



Law Society
of Scotland

Consultation Response

Visitor Levy (Scotland) Bill

September 2023



Introduction

The Law Society of Scotland is the professional body for over 12,000 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.

Our Tax Law sub-committee welcomes the opportunity to consider and respond to the Scottish Parliament's Local Government, Housing and Planning Committee's call for views on the Visitor Levy (Scotland) Bill.¹ The sub-committee has the following comments to put forward for consideration.

Questions

Q1) What are your views on whether local authorities should have a power to place a levy (a type of additional charge or fee) on top of the price charged for overnight accommodation in their area?

We previously provided detailed comments to the Scottish Government's 2019 consultation: *Principles of a Local Discretionary Transient Visitor Levy or Tourist Tax* (the "**2019 Consultation**").² 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 levy respects these principles.

Q2) Given that the Bill is likely to result in different councils introducing a visitor levy in different ways or not doing so at all, what impact do you think the Bill will have in your area and across different parts of Scotland? For example, this could include any impact (positive or negative) on local authority finances, local accountability and flexibility, businesses, or on numbers of overnight visitors.

We have no comments to make.

¹ [Visitor Levy Bill - call for views](#)

² Accessible [here](#)

Q3) Do you agree with the Bill’s definitions of a “chargeable transaction” and of “overnight accommodation”? If not, what definitions do you think would be better?

We consider that guidance could helpfully be introduced providing further clarity on the scope of the definitions, 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*.

Q4) What are your views on the Bill’s proposal to allow councils to set the levy as a percentage of the chargeable transaction? Are there any other arrangements that you think might be better? If so, please give examples and a short description of the reasons why.

We refer to our comments at questions 4 and 5 of our response to the 2019 Consultation, which consider the various options set out in the consultation relating to the way in which the levy could be calculated and the relevant considerations for each method.

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.

Q5) What are your views on the absence of an upper limit to the percentage rate (which would be for councils to decide) and that it could be different for different purposes or different areas within the local authority area, but not for different types of accommodation?

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.

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.

Q6) The Bill would allow councils to apply local exemptions and rebates to some types of guests if they choose to. It also allows the Scottish Government to set exemptions and rebates on a national basis where it considers it appropriate. What are your views on the Bill’s proposals in relation to 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 importance of accommodation providers and visitors understanding the proposals and there being a sufficient lead-in time.

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 any exemptions would benefit 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.

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.

Q7) Do you agree with the Bill’s requirements around the introduction and administration of a visitor levy scheme, including those relating to consultation, content, and publicity (Sections 11 to 15)? Are there any other requirements you think should be met before any introduction of the levy in a given area?

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

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.

We note that section 15(1) makes reference 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).

Q8) What are your views on the Bill's requirements for local authorities in respect of records keeping, reporting, and reviewing? (Sections 16, 18 and 19)

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.

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.

Q9) The Bill requires that net proceeds of the scheme should only be used to “achieve the scheme’s objectives” and for “developing, supporting, and sustaining facilities and services which are substantially for or used by persons visiting the area of the local authority for leisure purposes.” Do you agree with how the Bill proposes net proceeds should be used and if not, how do you think net proceeds should be used?

We have no comments to make.

Q10) What are your views on the Bill's requirements for accommodation providers to identify the chargeable part of their overnight rates, keep records, make returns, and make payments to relevant local authorities? Are there any other arrangements that you think would be better, for example, by reducing any “administrative burden” for accommodation providers?

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.

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.

Q11) Do you have any comments on Part 5 of the Bill (Enforcement and Penalties and Appeals)? Are there any other arrangements that you think might be more appropriate in ensuring compliance and reducing the risk of avoidance?

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 note the broad wording of section 27(4)(c) and consider that this could be more clearly expressed.

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

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.

Q12) Do you have any comments on the issues that the Scottish Government proposes to deal with in regulations after the Bill has been passed? (Set out in the Delegated Powers Memorandum). Are there any that you think should be included in the Bill itself rather than being dealt with by regulations and if so, why?

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.

Given the importance of any regulations made in relation to exemptions and rebates (also discussed in response to question 6), there may be merit in these being included within the primary legislation. We noted in our response to the 2019 Consultation that a clear definition of “visitor” would be required to ensure clarity. We note for the purposes of the Bill references to a “visitor” means “a person takes entry to the overnight accommodation in pursuance of the [chargeable] transaction” (section 3(1)(b); section 71). If the scope of “visitor” is to be amended by regulations which create exemptions or rebates, we similarly would note the importance of this being clearly defined.

Q13) Do you have any comments on the accuracy of the estimated costs for the Scottish Government, local authorities, accommodation providers and others as set out in the Financial Memorandum and Business and Regulatory Impact Assessment (BRIA)?

We have no comments to make.

For further information, please contact:

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