one or two phases. This means that the levy will be triggered all at once and places a heavy financial burden on the owner.
- No immediate sales revenue - BtR is not built for onward sale, rather based on long-term rental income. Therefore, a levy paid on completion cannot be recouped immediately.
- Cumulative impact – the growth of the BtR sector has been significantly stunted by recent rent control legislation which has undermined investor confidence in the sector. With only 4000 homes built and operational in Scotland, it is a sector which is still in its infancy and significantly lags behind England in terms of overall BtR provision. On a per capita basis, around 50% more BTR homes have been delivered in England than Scotland. If we are to improve the housing crisis and restore investor confidence, this sector must be encouraged by supportive policy.

The Housing Investment Taskforce Report (2025) clearly identifies Build-to-Rent (BtR) as a strategic priority for Scotland's housing future:

“The Build to Rent market in particular should be a priority for Scotland in providing new housing supply (including family homes) as an established route for private capital investment at scale. On the assumption that exemptions [for rent controls] are delivered, there should be ongoing work between the Scottish Government and investment and property development sectors to communicate positively and assertively that Scotland is open for business for both Build to Rent and Mid-Market Rent sectors.”

The proposed levy undermines the policy direction from this report as it serves as a financial disincentive for development.

SMEs

- SMEs are essential housing providers who are well suited to smaller-scale and more complex sites such as developing in rural areas, brownfield land and infill sites. These developments are also crucial in supporting local housing strategies and local economies.
- However, recent evidence suggests this sector has a declining market share with the number of new homes built by SMEs (3-49) falling from 40% in 2017 to just 20% in 2023. This sector is particularly vulnerable to higher financial, market and operational risks.
- There is a clear need to provide additional protections for this sector to ensure its future viability and would suggest that the threshold is set at **50 units or below** built per year to be exempt from the levy.

Affordable Housing

- The draft exempts some affordable housing but only those defined under section 1 or 2 of the Housing (Scotland) Act 1988 or section 92 of the Housing (Scotland) Act 2001. This means only publicly funded housing is exempt. We urge this definition to be broadened because it ignores the increasingly important role of privately delivered affordable housing which includes mid-market rent or discounted market rent. Both are a form of 'affordable housing' where rents are set between social and market rate. We therefore urge that the exemption for affordable housing is based on affordability criteria, regardless of the funding model or provider.
- Indeed, the Housing Investment Taskforce Report explicitly explores how private capital can be mobilised to support affordable housing. If the Scottish Government is actively promoting this model as part of its long-term housing strategy, then it is inconsistent to apply the levy to these developments while exempting others that serve the same purpose. If we are to scale-up the affordable housing delivery through diverse funding models, it is essential that the levy framework evolves to support not disincentive development.

QUESTION 7 Are the arrangements for penalties and appeals as set out in the Bill appropriate?

We recognise that the proposals for penalties are broadly in line with standard Scottish Government practice.

QUESTION 8 Do you consider that the estimated costs set out in the Financial Memorandum for the Bill are reasonable and accurate? If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill?

Our key concern is that the costs of SBSL will make larger density schemes such as Build to Rent, where 100s of new homes are completed at the same time, now unviable. It may well do the same for more traditional housebuilding projects too.

This is because development viability is now the single biggest challenge obstructing housing delivery. Already BtR projects ongoing in England are losing money compared to five years ago. This means it will be more difficult and challenging to attract investment to this key market. In England, there are factors such as the Building Safety Regulator not present here in Scotland, thankfully. However, in Scotland, we have faced years of uncertainty due to the ongoing Housing Bill process, which has obstructed the deployment of significant capital.

Our fear is that having finally got a Housing Bill, which could potentially reassure investors, we will now face a further tax that could add millions of pound to large scale BtR developments that will further emasculate the ability of this sector to bring forward new rental homes on a variety of tenures in Scotland (in the last 12 years England has built over 130,000 new BtR homes including houses, apartment and mid-market rental: in Scotland we have delivered just 4000 due to repeated policy interventions and uncertainty).

QUESTION 9 Do you have any other comments regarding the Bill which have not been captured by the previous questions?

Our members have raised several other points regarding the Bill that we feel have not been fully captured. These relate primarily for the need for clear, unambiguous guidance and a well-defined implementation process, without which the levy risks causing more harm than good to the housing market.

First and foremost, we are seeking clear guidance on the transitional provisions. Our members are seeking clarity on the qualifying cut-off point for schemes already under construction when the levy comes into effect and what specific milestone must a project have reached to be exempt from the levy. This is particularly important for businesses using forward-funding models, where build costs are agreed with funders early in the process. Introducing an unplanned levy partway through construction would significantly affect returns and could jeopardise the financial viability of projects already committed. We are concerned that the current uncertainty is deterring investment and development in Scotland, with consented schemes being withheld from delivery due to the risk of having to pay the levy.

We must stress the importance of a discounted levy rate for schemes on previously developed land. We support the Government's intention for such a discount to support brownfield regeneration. A similar approach in Scotland as England would be welcomed. Not only would it stimulate investment in urban sites, but it would also align with broader policy objectives to reduce reliance on greenfield development. This would be a crucial measure to ensure the levy does not disproportionately penalise developers who are working to regenerate existing urban areas. Our members are also seeking clarity on when this levy rates will be finalised so that the associated costs can be factored into project underwrites as early as possible. Any delay or uncertainty in this regard will risk slowing investment decisions and hindering project delivery across the sector.

As the Bill currently stands, high-density developments such as Build-to-Rent, PBSA and Co-Living will be caught in the tax. Our members have strongly relayed concerns over the implications should communal areas be counted within the chargeable floor area for levy calculations. Shared amenity space can often account for up to 10% of the total development area, so having a levy which includes communal areas will significantly affect development viability. We urge these spaces to be excluded from the chargeable floor area.

Another point we would seek clarity on is indexation of this levy. If this is to happen, what mechanism will be used for any such adjustments, and how frequently will they be made? To provide greater predictability and assist with project feasibility, we would advocate for a fixed rate that is reviewed periodically, such as every three years in line with inflation - a model adopted by the UK Government for its own levy. This would provide developers and funders with a stable basis for their financial models. Without this clarity, the risk of unbudgeted costs further undermines project viability and could lead to a stalling of investment. Indexation will have major implications for cost planning and funder underwriting, as the final cost of the levy could be unknown for years.

End of questions