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16 May 2024

Dear Convener,

Visitor Levy (Scotland) Bill

This letter provides information in relation to nine Stage 3 amendments to be lodged in my name in relation to the Visitor Levy (Scotland) Bill, which I propose are added to the Bill at Stage 3. In particular, the letter provides further information in connection with 2 new standalone delegated powers and amendments related to 2 matters which are already in the Bill. I have also included information about one further amendment related to the consultation requirements for regulation-making powers.

The amendments are expected to appear in the Business Bulletin on 17 May and the draft text of the amendments is included at **Annex A** below.

We appreciate delegated powers should ideally be added earlier in proceedings, but as explained further below for these amendments we consider that this has been unavoidable as a result of developments at Stage 2 and the subsequent consultation with stakeholders. I would be happy to provide more information if that would be of assistance to the Committee, and I would hope the Committee will be able to support these measures.

It is my intention to ask the Scottish Parliament to support these amendments at Stage 3.

New standalone delegated power – 1st amendment in Annex

The new delegated powers amendment in Annex A is a new section to be added in Part 5 (Enforcement of the Levy and Penalties) after section 41 giving a **power to allow local authorities to make or substitute an assessment**. While Part 5 of the Bill provides for enforcement and certain penalties and replicates much of the Revenue Scotland and Tax

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Powers Act 2014, Revenue Scotland have noted to my officials that Part 5 has no equivalent to the powers in the 2014 Act for a ‘designated officer’ to make or substitute an assessment of the level of tax to be paid (sections 95 (no tax return made) and 98 (incorrect assessment) of the 2014 Act). Such a power may allow the levy to be collected rather than relying on penalties in Part 5 of the Bil or on the power to make further provision about penalties in section 65.

I therefore consider it appropriate to review this matter further and take a power for Ministers to supplement the enforcement powers in the Bill by regulations subject to the affirmative procedure. The regulations would allow a local authority to substitute their own calculation for that of an accommodation provider, in circumstances where they believe that the level of levy that someone has reported, and returned, in their return under section 23 of the Bill is deliberately or carelessly inaccurate (a similar test to that in the 2014 Act). The power would also allow the regulations to provide that an authority may make an assessment where no return has been made. The regulations would provide more detail on the conditions for these actions to be taken and the procedures and rights of review and appeal which must be followed.

New standalone delegated power– 2nd 3rd, 4th and 5th amendments in Annex

The second, third, fourth and fifth amendments in Annex A are to clarify the **process around amendments to an existing VL scheme**. The 18 month implementation period in section 13(2) of the Bill applies when a local authority introduces a visitor levy scheme has been a source of discussion in Parliament since the Bill was introduced. A related matter in discussions with stakeholders has been the appropriate period for *modifications* of an existing scheme. I believe significant modifications should be subject to the same implementation period. The second and third amendments apply that period to modifications which expand the scheme area, increase the percentage rate or adjust exemptions. These are the listed “significant modifications” in new subsection (2A), introduced by the third amendment. This list may need some flexibility and to be adjusted over time with the benefit of experience and the fourth amendment therefore allows this to be done by regulations. The fifth amendment makes these regulations subject to the affirmative procedure, in the same manner as the existing section 13(3) power allowing amendments of section 13(1).

Amendment related to matters already in the Bill – 6th amendment In Annex

The sixth draft amendment in the Annex is an addition to section 10 in relation to a **specific exemption or rebate for nights in excess of a specified cap**. At Stage 2, the Committee debated amendment 28 lodged by Daniel Johnson MSP seeking to cap the number of nights someone has to pay a visitor levy at 14 nights per calendar month. While the intention was to provide that those in accommodation “semi-permanently” for work do not have to pay a visitor levy for the whole of their stay, it was unclear at that stage whether this was a proposition that could command support from local government and the tourism industry. In subsequent discussions it has become clear that this is an issue in which further consideration and flexibility in the future is required. While the Bill at section 10 already

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provides a power for Ministers to specify cases and circumstances where a scheme should include an exemption, I think this issue is sufficiently important to justify a separate specification of those circumstances without prejudice to the generality of the existing power, allowing Ministers to consult further and bring forward any detail if necessary. The specific matters which may need to be set out in regulations include the number of consecutive nights beyond which the levy might not be payable and the method by which any exemption or rebate is to be calculated (e.g. average cost or simply the nights before the cap is reached). As part of section 10 the exercise of this power would be subject to the affirmative procedure.

Amendments related to matters already in the Bill –7th and 8th amendments in Annex

The seventh and eighth amendments in Annex A relates to the **guidance power introduced as section 20A** at Stage 2 and discussed in the supplementary Delegated Powers Memorandum. It has become clear in subsequent engagements with stakeholders and MSPs that certain matters should be covered in the statutory guidance. The seventh amendment makes that change by adding mandatory content to the guidance in new subsection (2A), with the seventh amendment adjusting the existing power in section 20A(5) (subject to the affirmative procedure) to provide flexibility so that the subsection (2A) listed matters can be adjusted over time with experience of how the schemes are operating.

Amendment related to consultation on regulations already in the Bill –9th amendment in Annex

In reviewing the Bil after Stage 2 and preparing the amendments discussed above, we have noted a slight inconsistency in the mandatory consultation requirements for regulations under sections 4, 6 and 10 and 13. The final amendment in the Annex therefore bring some consistency to these, making the requirements in section 4 that Ministers consult “local authorities, such persons as they consider to be representative of communities, businesses engaged in tourism and tourist organisations, and such other persons as they consider appropriate”. This is consistent with section 6 the consultation requirement restated in section 10 by the sixth amendment and section 13 by the fourth amendment in the Annex.

I trust these details will assist the Committee in its consideration of these measures.

Yours sincerely



TOM ARTHUR

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Visitor Levy (Scotland) Bill —

Annex

1st amendment - power to allow local authorities to make or substitute an assessment

Tom Arthur

After section 41, insert—

<CHAPTER 1A

ASSESSMENTS WHERE NO RETURN OR INCORRECT RETURN

41A Power to allow a local authority to make or substitute an assessment

- (1) The Scottish Ministers may by regulations make provision for and in connection with a relevant local authority making an assessment of a levy payable by a person where the relevant local authority—
 - (a) has reason to believe that the person is liable to pay the levy but has not made a return to the authority in relation to that liability by the date required under section 23(2)(b), or
 - (b) is of the view honestly and reasonably that an assessment of the levy in a return made to the authority by the person in pursuance of that person's duty under section 23 is incorrect by reason of careless or deliberate miscalculation.
- (2) Regulations under subsection (1) may, in particular, make provision for or in connection with—
 - (a) the conditions which must be satisfied for a local authority to—
 - (i) make an assessment of a levy payable by a person where no return has been made,
 - (ii) make an assessment of a levy payable by a person where it is of the view that an assessment of the levy in a return is incorrect,
 - (b) the procedure which a local authority must follow to make an assessment of a levy payable by a person,
 - (c) notices which must be given before or after any assessment,
 - (d) the time limits within which the powers may be exercised,
 - (e) delegation of the authority's powers under the regulations,
 - (f) the effect of an authority's assessment for the purposes of the imposition of penalties under Chapter 2.
- (3) Regulations under subsection (1) must make provision for and connection with—
 - (a) reviews of an assessment made by a local authority and, for the avoidance of doubt, such provision may include in particular the matters mentioned in section 67(2), and
 - (b) appeals to the First-tier Tribunal for Scotland against an assessment after a review has been conducted and, for the avoidance of doubt, such provision may include in particular the matters mentioned in section 68(2).
- (4) Regulations under subsection (1) are subject to the affirmative procedure.>

2nd-5th amendments - process around amendments to an existing VL scheme

Tom Arthur

In section 13, page 7, line 34, after <force> insert <, or on which a significant modification is to take effect,>

Tom Arthur

In section 13, page 7, line 35, leave out <of the local authority's decision to introduce the scheme.> and insert <on which the local authority publishes a report under section 12(1)(c) stating that it intends to proceed with the original or modified proposal.>

(2A) In subsection (2), “significant modification” means a modification of a VL scheme which—

- (a) expands the scheme area,
- (b) increases the percentage rate (or rates) of the levy, or
- (c) removes from the VL scheme any cases or circumstances in which the levy (or a sum equivalent to the levy) is not payable or reimbursed.

(2B) Any other modification of a VL scheme may come into force on a date specified after the authority publishes a report under section 12(1)(c) stating that it intends to proceed with the original or modified proposal.>

Tom Arthur

In section 13, page 7, after line 39 insert—

<(3A) The Scottish Ministers may by regulations amend subsection (2A) so as to add to, remove, or vary the description of the modifications listed.

(3B) Before making regulations under this section the Scottish Ministers must consult—

- (a) local authorities,
- (b) such persons as they consider to be representative of communities, businesses engaged in tourism and tourist organisations, and
- (c) such other persons as they consider appropriate.>

Tom Arthur

In section 13, page 8, line 1, leave out <subsection (3)> and insert <this section>

6th amendment - specific exemption or rebate for nights in excess of a specified cap

Tom Arthur

In section 10, page 5, leave out lines 31 and 32 and insert—

<(1AA) Without prejudice to the generality of subsection (1), regulations may specify a maximum number of nights of overnight accommodation for the purposes of applying, where a chargeable transaction is for the right to reside in or at that accommodation for period of consecutive nights, an exemption or rebate to the part of the levy which is attributable to any nights in excess of that maximum.

(1AB) Regulations specifying a maximum number in accordance with subsection (1AA) may in particular provide—

- (a) that a maximum number of nights may apply in respect of a single chargeable transaction or more than one chargeable transaction which relate to the right to reside in or at the same overnight accommodation for a number of consecutive nights,
- (b) the method by which the maximum is to be used to calculate the accommodation portion of a transaction and the amount of the levy (for example by disregarding nights beyond the maximum or by applying an average).

(1AC) Regulations specifying a maximum number in accordance with subsection (1AA)—

- (a) may specify different maximum numbers of nights for different purposes, but
- (b) may not specify different maximum numbers of nights for different areas.

(1AD) Before making regulations under this section, the Scottish Ministers must consult—

- (a) local authorities,
- (b) such persons as they consider to be representative of communities, businesses engaged in tourism and tourist organisations, and
- (c) such other persons as they consider appropriate.>

7th and 8th amendments - guidance power introduced as section 20A

Tom Arthur

In section 20A, page 10, line 34, at end insert—

<(2A) Guidance published under this section must in particular include guidance about—

- (a) other persons whom a local authority might consider to be affected or appropriate when the authority consults on a VL scheme under section 12(1)(b) or on the net proceeds of a VL scheme under section 17(2),
- (b) the process which a local authority might follow before determining any cases and circumstances in which the levy is not payable or reimbursed,
- (c) support or assistance which a local authority may provide to liable persons to operate in accordance with a VL scheme,
- (d) the matters to be considered by a local authority when deciding the objectives of a scheme, and
- (e) the matters to be considered by a local authority when deciding the use of the net proceeds of a scheme.>

Tom Arthur

In section 20A, page 11, line 9, at end insert <, or

- () add to, remove, or vary the description of the matters listed in subsection (2A) which must be included in the guidance.>

9th amendment - consultation requirements on regulations

Tom Arthur

In section 4, page 3, leave out line 13 and insert <—

- () local authorities,
- () such persons as they consider to be representative of communities, businesses engaged in tourism and tourist organisations, and
- () such other persons as they consider appropriate.>