

# Visitor Levy (Amendment) (Scotland) Bill

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## Delegated Powers Memorandum

### Introduction

1. This Delegated Powers Memorandum has been prepared by the Scottish Government in accordance with Rule 9.3.3B of the Parliament's Standing Orders in relation to the Visitor Levy (Amendment) (Scotland) Bill ("the Bill"). It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers.

2. The following other accompanying documents are published separately:

- Explanatory Notes (SP Bill 79–EN);
- a Financial Memorandum (SP Bill 79–FM);
- a Policy Memorandum (SP Bill 79–PM);
- statements on legislative competence made by the Presiding Officer and the Scottish Government (SP Bill 79–LC).

3. This Memorandum has been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Parliament.

### Outline of Bill provisions

4. The Bill builds on the framework established by the Visitor Levy (Scotland) Act 2024 (the "2024 Act") which provided local authorities with a discretionary power to introduce a levy on the purchase of overnight accommodation. The 2024 Act was passed in response to calls from local government and tourism stakeholders for a mechanism to raise revenue to support local infrastructure and services impacted by tourism.

5. The Bill aims to further support local authorities as they design levy schemes that reflect local priorities and tourism pressures and enhance clarity on the operation of visitor levies, supporting effective future implementation. This will be delivered by strengthening the existing legislative framework, enabling local authorities to introduce an effective, proportionate and robust visitor levy that best meets the needs of their local tourism economy and community. The 2024 Act was designed to be enabling rather than prescriptive, and this Bill follows that principle.

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6. The Bill contains the following provisions:

- (a) Section 1 inserts new sections 4A and 6A into the 2024 Act so as to provide local authorities with the option of charging the levy on the basis of a fixed amount (or fixed amounts) or on the basis of a percentage rate (or percentage rates).
- (b) Section 2 amends section 3 of the 2024 Act to clarify what is the chargeable transaction for the purposes of the 2024 Act in a third party sales arrangement.
- (c) Section 3 amends section 26 of the 2024 Act to clarify that the amount of levy payable in a relevant period is the total amount of levies payable during that period as a result of visitors taking entry to the accommodation.
- (d) Section 4 provides that where a local authority modifies a visitor levy scheme to take account of certain changes made by the Bill to the required content of the scheme, the duty to consult under section 13 of the 2024 Act does not apply.
- (e) Section 5 provides that, where the local authority considers that there has been a failure to meet certain requirements under the 2024 Act in relation to returns, payment of the levy or keeping records as a result of relevant modifications by the Bill, that person has a reasonable excuse and is not liable to a penalty.
- (f) Section 6 provides a power to the Scottish Ministers to make further provision in regulations about the operation of Parts 2 and 3 of the 2024 Act. These Parts of the 2024 Act make provision about the basis and calculation of the levy, exemptions and rebates, and the introduction and administration of the levy.
- (g) Section 7 provides a power to the Scottish Ministers to make ancillary provision.
- (h) Section 8 provides that the “2024 Act” means the Visitor Levy (Scotland) Act 2024 for the purposes of the Bill.
- (i) Section 9 introduces the schedule of the Bill, which makes consequential and minor modifications of the 2024 Act.
- (j) Section 10 provides for commencement.

7. Further information about the policy intention is set out in the Policy Memorandum.

## Rationale for subordinate legislation

8. The Bill contains delegated powers which are explained in more detail below, with a short explanation of what each power allows, why the power has been taken in the Bill and why the selected form of parliamentary procedure has been considered appropriate.

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9. In deciding whether provisions should be specified on the face of the Bill or left to subordinate legislation, the importance of each matter has been considered against:

- The need to ensure sufficient flexibility in the future to respond to changing circumstances and to make changes quickly without the need for primary legislation;
- The need to ensure proper use of parliamentary time;
- The possible frequency of amendment; and
- The need to anticipate the unexpected, which might otherwise impact on the purpose of the legislation.

10. The delegated powers provisions are listed below, with a short explanation of what each power allows and why subordinate legislation is considered appropriate. For the decision on negative or affirmative procedure, the degree of Parliamentary scrutiny that is thought to be required for the instrument has been carefully considered, balancing the need for the appropriate level of scrutiny with the need to avoid using up Parliamentary time unnecessarily. The balance reflects the views on the importance of the matters being delegated by the Parliament.

## Delegated powers

Section 1(3) inserting new section 6A(6) into the 2024 Act: Power to set the maximum amount which a local authority may set as the amount of levy to be charged under new section 6A(2) where the levy is based on a fixed amount (or amounts).

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

## Provision

11. New section 6A(6) of the 2024 Act (to be inserted by section 1(3) of the Bill), gives the Scottish Ministers a power to specify in regulations the maximum amount which a local authority may set as the amount of a fixed amount (or amounts) levy. Subsection (7) of the new section provides that the regulations may specify different maximum amounts for different purposes, and subsection (8) imposes a duty on Ministers to consult local authorities, representatives of communities and businesses engaged in tourism and tourist organisations, and other persons as they consider appropriate, before making regulations under subsection (6).

## Reason for taking power

12. The power is necessary to ensure the ability, if required, to support national consistency and proportionality in the application of a fixed-amount visitor levy across

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Scotland. While local authorities will have discretion to set the levy within their area, without the ability, if required, to set a statutory maximum there is a risk of:

- Excessive or disproportionate charges being set by individual authorities, which could undermine the policy's objectives and harm Scotland's tourism sector.
- Fragmentation and uncertainty for visitors and businesses if levy rates vary significantly between areas, creating complexity for operators and potentially discouraging travel.
- Economic and reputational impacts on Scotland's competitiveness as a tourist destination if charges are perceived as unreasonable.

### Choice of procedure

13. New sections 6A(6), (7) and (8) are in similar terms to existing provision in sections 6(3), (4) and (5) of the 2024 Act which allows Ministers to specify the maximum percentage rate for the levy (in cases where it is based on a percentage rate, rather than a fixed amount). The new power permits the Scottish Ministers to set a national cap (or national caps) in relation to a local tax and has the effect of placing some limits on local authority discretion. The Scottish Government therefore considers it appropriate that the power is subject to the affirmative procedure.

### Section 6(1) inserting new section 75A into the 2024 Act: Power to make further provision about the operation of Parts 2 and 3 of the 2024 Act.

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative where regulations add to, replace or omit any part of the text of an Act, negative in any other case.

### Provision

14. New section 75A(1) of the 2024 Act (to be inserted by section 6(1) of the Bill) gives the Scottish Ministers power to make further provision by regulations about the operation of Parts 2 and 3 of the 2024 Act. Subsection (2) of the new section provides that the regulations may, in particular, include provision about how the levy is to be calculated, charged and paid in particular circumstances or types of case, and subsection (3) provides that regulations may modify any enactment including the 2024 Act. Subsection (4) requires Ministers consult local authorities, representatives of communities, businesses engaged in tourism and tourist organisations, and other persons as they consider appropriate, before making regulations under subsection (1).

### Reason for taking power

15. The power is required to provide flexibility and adaptability in the detailed operation of Parts 2 and 3 of the 2024 Act, which establish the visitor levy framework.

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While the Act sets out the core principles and duties, it cannot anticipate every operational scenario or technical issue that may arise once the levy is implemented. This power allows Scottish Ministers, if required, to:

- Address unforeseen circumstances or complex cases (e.g. atypical booking arrangements).
- Ensure consistency and clarity in application across all local authorities, reducing administrative burden and avoiding legal uncertainty.
- Respond to evolving practices in the tourism sector, such as new accommodation models or payment systems, without requiring further primary legislation.
- Maintain proportionality and fairness by refining calculation, charging, and payment rules as necessary to protect both consumers and businesses.

16. The ability to modify enactments is essential because some adjustments may require minor textual changes to the 2024 Act or related legislation to ensure coherence and effective operation. This is a standard approach for complex frameworks where practical implementation issues can only be fully understood after commencement.

### Choice of procedure

17. The power in section 75A(1) is intended to be used to make further provision where necessary to add or clarify the detail of the 2024 Act to ensure that Parts 2 and 3 of the Act operate as intended. The power is however subject to a consultation duty to ensure that stakeholder views are taken into consideration. The choice of procedure reflects the limited nature of this provision which will be used to address technical and administrative matters and, given this, the Scottish Government considers that the negative procedure provides the appropriate level of scrutiny. However, where the power is to be used to modify primary legislation, including the 2024 Act, it is considered that the affirmative procedure is appropriate.

### Section 7(1): Ancillary provision.

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative where regulations add to, replace or omit any part of the text of an Act, negative in any other case.

### Provision

18. Section 7(1) gives Scottish Ministers power to make, by regulations, any incidental, supplementary, consequential, transitional, transitory or saving provision that Ministers consider appropriate for the purposes of, in connection with or for giving full effect to the Bill's provisions including any provision made under it. Regulations under section 7(1) may make different provisions for different purposes, and may modify any enactment (including the Act resulting from the Bill).

## Reason for taking power

19. Section 7 follows the now standard model for the power to make ancillary provision. Any new law may give rise to the need for a range of ancillary provisions. This power is necessary to allow flexibility when commencing provisions in the Bill or otherwise to address unforeseen circumstances which may arise. Without the power to make that provision by regulations it would be necessary to return to the Parliament with another Bill to deal with minor matters to properly give effect to a Bill that Parliament has already passed. That would not be an effective use of either the Parliament's or the Scottish Government's resources. The power is restricted in that it can only be used to make provision ancillary to the Bill's provisions or any provision made under it. While the Scottish Government has given careful consideration to the provisions of the Bill, this power is considered necessary to ensure that any unexpected issues which require further changes can be dealt with effectively and so that the purpose of the Bill is not inadvertently obstructed.

## Choice of procedure

20. Regulations under section 7(1) will be subject to the affirmative procedure if they add to, replace or omit any part of the text of primary legislation. Otherwise, they will be subject to the negative procedure. This is the standard approach in relation to the scrutiny of regulations made under ancillary powers and the Scottish Government sees no special reason to depart from it in this case.

## Section 10(3): Commencement.

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Laid, no procedure

## Provision

21. Section 10(3) confers a regulation-making power on the Scottish Ministers to appoint the day on which sections 1, 6 and 9 (so far as relating to Part 1 of the schedule), and Part 1 of the schedule, come into force. Subsection (4) provides that regulations may include transitional, transitory or saving provision, and may make different provision for different purposes.

## Reason for taking power

22. This power will enable the Scottish Ministers to bring into force those provisions of the Bill that are not otherwise coming into force by way of section 10(1) or (2) of the Bill. It will also allow Ministers to make ancillary provision, where required, to manage the effects of their commencement. It is typical for the coming into force date of a Bill's substantive provisions to be commenced at such time as the Scottish Ministers consider suitable. In the course of preparing for commencement, it may emerge that there are circumstances in relation to which the application of the Bill will need to be adjusted. As is standard, section 10(4) therefore allows the Scottish Government to include

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transitional, transitory and savings provisions in the regulations bringing sections of the Bill into force, and to make different provision for different purposes.

23. The sections of the Bill making necessary technical modifications to the 2024 Act to address matters arising during the course of the implementation of the 2024 Act will come into force at the end of the period of two months beginning with the day of Royal Assent to ensure that the 2024 Act is modified before the first visitor levy schemes under the Act come into force.

### Choice of procedure

24. As is now usual for commencement regulations, the default laying requirement will apply, as provided for by section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010. The Scottish Ministers consider this appropriate because the policy behind the provisions will already have been considered by the Parliament during the passage of the Bill.

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