

Visitor Levy (Scotland) Bill

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 (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 28–EN);
 - a Financial Memorandum (SP Bill 28–FM);
 - a Policy Memorandum (SP Bill 28–PM);
 - statements on legislative competence made by the Presiding Officer and the Scottish Government (SP Bill 28–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 will provide a discretionary power to local authorities to introduce a levy on stays in overnight accommodation in all, or part, of their area if they choose to do so. Alongside the creation of that power, the Bill introduces a number of requirements that a local authority must meet when introducing such a levy, and a process that will need to be followed, including consultation. The Bill also creates relevant powers and duties, giving a local authority powers to effectively enforce a levy, and creates relevant reporting requirements. It also specifies the purposes for which funding raised by a levy can be used, and relevant reporting and transparency requirements in relation to that.
5. Part 1 of the Bill contains the power for local authorities to impose a levy in accordance with the Act; this Part does not contain any regulation-making powers. Part 2 of the Bill contains the key concepts underpinning the levy; it contains 4 regulation-making powers (in sections 4, 5, 9 and 10). Part 3 of the Bill deals with the process to be followed by a local authority when introducing a Visitor Levy (VL) scheme; it contains 5 regulation-making powers (in sections 13, 14, 16, 18 and 20). Part 4 of the Bill requires the liable person to make returns and payments to the local authority; this Part

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does not contain any regulation-making powers. Part 5 of the Bill deals with enforcement of the levy, including penalties for non-compliance; it contains 6 regulation-making powers (in sections 31, 36, 64, 65, 67 and 68) and a power to prescribe the form of a summary warrant by Act of Sederunt (section 66). Part 6 of the Bill provides local authorities with a power to set up a register of liable persons and allows local authorities to share information with certain persons; this Part does not contain any regulation-making powers. Part 7 of the Bill contains the formal provisions usually found at the end of an Act of the Scottish Parliament; it includes 2 regulation-making powers (in sections 73 and 74) as well as section 72 which elaborates on regulation-making powers conferred elsewhere in the Bill by providing that all such powers include power to make different provision for different purposes.

Rationale for subordinate legislation

6. The Scottish Government has, in deciding whether provisions should be in the Bill or in subordinate legislation, and in deciding on the appropriate level of scrutiny of subordinate legislation, given due regard to:

- the need to strike the right balance between the importance of the issue and providing flexibility to respond to changing circumstances;
- the need to make appropriate use of valuable parliamentary time;
- the need to allow detailed administrative arrangements to be kept up to date within the basic structures and principles set out in the primary legislation; and
- the need to deal with the unexpected, which might otherwise frustrate the purpose of provisions in primary legislation approved by the Parliament.

7. The delegated powers provisions are listed 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.

Delegated powers

Section 4: Meaning of overnight accommodation

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

8. Section 4(1) sets out the definition of “overnight accommodation” for the purposes of the Bill (i.e., the types of accommodation in relation to which a levy may be charged) by reference to the types of accommodation listed in subsection (2). Section 4(3) confirms that the list of accommodation types in subsection (2) does not include the particular types of accommodation mentioned in subsection (3); the types of

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accommodation mentioned in subsection (3) do not, therefore, fall within the definition of “overnight accommodation”.

9. Section 4(4) permits the Scottish Ministers to make regulations, subject to the affirmative procedure, to add a type of accommodation to those included in subsection (2) or (3); to vary the description of a type of premises in subsection (2) or (3); and to remove a type of premises in subsection (2) or (3).

Reason for taking power

10. During the National Discussion (a Scottish Government consultation conducted in 2018/19, as referred to in more detail at pages 1 and 2 of the Policy Memorandum), a range of industry stakeholders highlighted the importance of ensuring a level playing field across all types of accommodation including hotels, bed and breakfasts, self-catering units and campsites. The Bill reflects this need for a level playing field by ensuring that all major overnight accommodation types are included in subsection (2).

11. Following the passing of the Bill, it may become apparent, in the light of experience and from discussions with stakeholders, that certain types of accommodation should be added to, or removed from, the list of accommodation types in subsection (2). The inclusion of a power at subsection (4) will allow the Scottish Ministers to add, remove or amend the types of accommodation liable for the levy. This will allow the list of eligible accommodation types to be amended without primary legislation, bringing flexibility to the national framework of the levy and allowing it to be adjusted to reflect future economic and behavioural changes to the accommodation sector.

Choice of procedure

12. The power to amend the list of accommodation considered eligible for the levy is subject to the affirmative procedure, as regulations made in exercise of the power would amend primary legislation and it is generally considered that any substantive changes to primary legislation should usually be subject to the affirmative procedure. In addition, the amendment of the types of accommodation eligible may impact on any visitor levy schemes in place or in development by local authorities. Given this potential impact, it is considered that the affirmative procedure would provide the appropriate level of scrutiny over changes of that nature.

Section 5: Calculation of levy

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

13. Section 5 sets out the method of calculation for the amount of the levy chargeable in respect of a chargeable transaction (as defined in section 3(2)). Section 5(1) provides

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that the amount chargeable is calculated by taking the accommodation portion of the purchase, deducting the amount corresponding to any commission payable to a travel booking service, and multiplying the resulting amount by the percentage rate of the levy (which is set by a local authority under section 6).

14. Section 5(2) sets out the definition of the ‘accommodation portion’, that being the amount of the chargeable transaction that is attributable to the provision of the overnight accommodation. Subsections (3)(a) to (e) list things which are not attributable to the accommodation portion; these are additional facilities or services which may sometimes be provided to a person when staying at overnight accommodation, but which are not a central feature of the provision of the accommodation itself.

15. Subsection (4) permits the Scottish Ministers to make regulations, subject to the negative procedure, to add to, vary or remove facilities or services listed in subsection (3).

Reason for taking power

16. It may be that in future there will be additional services or facilities provided by accommodation providers that would not be appropriate to include as part of the accommodation portion, or, in the light of experience, it may be necessary to vary or remove entries from the list in subsection (3). It would be disproportionate for there to have to be primary legislation to adjust the list of exempted services or facilities.

Choice of procedure

17. This power is limited to adjusting the list of facilities or services which do not form part of the accommodation portion for the purposes of calculating the levy; it cannot be used to alter the basis upon which the levy itself is calculated (as provided for in section 5(1)). Given the limited nature of the power, the government considers that negative procure provides the appropriate level of scrutiny.

Section 9: Billing of overnight accommodation

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

18. Section 9 permits the Scottish Ministers to make regulations, subject to the negative procedure, on the requirements for the billing of overnight accommodation. Regulations made under this provision may, in particular, require persons to issue an invoice to a visitor when entering into a chargeable transaction specifying separately: the cost of the overnight accommodation purchased; the percentage rate of the levy; the amount of the accommodation portion and any reduction required (for example, excluding commission to a third party); and the amount of levy chargeable in respect of the transaction.

Reason for taking power

19. The issue of transparency requirements applying to transactions for the purchase of overnight accommodation subject to a visitor levy featured in the Scottish Government's consultation on the introduction of a visitor levy (see the discussion at page 2 of the Policy Memorandum). A range of responses were received, with some respondents favouring a statutory requirement for providers of overnight accommodation to display a breakdown of the cost of the accommodation and the amount of the levy charged (along with similar invoicing requirements); other respondents considered this unnecessary. As noted in the Policy Memorandum, billing requirements are to be considered by the Scottish Government as part of the development of national guidance. Taking this power will allow Scottish Ministers, if it is considered necessary following discussions with stakeholders, to introduce billing requirements applicable to all chargeable transactions. As a novel tax in the UK, there is no equivalent regime in operation which provides a model for how much standardisation of billing information is required to facilitate an effective levy framework across Scotland. Therefore, Scottish Government considers it appropriate to future-proof the Bill with a provision to introduce required billing information, where necessary.

20. The policy intention is that there are suitable powers in place to be used, if necessary, to ensure it is transparent to the person paying for the overnight accommodation how much of their bill is paying for the overnight accommodation, how much is for other elements of the transaction (such as any commission to a third party agent, where one has been used), and how much is the amount of the levy. The power to make such provision by regulations will provide flexibility to make any adjustments in light of experience in relation to the operation of the Act as timeously as possible.

Choice of procedure

21. Section 9(3) provides that regulations made in exercise of this power are subject to the negative procedure. The choice of procedure reflects the limited nature of this provision, in that it only affects the presentation of billing information to the purchaser of eligible overnight accommodation and is essentially a technical and administrative matter. The government considers that negative procedure provides the appropriate level of scrutiny for provision of this nature.

Section 10: Exemptions and rebates

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

22. Section 10 permits the Scottish Ministers to make regulations, subject to the affirmative procedure, to specify cases or circumstances in which a chargeable

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transaction is not subject to the levy, and to make arrangements for the issuing of exemption vouchers to categories of persons who may enter into a chargeable transaction for the purpose of demonstrating the application of circumstances in which a chargeable transaction is not subject to the levy.

Reason for taking power

23. There will be some situations in which it is not appropriate or desirable for a visitor levy to be applied to a chargeable transaction. For example, the consultation process identified a high level of support for exemptions for persons receiving medical care outwith their local authority area and their carers or next of kin; for children and young people; and for local residents. Such exemptions are commonly found in occupancy taxes in other jurisdictions.

24. The policy intention is that a local authority can put in place such exemptions as it thinks are appropriate (see sections 11 and 13(1)(g) of the Bill), after consultation with communities and businesses and before introduction of a scheme. We anticipate this engagement requirement with relevant stakeholders will allow for the identification and implementation of the most appropriate exemptions for the corresponding area.

25. However, there may be cases where it is appropriate to create national-level exemptions to the imposition of a levy, which will apply to all local authority visitor levy schemes. As we anticipate industry bodies and local authorities will discuss together what exemptions are appropriate, and different local authorities may want different exemptions in place, this power has been added to allow the Scottish Ministers a flexible and proportionate response to future changes. This is in line with other discretionary local taxes where the Scottish Ministers have regulatory powers to amend exemptions - for example, the workplace parking levy.

Choice of procedure

26. Section 10(2) provides that regulations made in exercise of this power are subject to the affirmative procedure. Given the power permits the Scottish Ministers to modify primary legislation and may make fundamental changes to the scope of a levy, the Scottish Government believes that the power should be subject to affirmative parliamentary procedure.

Section 13: Required content of a scheme

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

27. Section 13 sets out the required content of a visitor levy scheme. Section 13(1) lists the aspects that must be specified in any visitor levy scheme. Section 13(2) requires the

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date on which a visitor levy comes into force to be at least 18 months after the date of a local authority's decision to introduce a levy.

28. Section 13(3) permits the Scottish Ministers to make regulations, subject to the affirmative procedure, to amend subsection (1) so as to add an additional aspect that a scheme must specify, or to remove, or vary the description of, any of the required content listed in subsection (1) (other than the percentage rate of the levy set by a local authority).

Reason for taking power

29. Section 13(1) lists the required content which must be specified in any visitor levy scheme. This includes: the area in which the scheme will operate; its coming into force date; the scheme period; the percentage rate of the levy; the arrangements for review of decisions; any circumstances where the levy is not payable; and the manner in which the authority intends to make decisions around the proceeds of the scheme.

30. Following the passing of the Bill, stakeholder groups such as local communities, businesses or local government, may identify additional content that ought to be specified in a visitor levy scheme, or existing requirements which are no longer relevant. It would not be appropriate to use primary legislation to amend the list in subsection (1), therefore the power to amend through secondary legislation has been chosen.

Choice of procedure

31. Section 13(4) provides that regulations made in exercise of this power are subject to the affirmative procedure. Given the power permits the Scottish Ministers to modify primary legislation, the Scottish Government considers it appropriate that the power is subject to affirmative parliamentary procedure.

Section 14: Publicity for introduction of scheme

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

32. Section 14(1)(b) requires a local authority which has decided to introduce a visitor levy scheme to publicise its decision and the proposed coming into force date of the scheme as soon as reasonably practicable. This includes publishing its decision to introduce a visitor levy, and the proposed date on which the levy will come into force.

33. Section 14(2) permits the Scottish Ministers to make regulations, subject to the negative procedure, to make further provision about the manner in which local authorities must publicise these matters.

Reason for taking power

34. The policy intention for section 14 is to ensure decisions made by local authorities on introducing a visitor levy scheme are transparent and communicated appropriately. This is to ensure that local communities and businesses (and other relevant stakeholders) are informed of a local authority's decision to introduce a levy, and the proposed date on which a levy will come into force. The Bill does not specify the manner in which these matters are to be publicised, on the basis that local authorities, in operating a discretionary local tax, are best placed to decide this.

35. However, following the passing of the Bill, it may become apparent that there is a need to set out further provision on how all local authorities are to publicise their decisions. Where there are multiple proposals for visitor levy schemes across local government in Scotland, it may be appropriate to set out requirements for the form of publication for these schemes, to ensure consistency between local authorities. This could include, for example, a requirement to publicise in writing to all relevant persons in a local authority area. Such provision may be informed by discussions with local government or other stakeholders. As any such changes would be of an administrative nature, we consider it appropriate to permit such changes through secondary legislation.

Choice of procedure

36. Section 14(3) provides that regulations made in exercise of this power are subject to the negative procedure. This power relates to a purely administrative matter, insofar that it may specify the required form of communication that a local authority must use to publicly set out aspects of a levy that are required under the Bill. The Scottish Government therefore believes that negative procedure provides the appropriate level of scrutiny for provision of this nature.

Section 16: Duty to keep separate account for scheme

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

37. Section 16 imposes a duty on a local authority operating a visitor levy scheme to keep a separate account for the scheme. Subsection (2) sets out that for each financial year, the authority must credit the account with the money received under the scheme, and debit the account with the expenses of operating the scheme.

38. Subsection (3) permits the Scottish Ministers to make regulations, subject to the negative procedure, to make provision for or about the keeping of accounts by local authorities in connection with their functions. Subsection (4) sets out that such regulations may in particular specify the form of accounts; require the publication of a

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statement of account and specify the manner in which it must be published; and make provision about what may or must be done jointly where a VL scheme is made jointly.

Reason for taking power

39. The purpose of keeping separate accounts for the administration of the levy is to ensure there is transparency over money received and spent, both for demonstrating the proceeds of the levy against the authority's published objectives, and for general accounting and auditing processes. Such accounts will be subject to the existing accounting and auditing requirements that local authorities must currently abide by.

40. The Bill is not prescriptive on the form of these accounts. As a discretionary power to local government, we consider it appropriate for local authorities administering a visitor levy scheme to use appropriate accounting practices as they see fit. However, following the passing of the Bill, it may become apparent that a level of standardisation is required for auditing purposes if there are to be multiple levy schemes in operation across Scotland.

Choice of procedure

41. Section 16(5) provides that regulations made in exercise of this power are subject to the negative procedure. This power relates to a purely administrative matter as it relates to the form that the accounts must take place and the requirements for any publication. Given the limited nature of such provision, the Scottish Government believes that negative procedure provides the appropriate level of parliamentary scrutiny.

Section 18: Annual reporting on scheme

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

42. Section 18 provides that a local authority operating a visitor levy scheme must prepare a report on the scheme in respect of each reporting period, including information on the amount of money collected, how the net proceeds have been used, and the performance of the scheme by reference to its objectives. Subsection (2) requires a local authority to publish the report as soon as reasonably practicable and in a manner it considers appropriate.

43. Subsection (3) permits the Scottish Ministers to make regulations, subject to the negative procedure, to make provision about the content of reports under this section.

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Reason for taking power

44. A majority of respondents to the national consultation supported establishing an approach to monitoring and publicly reporting on revenues raised from the levy and its impact on the area. As a discretionary tax for local authorities to develop and administer, we consider it appropriate for local authorities to decide on the manner in which reports on the scheme are published. The Bill does not, therefore, make detailed provision about the required content of such reports.

45. However, as with the provisions in section 16 relating to accounts, where there are concerns about the disparity in reporting standards between local authorities, the power in subsection (3) may be used to ensure a level of standardisation is applied nationally.

Choice of procedure

46. Section 18(4) provides that regulations made in exercise of this power are subject to the negative procedure. The Scottish Government considers that negative procedure provides the appropriate level of scrutiny on the basis that these relate to essentially administrative matters (i.e. provision about of the content required to be included in an annual report), and that this strikes the correct balance between the use of parliamentary time and resources on the one hand and the nature and content of the regulations on the other.

Section 20: Scottish Ministers' power to regulate process

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

47. Section 20 permits the Scottish Ministers to make regulations, subject to the affirmative procedure, to make further provision about, or in connection with, the process to be followed by a local authority when introducing, administering, reporting on or reviewing a visitor levy scheme.

Reason for taking power

48. While similar accommodation taxes are common across Europe, there is no comparative tax in operation in any jurisdiction within the UK. This presents a number of unknowns over the most effective way for local authorities to administer a visitor levy scheme, which will likely be clarified through implementation and operation of the Act.

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49. The Bill has been framed to ensure that local authorities have sufficient discretion to design and tailor a visitor levy to suit their local needs. However, should concerns be raised during the implementation or operation of visitor levy schemes, this enabling power allows for the introduction of nationwide requirements on administration, reporting and reviewing. Taking a power to determine further provisions in regulations future-proofs the Bill, and provides the Scottish Ministers with the flexibility to respond if any new issues arise over time.

Choice of procedure

50. Section 20(2) provides that regulations made in exercise of this power are subject to the affirmative procedure. Given that this is a wide power permitting the Scottish Ministers to modify primary legislation, the Scottish Government considers it appropriate that the power be subject to affirmative parliamentary procedure.

Section 31: Further provision about powers relating to information notices

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

51. Section 31 permits the Scottish Ministers to make regulations, subject to the negative procedure, to make further provision about information notices (as defined in section 27(4)(d)). This includes the form and content of information notices, the time periods for complying, and the manner of complying.

Reason for taking power

52. Information notices are considered an important tool for local authorities to assess the liability of an accommodation provider for a visitor levy. An authorised officer may only request information or documentation if that information or documentation is reasonably required for the purpose of assessing liability, and it is reasonable for the liable person (accommodation provider) or a third party to provide the information or documentation.

53. Visitor levy schemes are a new regime and as such flexibility is required for the Scottish Ministers to be able to amend provisions relating to content which are expected to be too detailed and technical for primary legislation.

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Choice of procedure

54. Section 31(2) provides that regulations made in exercise of this power are subject to the negative procedure. This power relates to a purely administrative matter in making provision about the form and content of information notices. The Scottish Government therefore believes that the power should be subject to negative parliamentary procedure.

Section 36: Power to inspect business premises of third parties

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

55. Section 36 permits an authorised officer (defined in section 27(4)(c)) to enter and inspect business premises of an “involved third party” and to inspect “relevant documents” that are on the premises. Section 36(3) allows the Scottish Ministers to make regulations, subject to the negative procedure, to specify, for the purposes of section 36, (i) a person who is, or a category of persons who are, an “involved third party” (in addition to persons with whom a liable person has entered into an arrangement under section 8 – see paragraph (a) of the definition of “involved third party” in section 36), and (ii) relevant documents.

Reason for taking power

56. The power to inspect business premises of third parties is an important tool for local authorities in the enforcement of a visitor levy scheme. An authorised officer may only inspect the business premises of an “involved third party” and may only inspect “relevant documents” found on those premises.

57. Visitor levy schemes are a new regime and, as such, flexibility is required for the Scottish Ministers to be able to amend provisions relating to content which are expected to be too detailed and technical for primary legislation.

Choice of procedure

58. Section 36(5) provides that regulations made in exercise of this power are subject to the negative procedure. The use of this power is limited to specifying the third parties whose business premises may be inspected and the types of documents which may be inspected; these are essentially procedural and technical matters and the Scottish Government considers that negative procedure strikes the correct balance between the use of parliamentary time and resources on the one hand and the nature and content of the regulations on the other.

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Section 64: Rate of interest

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

59. Section 64 permits the Scottish Ministers to make regulations, subject to the negative procedure, specifying the rate of interest on the amount of unpaid levy as set out in section 62, and on the amount of unpaid penalty as set out in section 63.

Reason for taking power

60. This power is necessary to enable Scottish Ministers to ensure that the rate of interest on the amount of unpaid levy is appropriate in the economic circumstances of the time.

Choice of procedure

61. Section 64(3) provides that regulations made in exercise of this power are subject to the negative procedure. The power to specify the rate of interest is primarily an administrative matter, and therefore the Scottish Government considers it appropriate that the power be subject to negative parliamentary procedure.

Section 65: Power to change penalty provisions

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

62. Section 65 permits the Scottish Ministers to make, by regulations subject to the affirmative procedure, provision or further provision about penalties, including making amendments to this Bill or other legislation (subsections (1) and (4)). This includes provision about the circumstances in which a penalty is payable; the amount of penalties; the procedure for issuing penalties; appealing penalties; and enforcing penalties. Regulations made under section 65 may not create criminal offences.

Reason for taking power

63. Chapter 2 of the Bill contains provisions allowing a local authority to impose penalties on a person in relation to a visitor levy scheme. This power is needed to allow further provision to be made, where necessary, in relation to the issuing and enforcement of penalties. Changes to the penalty regime may be needed in the light of experience or changing circumstances to ensure that there is a robust and effective

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enforcement system in place. Scottish Ministers may also need to be able to amend the levels of penalty charge which may be applied: matters such as inflation or effectiveness as a deterrent may result in the need to vary the penalty charge.

Choice of procedure

64. Section 65(6) provides that regulations made in exercise of this power are subject to the affirmative procedure. Given the power permits the Scottish Ministers to modify primary legislation, the Scottish Government considers it appropriate that the power be subject to affirmative parliamentary procedure.

Section 66: Summary warrant

Power conferred on: Court of Session

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Laid – no procedure

Provision

65. Section 66 sets out the procedure for a local authority to take where a person fails to pay the local authority the amount of the levy payable, or a penalty imposed on the person. In these cases, the local authority may apply to the sheriff for a summary warrant. Subsection (5) requires the sheriff to grant a summary warrant in (or as nearly as may be in) the form prescribed by Act of Sederunt.

Reason for taking power

66. The Scottish Ministers consider it appropriate for the Court of Session to prescribe the form of the summary warrant by Act of Sederunt. This is the standard procedure for setting out procedural rules regulating summary warrant procedures in Scotland.

Choice of procedure

67. This instrument has no procedure and only requires to be laid before Parliament. This is the standard procedure for rules of court such as this.

Section 67: Reviews

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

68. Section 67 requires the Scottish Ministers to make, by regulations subject to the affirmative procedure, provision for and in connection with reviews by a local authority

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of: decisions made by the authority in connection with the operation of the scheme; enforcement action undertaken by the authority; and penalties imposed by the authority.

Reason for taking power

69. The policy intention for section 67 is that an accommodation provider should be able to challenge the decisions of a local authority in relation to the decisions it makes in connection with the operation of a visitor levy scheme. This includes in relation to enforcement action and the application of penalties.

70. The level of detail required for a system of reviews under this section is considered more suitable for secondary, rather than primary, legislation. The decision to take a power through regulations for provision of reviews is in line with another discretionary local tax – the workplace parking levy – where the Scottish Ministers may make regulations about reviews of, and appeals against, decisions in relation to schemes.

Choice of procedure

71. Section 67(3) provides that regulations made in exercise of this power are subject to the affirmative procedure. Given the width of this power, the Scottish Government considers it appropriate that the power be subject to affirmative parliamentary procedure.

Section 68: Appeals

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

72. Section 68 requires the Scottish Ministers to make, by regulations subject to the affirmative procedure, provision for and in connection with appeals against to the First-tier Tribunal for Scotland against: decisions made by a relevant local authority in connection with the operation of a visitor levy scheme; enforcement action taken by a relevant local authority; and penalties imposed by a relevant local authority.

Reason for taking power

73. The Scottish Ministers believe that the enforcement regime for a local visitor levy scheme is something which is best placed in subordinate legislation in order to enable it to be adaptive to the needs of the schemes and respond quickly to changes in behaviour or practice. Further, much of the detail of the enforcement regime is likely to be technical and procedural and therefore better suited to subordinate legislation.

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Choice of procedure

74. Section 68(4) provides that regulations made in exercise of this power are subject to the affirmative procedure. Given the width of this power, the Scottish Government considers it appropriate that the power be subject to affirmative parliamentary procedure.

Section 73: Ancillary Provision

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative if modifying primary legislation; otherwise negative

Provision

75. Section 73 permits the Scottish Ministers to make, by way of regulations, such incidental, supplementary, consequential, transitional, transitory or saving provision that they consider appropriate for the purposes of, in connection with or for giving full effect to the enacted Bill or anything done under it. These regulations may modify any enactment (including the Bill).

Reason for taking power

76. This power is necessary to allow flexibility when commencing provisions in the Bill or addressing circumstances that may arise in light of experience of the operation of the Act. This is particularly relevant here where a new discretionary local tax is being set up and the operation of this tax has not been tested.

77. The power is limited to the extent that it can only be used if the Scottish Ministers consider it appropriate for the purposes of, in connection with, or for giving full effect to the Bill.

78. The Scottish Government considers it appropriate to take a power to deal with anything that might emerge in the course of implementing the Act (for example, interactions with secondary legislation or older statutes or rules of law). Without the power proposed, it would be necessary to return to the Parliament, through subsequent primary legislation, to deal with a matter that is clearly within the policy intentions of the original Bill; this would not be an effective use of Parliamentary or Government resource. It is considered that such matters can be best addressed through subordinate legislation.

Choice of procedure

79. Regulations under this section will be subject to the affirmative procedure where they modify primary legislation by adding to, replacing or omitting any part of the text of

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an Act. Otherwise, they will be subject to the negative procedure. This is the normal approach for ancillary powers of this type.

Section 74: Commencement

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Laid only

Provision

80. Section 74 enables the Scottish Ministers, by regulations, to commence the Bill by bringing the substantive provisions of the Bill into force on such day as the Scottish Ministers appoint. Section 74(3) provides that such regulations may include transitional, transitory or saving provision.

81. The provisions in the Bill will, except as provided under subsection (1), come into force on the date appointed by the Scottish Ministers in regulations made under this section. Regulations under this section will be laid before the Scottish Parliament in accordance with section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010.

Reason for taking power

82. It is standard for Ministers to have powers over the commencement of Bills. It is considered appropriate for the substantive provisions of the Bill to be commenced at such time as the Scottish Ministers consider to be suitable.

Choice of procedure

83. As is now usual for commencement regulations, the default laying requirement applies.

This document relates to the Visitor Levy (Scotland) Bill (SP Bill 28) as introduced in the Scottish Parliament on 24 May 2023

Visitor Levy (Scotland) Bill

Delegated Powers Memorandum

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