



Law Society  
of Scotland

# Stage 1 Briefing

## Visitor Levy (Scotland) Bill

January 2023



## Introduction

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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 Visitor Levy (Scotland) Bill (the **Bill**) was introduced by the Minister for Community Wealth and Public Finance, Tom Arthur MSP, on 23 May 2023. Our Tax Law sub-committee previously submitted written evidence on the Bill to the Local Government, Housing and Planning Committee of the Scottish Parliament.<sup>1</sup>

The Local Government, Housing and Planning Committee's Stage 1 Report on the Bill (the **Stage 1 Report**)<sup>2</sup> was published on 21 December 2023.

We welcome the opportunity to consider and provide comment on the Bill ahead of the Stage 1 debate scheduled for 16 January 2024.

## General Remarks

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Our comments below note areas where we consider that further guidance or amendment would be welcomed to ensure that the Bill operates as intended and is consistent with the Scottish Government's policy intentions.

We note that the Scottish Government's overall approach to taxation is embedded in Adam's Smith's four principles: certainty, convenience, efficiency, and proportionality to the ability to pay; and based on a firm approach to tax avoidance and a commitment to stakeholder engagement. It is important therefore that the proposed levy respects these principles.

As noted below, we consider it important that there is an appropriate level of stakeholder engagement in relation to the introduction and operation of the proposed levy schemes. We welcome the recommendations in the Stage 1 Report that are reflective of this, for example at paragraphs 25 and 149.

<sup>1</sup> Accessible [here](#).

<sup>2</sup> [Stage 1 Report](#)

## Comments on sections of the Bill

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### Part 1 (Visitor Levy)<sup>3</sup>

We do not have any specific comments to make on Part 1 of the Bill.

### Part 2 (Key Concepts)

#### Section 3 – Levy to be charged on purchase of overnight accommodation

We consider that guidance could helpfully be introduced providing further clarity on the scope of the definitions of “chargeable transaction” and “overnight accommodation”, including examples where relevant.

We note the following wording in the definition of “chargeable transaction”: “within the area to which a VL scheme relates”. We consider that this could be more clearly expressed, for example *within a VL scheme area*.

#### Section 6 – Rate of levy

We note that under section 6(2)(a) of the Bill, a local authority can set a different percentage rate “for different purposes or different areas within the local authority’s area”. Section 11(2) also provides that “A VL scheme may make different provision for different purposes or different areas within the local authority’s area”. We highlight the need for clarity and, should different percentage rates be introduced under this section, clear and appropriate communications would be required to ensure stakeholders were aware of the differences.

We note the consideration of the absence of an upper limit to the percentage rate in the Stage 1 Report, at paragraphs 139-149. Whilst we do not express any substantive view on the absence of an upper limit to the percentage rate, we consider that guidance could be provided to local authorities as to how to determine an appropriate levy for their area.

#### Section 8 – Third party arrangements

In respect of section 8(2) – i.e. local authority consent for a liable person to make arrangements for a person to make returns under section 23 – we consider that the proposals would benefit from a consistent approach across local authorities to minimise the administrative burden on accommodation providers.

#### Section 10 – Exemptions and rebates

We note that section 10 introduces the power for national exemptions and rebates to be made by regulations. We would welcome more information around the proposed operation of these aspects and stress the

<sup>3</sup> We use the term “VL scheme” where relevant throughout for consistency with the wording of the Bill.

importance of accommodation providers and visitors understanding the proposals and there being a sufficient lead-in time.

We would also welcome greater clarity on the interaction between section 13(1)(g) and national provisions made pursuant to section 10, particularly in respect of operational VL schemes at the point regulations under section 10 may come into force.

We note that 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, including potentially the collection and processing of data.

### **Part 3 (Introduction and Administration of the Levy)**

#### **Section 11 – Scheme to impose levy**

We highlight our comments above in relation to section 6 of the Bill and the need for clarity.

#### **Section 12 – Prior consultation on scheme**

We welcome the consultation requirements before introducing or modifying a VL scheme as set out at section 12 of the Bill.

#### **Section 13 – Required content of a scheme**

We note that section 13(1)(g) requires that the VL scheme specifies “the cases or circumstances in which the levy (or a sum equivalent to the levy) is not payable or may be reimbursed”. We consider that there would be merit in any exemptions benefitting from consistency at national and local authority level. This would assist with ensuring clarity for both accommodation users and providers and make the scheme easier to administer, particularly for accommodation providers who are operating across more than one local authority area.

Please see also our comments above in relation to section 10 of the Bill.

#### **Section 14 – Publicity for introduction of scheme**

We also welcome the publicity requirements placed on local authorities under section 14 of the Bill, as we consider that any proposals must be communicated appropriately to affected stakeholders.

#### **Section 15 – Transitional provision**

We note that section 15(1) refers to transitional arrangements for chargeable transactions paid for “before the date of the local authority’s decision to introduce a VL scheme”. We consider that it would be clearer for this date to be aligned with the date of publication of such decision as required by section 14(1)(b)(i); and likewise in respect of the reference to “the date of the local authority’s decision to introduce a VL scheme” in section 15(2).

## **Section 16 – Duty to keep separate account for scheme**

We consider that the provisions made by regulations pursuant to section 16 should provide a sufficient lead-in time to allow accommodation providers time to comply and ensure that their accounting systems are capable of the requirements imposed.

## **Section 18 – Annual reporting on scheme**

We welcome the annual reporting requirements on local authorities in section 18 in the interests of transparency, accountability, and raising public awareness of the scheme.

## **Part 4 (Returns)**

As a general comment, we consider that there should not be unnecessary burdens placed on accommodation providers or local authorities as to the information to be collected. If at all possible, accommodation providers should not be required to obtain any additional information from visitors purely for the purposes of administering the levy.

## **Section 23 – Duty to make returns**

We consider that quarterly returns are an appropriate time frame. This ensures a balance between the burden on accommodation providers of remitting the levy and the receipt of the income for local authorities. We note that arrangements for returns and payment could be aligned with the non-domestic rates regime.

## **Part 5 (Enforcement of the Levy and Penalties)**

As a general comment, the imposition of a levy and any change of rate should be widely publicised in advance (both nationally and within the local authority area) to ensure providers are aware of their obligations under the law and accommodation users are aware of the charge. It is particularly important that the requirements are well publicised to accommodation providers. The possible penalties themselves should also be well publicised and should be proportionate to the amounts involved.

In the interests of fairness, it will be important for local authorities who introduce a levy to be able to detect non-compliance and enforce penalties consistency.

We have no particular suggestion in relation to the level of the penalty other than to note that it should be reasonable in the circumstances and reflect the desire to ensure compliance, rather than being used as a mechanism to raise revenue. It is appropriate that the penalty is proportionate to the amounts of levy involved.

## **Section 38 – Carrying out inspections under section 35 or 36: further provision**

We consider that section 38(2) could be more clearly expressed.

## Further comments

We note that a number of sections provide for powers to introduce secondary legislation in relation to the operation of the Bill. We consider that it is essential that appropriate parliamentary scrutiny is given to secondary legislation, particularly any regulations which modify primary legislation or make material changes to the scope or operation of a VL scheme. We welcome the use of the affirmative procedure in such circumstances.

We also welcome the Scottish Government's commitment to introducing the following amendments to the Bill at Stage 2:<sup>4</sup> (1) adding a requirement to consult local authorities and tourist organisations before amending the lists of accommodation types by adding or removing a type of accommodation or varying the description of a type of accommodation under section 4; (2) adding a requirement to consult local authorities and tourist organisations before specifying any exemptions or rebates under section 10; and (3) amending section 36 so that the exercise of powers to categorise "involved third parties" in relation to the inspection of business premises will be subject to the affirmative procedure.

<sup>4</sup> Noted at paragraph 293 of the Stage 1 Report; confirmed in the Scottish Government's letter to the Delegated Powers and Law Reform Committee, dated 29 September 2023 (accessible [here](#)); and detailed in the Report of the Delegated Powers and Law Reform Committee on the Bill, published 31 October 2023 (accessible [here](#)).

**For further information, please contact:**

Policy Team  
Law Society of Scotland  
[policy@lawscot.org.uk](mailto:policy@lawscot.org.uk)