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Delegated Powers and Law Reform Committee Comataidh Cumhachdan Tiomnaichte is Ath-leasachadh Lagh

Delegated powers in the Visitor Levy (Scotland) Bill (as amended at Stage 2)



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Delegated Powers and Law Reform Committee

The remit of the Delegated Powers and Law Reform Committee is to consider and report on the following (and any additional matter added under Rule 6.1.5A)—

(a) any—

(i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;

(ii) [deleted]

(iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

(e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act;

(f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject;

(g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and

(h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.

(i) any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.



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Introduction

1. At its meeting on 23 April 2024 , the Delegated Powers and Law Reform Committee considered the delegated powers contained in the [Visitor Levy \(Scotland\) Bill](#) (as amended at Stage 2).
2. This Scottish Government Bill was introduced 24 May 2023. The lead committee is the Local Government, Housing and Planning Committee.

Overview of the Bill

3. The Policy Note explains that the Bill pursues a single overall objective: “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.”
4. The Bill confers seventeen powers to make subordinate legislation on the Scottish Ministers, and one power to make subordinate legislation on the Lord President of the Court of Session.
5. The Committee considered the delegated powers in the Bill at Stage 1 at its meetings on 19 September and 24 October 2023 and issued its [report](#) on 31 October 2023.
6. The report notes that the Committee raised queries with the Scottish Government regarding three of the powers: those conferred under section 4 (Meaning of overnight accommodation), section 10 (Exemptions and rebates), and section 36 (Power to inspect business premises of third parties). In response to those queries the Scottish Government undertook to amend the Bill at Stage 2.
7. The Bill completed Stage 2 on 12 March 2024. The amendments give effect to all of the Scottish Government's undertakings. In addition, two new delegated powers have been conferred.
8. The Scottish Government has lodged a [Supplementary Delegated Powers Memorandum](#) (“supplementary DPM”) covering the delegated powers in the Bill as amended at Stage 2.
9. The Committee is required by Rule 9.7.9(b) of the Standing Orders to consider and report to the Parliament on new or substantially altered delegated powers after Stage 2.

Review of relevant additional/revised delegated powers

Section 4(4): Meaning of overnight accommodation

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Revised or new power: Revised

Provision

10. Section 4(2) defines the types of accommodation which may be subject to a levy. The list includes hotels, hostels, guest houses, bed and breakfast accommodation, self-catering accommodation, camping sites, caravan parks, and boat moorings or berthings, amongst other things.
11. Section 4(3) lists the types of accommodation which may not be subject to a levy, namely, local authority or registered social landlord gypsy and traveller sites.
12. Section 4(4) gives Scottish Ministers the power to amend these lists of accommodation types by adding or removing a type of accommodation or by varying the description of a type of accommodation.

Committee consideration

13. In its [letter](#) to the Scottish Government, the Committee queried why this power was not subject to a requirement to consult local authorities, providers of accommodation who may be affected by such a change, and other relevant stakeholders. In its response, the Scottish Government undertook to amend the Bill to add a consultation requirement. The Bill has been amended at Stage 2 to give effect to that undertaking. Before making regulations under section 4(4) Scottish Ministers must consult local authorities and such tourist organisations as Ministers consider appropriate.

14. **The Committee welcomes the amendment to the Bill.**

Section 6(3): Rate for levy

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Revised or new power: New

Provision

15. Section 6 of the Bill requires a local authority seeking to introduce a visitor levy scheme to set the percentage rate of the levy chargeable in respect of the purchase of overnight accommodation. The Bill was amended at Stage 2 to give Scottish Ministers the power to make regulations specifying the maximum percentage rate which a local authority may set under the Bill. Regulations made under this provision would be subject to the affirmative procedure.

Committee consideration

16. The supplementary DPM explains that this change was made in light of concerns from industry that there was no mechanism in the Bill for setting a maximum rate. The power is subject to a requirement to consult with local authorities, representatives of business engaged in tourism, tourist organisations, representatives of communities, and any other relevant persons.
17. The Committee notes the Scottish Government's view that this power strikes the right balance between local autonomy that allows for local decisions that reflect local circumstances, and the concern of industry that there is currently no mechanism that could limit the level at which a visitor levy could be set. It therefore agrees that the affirmative procedure is appropriate given that this power permits the Scottish Ministers to set a national cap in relation to a local tax.

- 18. The Committee finds this new power acceptable in principle and is content that it is subject to the affirmative procedure.**

Section 10(1): Exemptions and rebates

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Revised or new power: Revised

Provision

19. Section 10 permits the Scottish Ministers to specify cases or circumstances in which a chargeable transaction is not subject to the levy, and to make arrangements for the issuing of exemption vouchers to categories of persons. For example, regulations may provide that the levy is not chargeable where a person purchases overnight accommodation for the purpose of accessing hospital treatment in the area in which the scheme operates.

Committee consideration

20. In its letter to the Scottish Government, the Committee queried why this power had not been made subject to a requirement to consult with local authorities. In its response, the Scottish Government undertook to amend the provision to require the Scottish Ministers to consult local authorities and tourist organisations before making regulations under this provision. The Bill has now been amended to give

effect to that undertaking.

21. The Committee welcomes the amendment to the Bill.

Section 20A: Guidance on visitor levy scheme

Power conferred on: Scottish Ministers

Power exercisable by: Guidance and regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Revised or new power: New

Provision

22. The Bill was amended at Stage 2 to insert new Section 20A which deals with guidance on visitor levy schemes. Section 20A(2) places a duty on VisitScotland to prepare and publish guidance for local authorities on the introduction and administration of a visitor levy, and to review the guidance from time to time.
23. Section 20A(5) gives Scottish Ministers the power to make regulations that can substitute a different body for VisitScotland, or to make more than one body responsible for preparing, publishing, and reviewing the guidance.

Committee consideration

24. In the supplementary Delegated Powers Memorandum the Scottish Government states that it:

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

25. The Committee accepts the reason set out in the supplementary DPM for taking the power. As this power is a Henry VIII power, which permits the amendment of the Act which will result from this Bill, the Committee therefore considers that the affirmative procedure provides the appropriate degree of scrutiny.

26. The Committee finds the power acceptable in principle and is content that it is subject to the affirmative procedure.

Section 36– Power to inspect business premises of third parties**Power conferred on: Scottish Ministers****Power exercisable by: Regulations made by Scottish statutory instrument****Parliamentary procedure: Affirmative****Revised or new power: Revised****Provision**

27. Section 36 permits an authorised officer to enter and inspect business premises of an “involved third party” and to inspect “relevant documents” that are on the premises. Section 36(3) allows the Scottish Ministers to make regulations to specify (i) a person who is, or a category of persons who are, an “involved third party” and (ii) relevant documents.

Committee consideration

28. In its letter to the Scottish Government, the Committee queried whether the choice of the negative procedure provides an appropriate degree of parliamentary oversight, given that categorising a person as “involved third party” means that a party’s business premises can be inspected.
29. In its response, the Scottish Government undertook to amend the Bill so that the affirmative procedure applies to regulations made using the power at section 36(3). The Bill has now been amended to give effect to that undertaking.

30. **The Committee welcomes the amendment to the Bill.**

