

VISITOR LEVY (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

1. As required under Rule 9.3.3 of the Parliament’s Standing Orders, this Policy Memorandum is published to accompany the Visitor Levy (Scotland) Bill introduced in the Scottish Parliament on 24 May 2023.
2. The following other accompanying documents are published separately:
 - Explanatory Notes (SP Bill 28–EN);
 - a Financial Memorandum (SP Bill 28–FM);
 - a Delegated Powers Memorandum (SP Bill 28–DPM);
 - statements on legislative competence by the Presiding Officer and the Scottish Government (SP Bill 28–LC).
3. This Policy Memorandum has been prepared by the Scottish Government to set out the Government’s policy behind the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

BACKGROUND

4. Under the Scotland Act 1998, local taxes to fund local authority expenditure are a devolved matter. The Scottish Government is committed to using these powers to develop the fiscal measures available to local government whilst being consistent with the Scottish Government’s overarching approach to tax policy. The Scottish Government envisages an approach for assessing proposals for new local taxes to be an important part of a future Fiscal Framework for local government.
5. During 2018 (predating discussions between the Scottish Government and local government to identify a potential fiscal framework), the Convention of Scottish Local Authorities (COSLA), and a number of individual local authorities, called on the Scottish Government to grant the powers to allow a local authority to place a levy on visitors in their area, if they chose to do so. COSLA’s ‘Transient Visitor Tax’ paper¹ set out this ask, arguing that a discretionary visitor tax would strengthen local democracy and local choice, and generate revenue which could contribute to the cost of maintaining the public services that support tourism, and enhancing the tourist experience.

¹ https://www.cosla.gov.uk/data/assets/pdf_file/0027/16389/coslatransientvisitortax.pdf

6. Recognising the divergence of views in response to this proposal the then Scottish Government convened six National Discussion roundtable events across Scotland in the winter of 2018-19. Each was chaired by a Scottish Government Minister, and brought together a range of stakeholders from the tourism industry, local authorities, wider business interests, and communities. The National Discussion therefore provided a substantial evidence base, illustrating potential opportunities and challenges associated with a visitor levy, and allowing a full range of views to be heard and discussed.²

7. During the course of the Budget 2019-20,³ the Scottish Government committed to “consult on the principles of a local determined tourist tax, prior to introducing legislation to permit local authorities to introduce a transient visitor levy, if they consider it appropriate for local circumstances”. This commitment was part of a package of measures focussing on local tax reforms and local fiscal empowerment, helping further empower communities and local councils across Scotland.

8. A formal public consultation “Consultation on the Principles of a Local Discretionary Transient Visitor Levy or Tourist Tax” was therefore held from 9 September 2019 to 2 December 2019, and is discussed further below.⁴ However work on a visitor levy was paused in March 2020 in light of the pandemic. Budget 2022-23 announced the Scottish Government’s intention to recommence this work, following which renewed stakeholder engagement was carried out. This culminated in the Bill being included as part of the Programme for Government announced on 6 September 2022.

Tourism in Scotland

9. Tourism is a key sector which makes a significant contribution to Scotland’s economy, and is recognised as such within Scotland’s Economic Strategy. Scotland’s National Strategy for Economic Transformation,⁵ published in 2022, sets out the priorities for Scotland’s economy and the actions needed to maximise the opportunities of the next decade to achieve the Government’s vision of a wellbeing economy. It identifies Scotland’s tourism offer as one of the country’s strengths and confirms Scotland’s National Tourism Strategy, Scotland Outlook 2030,⁶ as the vehicle to further this.

10. This new national strategy, launched in March 2020, sets out a bold new vision of Scotland as the world leader in 21st century tourism. It identifies four key priorities: passionate people, thriving places, diverse businesses, and memorable experiences. Work to implement the Strategy was paused shortly after launch by the pandemic, as focus shifted to responding to the emergency and supporting businesses. The challenges that the sector faces linked to both the pandemic, and the cost of living crisis that has resulted in high inflation on key input costs such as food and energy, mean this ambitious strategy is more relevant than ever.

² <https://www.gov.scot/publications/tourist-taxes-scotland-messages-national-discussion/>

³ <https://www.gov.scot/publications/scottish-budget-2019-20-stage-1-scottish-greens-agreement-letters/>

⁴ <https://www.gov.scot/publications/consultation-principles-local-discretionary-transient-visitor-levy-tourist-tax/>

⁵ <https://www.gov.scot/publications/scotlands-national-strategy-economic-transformation/>

⁶ <https://scottishtourismalliance.co.uk/scotland-outlook-2030-overview/?iebrowser=1>

11. Prior to the Covid-19 pandemic, Scotland had seen a significant increase in visitor numbers. 2019 was a very strong year for overnight tourism in Scotland with an estimated 17.5 million overnight visitors, spending an estimated £5.9 billion, the highest figures recorded over the last decade.⁷ Visitor numbers, in particular those from overseas, reduced significantly due to the restrictions introduced during the pandemic. However, there is good evidence that visitor numbers are recovering. Initially this was focused on domestic visitors, but future international bookings are looking increasingly positive.

12. Prior to the pandemic, there had also been significant growth in both overnight stays and day visitors in specific parts of Scotland, such as Edinburgh and some parts of the Highlands. This means that in some areas there are greater pressures on the local environment and on activities that enhance the tourist experience, and communities facing pressure on their infrastructure as a result of visitor numbers. As one response to this in 2018 the Scottish Government established the Rural Tourism Infrastructure Fund (managed by VisitScotland), and to date £18 million of grant funding has been awarded to 74 projects across rural Scotland.

Local Government

13. Local government plays a unique role in the lives of citizens and communities. The work local authorities do touches the lives of every person in Scotland on a daily basis, and they provide the local democratic accountability needed to ensure that services are delivered according to the needs and priorities of local people. The Scottish Government is working with local government to agree an approach which improves the delivery of sustainable public services. The introduction of a visitor levy forms an important part of this work and the local government Fiscal Framework, and is a significant step towards the Scottish Government's ambition of fiscally empowering local government and strengthening local democracy.

Scottish Approach to Taxation

14. The Scottish Government is committed to improving outcomes for people and communities by ensuring that they have more control over the decisions that are most important to them. It is therefore important to review how powers, responsibilities and resources are shared across national and local spheres of government and with communities. This recognises that outcomes for citizens and communities are best when decisions are taken at the right level. As tourism can impact directly on local areas, and can form an important part of local economies, local decision-making regarding implementation of a visitor levy provides an opportunity for an appropriate local response to local circumstances.

15. A discretionary visitor levy will strengthen local democracy through increased decision making and empowerment of local communities. However, as there is also scope for decisions on tourism in one local authority to impact on other local authorities, and at a national level, it is important that the legislative framework for a visitor levy reflects the Scottish Government's national approach to tax policy.

⁷ Visit Scotland, 'Key facts on Tourism in Scotland: 2019' available online at: <https://www.visitscotland.org/research-insights/about-our-industry/statistics>

16. The Scottish Government’s overarching approach to tax policy, as set out in the Framework for Tax 2021,⁸ (which include the four principles set out by Adam Smith), is based on:

Proportionality: Taxes should be levied in proportion to taxpayers’ ability to pay. The Scottish Government also believes that a fair tax system should be progressive, i.e. that the proportion of tax paid should reflect the relative income or wealth of the taxpayer. Equally, comparable circumstances should attract comparable tax treatment, in the absence of strong justification to the contrary.

Efficiency: The tax system must balance the prospects for revenue against the potential for unintended behavioural responses. If such responses reduce economic activity – where, for example, a tax change prompts employees to cut back on working hours – they can create economic inefficiencies.

Certainty: Taxpayers must know if they are liable to pay tax, the amount to be paid, and when it is to be paid. This allows businesses and individuals to plan and invest with confidence. Changes to the tax system should be justified and, where possible, follow a predictable fiscal cycle or published roadmap.

Convenience: Taxes should be collected at a time and in a manner that maximises convenience for taxpayers. Tax policy should be as simple, clear and straightforward as possible and opportunities to streamline the tax system should be taken where they arise.

Engagement: People and businesses should be able to understand the tax system and governments and tax authorities play a critical role in relation to that. Governments must therefore be open and transparent about tax policies and their decision-making, consulting as widely as possible. This is crucial for accountability and trust.

Effectiveness: Design of the tax system should focus on ensuring taxes raise the expected revenues and achieve their intended aims. This includes designing taxes that minimise opportunities for tax avoidance. The vast majority of taxpayers want to pay the correct amount of tax, and do, but where taxpayers do engage in avoidance practices governments and tax authorities should respond quickly and proactively to tackle them.

17. The Scottish Government’s approach to a visitor levy has taken account of these principles, reflected in the design of the legislative framework set out in the Bill.

Visitor levies across Europe

18. Taxes on visitors staying overnight in paid-for accommodation are common across Europe and in other locations across the world. Only seven countries from the EU-27 did not charge an occupancy tax as of 2023. The rationale for these taxes varies, with some cities and regions using the levy as a way to increase general revenues to fund the provision of public goods and general services used by residents and visitors, whilst other cities ring-fence all or a portion of the net revenues arising from these taxes to fund specific projects that align with local priorities.

⁸ <https://www.gov.scot/publications/framework-tax-2021/documents/>.

19. These taxes have a varying basis of charge depending on the context, with some taxes charged on the basis of an additional flat rate per person per night, which can vary according to the quality of the accommodation or season. A tax based on a percentage of the accommodation charge, similar to the basis of charge set out in the Bill, applies to taxes typically applied in the larger city destinations of Europe (Amsterdam, Brussels, Vienna, Berlin and Budapest) and also tends to be more common outside of Europe, in particular in the US and Canada.

20. Typically, taxes on visitor accommodation in cities or regions in these countries are a devolved issue and are determined and administered locally by a municipal authority, although in some cases this is within a wider national framework. Therefore, tax rates typically vary by city/region within the same country.

21. Occupancy taxes operating in other countries also make use of exemptions or reduced rates, for particular groups of visitors such as business travellers, local residents, children under a certain age, any accommodation booked as part of an educational trip, temporary workers staying in accommodation for a short period of time, and people with a disability travelling for medical purposes and their carers. Some of these taxes also vary depending on the time of year, with higher rates charged in peak season and lower rates in off-peak season.

22. There are various examples of how revenues raised by these taxes are deployed in other countries. For cities and regions which ring-fence revenues raised by the tax, revenues may be deployed in projects which address any negative impacts of tourism such as specific environmental degradation, or increase promotion and marketing of a destination, or which make provision for specific benefits to visitors such as free local transport or discounts on visitor attractions. For example, income from a Sustainable Tourism Tax applied in the Balearic Islands is used to subsidise projects with a range of objectives including environmental development and protection, recovery of historical heritage, and promotion of training and employment. In Ljubljana, Slovenia, from 2019 part of the tourist tax is being hypothecated to fund activities of the Slovenian Tourist Board including marketing and promoting the country as a whole. In Swiss cantons such as Lucern and Geneva, part of the revenues raised by local taxes are used to fund a tourist card for visitors which grants them discounts to attractions or free access to public transport.

POLICY OBJECTIVES OF THE BILL

23. The overall policy objective of the Bill is to give 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. Giving local authorities this power will strengthen local democracy by giving them a discretionary new fiscal power that they can choose to use in their areas, if they consider it appropriate to do so. Funding raised from a visitor levy will be required to be spent on the visitor economy, such as facilities or services substantially for or used by visitors, providing a local authority with new resources it can use for these purposes. This may be particularly relevant in areas where public services are under additional pressure due to the number of visitors to an area.

24. The policy intention behind all of these provisions is to create an effective, proportionate and robust framework within which a local authority can establish a visitor levy. The purpose of these provisions is to ensure that appropriate consultation, impact assessment, transparency and accountability is in place for any visitor levy schemes established by local authorities. 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. It also specifies the purposes for which funding raised by a levy can be used, and relevant reporting and transparency requirements relating to that. Lastly the Bill creates relevant powers and duties, giving a local authority powers to allow it to effectively enforce a levy, and creates relevant reporting requirements.

CONSULTATION

National Discussion

25. Recognising that introduction of a visitor levy was an issue which required careful consideration, between November 2018 and January 2019 the Scottish Government facilitated a national discussion on tourist taxes in Scotland (hereafter referred to as the National Discussion), to seek views and build a common and shared understanding of the issues, opportunities, and challenges.

26. A discussion document “Transient Visitor Taxes in Scotland: Supporting a National Discussion”⁹ was published to inform this process, and six roundtable events were held across Scotland. These events illustrated potential opportunities and challenges associated with tourist taxes, complexities around design and operation, and opposition to these proposals from representatives of Scotland’s tourism industry. A summary of messages from the National Discussion was published in March 2019,¹⁰ along with the written evidence received.¹¹ In particular, it drew out areas of difference between stakeholders, including with regard to views on the degree of national consistency and local discretion that would be desirable in a Scottish context.

Consultation on the Principles of a Local Discretionary Transient Visitor Levy

27. The evidence from the National Discussion informed the development of the Scottish Government’s proposals around a discretionary visitor levy. A public consultation paper, “Consultation on the Principles of a Local Discretionary Transient Visitor Levy or Tourist Tax”,¹² was published on 9 September 2019 to develop understanding of the issues and inform the development of legislation to enable local authorities to apply a visitor levy. The consultation ran for a 12-week period until 2 December 2019.

28. During the consultation period a series of 14 information sessions were held across the country. These provided attendees with the opportunity to find out further information about the consultation from officials, and to discuss some of the issues raised in the consultation. Officials encouraged attendees to submit a formal consultation response. These events were held in Edinburgh, Glasgow, Aberdeen, Inverness, Skye, Dumfries, Mull and Shetland.

⁹ <https://www.gov.scot/publications/transient-visitor-taxes-scotland-supporting-national-discussion/>

¹⁰ <https://www.gov.scot/publications/tourist-taxes-scotland-messages-national-discussion/>

¹¹ <https://www.gov.scot/publications/tourist-taxes-scotland-published-evidence-national-discussion/>

¹² <https://www.gov.scot/publications/consultation-principles-local-discretionary-transient-visitor-levy-tourist-tax/documents/>

29. The consultation document posed 33 questions which invited views on a range of issues around enabling local authorities to apply a visitor levy. These included the balance between local autonomy and national consistency; the activities that a visitor levy would apply to; the basis of charge; the rate of charge; exemptions; and administration and compliance.

30. A total of 1,701 responses were received. There were 499 substantive responses, which were the focus of the consultation analysis, with 224 were from groups or organisations and 275 responses were from individuals. The two largest groups of organisational respondents were accommodation providers, with 49 responses from hotels and 67 responses from other accommodation providers (including B&Bs, guest houses, caravan parks and campsites). 1,202 responses were based on a Living Rent related campaign, and while not directly responding to any of the questions in the consultation paper, raised some pertinent points which have been covered below under the relevant issue (see paragraphs 40 and 75).

31. The consultation process was valuable and the Scottish Government is grateful to all who contributed their time, input and assistance to the process. The majority of respondents gave permission for their response to be published and these can be accessed through the Scottish Government Consultation Hub.¹³ An independent analysis of all the consultation responses was undertaken by Craigforth, and their report is available on the Scottish Government's website.¹⁴

32. The key findings from the consultation analysis were:

- 42% of respondents supported a visitor levy that was set out mostly at a local level with some overarching national principles. The majority of local authority respondents supported this approach. Accommodation providers tended to favour a wholly national framework.
- 35% of respondents supported a visitor levy being based on a percentage of the total accommodation charge. 32% supported a flat rate per person per night, and 24% supported a flat rate per room per night.
- A majority of respondents thought that there should be a national framework within which a visitor levy rate could be set by a local authority. A general theme was that any decisions on a visitor levy should be based on robust evidence, including an economic impact assessment.
- A large majority (ranging from 82% to 96%) supported a local authority needing to consult and conduct relevant impact assessments before introducing a visitor levy.
- A majority of respondents thought revenues from a visitor levy should be allocated to priorities articulated in local tourism strategies, where they exist.

33. These views have shaped the proposals in the Bill. More detail on the consultation responses is provided below with the relevant sections of the Bill.

¹³ <https://consult.gov.scot/local-government-and-communities/visitor-levy/>

¹⁴ <https://www.gov.scot/publications/principles-local-discretionary-transient-visitor-levy-tourist-tax/pages/2/>

OBJECTIVES OF THE BILL – INDIVIDUAL PROVISIONS

Power to create visitor levy (section 1)

34. The policy intention is that each local authority in Scotland is given the power to create a visitor levy, which will be a charge that is applied to the purchase of overnight accommodation. Any such levy introduced will be known as the visitor levy, and will be introduced, administered and charged in accordance with the provisions in the Bill. The policy intention is that only local authorities, and not any other body, will have the power to introduce a levy, and in doing so they will need to meet the requirements set out in the Bill. This is to ensure that there is a framework set out in legislation within which a local authority must operate when introducing or applying a levy, providing consistency across the country on key principles and aspects, while also enabling appropriate local discretion and decision making.

Consultation

35. The formal consultation paper suggested that there should be some overarching design principles for a visitor levy set out in national legislation. Three possible options were set out in the consultation paper and there was no clear consensus on which was the preferred option among respondents. A visitor levy set out mostly at the local level with some overarching national principles was supported by 42% of those answering (including the majority of local authority respondents). 36% supported a wholly national framework, while 22% supported a visitor levy set out mostly at the national level with some local discretion. Accommodation providers tended to favour a wholly national framework.

36. The Scottish Government's approach is to have a broad national framework within which a local authority would set out a local visitor levy scheme. This approach is in line with that supported by the largest group of respondents to this question, and reflects the Scottish Government's approach to fiscally empowering local government and strengthening local democracy. The Bill embeds the use of this new power within the Scottish Government's broad approach to taxation. A wholly or largely national approach would not fit with the Scottish Government's approach to local government, and would not fiscally empower local government or strengthen local democracy.

37. Potential alternatives to the approach taken in the Bill, the creation of a Business Improvement District (BID), are discussed in paragraphs 110 to 116, with further analysis of a BID in the Business and Regulatory Impact Assessment.

Levy to be charged on purchase of overnight accommodation (sections 3 and 4)

38. The policy intention is that a visitor levy, if a local authority chooses to introduce one, will apply to all overnight accommodation for which a payment is made. That includes hotels, hostels, guesthouses, B&Bs, self-catering accommodation, and pitches on campsites. This list is not exhaustive, and the policy intention is that any premises that are offered for residential purposes, other than to be an individual's usual place of residence, are liable for the charge. This is to ensure that all appropriate forms of overnight accommodation are within the scope of a visitor levy. Gypsy/Traveller sites that are provided by a local authority or registered social landlord are not to be included in the types of overnight accommodation to which a levy can be applied. This reflects that such sites are where Gypsy/Travellers live, for at least part of the year, or visit as part of their

culture and traditions, and it is important to protect this distinctive aspect of one of Scotland's important minority communities.

Consultation

39. The public consultation paper set out the intention that a visitor levy in Scotland would apply to overnight stays in overnight accommodation for which a payment is made. During the National Discussion 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. In total, 49% of respondents who answered the question did not think 'commercially let accommodation' (by which the consultation paper meant overnight accommodation for which a payment is made) to be an appropriate basis for applying a levy on visitors, while 46% thought that it would. Those who did not think an overnight stay in accommodation would be an appropriate basis for a levy expressed a variety of reasons for their views, including an objection to a visitor levy in principle, a concern that such a levy would impact on the competitiveness of accommodation in the relevant area, and that such a levy would only impact on one part of the tourism sector when a large proportion of tourism relates spend is elsewhere, such as on food or entrance tickets. Considering applying a visitor levy to overnight stays were the focus for much of the National Discussion, and were the focus of the public consultation that was carried out.

40. There was a marked difference between responses of individual and organisational respondents: while 56% of individual respondents were in favour of a levy on visitors staying in accommodation for which a payment is made, only 33% of organisational respondents agreed with this type of levy. The 1,202 responses to the consultation that were based on a Living Rent related campaign supported the view that a visitor levy should apply to holiday lets.

41. Respondents who agreed a charge on overnight accommodation to be an appropriate basis for a levy argued the importance of covering all accommodation, including bookings made through collaborative economy accommodation platforms such as Airbnb. Some respondents also suggested it would be appropriate to exclude some types of accommodation from collection of a levy including hostels, student campuses, campsites and small businesses operating below the VAT threshold.

42. The Scottish Government has taken the view that having the visitor levy apply to overnight accommodation provides a clear 'taxable event', which is easy to identify and straightforward to administer. For the same reason the meaning of 'overnight accommodation' in the Bill is broad and covers a room or area which is used for residential purposes but is not the visitor's only or usual place of residence. This reflects the wide variation of accommodation types across Scotland, with a higher prevalence of certain types of accommodation (such as hostels, student campuses, and campsites) in some parts of Scotland than in others. The Bill enables a local authority to exempt particular types of accommodation from a visitor levy if it wishes to do so, but this approach fits best with the overarching approach in the Bill of seeking to set a broad national framework within which local authorities can make their own decisions and establish a visitor levy scheme that suits their area.

Calculation and rates of levy (sections 5 and 6)

43. The overall policy intention is that a visitor levy, if a local authority chooses to introduce one, is a percentage of the charge for overnight accommodation, set by the relevant local authority for all or part(s) of its area. This approach has been taken for a number of reasons. It is practical to administer, and makes use of information that an accommodation provider will already hold. It means that the level of visitor levy paid is proportionate to the cost of the accommodation so that the levy that is paid reflects the amount of money a visitor is prepared to spend on their accommodation. This progressive and fair approach reflects the Scottish Government's overarching approach to tax policy, meaning that the level of visitor levy paid will generally reflect the quality and facilities of the accommodation, and the ability of someone to pay.

44. The policy intention is that the levy applies to the cost of overnight accommodation. It therefore is not intended to apply to additional monies that are paid for other elements for which someone using the accommodation may also be paying at the same time they are paying for the accommodation. These include elements such as meals or drinks, parking, and entertainment. To avoid misuse of this provision the policy intention is that costs that are reasonably attributable to these elements are not included in the calculation of the levy. In addition the cost of any commission paid by the accommodation provider to a travel booking service (such as a booking website) should also not be included in the amount used when calculating the levy. This is for the same reason as other elements are to be ignored, as it is not part of the cost of the overnight accommodation.

45. Therefore the actual calculation to be carried out when calculating how much levy is to be paid is to take the accommodation portion of a purchase (after any elements of the purchase not relating to overnight accommodation are removed), deduct any amount corresponding to any commission that the accommodation provider has paid, and multiply the resulting amount by the percentage rate set by the local authority.

Consultation

46. In the public consultation similar numbers of respondents who answered the question thought a percentage of the total accommodation charge (35%) or a flat rate per person per night (32%) would work best in Scotland. Fewer respondents advocated a levy based on a flat rate per room per night (24%), with even less support for a flat rate dependent on accommodation quality (9%). There were marked differences between organisational respondents, who were most likely to opt for a flat rate per room per night charge (44%), and individuals, who most frequently chose a flat rate per person per night (42%). Many of the respondents who were hotels selected a flat rate per room per night and accounted for around two in three of the organisations choosing this option. In contrast accommodation providers who were not hotels were most likely to prefer a percentage of total accommodation cost (45%, versus 24% support for per room per night). The 13 local authority respondents who answered were evenly divided between flat rates per person, per room, and a percentage of total accommodation.

47. Focussing on the method for calculating the levy in the Bill, those respondents who preferred this basis for a charge most frequently gave the reason that this approach is fair, as it is related to the ability to pay, as those choosing to use more expensive accommodation would also pay a higher level of visitor levy. A percentage charge was also suggested to be simple,

straightforward and well understood, and to be a method of calculation that is already used elsewhere. A percentage of the total accommodation charge does not require accommodation providers to know how many people are staying in their accommodation, and it was argued to be a better approach for self-catering providers, for whom the number of guests staying at a property may be unknown or may vary over the period of a booking.

48. Other points made in favour of a percentage charge included that it reflects changes in rates between high and low season and geographical variation in price; will rise with inflation, reducing the need for periodic reviews; and broadly reflects the quality of accommodation since higher cost is likely to correspond to higher quality. In addition respondents argued it would be the best option for hostels where very low-cost accommodation is charged on a per-bed basis.

49. Some issues were also raised in the consultation with a percentage rate as the basis of a visitor levy. These included that a percentage may prove more complicated to calculate and to enforce than a flat rate. It was also noted that there would need to be clarity on what is meant by “total accommodation charge” and views expressed on the inclusion, or otherwise, of “extras” and commission charges in the figure on which the levy is calculated. Whether VAT would be payable on the levy was also queried and argued to be inappropriate since this would represent a tax paid on a tax. Those respondents who argued against a percentage charge suggested that this approach could lead to significantly higher cost for guests when compared to a flat rate per room; disadvantage single travellers; and also room rates vary and therefore it would be difficult to monitor and audit. A percentage charge was also suggested to have less visibility and feel like part of the overall cost, whereas a per head levy would be likely to be more visible.

50. The Scottish Government has decided that a percentage rate is the most appropriate basis for a visitor levy. A flat rate approach would mean that the visitor levy charged did not adjust for accommodation of different qualities, or at different times of year, and would not automatically keep pace with inflation. In contrast a percentage rate approaches means the visitor levy charged automatically reflects the difference in prices paid for different types of accommodation with, for example, a pitch on a campsite attracting a lower amount of visitor levy than a luxury hotel, even though the percentage rate applied to each would be the same. It therefore reflects the amount that someone is willing to pay for overnight accommodation. It means a visitor levy will reflect the quality of accommodation, and adapt as the price of accommodation rises or falls with seasonality, inflation, and other factors. It also has the advantage of using information that an accommodation provider will be collecting and using already, such as the prices charged for accommodation and the number or nights that accommodation is occupied.

51. The consultation paper also explored the feasibility of applying a visitor levy on other activities. This included day visitors, cruise ship visitors who disembark for the day and wild or rough camping. While a majority of those who answered the question were opposed to a levy on day visitors or on wild camping, including in motorhomes and camper vans (65% and 60% respectively) a similar proportion (64%) were in favour of a levy on cruise ship passengers. Business organisation and port authority respondents were firmly opposed to cruise ship passenger levy, while local authority respondents were fairly evenly divided. 65% of respondents thought a levy could not be applied to day visitors, while 35% thought it could. All heritage and culture organisation and port authority respondents opposed a levy on day visitors, as did a majority of local authority respondents.

52. A cruise ship passenger levy is not included in the Bill. This situation is different from staying overnight in land based overnight accommodation, as a cruise ship is not fixed in one location and those on board it are travelling to a number of locations whilst in the one vessel and so does not have the same relationship with the local authority imposing the levy as providers within the area. There would be issues around who is responsible for collecting and remitting the levy, the treatment of tenders ferrying passengers from cruise ships moored offshore, how ferries and pleasure boats are differentiated, and the interaction with any relevant docking taxes and levies. However, a cruise ship levy will be considered separately by the Scottish Government as part of the new process for considering and assessing new local taxes included in the proposed fiscal framework for local government.

Person liable to pay the levy and third party arrangements (sections 7 to 8)

53. The policy intention is that the owner of the premises that have been booked for overnight accommodation is the person to pay the levy. This approach has been taken so that the party responsible for collecting and remitting the tax is the accommodation provider, making enforcement straightforward and avoiding the potential difficulties of pursuing individuals who may or may not reside in Scotland. It also links the liability clearly to a property within the area(s) where a local authority has decided to apply a levy.

54. An accommodation provider can choose to enter into an arrangement with a third party to allow them to collect the levy, remit it to the local authority, and complete any relevant returns to a local authority. The policy intention is that an accommodation provider can choose to make arrangements for a third party to handle these aspects, as is common practice in many jurisdictions where a visitor levy is paid. However, the policy intention is that in these circumstances the fulfilment of the requirements and duties in relation to a visitor levy remains the responsibility of the accommodation provider. This allows a local authority, if it is necessary, to take enforcement action against the accommodation provider rather than any third party. This keeps the responsibility where it should be, and simplifies the use of enforcement action if it is required.

Consultation

55. Respondents to the public consultation were evenly divided on whether accommodation providers should be ultimately responsible for collection and remittance of a levy: of those who answered the question 49% agreed and 51% disagreed. Among organisational respondents, tourism and hospitality industry representative organisations all disagreed with the proposal as did a majority of accommodation provider (other) respondents. However most other groups of respondents either agreed that accommodation providers should be ultimately responsible, or were evenly divided. While organisations are not in favour of this approach, the Scottish Government believes accommodation providers are best placed to collect the levy and make the necessary returns as they will have a direct relationship with the visitors staying in their accommodation. Putting the liability for paying a visitor levy onto individual visitors would make enforcement action potentially costly and difficult for a local authority, and would mean any appeals process would require individuals to challenge specific transactions, increasing the likelihood of large case numbers potentially involving very small amounts of money. It would also lead to confusion about which bodies were responsible for which aspects of the administration of the levy. For example, there would be a source of uncertainty if a levy was not collected from a visitor as to whether that was the responsibility of the visitor for not paying it or the accommodation provider for not

collecting it. The approach taken in the Bill avoids such issues by making clear that liability for the levy falls on the accommodation provider.

Billing of overnight accommodation (section 9)

56. The policy intention is that there are suitable provisions 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, and how much is the amount of the visitor levy and what percentage rate has been applied. The Bill therefore gives Scottish Ministers the power to make regulations that can specify how the billing of such transactions should be done. This is to provide the means of making clear, if required, how much of a transaction is related to paying a visitor levy established by a local authority.

Consultation

57. The public consultation paper asked respondents what transparency requirements for prices and billing should be part of a visitor levy. A handful of respondents argued that any requirement to display a visitor levy should be at the discretion of individual providers. Other respondents suggested both a standard or statutory format and that either all providers should display the levy, or none should do so. It was argued both that displaying the levy is normal practice in other European destinations and that it is not. The importance of transparency was highlighted, and some respondents argued that the levy should be shown clearly at the time accommodation is booked.

58. The Scottish Government's position, given the range of views expressed in the consultation, is that this is an area that will be considered as part of the development of national guidance. This is a matter of detail and best addressed in regulations rather than in the Bill itself, if that proves necessary after consideration with stakeholders.

Exemptions and rebates (section 10)

59. There may be some situations in which it is not appropriate for a visitor levy to be applied to a chargeable transaction. The policy intention is that a local authority can put in place such exemptions as it thinks are appropriate (see section 13(1)(g)). These will be informed by national guidance, to be developed with local government and business organisations, which will provide advice on exemptions for those local authorities planning to introduce a visitor levy. Exemptions may therefore differ between local authorities. The Bill does not include national exemptions; instead, this section gives Scottish Ministers a power to make exemptions by regulations if national-level exemptions are necessary.

Consultation

60. A majority of respondents to the public consultation (78%) thought that all exemptions should be the same across Scotland and therefore set out in the national legislation. Local authority respondents were among the groups that were relatively evenly divided on whether the exemptions should be set out in the national legislation, or whether local authorities should have scope to select some exemptions.

61. In terms of specific exemptions, 62% supported an exemption for those receiving medical care outwith their local authority area and their carers or next of kin. 53% supported an exemption for children and young people, while 52% supported an exemption for local residents. Three exemptions were supported by a large minority of respondents: disabled people, those registered blind and deaf, and their carers (46%); students (40%); and long stay guests (40%). The lowest level of support for a specific exemption was for business travellers (25%).

62. Reflecting the points raised in the consultation, and the wish to exclude certain groups of people from having to pay a visitor levy, the Bill has been drafted so that a visitor levy (if a local authority introduced one) will only be charged on stays in accommodation that is not someone's sole or usual place of residence. This approach means that people who were using overnight accommodation as their residence (e.g. because they were homeless) would not be subject to a VL. The rationale for these exemptions is that such persons are not considered visitors to an area for business or leisure purposes, and therefore should be excluded from paying the levy. This is a more comprehensive approach than seeking to create a series of specific exemptions in the Bill, which would create the risk of missing some situations in which people could find themselves using overnight accommodation as their residence.

63. The Bill will also enable local authorities to create exemptions at a local level to a visitor levy scheme they introduce, and local authorities will be supported in doing that by national guidance developed in partnership with local government and the tourist industry. The Scottish Government believes that exemptions should be set at the local level as a list of exemptions on the face of the Bill would be too prescriptive for local authorities to implement on the many diverse communities and areas of Scotland, and local authorities are often best placed to understand the needs of their local communities. The Scottish Government is therefore of the view that exemptions are best created at a local level, taking into account national guidance.

64. The Bill will include a requirement for local authorities to consult with local communities, businesses, and any people who will be affected by a visitor levy they are considering introducing, which will provide an opportunity to identify any exemptions they want to create at a local level. As public bodies, local authorities will also be subject to existing statutory duties when designing a visitor levy scheme, including the Public Sector Equality Duty. The Bill will provide Scottish Ministers with powers to create national exemptions through subordinate legislation, should that be required.

Introduction of visitor levy scheme (sections 11 to 15)

65. The policy intention is that a visitor levy is introduced as part of a formal scheme established by a local authority. Such a visitor levy scheme can apply to all or part(s) of a local authority area, and two or more local authorities can jointly establish a scheme if they wish.

66. The policy intention is that a local authority must be clear before it introduces a visitor levy scheme on how that scheme will operate, and the objective(s) of any such scheme. It should have provided information and an opportunity to all those who may be affected by the scheme to be consulted. This is so it is clear to local communities and businesses how a local authority is proposing a scheme will operate (or how a modified scheme will operate), and on the objectives it has for a scheme. As part of the statement a local authority must set out how it will measure and

report on the achievement of the scheme's objectives. A local authority must also assess the impacts of the proposed scheme on the authority's area. This is important in requiring a local authority to consider and set out the impacts that a proposed (or modified) scheme would have. The assessment must, in particular, set out what the local authority considers to be the likely effect of the proposal on those living within the area to which the visitor levy scheme would apply, and any others the local authority considers would be affected by the proposal.

67. Engagement and consultation with local communities and businesses will be an important part of the process of establishing a visitor levy scheme, and the policy intention is that a visitor levy scheme is developed in consultation with communities and businesses. The Bill therefore requires a local authority to consult representatives of communities and businesses engaged in tourism, and tourist organisations, in its area, along with any other people or bodies who will be affected by the proposal. The local authority will be required to prepare and publicise a report which summarises the consultation responses received, its response to the consultation, and its reasons for continuing, modifying, or abandoning a visitor levy proposal.

68. If a local authority formally decides to introduce a visitor levy scheme, the Bill requires it to notify the Scottish Ministers of its decision, and to publicise that it is introducing a visitor levy scheme, and the proposed date on which it is to come into force. This ensures that all those with an interest in the creation of such a scheme are made aware in advance of a scheme coming into force. The Bill is also clear that if accommodation has been paid for after a local authority's decision to introduce a visitor levy, and is occupied after a visitor levy has come into force, then it may be liable for the visitor levy, subject to any exemptions or other relevant matters. Accommodation paid for before the date of the local authority's decision to introduce a visitor levy scheme will not be subject to the levy.

Consultation

69. The public consultation paper suggested that, before they can decide to impose the levy, a local authority should be required to demonstrate that it has given doing so adequate consideration and made adequate preparations. 89% of respondents to the consultation supported the requirement for a local authority to consult within their local area to gather views from all those who will be affected by the visitor levy. 92% supported a requirement for an assessment on the administrative burden on businesses, with 92% supporting a requirement for a local authority to demonstrate why the chosen rate of the visitor levy is optimal for that area.

70. The Scottish Government has taken these points into account in requiring a local authority to consult communities, tourism businesses, and tourist organisations in its area. It must also assess the impact of a proposal for a visitor levy scheme in the authority's area. The Scottish Government believes this approach strikes the right balance between national requirements to consult, and leaving appropriate local discretion for local authorities to meet the requirements in the way that is appropriate in their area. This fits with the overarching purpose of giving local authorities the power to introduce a visitor levy to strengthen local democracy by giving them a discretionary new fiscal power that they can choose to use in their areas.

Accounting for, and use of, funding raised by a levy (sections 16 and 17)

71. The policy intention is that funding raised by a levy, net of any administration costs, is used for the purpose of developing, supporting and sustaining facilities and services which are substantially for, or used by, those visiting a local authority's area for leisure purposes. This places suitable parameters within which funding from a visitor levy can be used, whilst also recognising the importance of local decision making by local authorities. This will mean facilities and services which are used by residents as well as visitors could receive funding from a visitor levy, depending on the local authority's assessment of whether the facility or service is substantially used by visitors.

72. To facilitate this the Bill will therefore require a local authority to keep a separate account of the scheme, crediting it with the amount of money received under the local authority's scheme, and debiting from the account the expenses of operating the scheme. The Bill also allows for the Scottish Ministers to make regulations further specifying the form of accounts, publication of the account, and what must be carried out jointly where one or more local authorities have a joint visitor levy scheme.

73. An important aspect of a visitor levy is that it can be used to address and improve the offer for visitors in a local authority's area, including investment in relevant facilities and services. The Bill therefore includes requirements for the funds raised by the levy to be only used for particular purposes as set out in the Bill. The policy intention is that funds raised by the levy will be additional to other sources of funding, and are not intended to act as a substitute for other sources of funding for local government or the annual budget process through which the local government settlement is determined.

74. To reflect the policy intention that any visitor levy is introduced after consultation with local communities and businesses, a local authority will also, under the Bill, be required to consult with representatives of communities, businesses engaged in tourism, and tourist organisations on the use of the funds raised by a levy. A local authority will also have to have regard to any local tourism strategy when considering how best to use the funds raised.

Consultation

75. 73% of respondents to the public consultation thought revenues from a visitor levy should be allocated to priorities articulated through local tourism strategies, where they exist. Organisations were more likely than individuals to take this view (86% and 63% respectively). A small majority of respondents thought that if a local authority was to impose a visitor levy on a specific area within the authority any revenue raised should have to be spent only in that area. When asked about what requirements might be placed on local authorities to engage with local stakeholders to determine how revenues are spent, respondents often agreed that engaging with stakeholders, including the general public, should be a priority for local authorities. The 1,202 responses to the consultation that were based on a Living Rent related campaign expressed the view that any revenue raised by a visitor levy should be used to invest in local communities, such as improving local housing, roads, or pavements, or improving refuse collection and public transport services.

76. Local government, in seeking the power to introduce a visitor levy, has been clear that it believes that any funding a visitor levy raised should not be a replacement for existing funding, and the money raised should be used to maintain public services vital to tourism or to enhance the tourist experience. The Scottish Government's position is that the funding raised should be used for purposes related to the visitor economy, and this is reflected in the drafting of the Bill. If the income from a visitor levy could be used for any purposes this would arguably impact on other local government funding or the annual budget process through which the local government settlement is determined. Taking an approach where the funding raised can be used only for broad purposes set out in the Bill reflects that the levy is not intended to be substituted for other sources of local government funding.

Reporting on, and reviewing, a visitor levy scheme, and regulating the process (sections 18 to 20)

77. The policy intention is that it is transparent to all concerned what amount of money has been collected under a visitor levy scheme; how those funds have been used; and how a scheme has performed against the objectives set out for it. The Bill therefore requires a local authority to publish a report setting out this information within 18 months of a scheme being introduced, and then every 12 months. These annual reporting requirements will ensure that any visitor levy scheme introduced will be reported on regularly, with information provided to show how the scheme is operating, and its performance in meeting the stated objectives.

78. The policy intention is that a visitor levy scheme is regularly reviewed. This will ensure the scheme is operating as intended, and provides a formal opportunity to revise the objectives of a scheme. The Bill therefore requires a local authority operating a visitor levy scheme to review it within 3 years of it coming into force, and then each 3 years after that. This provides a regular pattern of review of a scheme, to assess how it is working and the objectives it is seeking to meet.

79. Given the importance of having a strong framework set in legislation, within which a local authority can create its own visitor levy scheme, the policy intention is that there is scope to make further provision as necessary about the process to be followed when introducing, administering, reporting on or reviewing a scheme. To enable this to happen the Bill includes a provision for the Scottish Ministers to make regulations on these matters. Such regulations would be subject to the affirmative procedure.

Consultation

80. In the public consultation 95% of respondents supported establishing an approach to monitoring and publicly reporting revenues raised and their expenditure on an annual basis. In addition, 94% of respondents supported establishing an approach to evaluating and publicly reporting the impact of a visitor levy, within a reasonable period after introduction. The approach taken in the Bill is in line with the approach already in place for local government accounts, as set out by the Chartered Institute of Public Finance and Accountancy (CIPFA) in their Code of Practice on Local Authority Accounting. The currently required annual accounts published by each local authority include statements that show each category of income, such as grants contributions, council tax etc., against a summary of expenditure that sets out how the income has been utilised by the local authority in the year. For local taxes such as council tax and non-domestic rates, further statements are required within the published accounts, reporting on the gross income raised,

deductions made, and the resultant net income. The provisions in the Bill reflect this broader context, with annual reporting on the amount raised by a visitor levy, how the net proceeds have been used, and the performance of a visitor levy scheme in relation to the objectives a local authority has set for it.

Delegation of collection and enforcement functions (section 21)

81. The policy intention is that there is scope for a local authority to authorise a person to receive returns required under a local authority scheme, receive payments, and enforce payment of levies and payments. The Bill therefore enables a local authority to delegate these collection and enforcement functions, to allow it to put in place arrangements with a third party to handle these aspects in relation to a visitor levy scheme. In practice, this means a local authority could perform the various collection and enforcement functions itself or, if it wishes, make arrangements with an administrative and professional services company to carry out the administration of a visitor levy scheme or delegate these functions to another local authority, as is currently the practice for some elements of existing local taxes. Functions relating to the register of liable persons (see section 69) may also be delegated under this section.

Returns to local authority, payment of levy (sections 22 to 26)

82. The policy intention is to ensure that a local authority which has a visitor levy scheme receives returns on a regular basis (which allow it to monitor, and effectively administer, the scheme) and levy payments due in respect of the return period. The Bill therefore places a duty for returns and levy payments to be made to the relevant local authority, allows a local authority to determine the form and content of such returns, and places a related duty on a liable person to keep and preserve relevant records.

Consultation

83. The issue of returns to a local authority relates to the frequency with which levies collected by accommodation providers should be remitted to a local authority, given that such returns are connected to monitoring the scheme and the collection of a visitor levy. The public consultation asked respondents their preference on this, and among those who answered the question the highest level of support (40%) was for remittance of levies to local authorities on a quarterly basis, with 30% preferring monthly remittance and 25% annual remittance. Only 5% of respondents thought remittance should be carried out on an ongoing basis. There were notable differences between organisational respondent groups including among accommodation providers: while a large majority of the accommodation provider (hotel) group preferred quarterly remittance of levies, those in the accommodation provider (other) group were more likely to favour remittance on an annual basis. Local authority respondents preferred monthly remittance.

84. The Scottish Government's view is that making returns on a regular basis allows a local authority to effectively monitor the collection of a visitor levy by an accommodation provider. Remittance of a visitor levy on a quarterly basis strikes the right balance between such payments being remitted in a timely fashion after the taxable event (purchase of the overnight accommodations) has taken place, without placing too high an administrative burden on an accommodation provider. It is open to a local authority to set a period other than quarterly if it wishes to do so, as part of the decisions it can take in relation to a visitor levy scheme.

Enforcement of the Levy and Penalties – Part 5

85. The policy intention of this Part of the Bill is that there is a robust regime set out in legislation to enable a local authority to investigate and enforce compliance with a visitor levy scheme. Having effective tools available to a local authority is a critical piece of putting in place a framework within which a local authority can operate a visitor levy scheme, if it chooses to introduce one. This also fits with the national approach to taxation, and the overarching principle of effectiveness.

86. The overall policy intention is to give local authorities powers that are in line with those which are used to enforce local taxes for which they have responsibility, in particular council tax and non-domestic rates. The enforcement regime set out in the Bill therefore reflects the powers that are used in relation to those taxes, including the penalty regime which is consistent with the approach to those taxes and enables local authorities to deal with non-compliance, rather than needing involvement from the police.

87. The Bill therefore puts in place a number of powers that a local authority can use, if necessary, to enforce a visitor levy scheme. It also sets out the penalties which can be applied, and the process to be used in enforcing such penalties. More details on each element of the enforcement regime are set out below.

88. It should be noted that the regime includes a power for a local authority to reduce, suspend or waive a penalty if it believes it is right to do so because of special circumstances. There is therefore the ability for a local authority to take these actions if it believes doing so is the right course of action.

Information notices (sections 27 to 34)

89. The policy intention is that a local authority has the tools it needs to effectively enforce a visitor levy scheme. One aspect of this is having powers to request and obtain the information necessary to assess the visitor levy liability of an accommodation provider. The Bill therefore enables a local authority to require a liable person, or a relevant third party, to provide information or produce a document that is relevant to their liability to pay the visitor levy. This includes the power to issue an information notice and rules around complying with such an information notice. Certain types of information are exempt, such as journalistic material and privileged communications between legal advisers and their clients. This means that journalists who are investigating issues around a visitor levy would not be compelled to provide information (which can have a chilling effect on their ability to investigate or find whistle-blowers). The exemption for privileged communications between legal advisers and their clients reflects well established practice and allows clients and their lawyers to share and discuss information freely in relation to their legal position. Personal information (such as information relating to a person's physical or mental health) is also exempt, as it is not considered necessary or appropriate to require that type of information to be provided.

Consultation

90. The public consultation asked respondents what enforcement powers a local authority should have to ensure compliance and prevent avoidance and evasion by accommodation providers. Responses to this included that local authorities should be able to acquire information about the occupancy and charges of the relevant accommodation, including proof to support any exemptions being applied, and to carry out regular audits. The provisions in the Bill reflect the feedback in the consultation, giving local authorities the power to request and obtain information relevant to a visitor levy.

Inspection powers (section 35 to 41)

91. The policy intention is that a local authority has the tools it needs to effectively enforce a visitor levy scheme. In some circumstances it may be necessary for a local authority to inspect a premises to assess potential liability for a visitor levy, or to inspect business documents that are on the premises. The Bill therefore includes a power for a local authority to do this, with suitable provisions around serving a notice, the powers a local authority officer or a person authorised by an officer has, and other matters related to use of the inspection powers.

Consultation

92. On the question of what enforcement powers a local authority should have, respondents commented that local authorities should have powers to inspect an accommodation premises, as well as power of entry, and allowing for enforcement of any ‘cease and desist’ sanction.

Penalties (sections 42 to 66)

93. An accommodation provider has to provide a return to a local authority as set out above. Failure to do so can lead to penalties for an initial failure, and if that initial failure continues for 3 months, 6 months, or 12 months. Failure to pay a visitor levy will also potentially lead to a penalty, if the levy payable is not paid within 14 days of being reminded by a local authority that such a payment is due. The level of the penalty increases the longer that the outstanding visitor levy payment is not paid.

94. It is important that an accommodation provider keeps accurate records in relation to a visitor levy. The policy intention is that there are suitable enforcement powers, including penalties, for failure to do so. The Bill therefore gives a local authority the power to apply a penalty if a person provides inaccurate information, or a document that contains an inaccuracy, that is careless or deliberate; that the person knows to be an inaccuracy; or the person discovers the inaccuracy and fails to tell the relevant local authority. Concealing or destroying a document that is the subject of an information notice can also lead to a penalty. In line with usual enforcement regimes the Bill also provides for interest to be applied to penalties.

95. In keeping with the overall policy intention to give a local authority the enforcement powers it needs the Bill provides for the use of the summary warrant procedure in relation to enforcement action. This is a procedure used in relation to taxes collected by a local authority such as council tax, and again provides a robust and familiar tool which a local authority can use in relation to a visitor levy if necessary.

Consultation

96. In terms of the enforcement powers a local authority should have to ensure compliance and prevent avoidance and evasion, respondents to the public consultation most frequently suggested some form of civil penalty, often referring to a fine or penalty charge. More generally, it was suggested that any approach taken should be based on existing approaches, with the enforcement regimes cited including those for council tax, non-domestic rates, VAT, or other payments due to HMRC.

97. Other comments about how any regulatory approach could work included that:

- Local authorities should have powers to inspect premises or to require access to records. These should include being able to require information about the occupancy and charges, including proof to support any exemptions being applied, and being able to carry out regular audits.
- Local authorities should have power of entry, to carry out inspections and to enforce any ‘cease and desist’ sanction.

98. In addition to providing preferences around types of penalties, there were suggestions around staged approaches. These included that providers should be issued with a formal warning or notice of requirement to comply before the matter was escalated, for example to a fine or deregistration. It was also suggested that a custodial sentence could be an option to follow on from a fine or for repeated infringements. There was also a view expressed that, to be effective, any approach will need to be supported by sufficient resources from within local authorities and that compliance checks, and enforcement teams to carry them out, will be required.

99. The Scottish Government’s view is that as this is a levy that will be introduced, administered, and enforced by a local authority it is best to replicate the enforcement tools and measures that are in place for existing local taxes, such as council tax and non-domestic rates. This will give those local authorities who introduce a visitor levy a familiar and appropriate set of enforcement measures and penalties that can be used as a local authority believes appropriate to enforce a visitor levy scheme. As part of this policy approach, a local authority is not required to impose penalties, and if a person liable to pay a visitor levy has a reasonable excuse for not making a return, or for paying the levy, then a penalty will not arise. The administrative costs of a visitor levy scheme can be taken from the funds raised by the scheme, and will be a matter for the relevant local authority.

100. The use of penalties for late payment or non-payment of a visitor levy is standard practice across other jurisdictions that operate a visitor levy or equivalent taxes in Europe and elsewhere. Our engagement with officials in other jurisdictions has suggested that compliance is generally high and the number of penalties issued is low relative to number of taxpayers. Penalties vary in size and are typically dependent on the type of infringement that has occurred. For example, under French law, fines for non-compliance with a visitor levy (taxes de séjour) start from 150 EUR for minor infringements, but can be as high as 12,500 EUR for more serious offences.

Reviews and Appeals (sections 67 and 68)

101. The policy intention 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.

102. The first part of the process is that an accommodation provider can seek an internal review by a local authority of a decision it has made in relation to an accommodation provider and the levy. After this stage of an internal review the policy intention is that an accommodation provider can then appeal to the First-tier Tribunal for Scotland. Such appeals would again be in relation to a decision made by a local authority in connection with the operation of a visitor levy scheme; in relation to enforcement action; or the penalties imposed by a local authority in relation to some aspect of non-compliance with the scheme.

103. The details of the procedures to be followed, any time limits to be put in place, the circumstances in which such reviews or appeals may be conducted, are matters to be set out in regulations.

104. Such review and appeal mechanisms already exist in relation to local taxes such as council tax and non-domestic rates. It is appropriate that they are put in place in relation to the visitor levy, allowing accommodation providers and local authorities a proportionate and local first stage to address any challenges. The right of appeal to the First-tier Tribunal of Scotland provides an external and judicial oversight of the actions of a local authority in any particular case.

Consultation

105. Some respondents to the public consultation anticipated that there would be a need for a system of appeals if providers felt they had been graded incorrectly. When asked about any other suggestions for requirements, respondents noted that there should be an appeal mechanism for persons identified by the local authority as accommodation providers for the purposes of the Bill but do not feel they should be considered so. Another suggestion was that there should be an ombudsman or other answerable body to deal with concerns that a local authority has not implemented all the required processes or has not completed the requirements to an acceptable standard.

106. The Scottish Government's view is that the First-tier Tribunal is a suitable body to hear appeals relating to a local authority's actions in a particular case, and that the detailed provisions around the appeal process and rules are best covered in regulations. The decisions of a local authority in relation to a visitor levy would be subject to the oversight of the Scottish Public Services Ombudsman in the normal way.

Registers of liable persons and information sharing (sections 69 and 70)

107. The policy intention is that a local authority which introduces a visitor levy can establish and maintain a register of liable persons, if it wishes to do so. Such a register is commonplace when a body needs to administer a levy. A local authority is very likely to be able to populate such

a register through the use of publicly available information from other sources, such as information from the short term lets licensing regime and the non-domestic rates Valuation Roll.

108. It is also important that a local authority can share information with another local authority, its officers, and any person authorised by the local authority to carry out its functions, where this is necessary for the carrying out of functions in relation to a visitor levy scheme, and as set out in the Bill. In doing so a local authority must abide by its duties under data protection legislation, as it must when generally handling data.

Consultation

109. The public consultation asked respondents how a local authority could ensure it has a comprehensive list of all liable accommodation providers in the area. The most frequent comments were on the need for a registration scheme, or specifically that any local authority wishing to charge a visitor levy would need to set up a registration scheme or introduce a licensing regime. A connection was made with the Scottish Government's work relating to short term lets, including the possible introduction of a registration system. Commenters highlighted the importance of a comprehensive registration system to ensure all relevant businesses are included, including a suggestion that registration should be compulsory. Other comments focused on the need for any registration process to be simple or easy for providers to complete, and to be free to the organisations and businesses that would need to register.

ALTERNATIVE APPROACHES

110. The most appropriate non-regulatory alternative the Scottish Government has identified to using the powers in the Bill would be for local authorities to work in partnership with accommodation businesses in their area and, with the consent of the majority of relevant businesses in an area, establish a Tourism or Accommodation focussed Business Improvement District (BID).

111. BIDs came into force in Scotland in 2007 as a result of primary legislation in Part 9 of the Planning etc. (Scotland) Act 2006 and other secondary legislation. A BID is a geographically defined area where businesses come together and agree to invest collectively in projects and services that the businesses believe will improve their trading environment. Those improvement projects are funded by revenues collected through an investment levy agreed to be paid by businesses (ratepayers) in the BID area. There are approximately 40 BIDs established across Scotland, some of which have a levy only on ratepayers with a business that is clearly defined as part of the local visitor economy, for example the Visit Moray Speyside BID.

112. One potential model that could be adopted in Scottish local authorities is that which has been recently adopted in Manchester. In 2022, it was announced that a new specialist BID was to be established in Manchester – the Manchester Accommodation Business Improvement District. This followed a majority of relevant local businesses voting for the creation of the BID. Under the Manchester BID it is proposed that certain city centre hotelier businesses and serviced apartments with a Rateable Value over £75,000 pay an additional levy from 2023 to 2028 to raise additional revenue to be invested in the local visitor economy.

113. The Scottish Government has decided not to pursue a BID approach as this would not fiscally empower local authorities in the way that giving them the power to introduce a visitor levy scheme would do. For example any revenues raised through an alternative BID model would be effectively fully retained by the BID board. This would mean there was a limited role for elected councillors to exercise influence over priorities for investment in their local areas (although local authorities may exercise a veto in some circumstances). Therefore, as an option it fails to meet a key objective of the Visitor Levy Bill to strengthen local democracy. It would also be a far blunter tool than a visitor levy scheme, as a local authority would not be able to decide to introduce exemptions for particular types of accommodation, would not be able to set or change the percentage rate, and would not have to consult local communities, businesses engaged in tourism, or tourist organisations in its area, in the way the Bill will require.

114. Visitors (both domestic and international) that choose to stay in accommodation in local authorities where a BID is in place could face new costs as a result of the BID levy increasing the market price for commercial accommodation, should accommodation providers choose to pass on the levy via higher prices. The amount of any such BID levy would also not necessarily be transparent to visitors as there is no requirement for the levy to appear on bills to visitors. There is also likely to be potential for confusion for visitors if some accommodation signed up to the BID choose to pass on a levy explicitly to visitors whilst others did not. The BID option is considered in depth in the Business and Regulatory Impact Assessment, which sets out the benefits and costs of such an approach for businesses, residents, visitors, local authorities, and the Scottish Government.

115. After taking these factors into account the Scottish Government has decided that introducing a power for a local authority to introduce a visitor levy scheme, as set out in the Bill, is the best policy approach.

116. Another potential alternative would be to expand the Rural Tourism Infrastructure Fund, established in 2018. This fund is managed by VisitScotland, and to date has provided £18 million of grant funding to 74 projects across rural Scotland. The Fund is designed to support collaborative projects which focus on improving the visitor experience in rural parts of Scotland that are facing pressure on their infrastructure and communities as a result of visitor numbers. The Scottish Government's view is that this is not a suitable alternative to giving local authorities the power to introduce a visitor levy, as it would not strengthen local democracy or give local authorities the ability to refine the measure as appropriate for their local circumstances.

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

Equal opportunities

117. An Equality Impact Assessment (EQIA) has been conducted in order to ascertain the impact of the Bill on equality groups. The EQIA concluded that the Bill's provisions are not directly discriminatory on the basis of age, disability, race, pregnancy and maternity, religion or belief, sex, sexual orientation or gender reassignment. There may be an indirect impact from the Bill's provisions, dependent on how local authorities introduce a levy – the extent of the impact will depend on how local authorities choose to implement a Visitor Levy scheme, including the designation of any exemptions from the levy. The EQIA sets out those categories of persons the

Scottish Government believes should be exempt from paying the levy: those who are homeless or at risk of homelessness; those whose residence is unfit for habitation; asylum seekers and refugees; and members of Gypsy/Traveller communities staying on dedicated sites. The Bill has been drafted to exclude such persons from a levy, ensuring that those who use chargeable overnight accommodation as their sole or usual place of residence are not unfairly penalised through an additional levy.

118. The EQIA and accompanying Child Rights and Wellbeing impact assessment (CRWIA) also identified further categories of persons that may be impacted by the introduction of a levy, including children and young people, and those using overnight accommodation for the purpose of seeking medical treatment. As a new local tax, the Scottish Government is committed to providing local authorities with the flexibility to tailor a Visitor Levy in order to meet the needs of their respective communities, and therefore consider it appropriate for local authorities to designate local exemptions, should they wish to. These assessments also identified potential positive impacts from the Bill. The availability of a new source of funding for visitor services and facilities would likely benefit the experiences of children and young people, who were found to have higher rates of attending a cultural event or visiting places of culture than older age groups. The EQIA and CRWIA are being published on the Scottish Government website to coincide with the introduction of the Bill.

Human rights

119. The Scottish Government is satisfied that the provisions in the Bill are consistent with the European Convention on Human Rights (ECHR). As the levy will be a form of taxation, albeit local, it is important to ensure that administrative arrangements set out in the Bill are compliant with a levy payer's property rights under Article 1 of the First Protocol to the ECHR. To ensure this, consideration has been given to ensuring the appropriate safeguards, including the opportunity to access an independent tribunal, are included in the Bill which will protect the levy payer's rights.

Island communities

120. An Island Communities Impact Assessment (ICIA) has been conducted in order to ascertain the impact of the Bill on island communities. Engagement with island communities raised specific challenges and opportunities as a result of the implementation of a Visitor Levy. These include recognising island circumstance (ensuring that any levy scheme is 'island-proofed' through engagement with island communities); the distinct visitor economies found on islands; and how any revenues from a levy would be used. The ICIA concluded that the Bill's provisions will have no differential impact on island communities, but that local authorities will need to have regard to island communities that may be affected (both within and outwith the area) when designing a levy. In addition to the existing statutory duties for local authorities under the Islands (Scotland) Act 2018, the ICIA process informed a requirement to consult with local communities prior to the introduction of a levy, which has been built into the Bill. The ICIA will be published on the Scottish Government website to coincide with the introduction of the Bill.

Local government

121. The Bill will have a direct impact on local authorities as it will give them the power to introduce a visitor levy should they decide to do so. As set out above the policy intention is that funding raised by a levy, net of any administration costs, is used for the purpose of developing, supporting and sustaining facilities and services which are substantially for, or used by, those visiting a local authority's area for leisure purposes. To facilitate suitable transparency with this, the Bill will require a local authority to keep a separate account of the scheme, crediting it with the amount of money received under the local authority's scheme, and debiting from the account the expenses of operating the scheme. The estimated cost implications are set out in more detail in the Financial Memorandum.

122. The power to implement a visitor levy has been a long term ask from local government. This new discretionary power delivers on this ask and forms part of the fiscal framework, showing the clear link between fiscal empowerment for local government and achieving the outcomes local government and the Scottish Government jointly want to see for communities. The Scottish Government considers the provisions of the Bill to be a net positive for local government, providing a new and flexible discretionary power to develop, support and sustain facilities and services primarily for visitors, whilst also strengthening local decision-making. Local communities will also be empowered through the requirement for local authorities to consult prior to the introduction of a levy.

Sustainable development

123. The Bill has no negative effect on any aspect of sustainable development. Funding raised by a visitor levy could potentially be used to support sustainable development initiatives related to visitors, to make visitor activity sustainable and address climate change. This has been the case with the use of visitor levies in other countries (for example, one of the purposes of the Balearic Islands' Sustainable Tourism Tax is for the protection, preservation and recovery of the environment). The requirement for local authorities to use funds to develop, support and sustain facilities and services primarily for visitors would allow for investment in visitor management strategies, which in turn could provide a positive environmental impact. The use of funds raised from a visitor levy for these purposes would be a matter for a local authority that introduces a levy to decide, following appropriate consultation with local communities, businesses, and other organisations. This is in keeping with the policy intention of supporting local fiscal empowerment and helping further empower communities and local councils across Scotland.

Crown consent

124. It is the Scottish Government's view that the Bill as introduced does require Crown consent. Crown consent is required, and must be signified during the Bill's passage, where the Bill impacts on the Royal prerogative, the hereditary revenues of the Crown or the personal property or interests of the Sovereign, the Prince and Steward of Scotland or the Duke of Cornwall. The Scottish Government's view is that this Bill will require Crown consent as it could potentially apply to overnight accommodation that is provided in property owned by the Crown.

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

125. For the source of the requirement for Crown consent, see paragraph 7 of schedule 3 of the Scotland Act 1998,¹⁵ and rule 9.11 of the Parliament's Standing Orders.¹⁶ For further information about the considerations that go into determining whether Crown consent is required for a bill see *Erskine May*,¹⁷ the guide to procedure in the UK Parliament.

¹⁵ <https://www.legislation.gov.uk/ukpga/1998/46/schedule/3/crossheading/crown-interests>

¹⁶ <https://www.parliament.scot/about/how-parliament-works/parliament-rules-and-guidance/standing-orders/chapter-9-public-bill-procedures>

¹⁷ <https://erskinemay.parliament.uk/section/6542/queens-consent-on-bills/>

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VISITOR LEVY (SCOTLAND) BILL

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