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Visitor Levy (Scotland) Bill

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The Visitor Levy (Scotland) Bill ("the Bill") aims to enable local authorities to introduce a levy on overnight accommodation in their areas, if they so choose. This briefing summarises the reasons why legislation is being introduced, discusses the background to the Bill and explains the changes proposed by the Bill. The briefing is not meant to be a line-by-line explanation of the legislation. Rather, it focuses on the aims of each part of the Bill and highlights issues which may be of interest to our MSPs as they scrutinise the legislation over the coming months.

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Summary and key Bill documents

The Visitor Levy (Scotland) Bill [1] was introduced on 24 May 2023. Accompanying the Bill are explanatory notes [2] , a policy memorandum [3] and financial memorandum [4] , all published on the Scottish Parliament website.

In addition, the Scottish Government published a number of impact assessments:

- Business and regulatory impact assessment [5]
- Equality impact assessment
- Fairer Scotland duty assessment
- Island communities impact assessment [6]
- Child rights and wellbeing impact assessment
- Data protection impact assessment. [7]

Another useful source for this briefing is the Official Report of an evidence session held by the Local Government, Housing and Planning Committee with the Scottish Government Bill Team in June 2023 [8] .

The Bill's Policy Memorandum states that:

> " ...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."

The Scottish Government Bill Team confirmed that the Bill is "enabling legislation" [8] .

The Bill defines what is considered a "chargeable transaction" and "overnight accommodation" and states that any levy should be set as a percentage rate of the cost of an overnight stay (rather than as a flat charge of say £1, £2 or £5 a night). It will be up to local authorities to decide on the appropriate rate, and there is no limit in the Bill as to how high levy rates can be set.

The Bill also requires any levy to be introduced as part of a formal "visitor levy scheme" established by a local authority. Schemes 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. The Bill sets out what should be included in these schemes and how they should be developed. The policy intention, as set out in the Policy Memorandum, is that funding raised by a levy 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 [3] ."

Scottish Parliament consideration of the Bill at Stage 1

The lead committee for the Bill is the Local Government, Housing and Planning Committee. Over the course of October and November 2023, it will take evidence and consider the general principles of the Bill at Stage 1. The Committee expects to produce a Stage 1 report in the early part of 2024. This will be followed by a Stage 1 debate on the general principles of the Bill.

As part of its deliberations, the Committee invited written evidence on the Bill in a Call for Views which closes on 15 September 2023. In order to collect as wide a range of opinions and experiences as possible, the Committee is also using a digital consultation tool to help communities and individuals provide their views on the Bill in a more informal and interactive way.

Introduction

Although tourist taxes have existed in many European countries for decades, the Visitor Levy (Scotland) Bill is the first of its kind in the UK. Hot on Scotland's heels, the Welsh Government is consulting on its own Visitor Levy proposals at the moment, with the expectation being that legislation will be introduced in the Senedd over the next couple of years [9] .

The Scottish Government estimates that the potential income raised by a Visitor Levy across Scotland could range from £17 million to £118 million, depending on how many local authorities decide to introduce a levy and what rate they choose to set [10] . The upper estimate is based on a scenario where a levy is implemented by all 32 local authorities, which unlikely to happen. These are relatively small sums when compared to the total net revenue expenditure by Scottish local authorities in 2021-22 of £11,800 million [11] .

It seems likely that only a handful of councils will decide to take advantage of the new powers; not every local authority has a strong visitor economy and the point of any levy would be to raise more money than it costs to administer. Indeed, the Scottish Government Bill Team confirmed that, so far, only "three or four local authorities have expressed an interest in introducing a visitor levy and have carried out preliminary work towards potentially introducing a levy" [8] .

The annex to the Business and Regulatory Impact Assessment (BRIA) [10] published by the Scottish Government includes the following table showing how much could be raised if a visitor levy was introduced across the country. These calculations are based on Visit Scotland's regional tourism statistics which use a rather unfamiliar way of categorising Scotland's geography. Nevertheless, the table still gives an indication of which local authorities are most likely to be interested in introducing a levy, for example Edinburgh, Highland, Glasgow, and possibly Aberdeen and Argyll and Bute.

Table 1: Potential revenue from a visitor levy by region

Region	Revenue (£m) by 1% tax rate	Revenue (£m) by 2% tax rate	Revenue (£m) by 3% tax rate	Revenue (£m) by 4% tax rate	Revenue (£m) by 5% tax rate	Revenue (£m) by 6% tax rate	Revenue (£m) by 7% tax rate
Edinburgh and Lothians	5.9	11.9	17.8	23.7	29.6	35.6	41.5
Highlands and Islands	3.1	6.1	9.2	12.2	15.3	18.4	21.4
Greater Glasgow and Clyde Valley	2.3	4.7	7.0	9.3	11.7	14.0	16.3
Argyll, Isles, Loch Lomond, Stirling and Trossachs	1.6	3.1	4.7	6.2	7.8	9.4	10.9
Aberdeen and Grampian	0.9	1.8	2.7	3.6	4.5	5.4	6.2
Perthshire	0.7	1.4	2.1	2.8	3.5	4.2	4.9
Fife	0.7	1.4	2.0	2.7	3.4	4.1	4.7
Ayrshire and Arran	0.4	0.8	1.2	1.6	2.0	2.4	2.7
Dumfries and Galloway	0.4	0.8	1.2	1.6	1.9	2.3	2.7
Angus and Dundee	0.4	0.8	1.1	1.5	1.9	2.3	2.6
Scottish Borders	0.2	0.3	0.5	0.7	0.9	1.0	1.2
Area not specified	*0.4*	*0.7*	*1.1*	*1.4*	*1.8*	*2.1*	*2.5*
Scotland	**16.8**	**33.7**	**50.5**	**67.4**	**84.2**	**101.0**	**117.9**

These are relatively small amounts across the whole of the country, but additional money raised could be significant for some local authorities such as Edinburgh and Highland councils.

This is the first piece of legislation in the United Kingdom which enables a local authority to establish a visitor levy and the Scottish Government is keen to present its Visitor Levy Bill as the first of a number of measures aimed at increasing local authorities' financial flexibility [8] . This is consistent with the recently signed New Deal and its commitment to establish "clear routes to explore local revenue raising and sources of funding" [12] . Although welcomed by a number of local authorities and COSLA, the Visitor Levy Bill is not popular with many businesses operating in the accommodation sector. For example, Fiona Campbell, Chief Executive of the Association of Scotland's Self-Caterers, stated at the time of the Bill's introduction [13] :

> “ The visitor levy plans arrive at a time as our sector is already being hit with a never-ending juggernaut of regulation when the government and industry should instead be working together to reduce the burden on small businesses to support a sustainable and prosperous future for Scottish tourism... Businesses have endured a global pandemic and are now being squeezed by a cost-of-living crisis. These proposals may add more risk and uncertainty to a sector where the domestic market makes up 70% of those holidaying in Scotland.”

Context for the Bill

As far back as 2018, COSLA [14] and The City of Edinburgh Council [15] were calling on the Scottish Government to grant powers to councils to enable them to introduce a local tourist tax “if the circumstances are right”. The main reason stated was to help councils meet the cost of maintaining public services used by tourists, thus enhancing the visitor experience at no additional cost to local residents. COSLA also argued that permitting councils to decide whether or not to introduce a visitor tax would help strengthen local democracy and local choice.

COSLA stated their preferred option would be “a tax on visitors and not on businesses” and noted that the UK is one of only nine countries in the EU-28 (at that time) which did not charge a tourist tax. After investigating various options, COSLA’s view was that the introduction of a local tourist tax could only happen with the support of the Scottish Parliament and the passing of enabling legislation. They concluded that new legislation was required because:

- The ‘power to advance wellbeing’ [as introduced by part 3 of the Local Government in Scotland Act 2003] does not permit a council to levy a new tax.
- Byelaws are about "good rule" and the prevention of nuisance and so are not an option.
- Licensing of any kind was not considered a viable option.
- Voluntary schemes would not ensure adherence to local design [14] .

The Scottish Government Bill Team confirmed to the Local Government, Housing and Planning Committee [8] that there are currently no powers that local authorities can use to introduce a visitor levy, "so an act is needed to give them that power".

The road to legislation

Back in 2016, the then Cabinet Secretary for Culture, Tourism and External Affairs told the Parliament [16] that, at that time, the Scottish Government was not planning to introduce a tourist tax:

> “ The Scottish Government has no plans to introduce a tourist tax. The Scottish tourism industry [is] currently subject to UK Government VAT rates which are the second largest in the EU. However we are open to discussions with any local authorities that are interested, recognising that potential impacts and implications would need to be carefully considered.”

However, by 2018, the Government's position appeared to have softened, with the Cabinet Secretary for Culture, Tourism and External Affairs responding to a Parliamentary Question [17] :

> “ Scottish Ministers have been clear that they will not consider requests to explore a Tourist Tax unless the tourism and hospitality industry are involved from the outset and their long-term interests and the sustainability of tourism are fully recognised.”

Shortly after the publication of the 2018 COSLA paper, the Scottish Government engaged with the tourism industry, local authorities and the wider business community on a “national discussion” on tourist taxes [18]. This ran from November 2018 to January 2019 with six roundtables being held across Scotland. Each event was chaired by a Scottish Minister, with representatives from the tourism industry, local authorities and business organisations attending. Participants were also encouraged to submit written views and 135 responses were received.

According to the report summarising the discussion [18], those representing the tourism sector, in particular accommodation providers’ representatives and individual accommodation providers, were strongly opposed to the idea of a tourist tax. Concerns from the sector focussed on the impact of additional taxation on Scotland's competitive position, arguing that existing taxes such as Non-Domestic Rates and VAT were already high. There were also concerns about additional costs and resource burdens being imposed on businesses.

As part of the 2019-20 Budget agreement between the Scottish Government and the Scottish Green Party , the Scottish Government committed to consult on the principles of a locally determined ‘tourist tax’ or visitor levy and introduce legislation to permit local authorities to introduce such a visitor levy if they considered it “appropriate for local circumstances”. A public consultation was held between September and December 2019, with a consultation analysis report published in March 2020. Work was then paused during the COVID-19 pandemic, until the 2022-23 Scottish budget again committed the Scottish Government to resuming work on the Visitor Levy proposal.

The Scottish Government's 2022 Resource Spending Review [19] mentioned a future Visitor Levy in the context of the New Deal being negotiated between the Scottish Government and COSLA. Published as the Verity House Agreement in June 2023 [12], the New Deal commits the Scottish Government to supporting an increase in the fiscal flexibilities available to councils. Indeed, Scottish Government officials confirmed to the Local Government, Housing and Planning Committee in June that "the overriding drive" behind the Visitor Levy Bill "is to fiscally empower local authorities, giving them a new tool to use, if they wish to do so, in their areas" [8].

Scotland's visitor economy

Tourism is an important part of the Scottish economy, supporting over 200,000 jobs and contributing £4.5 billion to Scotland's gross value added [20] [21] . Businesses operating in tourism include accommodation providers, restaurants, bars, travel agents, museums and businesses offering other recreational and cultural activities. There are almost 3,000 accommodation services businesses registered for VAT in Scotland, meaning their annual turnovers are above the VAT threshold of £85,000. There are a further 2,000 to 3,000 smaller operators who aren't eligible for VAT registration [5] . In 2019, all these businesses provided rooms, houses, beds and pitches for over 17.5 million overnight visitors [22] .

The Bill's Business and Regulatory Impact Assessment (BRIA) [5] shows that the size of the visitor economy varies in significance across different parts of Scotland. For example, 37% of total visitor spend in Scotland, and 33% of visitor nights in commercial accommodation, were in the Edinburgh and Lothians region between 2017 and 2019. The Highlands and Islands area also saw a large number of overnight visitors - around 20% of Scotland's total overnight visitors and visitor spend happened there over the period. On the other hand, Greater Glasgow and Clyde Valley, where 34% of Scotland's population lives, saw only 17% of total Scottish overnight visits in 2017 to 2019.

Readers will note the use of 2017-2019 figures in this section. There are more recent figures available- however these mainly relate to 2020 and 2021 when the COVID-19 pandemic and associated lock-down measures led to the effective closure of the industry for parts of those years. The 2017-19 figures are used by the Scottish Government in its BRIA and Financial Memorandum; however it is worth noting that visitor numbers for 2023 and any future years may be lower, or indeed higher, than those seen during the immediate pre-pandemic period.

Combined with the steep increases in the costs of doing business and issues with staffing post-Brexit [23] , the past three years have been an incredibly difficult time for Scotland's visitor economy. The most recent industry survey conducted by the Scottish Tourism Alliance in May and June 2023 [23] found that the "majority of Scottish tourism and hospitality sector [is] financially fragile and still in survival mode". Nevertheless, the Scottish Government states in the Bill's Policy Memorandum [3] :

> “ 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.”

Summary of the Scottish Government's "national discussion" on tourist taxes, in 2018 and 2019

The Scottish Government held two consultation exercises leading up to the development of its Visitor Levy Bill: a “national discussion” with representatives of the tourism industry and local authorities in 2018 and early 2019, and a wider public consultation held in late 2019 which built on this earlier work.

The national discussion was structured around four broad questions:

- What would the reasons be for introducing a transient visitor tax?
- What would a well-designed and operated transient visitor tax look like?
- What positive and negative impacts could a transient visitor tax have?
- How could a transient visitor tax be used, and how can revenues be distributed fairly?

The Scottish Government hosted six round-table events across Scotland, each chaired by a Scottish Government Minister. They also received 135 written contributions from individuals, tourism sector representatives, business organisations and local authorities. A report of the round-table discussions was published in March 2019 [18] , and the following summarises some of the main points raised.

Views of the tourism sector expressed during the "national discussion"

- Accommodation providers' representatives tended to strongly oppose the idea of a tourist tax.
- Tourism industry representatives were concerned about the impact additional taxes could have on Scotland's competitive position.
- Costs of doing business for the sector had gone up due to increases in labour costs and increasing input costs, such as food, drink and energy. Many in the sector also believed that existing taxes such as Non-Domestic Rates and VAT are high compared to other countries.
- The UK applies its standard rate of VAT (20 per cent) to accommodation. The rate of VAT applied to accommodation is among the highest in the EU, as most EU member states apply rates of between 5 per cent and 10 per cent, with only Denmark applying a higher rate to accommodation (25 per cent).
- Industry representatives also raised concerns about the potential for negative messages to visitors at a national level from taxes introduced at local authority level, with risks that new taxes could inadvertently signal that tourists are unwelcome in Scotland.

- Some industry representatives highlighted the importance, in their view, of national consistency in: the types of accommodation covered by a tax; who would be liable to pay a tax; rates and bands employed, and who would set them; whether rates should vary across the year or by season; and exemptions made for different types of accommodation or types of visitor.
- The introduction and operation of a tourist tax could create additional costs for accommodation providers. Accommodation providers advised that they would likely need to change or adapt existing IT and booking systems, and train staff to comply with a new tax. They also highlighted that there could potentially be ongoing costs associated with administering and remitting taxes.
- Accommodation providers also highlighted that costs and complexities could be greater for accommodation providers who operated across several local authorities, should different systems be in operation in different local authority areas.
- Tourism industry representatives and contributors tended to emphasise the desirability of hypothecation of revenues, with revenues being raised from tourism businesses being clearly allocated to tourism uses.
- Industry participants highlighted the importance of transparency in how revenues are used.

Views of local authorities expressed during the "national discussion"

- Some local authorities described the financial challenges of providing support for tourism investment, or providing core infrastructure and facilities.
- Local authorities such as Edinburgh and Aberdeen viewed the ability to levy a tourist tax as a potentially helpful tool for generating sustainable funding streams to provide infrastructure or services that could support tourism development.
- They also highlighted potential to support provision of public goods in their areas used by both tourists and residents, such as parks, walkways and public spaces, where the costs of provision were often borne by local taxpayers.
- Similar arguments were also advanced around supporting services like street cleaning in peak tourist seasons, where costs were currently borne by local taxpayers.
- The City of Edinburgh Council advised that their survey evidence had indicated that local residents were in favour of a tourist tax. They suggested that a tourist tax could offer an important means of securing residents’ buy-in to support ongoing tourism development in areas experiencing relatively high volumes of visitors.
- Not all local authorities expressed enthusiasm for a tourist tax; several had yet to take a view, while councils such as Scottish Borders expressed concerns that a tax could hinder their ability to develop a sustainable tourism sector.
- Some local authorities were sympathetic to a national framework; however, others favoured approaches that could vary according to local circumstances.

- Some local authorities suggested that the tax should be collected by accommodation providers, who would be required to: register with the relevant local authority; maintain records, including of rooms occupied; and collect and remit revenues to the local authority.

- Participants suggested there was potential for additional costs to local authorities from the creation of a new tax, owing to requirements to collect, administer, monitor and enforce it.

- Local authorities interested in adopting a tourist tax believe revenues would be targeted at supporting tourism development and investment in areas' tourism offers.

- Other authorities emphasised the need for flexibility over how revenues are spent, to ensure that expenditure was aligned with local needs and responding to local priorities.

The Bill

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. The Bill is "enabling legislation" - local authorities are not compelled to introduce visitor levies, but if they do decide to, the Bill sets out how levies and associated schemes should operate.

The Bill consists of seven parts, with 75 sections and no schedules:

- Part 1: Power for local authorities to impose levy and overview
- Part 2: Key concepts including basis and calculation of levy and exemptions and rebates
- Part 3: Introduction and administration of the levy including process, finances, and performance
- Part 4: Returns and payment
- Part 5: Enforcement of the levy and penalties
- Part 6: Registers of liable persons and information sharing
- Part 7: General provisions including interpretation, regulation-making powers, ancillary provision, and commencement.

The following sections of this briefing are not meant to be a line-by-line explanation of the legislation - the Bill's Explanatory Notes [2] and Policy Memorandum [3] serve that purpose. Rather, they focus on the aims of each part of the Bill and highlight issues which may interest our MSPs as they scrutinise the legislation over the coming months.

Parts 1 and 2 - what the Bill does

Part 1 enables local authorities to introduce a levy on the purchase of overnight accommodation, with Part 2 defining what is meant by "overnight accommodation":

> “ a room or area provided to a visitor for residential purposes in or at a type of accommodation otherwise than as the visitor's only or usual place of residence.”

The levy will apply to the accommodation element of an overnight stay only. The cost of breakfast, entertainment, car parking, etc should not be included in the taxable amount. The levy amount is then calculated by multiplying the taxable amount by a percentage rate, set by the local authority.

Although it is the person purchasing the overnight accommodation who pays an additional fee, the "liable person" for the purposes of the legislation is actually the owner of the accommodation or the occupier of the premises at which the accommodation is provided [2] . The visitor pays the levy fee to the owner of the accommodation directly, or to a third party body such as Booking.com or AirBnB, and it is then the responsibility of the business owner to ensure all visitor levy fees are transferred to their local authority. This remittance will likely be done on a quarterly basis (unless the local authority chooses a different arrangement).

As a tax on a purchase, the visitor levy is similar to VAT (which already applies to the buying of overnight accommodation). The levy will be a percentage of the purchase value and, like VAT, it will be collected on behalf of the tax authority by the business selling the product. People purchasing overnight accommodation in a visitor levy area will continue to pay VAT (currently 20% if the provider operates above the VAT threshold) plus whatever rate the local authority sets their visitor levy at. The interplay between the visitor levy and VAT is discussed in the box below.

Why a percentage rate rather than a flat rate?

Many Scottish holidaymakers will be familiar with a range of tourist taxes operating across Europe. As set out in the BRIA, some destinations charge a flat rate (of say 2 or 3 Euros per night) whilst others apply a percentage rate. The Scottish Government has opted for the latter option and provides the following reasons:

- The level of visitor levy paid will be proportionate to the cost of accommodation and so reflects the amount of money a visitor is prepared to spend on accommodation.
- A flat rate would not automatically keep pace with inflation.
- A percentage rate is practical to administer.
- A slightly higher number of respondents preferred this option in the public consultation.

What rate(s) can be set?

The Bill does not restrict what rate can be set by local authorities. The modelling used in the Business and Regulatory Impact Assessment (BRIA) assumes a range of possible rates from 1% to 7%, reflecting the different rates used across various European destinations [10] .

The Scottish Tourism Alliance has called for a national maximum cap [24] . Indeed, the annex to the Bill's BRIA describes how national legislation in France sets a floor and ceiling rate for each type of accommodation subject to the ‘taxe de séjour’ and also highlights the examples of Poland and Bulgaria which set national ceilings on rates [10] .

Edinburgh City Council does not support a nationally-set upper limit and argues that a nationally set cap or upper percentage limit "contradicts the legislation’s original intent; to grant fiscal powers to improve local democracy" [25] .

There is scope in the Bill for a local authority to be able to set different rates in relation to particular events, "such as arts festivals or special conferences" [2] . Such flexibility would suggest it is also possible for different rates to be in place at different times of the year, for example during peak season and non-peak season.

VAT issues

The tourism sector has highlighted the fact that tourists pay 20% VAT when staying in most overnight accommodation in the UK. According to the annex to the Bill's BRIA, this is higher than most European countries (see Table B2, pages 17 to 22). The Scottish Tourism Alliance argues that tourists coming to the UK are therefore already highly taxed:

> "Although several countries already have in place a tourist levy, in comparison Scotland and the UK are already less competitive in terms of other fiscal measures. When tourists visit these other destinations, they can spend more and stay longer because they are ultimately taxed less." [26]

During the evidence session in June, the Scottish Government Bill Team was asked about this by Members of the Local Government, Housing and Planning Committee. They responded:

> "It is true that the 20 per cent VAT rate in Scotland and the United Kingdom is one of the highest in Europe, but, of course, it is just one in the basket of taxes that is paid by the industry. I will point out that, in comparative countries, the turnover threshold for paying VAT is much lower. In Spain, for example, there is no registration threshold, so even the smallest businesses will pay VAT, and that is not the case here. Comparisons of that kind are therefore very hard to make." [8]

As discussed earlier, there are approximately 2,000 to 3,000 smaller operators who aren't eligible for VAT registration, roughly a third to a half of all Scotland's accommodation providers.

The Scottish Government wrote to the Local Government, Housing and Planning Committee on the 1 September 2023 confirming that the Visitor Levy will be liable for VAT [27] . Therefore, a room costing £100 per night with a VL of 5% would give us a total VAT taxable amount of £105 rather than £100. The Bill's Financial Memorandum explains why this could be an issue:

> "It is recognised that should a visitor levy be considered liable for VAT, this would increase the total price for the accommodation and potentially incur further costs to accommodation providers. The application of VAT may also have additional financial implications for accommodation providers that operate just below the thresholds for VAT registration or the VAT flat rate scheme." [4]

The Scottish Government's BRIA acknowledges that a proportion of small providers may be operating close to or at the £85,000 threshold. Therefore:

> "The addition of a visitor levy to the accommodation sales price may mean some businesses will either need to register for VAT or take some action to reduce their turnover to remain below the £85,000 threshold. Registering for VAT would incur an increased tax liability and lead to some additional compliance costs for such business, whilst reducing their turnover would have a limiting effect on the supply of accommodation." [5]

At the launch of the Visitor Levy (Scotland) Bill on 25 May, the Scottish Government's

Minister for Community Wealth and Public Finance wrote to the Chief Secretary to the Treasury, seeking clarification on whether VAT would apply to a visitor levy. According to the Minister's letter to the Committee [27], the Financial Secretary to the Treasury, Victoria Atkins MP, responded with the following points:

- a fundamental principle of VAT law is that VAT is charged on the price paid on the supply of taxable goods or services, including other taxes, levies and charges.
- if an accommodation provider includes an amount equivalent to a visitor levy in the charge for the overnight accommodation, then this will form part of what is paid under a contract for the supply of accommodation.
- This portion will therefore have the same VAT liability as the accommodation.

What type of accommodation is included and excluded?

Part 2 includes a list of accommodation types that will be subject to a Visitor Levy. These are:

- hotels
- hostels
- guest houses
- bed and breakfast accommodation
- self catering accommodation
- camping sites
- caravan parks
- boat moorings or berthings
- accommodation in a vehicle, or on board a vessel, which is permanently or predominantly situated in one place
- any other place at which a room or area is offered by the occupier for residential purposes otherwise than as a visitor's only or usual place of residence.

The Bill's Policy Memorandum (PM) states that the "list is not exhaustive", with the intention being that any premises offered for residential purposes, other than someone's usual residence, are liable for the charge. Referencing views expressed during the national discussion, the PM stresses the importance of ensuring "a level playing field across all types of accommodation" hence the inclusion of the list in the Bill. The Scottish Government may decide to add, or indeed remove, types of accommodation at a later date through the use of affirmative regulations.

Notable by their absence in the above list are cruise ships, with Part 2, Section 3 exempting "accommodation in a vehicle, or on board a vessel, that is undertaking a journey involving one or more overnight stops". The Explanatory Notes state:

> “ this will mean, for example, that the provision of a cabin on a ferry or a sleeper train, or the hiring of a campervan, will not typically be subject to a levy. However, the levy would be chargeable on the overnight parking of a campervan at a campsite, or the overnight mooring of a boat at a boat mooring.”

With cruise ships being a major part of the visitor economy in some parts of Scotland [28], the reasons for their exemption were explored by the Local Government, Housing and Planning Committee in June [8]. The Scottish Government's Visitor Levy Bill Team explained the rationale:

> “ A cruise ship is a very different animal from a hotel that is fixed in one local authority area and where people book overnight accommodation. Obviously, cruise ships are moveable assets and go to a variety of places. People on cruise ships stay on the cruise ship but also pay to be moved around to different places and to visit different locations. The taxable event is very different. The powers and provisions that would be needed for cruise ships would be very different from the ones in the bill.”

On pages 14 and 15 of its Business and Regulatory Impact Assessment (BRIA), the Scottish Government sets out a more detailed explanation of its reasons for not including cruise ships [5].

The Island Communities Impact Assessment (ICIA) of the Bill published by the Scottish Government confirms that "cruise tourism in Scotland is heavily concentrated by geography and is of significant importance to many island communities" [6]. Members of the Local Government, Housing and Planning Committee heard more about this during their trip to Orkney in June. The ICIA informs us that in 2019, "the Highlands and Islands accounted for almost three quarters of Scotland’s total cruise calls, and 61% of cruise passengers, largely at Kirkwall, Lerwick and Invergordon".

The Policy Memorandum accompanying the Bill states that a cruise ship levy is to 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" [3].

In addition to cruise ships and sleeper train/ferry cabins, Part 2 specifically exempts local authority Gypsy/Traveller sites. The Bill's Policy Memorandum explains that:

> “ 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. [3] ”

Opportunity for local exemptions

The Bill permits councils to make their own local exemptions (see Section 13, 1 (g)) with the Policy Memorandum setting out that "these will be informed by national guidance, to be developed with local government and business organisations" [3]. Exemptions may therefore differ between local authorities; however, the Bill gives Scottish Ministers a power to make exemptions by regulations "if national-level exemptions are necessary" [3]. The issue of a possible national exemption for patients and family travelling for medical treatment purposes was discussed in the evidence session with the Scottish Government's Bill Team in June. The Government officials responded:

> " For some local authorities, consideration of inclusion of travel for medical treatment might be valid. For others, that will not have to be taken into account. Ministers decided that it was best not to include that in the bill but to pick it up in guidance, with the backstop of introducing regulations if necessary, depending on how things turn out with the guidance, and on what practice looks like in different local authorities. [8] "

Exemptions in other destinations across Europe

The Annex to the Bill's BRIA includes details of exemptions in place across the various European destinations with tourist taxes. These include reduced rates for particular groups of visitors or types of accommodation, such as business travellers, local residents, children under a certain age, accommodation booked as part of an educational trip, temporary workers staying in accommodation for a short period of time and people with disabilities or travelling for medical purposes with their carers. The BRIA concludes that "operating exemptions such as these does increase the complexity of the taxes in place but may be viewed as being fairer in particular circumstances" [10] .

The city of Nice's "taxe de sejour" includes exemptions for children under 18, holders of a seasonal employment contract who are employed in the municipality and beneficiaries of emergency accommodation or temporarily relocated persons. Berlin's City Tax includes exemptions for school trip bookings and people staying in the city for business purposes. The nationwide tourist tax in Greece exempts youth hostels, and some areas of Hungary exempt both under 18s and over 70s. The municipal tax in Lisbon, Portugal, includes exemptions for those travelling for medical reasons and the Balearic Islands include exemptions for under 16s.

Part 3 - what the Bill does

If local authorities decide to introduce a visitor levy they must do so as part of a visitor levy scheme. Part 3 sets out what these schemes should include, and how they are to be developed and operated. A local authority can have more than one scheme in place for different areas or for different purposes. They can even develop and introduce a joint visitor levy scheme with one or more other local authorities.

Crucially, the Bill states that any revenues raised, net of administration costs, should be used to support objectives relating to the "developing, supporting or sustaining facilities or services which are substantially for or used by persons visiting the scheme area for leisure purposes". It is notable that the Bill specifies services used by leisure tourists only, as *all* overnight visitors are eligible to pay the levy, including business visitors.

The Bill's Explanatory Notes offer some examples of how money could be spent, including the building of a visitor centre and improvement of transport links to an area popular with visitors to the area [2] . However, it will be up to the local authority, in consultation with local stakeholders, to decide how revenue is spent to support the objectives set out in the Bill (with subsequent annual reporting and three yearly reviews providing monitoring opportunities). The Policy Memorandum acknowledges that

> “ ...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 [3] .”

By requiring funds to be hypothecated, the Bill restricts what local authorities can do with the money they raise from a Visitor Levy - it cannot just be added to general funding. This has been an ask of the tourism industry since the National Discussion in 2018, with the STA insisting earlier this year that the Bill "must explicitly state that the revenue raised through the levy will be reinvested in tourism priorities" [24] . The Association of Scottish Visitor Attractions made a similar call in May, stating that Levy money should be used to help tackle the "chronic underfunding in tourism product and infrastructure at local authority level" [29] .

There are many examples around Europe of such hypothecation of tourist tax funds. The annex to the Bill's BRIA [10] describes similar schemes in Catalonia, Slovenia, Lithuania, Croatia, Hamburg and France. However, there are other destinations, such as Berlin and Amsterdam, where tourist tax money appears to be added to the general budget and is not ring-fenced.

Visitor Levy Scheme - what are the requirements?

A local authority will have to consult before it introduces a new scheme or if it decides to change an existing one. Those consulted should include people the local authority considers "representative of communities, businesses engaged in tourism and tourist organisations in its area" as well as "such other persons as the authority considers likely to be affected by the proposal" (presumably that could include the visitors themselves).

The local authority must prepare and publicise an outline of the proposed scheme for consultation. The proposed scheme should include a statement about the objectives of the proposal and an assessment of the impacts of the proposal. Section 12, which sets out requirements for the consultation stage, does not specify the individual items that a local authority has to consult on. It is likely that national guidance produced later will provide advice to local authorities on how a visitor levy scheme consultation should be carried out and what should be included in it.

After consultation, the local authority must summarise the consultation responses received and declare whether or not it wishes to proceed with the proposal. If the local authority chooses to proceed, it must then publish the scheme itself. All schemes should include information on the following:

- The area in which the scheme will operate.
- When the scheme will come into force and how long it will be in place.
- How much the rate will be as a percentage of overnight accommodation costs.
- Arrangements for the review of decisions in relation to the scheme.
- Details of any exemptions or discounts
- Details of the manner in which the local authority intends to make decisions on the use of funds raised.

Subsection 2 of section 13 states that any visitor levy scheme can only come into force a minimum of 18 months after the local authority announces its intention to introduce one. In its Business and Regulatory Impact Assessment [5], the Scottish Government explains why:

> “ We have heard from stakeholder feedback that due to the complexity of routes to market in the industry (such as the use of online travel agents and other third parties), there may be complications in ensuring that prices inclusive of a visitor levy are shown across all platforms. To mitigate against this risk, the bill sets out an 18-month period in which accommodation providers can ensure that they are fully ready to comply with the requirements of a visitor levy scheme, including that advertised prices accurately reflect the impact of the visitor levy.”

Once it has decided to introduce a visitor levy scheme, the local authority must notify the Scottish Government and also publicise its decision so "all those with an interest in the creation of such a scheme are made aware in advance of a scheme coming into force" [2]. The Bill does not specify *how* local authorities should do this, but it does include a provision whereby the Scottish Government may make specific requirements through future regulations.

Local authorities must report annually on any scheme introduced, with information published on the amount of money raised, how funds have been spent and progress towards the objectives of the scheme. In addition, there should be reviews of schemes conducted every three years.

How local authorities should treat Visitor Levy income

As stated elsewhere, money raised from a visitor levy should only be used to support the objectives of a visitor levy scheme, and these should: "relate to developing, supporting or sustaining facilities or services which are substantially for or used by persons visiting the scheme area for leisure purposes".

The money is therefore ring-fenced and should not be moved into a local authority's general funding pot. The Bill requires local authorities to keep a separate account for any visitor levy 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" [3].

The Bill talks about the use of "net proceeds of the scheme". This means whatever money is left after covering the costs to councils of operating a scheme. The Financial Memorandum (FM) provides some estimates of how much it could cost local authorities to administer a levy, based on figures provided by local authorities. With initial set-up costs of approximately £100,000 - £460,000 per local authority, the FM estimates ongoing operating costs of between £190,000 and £500,000 per year. This is based on three to five full time equivalent members of administrative staff plus various non-staff costs. Clearly for any local authority to consider introducing a visitor levy, the total amount raised would have to exceed the total likely costs.

Part 4 - what the Bill does

Part 4 of the Bill is concerned with returns and payments, with money raised through a levy being remitted to the local authority on a regular basis. The Bill requires the "liable person" - i.e. accommodation providers in a visitor levy scheme area - to make payments to the local authority every quarter, and the Bill allows a local authority to determine the form and content of such returns. According to the Policy Memorandum:

> “ 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.”

There is also a duty placed on accommodation providers to keep and preserve relevant records for five years (or any such period specified by a local authority), including "details of any chargeable transactions entered into by the liable person and any associated records of payments, receipts and financial arrangements" [2] Section 21 enables a local authority to make arrangements for a third party to handle the collection and enforcement functions associated with a levy, similar to what is currently the case with with council tax and Non Domestic Rates.

Part 5 - what the Bill does

According to the Policy Memorandum, the Bill aims to provide "a robust regime" [3] to allow local authorities to investigate and enforce compliance. Part 5 - taking up 16 pages of the 30 page Bill - provides considerable detail on granting local authorities powers to obtain information, inspect business premises, impose penalties and recover unpaid amounts. After all, this is a tax, not a voluntary contribution, and for a tax to be effective measures need to be in place to discourage and prevent avoidance.

The overall policy intention of Part 5, according to the Policy Memorandum [3] , is to provide local authorities with powers that are in line with ones they already have in terms of council tax and non-domestic rates enforcement:

> “ The enforcement regime set out in the Bill therefore reflects the powers that are used in relation to those taxes [council tax and NDR], 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.”

According to the Policy Memorandum, local authorities who introduce a visitor levy will already be familiar with the enforcement measures and penalties set out in Part 5 of the Bill.

There is scope in the Bill for local authorities to write-off a visitor levy debt if a liable person (i.e. an accommodation provider) has a "reasonable excuse". Examples of things which may qualify as a reasonable excuse include serious unexpected illness, an unforeseen collapse of a third party’s IT system (meaning that a return could not be sent), or the liable person's office being destroyed by fire [3] .

Penalties and recovery of unpaid amounts

The use of penalties for late or non-payment is, according to the Policy Memorandum, "standard practice across other jurisdictions that operate a visitor levy or equivalent taxes in Europe and elsewhere". Officials in these destinations reported a high level of compliance in their areas with penalties issued being low compared to the number of taxpayers [3] . Part 5 of the Bill sets out the levels and reasons for penalties, with an initial £100 fine being issued for failure to make a return. Further penalties apply if failure to pay continues for three months, six months or 12 months.

Regulations may be made in future to change the penalty amounts and the procedures for issuing and enforcing penalties.

There is scope in the Bill for local authorities to write-off visitor levy debts and penalties if a liable person (i.e. an accommodation provider) provides a "reasonable excuse" (see above). However, if the local authority seeks to pursue unpaid amounts, the Bill provides them with the option of applying to the sheriff for a summary warrant. Again, this is a procedure local authorities will be familiar with in relation to council tax.

Appeals

Sections 67 and 68 will provide "liable persons" the ability to challenge a range of decisions made by local authorities with regards a visitor levy scheme. The Policy Memorandum states that the policy intention of sections 67 and 68 is to enable accommodation providers to seek an internal review of decisions made by the local authority and then be able to appeal decisions to the First-tier Tribunal for Scotland (which currently deals with council tax, council tax reduction, water charges and non domestic rates appeals). The Bill does not include details of the review and appeals processes, stating that these will be set out in subsequent regulations; however, sections 67 and 68 set out what should be covered in these regulations. The reason for this approach is partly explained in the Financial Memorandum [4] , in relation to potential costs of an appeals process:

> “ The Bill does not contain provisions relating to appeals but confers regulation-making powers to Scottish Ministers to make provision for appeals. As a novel discretionary local tax without equivalence in the UK, there are uncertainties over size and scope of an appeals system needed for this new discretionary power and therefore no comparable financial estimates available.”

Parts 6 and 7 - what the Bill does

For a visitor levy to work, the local authority should have a record of all accommodation providers in its area. Part 6 allows a local authority to create and maintain a register of "liable persons", but only if it wishes to do so. Presumably, local authorities could do this already, as much of the information needed will be available from the short term lets licensing scheme and the NDR Valuation Roll. The Bill's Data Protection Impact Assessment [7] states that a register will likely include personal data of accommodation providers such as names, addresses, postcodes and phone numbers.

Section 70 allows a local authority to share information with another local authority, its officers and other organisations authorised to carry out functions of a visitor levy scheme. On the issue of data protection, as well as other matters related to the Bill, the Scottish Government is committed to developing national guidance in collaboration with local government and the tourist industry: "this guidance will aim to provide best practice on the processing of data by local authorities for the purposes of administering the levy".

As is common in the closing sections of most bills, Part 7 sets out a number of important terms used throughout the Bill, provides details of commencement and includes the short title of the Act (if the Bill is passed and enacted).

Financial Memorandum

The Financial Memorandum (FM) acknowledges from the outset that only a few local authorities are likely to introduce a visitor levy scheme because the tax base (visitors staying in commercial accommodation) in many local authority areas is "relatively small", therefore revenues in these areas would be low relative to the costs involved in introducing a visitor levy. This is not a tax that will be introduced across the whole of Scotland. As such, the FM aims to assess costs on an individual local authority basis rather than for all local authorities.

It is anticipated that costs to the Scottish Government will be "negligible" (although there may be costs associated with an appeals process, to be determined at a later date). So the most significant additional costs examined in the FM are those likely to be faced by local authorities, accommodation providers and by visitors themselves.

Costs to local authorities

The FM confirms that local authorities will have to meet all their own costs associated with introducing a levy scheme in their areas - the Scottish Government will not provide additional funding to help with start-up or operating costs. It is expected that initial costs will be financed from existing budgets, with the FM stating that these will likely be "offset against future revenues raised through a visitor levy". Costs will mainly relate to additional staff costs (recruitment and training) and costs associated with IT system procurement and maintenance. However:

> “ The Bill does not prescribe the new activities, processes and systems a local authority is likely to require in order to implement and operate a visitor levy. Local authorities will therefore have a degree of autonomy in the approach and design of such processes and systems, tailoring these to be most appropriate to local circumstances.”

The FM includes a range of costs likely to be faced by local authorities, with Scottish Government analysts working with COSLA on these calculations:

1. The costs of consulting on a proposal to introduce a visitor levy scheme, conducted either in-house or commissioned to an external consultancy. Estimated cost is **£10,000 to £20,000**.

2. The costs of setting-up a visitor levy scheme in terms of new IT systems, processes, directory of providers, communicating with the sector, recruitment and training of staff. Estimated cost is **£100,000 to £460,000**.

3. The on-going operational costs will mainly consist of staff costs, with an estimated three to five additional members of staff being required at £35,000 per head per year. **Estimated £145,000 to £240,000** for most councils and **up to £500,000 for Edinburgh City Council** (due to the higher numbers of accommodation providers).

Set-up costs in the FM are based on estimates provided by local authorities themselves and take into account procurement for an IT system (or the upgrading of an existing one); recruitment and training; and the costs of an awareness-raising campaign. The FM tells us that the total cost range of £100,000 to £460,000 has been inflated by 200%, in accordance with UK Treasury Green Book practice, "to account for optimism bias in estimates provided by local authorities".

Costs to accommodation providers

There are likely to be various costs that accommodation providers will face if their local authority decides to introduce a visitor levy scheme. These are categorised in the FM as either initial set-up costs or ongoing administration costs. Set-up costs include paying for updates to existing property management systems and software and training costs, and on-going costs include the preparation of remittances to the local authority and record keeping costs. These will vary according to the size of enterprise and the FM provides different costings for micro businesses (turnover less than £85,000) and smaller sized businesses (fewer than 50 members of staff). It is unclear why there is no estimate of costs for larger operators in the FM- after all, there are over 200 accommodation providers in Scotland with 50 plus employees [20] .

Table 2: Expected costs for smaller businesses in the accommodation sector

	Year before introduction of VL	Year of introduction	Ongoing costs (year 1)	Ongoing costs (year 2)
Micro accommodation providers (turnover under £85k)	£150 - £1,100	£200-£850	£200-£850	£200-£850
Small to medium sized providers (turnover £1m to £5m)	£3,000 -£10,000	£300 - £400	£300 - £400	£300 - £400

The Local Government, Housing and Planning Committee will hear from a range of accommodation providers over the next few months and explore with them the various assumptions and estimates presented in the Financial Memorandum and BRIA. The Parliament's Finance and Public Administration Committee will also conduct its own scrutiny of the FM and report to the Local Government, Housing and Planning Committee as the lead committee.

Costs to visitors themselves

Clearly, there will be additional costs to overnight visitors staying in areas where visitor levy schemes have been introduced. The FM assumes that, similar to other countries, the amount charged per night will be relatively small; however, as discussed above, there are no limits in the Bill on the percentage rates available to local authorities. The BRIA models scenarios ranging from 1% to 7% in order to reflect the range of charges currently in place across other European destinations.

The FM provides six examples of visitor trips and possible levy cost scenarios (on page 20) [4] . These range from a VL charge of £1.60 for a single person staying two nights at an Aberdeen hotel, to a £7.75 charge for a family staying one week in self-catering accommodation in Argyll and Bute. Both these scenarios model a 1% VL charge and so result in relatively small VL sums. However, if the VL is set at 5 or 6%, an additional £35 or £40 for a week's holiday will be more noticeable for many families. The following table presents the same scenarios set out in the FM, but includes likely additional costs for 3%, 5% and 7% rates:

Table 3: Examples of visitor trips and visitor levy payable across different accommodation types (4 different rates)

Description	Price	Total taxable cost	Total Visitor Levy Payable (1%)	Total Visitor Levy Payable (3%)	Total Visitor Levy Payable (5%)	Total Visitor Levy Payable (7%)
Couple in Edinburgh for a long weekend (3 nights) in an average priced hotel	£220 per room per night	£660	£6.60	£19.80	£33.00	£46.20
Single person stays 2 nights in average priced hotel in Aberdeen	£80 per room per night	£160	£1.60	£4.80	£8.00	£11.20
2 couples visits Edinburgh for a short-break (4 nights) using an Airbnb rental	£170 per property per night	£680	£6.80	£20.40	£34.00	£47.60
4 backpackers travel to the Highlands 3 nights in hostel	£30 per bedspace per person	£360	£3.60	£10.80	£18.00	£25.20
A family of five week holiday in April in self-catering in Argyll & Bute	£775 for a weeks booking	£775	£7.75	£23.25	£38.75	£54.25
A family of four on a week summer holiday at a caravan site	£40 per pitch per night	£280	£2.80	£8.40	£14.00	£19.60

It can be assumed that for a number of people holidaying in Scotland, especially those on low incomes, paying more for accommodation could lead to them spending less on other products and services related to their trip, for example souvenirs, food and drink, tours and other cultural experiences. However, the BRIA references a 2018 Edinburgh survey which found that only 14% of visitors said they would be likely to reduce their non-accommodation spending if a hypothetical £1 or £2 per room per night tourist tax was introduced in Edinburgh [10] .

Potential impacts on tourist numbers

The Bill's Business and Regulatory Impact Assessment (BRIA) [5] and associated Annex [10] set out further Scottish Government analysis of the potential impacts of the Bill on accommodation providers, tourist numbers and the wider economy.

On the issue of tourist taxes impacting the attractiveness of a destination, the BRIA identifies evidence from some European cities that have recently introduced or raised tourist taxes, and these show "that generally growth in visitor numbers has continued after the introduction of these taxes". Analysis focusses on the experiences of Barcelona, Berlin, Lisbon, Hamburg and Paris. In all but one city, there has been a substantial *increase* in overnight visitor numbers since occupancy taxes were introduced, with Hamburg and Lisbon seeing 62% and 40% increases respectively. So, there is little evidence from these examples that the introduction of tourist taxes has discouraged visitors. Nevertheless, the BRIA also acknowledges "there is a risk of negative economic impacts arising from the introduction of additional taxes on the visitor economy in local areas".

The tourism sector has expressed concerns that a new levy could impact on Scotland's competitiveness as well as Scotland's reputation as a destination that is welcoming to tourists, especially when compared to other parts of the UK [18] . Writing in January 2023, the Scottish Tourism Alliance highlighted the fact that around 70% of tourism in Scotland comes from the domestic market, i.e. people from across the UK deciding to visit Scotland for leisure or business purposes. As such:

> “ ...the cost of-living crisis is already having an acute impact on tourism and hospitality. Bookings are markedly down and visitor spending declining, while the forecast for next year is of huge concern for the tourism and hospitality sectors. As Scotland’s tourism industry looks towards recovery post-COVID and faces unprecedented economic pressures of record inflation, rising energy prices, household budgets being squeezed and a recession, a tourism tax adds an additional financial burden for households and businesses in the coming years. [24] ”

With the introduction of a levy, accommodation providers can either pass on the higher cost to the consumer or keep the overall price the same, thus absorbing the levy costs and reducing profits. Whether or not a levy would impact overnight tourist numbers depends on a number of factors, including how high the levy rate is set, the strength of the tourist offer in an area, the personal financial situation of the consumer and whether or not there are attractive alternatives (substitutes). It will be up to individual local authorities to make decisions based on these, as well as other factors.

The BRIA annex references a 2018 Edinburgh City Council survey of visitors’ hypothetical responses to the hypothetical introduction of £1 or £2 per room per night tourist tax in Edinburgh [10] . The survey found that the majority of respondents (75%) would not have changed their plans in response to the tax. Similarly, research conducted by VisitScotland in 2017 suggested that for visitors to Scotland, the price of hotels/accommodation was not an important factor in their motivation to visit Scotland, with only 6% of visitors indicating that this factor persuaded them to visit Scotland:

> “ Visitors were primarily drawn in by its natural and cultural resources, with other main motivations cited including: escapism; visiting friends / family; proximity; friendly people; and range of activities available. [5] ”

The Scottish Government's Visitor Levy Bill team stated that beyond price, the "wider visitor offer" means the UK is "a very attractive destination and is very high in the rankings", with Scotland in particular presenting "many unique offerings":

> “ People come to play golf at St Andrews. People come to see Edinburgh castle. People come to put their toe in the fairy pools in Skye or to try to spot the Loch Ness monster. None of those are substitutable experiences for which there are alternatives elsewhere. [8] ”

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