

# **VISITOR LEVY (SCOTLAND) BILL**

## **[AS AMENDED AT STAGE 2]**

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### **SUPPLEMENTARY DELEGATED POWERS MEMORANDUM**

#### **Introduction**

1. This supplementary Delegated Powers Memorandum has been prepared by the Scottish Government in accordance with rule 9.7.9 of the Parliament’s Standing Orders to assist the Delegated Powers and Law Reform Committee (“DPLRC”) in its consideration of the Visitor Levy (Scotland) Bill (“the Bill”). This memorandum describes provisions in the Bill conferring power to make subordinate legislation which were either introduced to the Bill or amended at Stage 2. It should be read in conjunction with the Delegated Powers Memorandum published to accompany the Bill on introduction.

2. The contents of this memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament.

#### **Provisions conferring power to make subordinate legislation introduced or amended at Stage 2**

3. The amended or new delegated powers in the Bill 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(4): Meaning of overnight accommodation**

<b>Power conferred on:</b>	<b>Scottish Ministers</b>
<b>Power exercisable by:</b>	<b>Regulations made by Scottish statutory instrument</b>
<b>Parliamentary procedure:</b>	<b>Affirmative</b>
<b>Revised or new power:</b>	<b>Revised</b>

#### ***Provision***

4. As outlined in the Delegated Powers Memorandum which accompanied the Bill at introduction 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 accommodation mentioned in subsection (3) do not, therefore, fall within the definition of “overnight accommodation”.

5. 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).

### ***Choice of procedure***

6. The power to amend the list of accommodation considered eligible for the levy is subject to the affirmative procedure, as was the case with the Bill as introduced. However, in light of scrutiny from the DPLRC the Government lodged an amendment at stage 2 in relation to this power. That amendment, passed at stage 2, inserted section 4(4A) into the Bill. This requires that before making regulations under section 4(4) Scottish Ministers must consult local authorities and such tourist organisations as Ministers consider appropriate. This pre-condition has to be satisfied before Ministers can exercise the relevant power.

### **Section 6(3): Rate for levy**

<b>Power conferred on:</b>	<b>Scottish Ministers</b>
<b>Power exercisable by:</b>	<b>Regulations made by Scottish statutory instrument</b>
<b>Parliamentary procedure:</b>	<b>Affirmative</b>
<b>Revised or new power:</b>	<b>New</b>

### ***Provision***

7. Section 6 of the Bill requires a local authority seeking to introduce a scheme to impose the visitor levy in its area to set the percentage rate of the levy chargeable in respect of the purchase of overnight accommodation. Different rates can be set for different purposes or areas (subsection (2)(a)), meaning that a local authority could, for example, set different rates in relation to particular events, such as arts festivals or special conferences. However, different rates may not be set for different types of accommodation (subsection (2)(b)).

8. The Bill as amended at stage 2 added subsections (3), (4), (5) and (6) to the Bill. These give Scottish Ministers the power to make regulations specifying the maximum percentage rate which a local authority may set under the Bill. The regulations may specify different maximum rates for different purposes, but may not specify different maximum percentage rates for different geographical areas.

9. Before making regulations under this power Scottish Ministers must consult with local authorities, representatives of communities, representatives of business engaged in tourism and tourist organisations, and any other persons they consider appropriate. Regulations made under this provision would be subject to affirmative procedure.

### ***Reason for taking the power***

10. The overarching policy intention behind the provisions in the Bill is to establish an effective, proportionate and robust framework within which a local authority can establish a visitor levy. That includes a number of requirements that a local authority must meet when introducing such a levy, and a process that will need to be followed. In line with that policy intention it will be for a local authority to determine, having followed the process required in the Bill, the rate of any visitor levy in its area. However, in light of concerns from industry that there is currently no mechanism in the Bill for setting a maximum rate the Government sought to amend the Bill at stage 2 to give Scottish Ministers the power in section 6(3).

11. This power sits alongside those powers already in the Bill (such as in section 20) to make provision in regulations connected with the process to be followed when introducing, administering, reporting on or reviewing a visitor levy. It could only be used after consultation with local authorities, representatives of business engaged in tourism, tourist organisations, representatives of communities, and any other relevant persons. It would also require Parliament to approve under affirmative procedure any cap before it came into force. The Government's view is this strikes the right balance between local autonomy that allows for local decisions that reflect local circumstances, and the concern of industry that there is currently no mechanism that could limit the level at which a visitor levy could be set.

### ***Choice of procedure***

12. Section 6(6) provides that regulations made in exercise of this power are subject to affirmative procedure. Under section 6(5) the power could also only be exercised after consultation had been carried out by the Scottish Ministers with local authorities, such persons as they consider to be representative of communities, business engaged in tourism, tourist organisations, and such other persons as they consider appropriate.

13. Given this power permits the Scottish Ministers to set a national cap in relation to a local tax the Scottish Government considers it appropriate that the power is subject to affirmative parliamentary procedure.

### **Section 10(1): Exemptions and rebates**

<b>Power conferred on:</b>	<b>Scottish Ministers</b>
<b>Power exercisable by:</b>	<b>Regulations made by Scottish statutory instrument</b>
<b>Parliamentary procedure:</b>	<b>Affirmative</b>
<b>Revised or new power:</b>	<b>Revised</b>

### ***Provision***

14. As outlined in the Delegated Powers Memorandum which accompanied the Bill at introduction section 10 permits the Scottish Ministers to make regulations, subject to the affirmative procedure, to specify cases or circumstances in which a chargeable 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.

### ***Choice of procedure***

15. The power to make regulations under section 10 continues to be subject to the affirmative procedure, as was the case with the Bill as introduced. However in light of scrutiny from the DPLRC the Government lodged amendments at stage 2 in relation to the power. This amendment, passed at stage 2, inserted section 10(1A) into the Bill. This requires that before making regulations under section 10(1) Scottish Ministers must consult local authorities and such tourist organisations as Scottish Ministers consider appropriate. This pre-condition has to be satisfied before Scottish Ministers can exercise the relevant power.

### **Section 20A: Guidance on visitor levy scheme**

<b>Power conferred on:</b>	<b>Scottish Ministers</b>
<b>Power exercisable by:</b>	<b>Guidance and regulations made by Scottish statutory instrument</b>
<b>Parliamentary procedure:</b>	<b>Affirmative</b>
<b>Revised or new power:</b>	<b>New</b>

### ***Provision***

16. Section 20A of the Bill as amended at stage 2 covers the subject of Guidance on a visitor levy scheme. Under section 20A(1) a local authority must have regard to any guidance published under section 20A. Section 20A(2) places a duty on VisitScotland to prepare and publish guidance for local authorities on the introduction and administration of a visitor levy, and to review the guidance from time to time.

17. Section 20A(5) gives Scottish Ministers the power to make regulations that can substitute a different body for VisitScotland, or to make more than one body responsible for preparing, publishing, and reviewing the guidance.

### ***Reason for taking the power***

18. The Scottish Government believes that placing a statutory duty on a local authority to have regard to any guidance published under section 20A is a sensible measure, reflecting work already underway to develop guidance on a visitor levy. That work is currently being led by VisitScotland, and the Bill therefore reflects this role, as is appropriate for Scotland's national tourist board. However VisitScotland may not exist in its current form at some point in the future, or there may be another or an additional body which would be most appropriate to deal with guidance on a visitor levy. To future proof the Bill it is therefore appropriate to give Scottish Ministers the power under section 20A(5) to substitute a different body for VisitScotland, or to designate more than one body responsible for the guidance.

### ***Choice of procedure***

19. Section 20A(7) provides that regulations made in exercise of the section 20A(5) Ministerial power are subject to affirmative procedure. Given this power permits the Scottish Ministers to amend primary legislation in this way, the Scottish Government considers it appropriate that the power is subject to affirmative parliamentary procedure.

## **Section 36– Power to inspect business premises of third parties**

<b>Power conferred on:</b>	<b>Scottish Ministers</b>
<b>Power exercisable by:</b>	<b>Regulations made by Scottish statutory instrument</b>
<b>Parliamentary procedure:</b>	<b>Affirmative</b>
<b>Revised or new power:</b>	<b>Revised</b>

### ***Provision***

20. As outlined in the Delegated Powers Memorandum which accompanied the Bill at introduction 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. At introduction section 36(3) allowed 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.

### ***Choice of procedure***

21. Section 36(5) at introduction required that regulations made in exercise of this power were subject to the negative procedure. However, in light of scrutiny from the DPLRC the Scottish Government lodged an amendment at stage 2 in relation to the power. This amendment, passed at stage 2, changed the procedure to affirmative, reflecting the views of the DPLRC.

*This document relates to the Visitor Levy (Scotland) Bill (SP Bill 28A) as amended at Stage 2*

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