

Visitor Levy (Scotland) Bill

[AS PASSED]

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Visitor Levy (Scotland) Bill

[AS PASSED]

An Act of the Scottish Parliament to give local authorities the power to impose a levy in respect of persons staying in certain types of accommodation overnight.

PART 1

VISITOR LEVY

5 **1 Power for local authorities to impose levy**

A local authority may impose a levy to be charged on the purchase of overnight accommodation (see section 4(1) for the meaning of overnight accommodation) which is to be—

- 10 (a) known as the visitor levy (referred to in this Act as “the levy”), and
 (b) introduced, administered and charged in accordance with this Act.

2 **2 Overview**

This Act is arranged as follows—

- 15 Part 2 contains provision on the key concepts underlying the levy,
 Part 3 contains provision on the introduction and administration of the levy,
 Part 4 contains provision on returns and payment of the levy,
 Part 5 contains provision on enforcement of the levy and penalties,
 Part 6 contains provision on registers of liable persons and information sharing,
 and
20 Part 7 contains provisions on regulation-making powers and commencement as well as other final provisions.

PART 2

KEY CONCEPTS

*Basis and calculation of levy***3 Levy to be charged on purchase of overnight accommodation**

- 5 (1) The levy—
- (a) is to be charged in respect of a chargeable transaction, and
 - (b) becomes payable when a person takes entry to the overnight accommodation in pursuance of the transaction (such a person is referred to in this Act as a “visitor”).
- 10 (2) In this Act, a “chargeable transaction” is a purchase for value of the right to reside in or at overnight accommodation situated within the area to which a VL scheme relates for a period of one or more nights (see section 11(1)(a) for the meaning of a VL scheme).
- (3) For the purpose of subsection (2), a reference to a night is a reference to—
- (a) any continuous period of 6 or more hours between 12 noon on one day and 12 noon on the following day which includes midnight, or
 - 15 (b) any combination of two or more individual periods totalling 6 hours or more where—
 - (i) the combined period occurs between 12 noon on one day and 12 noon on the following day, and
 - (ii) at least one of the individual periods begins before midnight and at least 20 one of the individual periods ends after midnight.

4 Meaning of overnight accommodation

- (1) In this Act, “overnight accommodation” means a room or area provided to a visitor for residential purposes in or at a type of accommodation listed in subsection (2) otherwise than as the visitor's only or usual place of residence.
- 25 (2) The types of accommodation are—
- (a) hotels,
 - (b) hostels,
 - (c) guest houses,
 - (d) bed and breakfast accommodation,
 - 30 (e) self catering accommodation,
 - (f) camping sites,
 - (g) caravan parks,
 - (i) accommodation in a vehicle, or on board a vessel, which is permanently or predominantly situated in one place,
 - 35 (j) 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.

- (3) But none of the types of accommodation in subsection (2) includes—
- (a) a local authority gypsy and traveller site or a registered social landlord gypsy and traveller site (those expressions having the same meaning as in Part 1 of schedule 1 of the Mobile Homes Act 1983), or
 - 5 (b) accommodation in a vehicle, or on board a vessel, that is undertaking a journey involving one or more overnight stops.
- (4) The Scottish Ministers may, by regulations, amend this section so as to—
- (a) add a type of accommodation to those included in subsection (2) or (3),
 - 10 (b) vary the description of a type of accommodation included in subsection (2) or (3), or
 - (c) remove a type of accommodation from being included in subsection (2) or (3).
- (4A) Before making regulations under subsection (4), the Scottish Ministers must consult—
- (a) local authorities,
 - 15 (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.
- (5) Regulations under subsection (4) are subject to the affirmative procedure.

5 Calculation of levy

- (1) The amount of the levy chargeable in respect of a chargeable transaction is calculated by—
- 20 (a) taking the accommodation portion of the transaction, and
 - (b) multiplying that amount by the percentage rate set by a local authority under section 6.
- (2) In subsection (1), the “accommodation portion” means the amount of the chargeable transaction that is attributable to the provision of the overnight accommodation.
- 25 (3) In particular, the accommodation portion does not include any amount reasonably attributable to the provision of—
- (a) meals or drinks,
 - 30 (b) parking for a motor vehicle (other than a parking area provided as overnight accommodation in respect of the transaction),
 - (c) laundry facilities or services,
 - (d) entertainment,
 - (e) transportation to or from the accommodation.
- (4) The Scottish Ministers may, by regulations, amend subsection (3) so as to add to, remove, or vary the description of, the facilities or services listed.
- 35 (5) Regulations under subsection (4) are subject to the negative procedure.

6 Rate for levy

- (1) A local authority seeking to introduce a VL scheme must set the percentage rate of the levy chargeable in respect of a chargeable transaction.
- (2) The percentage rate set under subsection (1)—
- 5 (a) may be different for different purposes or different areas within the local authority's area, but
- (b) may not be different in relation to different types of overnight accommodation.
- (3) The Scottish Ministers may by regulations specify the maximum percentage rate which a local authority may set under subsection (1).
- 10 (4) Regulations under subsection (3)—
- (a) may specify different maximum percentage rates for different purposes, but
- (b) may not specify different maximum percentage rates for different areas.
- (5) Before making regulations under subsection (3), the Scottish Ministers must consult—
- 15 (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.
- (6) Regulations under subsection (3) are subject to the affirmative procedure.

6A Maximum number of nights of overnight accommodation

- 20 (1) A local authority seeking to introduce a VL scheme may specify that a maximum number of nights may apply in respect of a chargeable transaction for the right to reside in or at that accommodation for a period of consecutive nights.
- (2) A local authority may only specify a maximum number of nights under subsection (1) if it has consulted—
- 25 (a) such persons as they consider to be representative of communities, businesses engaged in tourism and tourist organisations, and
- (b) such other persons as they consider appropriate.

7 Person liable to pay levy

30 The person liable to pay the levy charged in respect of a chargeable transaction is the person who—

- (a) provides overnight accommodation to a visitor in pursuance of the transaction, and
- (b) is the occupier of the premises at which that overnight accommodation is provided (such a person is referred to in this Act as “the liable person”).

8 Third party arrangements

- (1) The liable person may make arrangements for a person to—
- (a) collect a sum equivalent to the amount of the levy from visitors taking entry to overnight accommodation in pursuance of a chargeable transaction,
 - (b) make returns to a relevant local authority in accordance with section 23 (see section 21(2) for the meaning of relevant local authority),
 - (c) pay the levy to a relevant local authority in accordance with section 26, on behalf of the liable person.
- (2) Returns may be made by a person in pursuance of an arrangement under subsection (1)(b) only with the consent of the relevant local authority.
- (3) The making of an arrangement under subsection (1) does not affect the liable person's obligations under this Act.

9 Billing of overnight accommodation

- (1) The Scottish Ministers may, by regulations, specify requirements for the billing of overnight accommodation in respect of chargeable transactions.
- (2) Regulations under subsection (1) may, in particular, require persons to—
- (a) issue an invoice to a visitor entering into a chargeable transaction, which specifies separately—
 - (i) the cost of the overnight accommodation purchased,
 - (ii) the percentage rate of the levy chargeable in respect of the transaction,
 - (iii) the amount of the accommodation portion of the transaction and any deduction made under section 5(1)(b), and
 - (iv) the amount of levy chargeable in respect of the transaction.
 - (b) publish the cost (or costs) of overnight accommodation made available for purchase by the liable person, specifying separately—
 - (i) the amount attributable to the accommodation portion of the accommodation and any deduction made under section 5(1)(b),
 - (ii) the percentage rate of the levy chargeable in respect of the accommodation, and
 - (iii) the amount of levy chargeable in respect of the accommodation.
- (3) Regulations under subsection (1) are subject to the negative procedure.
- (4) In this section, the “accommodation portion” has the meaning given by section 5(2) and (3).

Exemptions and rebates

10 Exemptions and rebates

- (1) The Scottish Ministers may by regulations—
- (a) specify the cases or circumstances in which the levy (or a sum equivalent to the amount of the levy) is not payable or may be reimbursed,
 - (b) provide for the making of arrangements for the issuing of exemption vouchers to categories of visitors specified in the regulations who may enter into a chargeable transaction, for the purpose of demonstrating the application of circumstances in which a chargeable transaction is not subject to the levy.
- (1A) 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.
- (1B) Regulations specifying a maximum number in accordance with subsection (1A) 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).
- (1C) Regulations specifying a maximum number in accordance with subsection (1A)—
- (a) may specify different maximum numbers of nights for different purposes, but
 - (b) may not specify different maximum numbers of nights for different areas.
- (1D) 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.
- (2) Regulations under subsection (1) are subject to the affirmative procedure.

PART 3

INTRODUCTION AND ADMINISTRATION OF THE LEVY

Process

11 Scheme to impose levy

- (1) A local authority may—
- (a) introduce a scheme or schemes to impose the levy for all or part of its area (referred to in this Act as a “VL scheme”),

(b) modify a VL scheme, or

(c) revoke a VL scheme.

(2) A VL scheme may make different provision for different purposes or different areas within the local authority's area.

(3) Two or more local authorities may act jointly to make a VL scheme.

(4) In those circumstances—

(a) they must continue to act jointly in relation to the scheme in all respects, and

(b) unless the context requires otherwise, a reference in this Act to—

(i) a local authority, in relation to a VL scheme or to a proposed scheme, is a reference to the authorities acting jointly,

(ii) the area of a local authority is a reference to the combined areas of those authorities, and

(iii) the local tourism strategy of a local authority is a reference to any tourism strategy prepared by an authority which is in effect in all or part of the area to which the VL scheme applies.

12 Prior consultation on scheme

(1) Before introducing or modifying a VL scheme, a local authority must—

(a) prepare and publicise—

(i) an outline of the proposed scheme or (as the case may be) the scheme as it is proposed to be modified (“the proposal”),

(ia) a statement about the cases and circumstances under the proposal in which the levy (or a sum equivalent to the levy) is not payable or may be reimbursed,

(ii) a statement about the objectives of the proposal, including how the authority intends to measure and report on the achievement of those objectives, and

(iii) an assessment of the impacts of the proposal in the authority's area,

(b) consult—

(i) such persons as the authority considers to be representative of communities, businesses engaged in tourism and tourist organisations in its area,

(zia) in the case of a modification of a VL scheme, the VL forum for that scheme as established by the local authority in accordance with section 14A(1),

(ia) if any part of the area to which the VL scheme relates has been designated as a National Park, the National Park authority for that Park, and

(ii) such other persons as the authority considers likely to be affected by the proposal,

(c) prepare and publicise a report which—

(i) summarises the consultation responses received,

(ii) states whether or not the authority intends to proceed with the proposal (or the proposal as modified in light of the consultation), and

(iii) sets out the authority's reasons for whether or not it intends to proceed.

- (2) For the purposes of subsection (1)(a)(ii) the objectives must relate to developing, supporting or sustaining facilities or services which are substantially for or used by persons visiting the scheme area for leisure or business purposes (or both).
- 5 (3) For the purposes of subsection (1)(a)(iii) the assessment must, in particular, set out what the local authority considers to be the likely effects of the proposal on—
- (a) persons living within the scheme area, and
 - (b) such other persons as the authority considers likely to be affected by the proposal.
- 10 (4) Before revoking a VL scheme, a local authority must publicise the proposed revocation of the scheme.

13 Required content of a scheme

- (1) A VL scheme must specify—
- (a) the scheme area,
 - (b) the date on which the scheme is to come into force,
 - 15 (c) the scheme period (that is, the period during which the scheme is to remain in force (which may be indefinitely)),
 - (d) when during the scheme period a purchase of the right to reside in or at overnight accommodation is to give rise to the levy (which may be at all times during the scheme period),
 - 20 (e) the percentage rate (or rates) of the levy set by the local authority under section 6,
 - (ea) the scheme's objectives,
 - (f) arrangements for the review of decisions by the authority in relation to the scheme,
 - (g) the cases or circumstances in which the levy (or a sum equivalent to the levy) is not payable or may be reimbursed,
 - 25 (ga) that the levy (or a sum equivalent to the levy) is not payable or is to be reimbursed in a case where the visitor or any other person utilising the right to reside in the overnight accommodation is in receipt of benefits, payments or allowances for a disability—
 - 30 (i) under section 71 of the Social Security Contributions and Benefits Act 1992 (disability living allowance),
 - (ii) specifically for working age people given in accordance with regulations made under section 31 of the Social Security (Scotland) Act 2018 (disability assistance),
 - 35 (iii) under section 64 of the Social Security Contributions and Benefits Act 1992 (attendance allowance),
 - (iv) specifically for older people given in accordance with regulations made under section 31 of the Social Security (Scotland) Act 2018 (pension age disability benefit), or

- (v) under Part 4 of the Welfare Reform Act 2012 (personal independence payment),
- (gb) arrangements for the administration of the exemption or reimbursement specified in accordance with paragraph (ga), including the evidence required and manner in which it may be demonstrated that a visitor or other person is in receipt of the relevant benefit, payment or allowance,
- (h) arrangements for the reimbursement of the levy (or a sum equivalent to the levy) to a visitor who has (or a category of visitors who have) entered into a chargeable transaction, and
- (i) the manner in which the authority intends to make decisions on the use of the net proceeds of the scheme.
- (1A) For the purposes of subsection (1)(g), the VL scheme must specify whether the levy is not payable in relation to accommodation which has an annual turnover below the VAT threshold.
- (2) The date on which a VL scheme is to come into force, or on which a significant modification is to take effect, must be at least 18 months after the date 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.
- (3) The Scottish Ministers may by regulations amend subsection (1) so as to—
- (a) add something that a VL scheme must specify, or
- (b) remove, or vary the description of, any of the required content of a VL scheme listed in subsection (1) (except subsection (1)(e)).
- (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.
- (4) Regulations under this section are subject to the affirmative procedure.
- (5) In this section, “the VAT threshold” means the amount for the time being specified in paragraph 1(1)(a) of schedule 1 of the Value Added Tax Act 1994.

14 Publicity for introduction of scheme

- (1) As soon as reasonably practicable after the date of its decision to introduce a VL scheme, the local authority must—
- (a) notify the Scottish Ministers of its decision to introduce a VL scheme, and
 - (b) publicise—
 - (i) its decision to introduce a VL scheme, and
 - (ii) the proposed date on which the VL scheme is to come into force.
- (2) The Scottish Ministers may by regulations make further provision about how local authorities must publicise the matters mentioned in subsection (1)(b).
- (3) Regulations under subsection (2) are subject to the negative procedure.

14A Visitor levy forum

- (1) A local authority operating a VL scheme must—
- (a) by no later than 6 months after the date of its decision to introduce a VL scheme, establish a forum for the scheme (“the VL forum”) to carry out the functions set out in subsection (2),
 - (b) maintain the VL forum for the duration of the scheme, and
 - (c) ensure that the VL forum—
 - (i) is able to carry out those functions, and
 - (ii) meets on a regular basis, being not less than 2 times in each calendar year.
- (2) The functions of the VL forum are—
- (a) to discuss and advise the authority and any other person or body consulting the forum on matters having to do with the VL scheme,
 - (b) to discuss and respond to each—
 - (i) consultation on a modification of the VL scheme under section 12(1)(b), and
 - (ii) consultation on the use of net proceeds of the VL scheme under section 17(2), and
 - (c) to discuss and make such representations as are considered appropriate in relation to each—
 - (i) annual report on the VL scheme under section 18, and
 - (ii) report setting out the findings of a review of the VL scheme under section 19.
- (3) The VL forum is to consist of such persons as are appointed to it by the local authority operating the VL scheme.
- (4) The local authority must ensure that the membership of the VL forum—
- (a) includes such persons as the authority considers to be representative of communities, businesses engaged in tourism and tourist organisations in its area, and

(b) consists of a reasonable balance of such persons.

(5) The local authority may appoint one or more of its own members to the VL forum, provided that local authority members do not form a majority of the members of the VL forum.

5 (6) If there is more than one VL scheme for different parts of a local authority area—

(a) more than one VL forum may be established for the area of a local authority, but

(b) a single VL forum may be established for the purposes of this section and the schemes in the different parts of a local authority area.

15 Transitional provision

10 (1) The levy must not be charged in respect of a chargeable transaction that is paid for (in full or part) before the date of the local authority's decision to introduce a VL scheme.

(2) The levy may be charged in respect of a chargeable transaction that is paid for (in full or in part) after the date of the local authority's decision to introduce a VL scheme but before the date on which the VL scheme comes into force, if the visitor takes entry to the accommodation that the transaction relates to after the date on which the scheme comes into force.

Finances

16 Duty to keep separate account for scheme

(1) A local authority operating a VL scheme must keep an account for the scheme.

20 (2) The authority must, for each financial year—

(a) credit the account with the amount of money received under the VL scheme (including any money received from penalties), and

(b) debit the account with the expenses of operating the scheme.

25 (3) The Scottish Ministers may by regulations make provision for or about the keeping of accounts by local authorities in connection with their functions under this Act.

(4) Regulations under subsection (3) may, in particular—

(a) specify the form of accounts,

(b) require the publication of a statement of account, and specify the manner in which it must be published,

30 (c) make provision about what may or must be done jointly where a VL scheme is made jointly.

(5) Regulations under subsection (3) are subject to the negative procedure.

17 Use of net proceeds of scheme

- (1) A local authority operating a VL scheme must use the net proceeds of the scheme (or, in the case of a joint scheme, the authority's share of the net proceeds) for the purposes of—
- 5 (a) facilitating the achievement of the scheme's objectives (as set out in the statement publicised by the authority under section 12(1)(a)(ii)), and
- (b) so far as not needed for the achievement of the scheme's objectives, otherwise developing, supporting and sustaining facilities and services which are substantially for or used by persons visiting—
- 10 (i) the area of the local authority, or
- (ii) in the case of a joint scheme, the area of the local authority or the area of a local authority with whom the authority is acting jointly,
- for leisure or business purposes (or both).
- (2) In using the net proceeds of the VL scheme, a local authority must—
- 15 (a) from time to time, consult—
- (i) such persons as the authority considers to be representative of communities, businesses engaged in tourism and tourist organisations in its area,
- (zia) the VL forum for that scheme as established by the local authority in accordance with section 14A(1),
- 20 (ia) if any part of the area to which the VL scheme relates has been designated as a National Park, the National Park authority for that Park,
- (ii) such other persons as the authority considers appropriate,
- (b) have regard to its local tourism strategy (if any), and
- 25 (c) if any part of the area to which the VL scheme relates has been designated as a National Park, have regard to the National Park Plan for that Park as adopted under section 12(7)(a) of the National Parks (Scotland) Act 2000.
- (3) Before using any share of net proceeds under subsection (1)(b)(ii) in respect of a facility or service outside its own area, the authority must also be satisfied that doing so will benefit some part of its own area.
- 30 (4) In this section, “net proceeds” means the amount of money (if any) by which the gross amount received under the VL scheme for a financial year exceeds the expenses of operating the scheme for the financial year.

Performance

18 Annual reporting on scheme

- 35 (1) A local authority operating a VL scheme must prepare a report on the scheme in respect of each reporting period, including information on—
- (a) the amount of money collected under the scheme,
- (b) how the net proceeds of the scheme have been used, and
- 40 (c) the performance of the scheme by reference to its objectives (as set out in the statement publicised by the authority under section 12(1)(a)(ii)).

- (2) A local authority must publish the report—
- (a) as soon as reasonably practicable after the end of the reporting period, and
 - (b) in such manner as it considers appropriate.
- (2A) The local authority must provide a copy of the published report to the VL forum for that scheme established by the local authority in accordance with section 14A(1).
- (3) The Scottish Ministers may by regulations make further provision about the content of reports under this section.
- (4) Regulations under subsection (3) are subject to the negative procedure.
- (5) In this section—
- “net proceeds” has the same meaning as in section 17,
- “reporting period” means—
- (a) in the case of the first report, any period determined by the local authority of a maximum of 18 months beginning with the date on which the scheme came into force,
 - (b) in any other case, the period of 12 months beginning with the date on which the previous reporting period ended.

19 Review of scheme

- (1) A local authority operating a VL scheme must review the scheme—
- (a) before the end of the period of 3 years beginning with the date on which the scheme came into force, and
 - (b) before the end of each subsequent period of 3 years.
- (2) The local authority must, as soon as reasonably practicable after carrying out such a review, publish a report setting out its findings.
- (3) The local authority must provide a copy of the published report to the VL forum for that scheme established by the local authority in accordance with section 14A(1).

20 Scottish Ministers' power to regulate process

- (1) The Scottish Ministers may by regulations make further provision about, or in connection with, the process to be followed by a local authority when introducing, administering, reporting on or reviewing a VL scheme.
- (2) Regulations under this section are subject to the affirmative procedure.

20A Guidance on visitor levy scheme

- (1) A local authority must, when exercising a function under Part 3 of this Act, have regard to any guidance published under this section.
- (2) VisitScotland must—
- (a) prepare and publish guidance for local authorities about the operation of Part 3 of this Act, and

(b) from time to time review the guidance published under this section and, if it considers it appropriate, publish updated guidance.

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

5 (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,

10 (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.

15 (3) Before publishing guidance (or updated guidance) under this section, VisitScotland must send a draft of the guidance to the Scottish Ministers for approval.

(4) The Scottish Ministers may—

(a) approve draft guidance submitted to them under subsection (3),

(b) reject the draft guidance, or

20 (c) require VisitScotland to modify the guidance in such manner as the Scottish Ministers may specify.

(5) The Scottish Ministers may by regulations modify this section so as to—

(a) substitute a different body for the one which is for the time being subject to the duties in subsections (2) and (3), or

25 (b) make more than one body responsible for preparing and publishing or reviewing the guidance,

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

30 (6) If regulations under subsection (5) substitute the Scottish Ministers as the body responsible for publishing the whole or part of guidance, the requirements in subsections (3) and (4) do not apply to the duties of the Scottish Ministers.

(7) Regulations under subsection (5) are subject to the affirmative procedure.

PART 4

RETURNS AND PAYMENT

CHAPTER 1

DELEGATION OF FUNCTIONS

5 **21 Delegation of collection and enforcement functions**

- (1) A relevant local authority may authorise a person to carry out its functions under—
- (a) section 23(1) (receipt of returns),
 - (b) section 26 (receipt of levy payments),
 - 10 (c) Part 5 (enforcement of the levy and penalties), except section 61 (power of local authorities to reduce, suspend or waive penalties),
 - (d) section 69 (registers of liable persons).
- (2) In this Act, “relevant local authority” means (subject to subsection (3)) a local authority which has introduced a VL scheme.
- (3) Where a person is authorised to carry out functions under any of the provisions or Parts mentioned in subsection (1), references to “relevant local authority” in the particular
15 provision or Part include that person.
- (4) Delegation of a function under this section does not affect a local authority's—
- (a) ability to exercise that function,
 - (b) responsibility for that function.

20 **CHAPTER 2**

RETURNS

22 Interpretation

- (1) References in this Act to the making of returns are to the making of returns that comply with the requirements of this Part.
- 25 (2) References in this Part to the relevant period are to the period mentioned in section 23(4).

23 Duty to make returns

- (1) The liable person must make returns to the relevant local authority.
- (2) Returns must—
- 30 (a) include an assessment of the amount of the levy payable in respect of the relevant period, and
 - (b) be made before the end of the period of 30 days beginning with the end of each relevant period.
- (3) For the purposes of subsection (2)(a)—
- 35 (a) the amount of the levy payable by a liable person in respect of each relevant period is the total amount of the levies (calculated in accordance with section 5)

in respect of all chargeable transactions entered into by the liable person during that period, and

- (b) where the liable person is the occupier of more than one set of premises within the area to which the VL scheme relates, the return must include assessments of the amount of the levy payable for each set of premises.

(4) The relevant period means—

- (a) each quarter, or
 (b) such period or periods specified by a relevant local authority in the VL scheme to which the return relates.

24 Form and content of return

A return under this Act must—

- (a) be in the form specified by the relevant local authority,
 (b) contain such information specified by the relevant local authority, and
 (c) be made in such manner as specified by the relevant local authority.

25 Duty to keep and preserve records

(1) A liable person must—

- (a) keep any records that may be needed to enable the person to make a correct and complete return, and
 (b) preserve those records in accordance with this section.

(2) The duty in subsection (1)—

- (a) also applies to any person with whom a liable person has made an arrangement under section 8(1)(b), as it applies to a liable person, and
 (b) applies to a liable person whether or not such an arrangement has been made.

(3) The records mentioned in subsection (1) must be preserved for—

- (a) 5 years from the date on which a return is made, or
 (b) such other period specified by the relevant local authority.

(4) The records required to be kept and preserved under subsection (1) include—

- (a) details of any chargeable transactions entered into during the period to which the return relates,
 (b) records of payments, receipts and financial arrangements associated with those chargeable transactions, and
 (c) such other records specified by a relevant local authority in a VL scheme.

CHAPTER 3

PAYMENT

26 Payment of levy

- 5
- (1) The levy payable in respect of a chargeable transaction must be paid to the relevant local authority.
 - (2) Where a return is to be made under section 23, the total amount of the levy payable for the relevant period must be paid at the same time as the return is made.
 - (3) The levy is treated as paid if arrangements satisfactory to the relevant local authority are made for payment of the levy.

10

PART 5

ENFORCEMENT OF THE LEVY AND PENALTIES

CHAPTER 1

INVESTIGATORY POWERS

Information notices

15

27 Power to obtain information and documents from the liable person

- 20
- (1) If the condition in subsection (2) is met, an authorised officer may by notice require a liable person to—
 - (a) provide information, or
 - (b) produce a document.
 - (2) That condition is that—
 - (a) the information or document is reasonably required by the officer for the purpose of assessing the liable person's liability to pay the levy, and
 - (b) it is reasonable for the liable person to be required to provide the information or to produce the document.
 - (3) A notice under this section must specify or describe the information or documents to be provided or produced.
 - (4) In this Part—
 - (a) “liability to pay the levy” in relation to a liable person, means the person's past, present and future liability to pay—
 - (i) the levy, and
 - (ii) any penalties or other amounts that have been paid, or are or may be payable by that person in connection with the levy,
 - (b) “assessing the liable person's liability to pay the levy” includes carrying out an investigation or enquiry of any kind,
 - (c) an “authorised officer”, in relation to a relevant local authority, means a person authorised in writing by the authority, and
 - (d) an “information notice” means a notice given under this section or section 28.
- 35

28 Power to obtain information and documents from third parties

- (1) If the condition in subsection (2) is met, an authorised officer may by notice require a person to—
- (a) provide information, or
 - (b) produce a document,
- in respect of a liable person.
- (2) That condition is that—
- (a) the information or document is reasonably required by the officer for the purpose of assessing the liable person's liability to pay the levy, and
 - (b) it is reasonable for the person to be required to provide the information or to produce the document.
- (3) A notice under this section must specify or describe the information or documents to be provided or produced.

29 Complying with information notices

- (1) Where a person is required by an information notice to provide information or produce a document, the person must do so—
- (a) within such period, and
 - (b) at such time, by such means and in such form (if any), as is reasonably specified or described in the notice.
- (2) Where an information notice requires a person to produce a document, it must be produced—
- (a) at a place agreed to by that person and an authorised officer, or
 - (b) at such place as an authorised officer may reasonably specify.
- (3) An authorised officer must not specify for the purposes of subsection (2)(b) a place that is used solely as a dwelling.

30 Producing copies of documents

- (1) Where an information notice requires a person to produce a document, the person may comply with the notice by producing a copy of the document.
- (2) Subsection (1) does not apply where—
- (a) the notice requires the person to produce the original document, or
 - (b) an authorised officer subsequently makes a request to the person for the original document.
- (3) Where an authorised officer requests a document under subsection (2)(b), the person to whom the request is made must produce the document—
- (a) within such period, and
 - (b) at such time and by such means (if any), as is reasonably requested by the authorised officer.

31 Further provision about powers relating to information notices

- (1) The Scottish Ministers may by regulations make further provision about—
- (a) the form and content of information notices,
 - (b) the time periods for complying with information notices, and
 - (c) the manner of complying with information notices.
- (2) Regulations under subsection (1) are subject to the negative procedure.

32 Information notices: general restrictions

- (1) An information notice requires a person to produce a document only if it is in the person's possession or power.
- (2) An information notice may not require a person to produce a document if the whole of the document originates more than 5 years before the date of the notice.

33 Types of information

- (1) An information notice does not require a person to provide or produce journalistic material (or information contained in such material).
- (2) In subsection (1), “journalistic material” means material acquired or created for the purposes of journalism.
- (3) Material is to be treated as journalistic material if it is in the possession of someone who acquired or created it for the purposes of journalism.
- (4) A person who receives material from someone who intends that the recipient will use it for the purposes of journalism is to be taken to have acquired it for those purposes.
- (5) An information notice does not require a person to provide or produce personal records or information contained in such records, subject to subsection (7).
- (6) In subsection (5) “personal records” means documentary and other records concerning an individual (“P”) (whether living or dead) who can be identified from them and relating—
- (a) to P's physical or mental health,
 - (b) to spiritual counselling or assistance given or to be given to P, or
 - (c) to counselling or assistance given or to be given to P, for the purposes of P's personal welfare, by any voluntary organisation or by any individual who—
 - (i) by reason of an office or occupation has responsibilities for P's personal welfare, or
 - (ii) by reason of an order of a court has responsibilities for P's supervision.
- (7) An information notice may require a person—
- (a) to produce documents (or copies of documents) that are personal records, omitting any information whose inclusion (whether alone or with other information) makes the original documents personal records (“personal information”), and
 - (b) to provide any information contained in such records that is not personal information.

34 Protection for privileged communications between legal advisers and clients

- (1) An information notice does not require a person—
- (a) to provide privileged information, or
 - (b) to produce any part of a document that is privileged.
- (2) For the purposes of this Part, information or a document is privileged if it is information or a document in respect of which a claim to confidentiality of communications as between client and professional legal adviser could be maintained in legal proceedings.

Inspection powers

35 Power to inspect business premises

- (1) If the condition in subsection (2) is met, an authorised officer may enter a liable person's business premises and inspect—
- (a) the premises,
 - (b) business documents that are on the premises.
- (2) That condition is that the authorised officer has reason to believe that the inspection is reasonably required for the purpose of assessing the liable person's liability to pay the levy.
- (3) The powers under this section do not include power to enter or inspect any part of the premises that is used solely as a dwelling.
- (4) In subsection (1)—
- “business documents” means documents or copies of documents—
 - (a) that relate to the carrying on of a business by any person, and
 - (b) that form part of the records which require to be kept or preserved by or under this Act.
- (5) In this Chapter—
- “business premises” in relation to a liable person or third party, means premises (or any part of premises) that an authorised officer has reason to believe are (or is) used in connection with the carrying on of a business by or on behalf of the person,
 - “carrying on a business” includes the letting of property and the activities of a charity,
 - “premises” includes any building or structure, any land and any means of transport.

36 Power to inspect business premises of third parties

- (1) If the condition in subsection (2) is met, an authorised officer may enter business premises of an involved third party and inspect—
- (a) the premises, and
 - (b) relevant documents that are on the premises.

(2) That condition is that the authorised officer has reason to believe that the inspection is reasonably required for the purpose of assessing the liable person's liability to pay the levy.

(3) In this section—

5 “involved third party” means—

(a) a person with whom a liable person has entered into an arrangement under section 8, or

(b) a person who is, or a category of persons who are, specified by the Scottish Ministers by regulations,

10 “relevant documents” means such documents as may be so specified.

(4) The powers under this section do not include power to enter or inspect any part of the premises that is used solely as a dwelling.

(5) Regulations under subsection (3) are subject to the affirmative procedure.

37 Carrying out inspections under section 35 and 36

15 (1) An inspection under section 35 or 36 may be carried out only—

(a) at a time agreed to by the occupier of the premises, or

(b) if subsection (2) is satisfied, at any reasonable time.

(2) This subsection is satisfied if—

20 (a) the occupier of the premises has been given at least 7 days' notice in writing of the time of the inspection, or

(b) the authorised officer has reasonable grounds for believing that giving notice of the inspection would seriously prejudice—

(i) the assessment of the liable person's liability to pay the levy, or

(ii) the payment of the levy by the liable person.

25 (3) An authorised officer seeking to carry out an inspection by virtue of subsection (2)(b) must provide a notice in writing as follows—

(a) if the occupier of the premises is present at the time the inspection is to begin, the notice must be provided to the occupier,

30 (b) if the occupier of the premises is not present but a person who appears to the officer to be in charge of the premises is present, the notice must be provided to that person,

(c) in any other case, the notice must be left in a prominent place on the premises.

(4) The notice referred to in subsection (2)(a) or (3) must state the possible consequences of obstructing the authorised officer in the exercise of the power.

38 Carrying out inspections under section 35 or 36: further provision

35 (1) An authorised officer carrying out an inspection under section 35 or 36 has the following powers.

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- (2) On entering the premises, the officer may take any person authorised by the officer and, if the officer has reasonable cause to apprehend any serious obstruction in the execution of the inspection, a constable.
- 5 (3) Subject to subsection (6), on entering the premises, the officer or a person authorised by the officer may take any equipment or materials required for any purpose for which the inspection is being carried out.
- (4) The officer may make such examination or investigation the officer considers to be necessary in the circumstances.
- 10 (5) The officer may direct that the premises or any part of them, or anything in them, be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of any such examination or investigation.
- (6) An officer or authorised person may exercise the power mentioned in subsection (3) only—
- 15 (a) at a time agreed to by the occupier of the premises, or
- (b) if subsection (7) is satisfied, at any reasonable time.
- (7) This subsection is satisfied if—
- (a) in a case where notice was given under section 37(2)(a), that notice informed the occupier of the premises that the officer or authorised person intended to exercise the power mentioned in subsection (3), or
- 20 (b) the officer has reasonable grounds for believing that giving notice of the exercise of that power would seriously prejudice—
- (i) the assessment of the liable person's liability to pay the levy, or
- (ii) the payment of the levy by the liable person.
- 25 (8) Section 37(3) and (4) apply to the exercise of the power mentioned in subsection (3) by virtue of subsection (7)(b) as they apply to an inspection carried out by virtue of section 37(2)(b).

39 Power to copy and remove documents

- (1) Where a document is produced to, or inspected by, an authorised officer, the officer may take copies of, or make extracts from, the document.
- 30 (2) Where a document is produced to, or inspected by, an authorised officer, the officer may—
- (a) remove the document at a reasonable time, and
- (b) retain it for a reasonable period, if it appears to the officer to be necessary to do so.
- 35 (3) Where a document is removed in accordance with subsection (2), the person who produced the document may request—
- (a) a receipt for the document, and
- (b) a copy of the document.
- (4) An authorised officer must comply with a request under subsection (3) without charge.

- (5) Where a document removed under this section is lost or damaged, the relevant local authority is liable to compensate the owner of the document for any expenses reasonably incurred in replacing or repairing the document.
- (6) In this section, references to a document include a copy of a document.

5 **40 Restriction on inspection of documents**

An authorised officer may not inspect a document whilst carrying out an inspection under this Chapter if (or to the extent that), by virtue of sections 27 to 34, an information notice given at the time of the inspection to the occupier of the premises could not require the occupier to produce the document.

10 **41 Electronic records**

- (1) This section applies to any provision of this Chapter or Chapter 2 (penalties) that—
 - (a) requires a person to provide information or produce a document or cause a document to be produced,
 - (b) requires a person to permit an authorised officer—
 - 15 (i) to inspect a document, or
 - (ii) to make or take copies of or extracts from or remove a document,
 - (c) makes provision about penalties in connection with the provision of information or production or inspection of documents, including with the failure to provide information, or to produce or permit the inspection of documents, or
 - 20 (d) makes any other provision in connection with a requirement mentioned in paragraph (a) or (b).
- (2) A provision to which this section applies has effect as if—
 - (a) any reference in the provision to information were a reference to information held in any form,
 - 25 (b) any reference in the provision to a document were a reference to anything in which information of any description is recorded, and
 - (c) any reference in the provision to a copy of a document were a reference to anything onto which information recorded in the document has been copied, by whatever means and whether directly or indirectly.
- 30 (3) An authorised officer may, at any reasonable time, obtain access to, inspect and check the operation of, any electronic device and any associated apparatus or material which is or has been used in connection with relevant information or a relevant document.
- (4) In subsection (3)—
 - 35 “relevant document” means a document that a person has been, or may be, required by or under a provision of this Part—
 - (a) to produce or cause to be produced, or
 - (b) to permit an authorised officer—
 - (i) to inspect,
 - (ii) to make or take copies of or extracts from, or

(iii) to remove,

“relevant information” means information that a person has been, or may be, required by or under a provision of this Part to provide.

(5) An authorised officer may require—

- (a) the person by whom or on whose behalf the electronic device is or has been so used, or
- (b) any person having charge of, or otherwise concerned with the operation of, the electronic device, apparatus or material,

to provide the authorised officer with such reasonable assistance as may be required for the purposes of subsection (3).

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—

- 5
- (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.

CHAPTER 2

PENALTIES

10

Power to impose penalties

42 Power of local authorities to impose penalties

A relevant local authority may impose penalties on a person in accordance with this Chapter.

Penalty for failure to make returns

15

43 Penalty for failure to make returns

- (1) A penalty is payable by a liable person (“P”) where P fails to make a return in accordance with section 23.
- (2) P is liable to a penalty under this section as determined by a relevant local authority.
- (3) In sections 44, 45 and 46 “penalty date”, in relation to a return, means the day after the day on which a return must be made under section 23.

20

44 Three month penalty for failure to make return

- (1) P is liable to a penalty under this section if—
 - (a) P's failure continues after the end of the period of 3 months beginning with the penalty date,
 - (b) the relevant local authority decides that such a penalty should be payable, and
 - (c) the relevant local authority gives notice to P specifying the date from which the penalty is payable.
- (2) The penalty under this section is to be determined by a relevant local authority for each day that the failure continues during the period of 90 days beginning with the date specified in the notice given under subsection (1)(c).
- (3) The date specified in the notice under subsection (1)(c)—
 - (a) may be earlier than the date on which the notice is given, but
 - (b) may not be earlier than the end of the period mentioned in subsection (1)(a).

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45 Six month penalty for failure to make return

- (1) P is liable to a penalty under this section if P's failure continues after the end of the period of 6 months beginning with the penalty date.
- (2) The penalty under this section is to be determined by a relevant local authority.

46 Twelve month penalty for failure to make return

- (1) P is liable to a penalty under this section if P's failure continues after the end of the period of 12 months beginning with the penalty date.
- (2) Where, by failing to make the return, P deliberately withholds information which would enable or assist a relevant local authority to assess P's liability to pay the levy, the penalty under this section is to be determined by a relevant local authority.
- (3) In any case not falling within subsection (2), the penalty under this section is to be determined by a relevant local authority

47 Reasonable excuse for failure to make return

- (1) If P satisfies the relevant local authority that there is a reasonable excuse for a failure to comply with section 23, liability to a penalty under sections 43 to 46 does not arise in relation to that failure.
- (2) For the purposes of subsection (1)—
 - (a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside P's control,
 - (b) where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the failure, and
 - (c) where P had a reasonable excuse for the failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

Penalty for failure to pay levy

48 Penalty for failure to pay levy

- (1) A penalty is payable by a liable person ("P") where—
 - (a) P fails to pay the total amount of the levy payable in accordance with section 26(2),
 - (b) the local authority has reminded P that payment is due, and
 - (c) the period of 14 days beginning with the day on which the reminder is given expires without payment having been made.
- (2) P is liable to a penalty as determined by a relevant local authority.
- (3) If any amount of the levy remains unpaid after the end of the period of 5 months beginning with the penalty date, P is liable to an additional penalty as determined by a relevant local authority.

- (4) If any amount of the levy remains unpaid after the end of the period of 11 months beginning with the penalty date, P is liable to an additional penalty as determined by a relevant local authority.
- (5) In this section, “penalty date”, in relation to an amount of the levy, means the day after the day on which the period mentioned in subsection (1)(c) expired.

49 Reasonable excuse for failure to pay levy

- (1) If P satisfies the relevant local authority that there is a reasonable excuse for a failure to comply with section 26, liability to a penalty under section 48 does not arise in relation to that failure.
- (2) For the purposes of subsection (1)—
- (a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside P's control,
 - (b) where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the failure, and
 - (c) where P had a reasonable excuse for the failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

Penalty for failure to keep and preserve records

50 Penalty for failure to keep and preserve records

- (1) A person (“P”) who fails to comply with section 25 in relation to a return is liable to a penalty as determined by a relevant local authority, subject to the following exception.
- (2) No penalty is incurred if the relevant local authority is satisfied that any facts that it reasonably requires to be proved, and that would have been proved by the records, are proved by other documentary evidence provided to the authority.

51 Reasonable excuse for failure to keep and preserve records

- (1) If P satisfies the relevant local authority that there is a reasonable excuse for a failure to comply with section 25, liability to a penalty under section 50 does not arise in relation to that failure.
- (2) For the purposes of subsection (1)—
- (a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside P's control,
 - (b) where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the failure, and
 - (c) where P had a reasonable excuse for the failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

Penalties for failure to comply or obstruction

52 Penalties for failure to comply or obstruction

- (1) This section applies to a person who—
- (a) fails to comply with an information notice, or
 - (b) deliberately obstructs an authorised officer or a person authorised by the officer in the course of an inspection.
- (2) The person is liable to a penalty as determined by a relevant local authority.
- (3) The reference to a person who fails to comply with an information notice includes a person who conceals, destroys or otherwise disposes of (or arranges for the concealment, destruction or disposal of) a document in breach of section 56 or section 57.

53 Daily default penalties for failure to comply or obstruction

- (1) This section applies if the failure or obstruction mentioned in section 52(1) continues after the date on which a penalty is imposed under that section in respect of the failure or obstruction.
- (2) The person is liable to a further penalty or penalties as determined by a relevant local authority for each subsequent day on which the failure or obstruction continues.

54 Reasonable excuse for failure to comply or obstruction

- (1) Liability to a penalty under section 52 or 53 does not arise if the person satisfies the relevant local authority that there is a reasonable excuse for the failure or the obstruction of an authorised officer or of a person authorised by the officer.
- (2) For the purposes of this section—
- (a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside the person's control,
 - (b) where the person relies on another person to do anything, that is not a reasonable excuse unless the first person took reasonable care to avoid the failure or obstruction, and
 - (c) where the person had a reasonable excuse for the failure or obstruction but the excuse has ceased, the person is to be treated as having continued to have the excuse if the failure is remedied, or the obstruction stops, without unreasonable delay after the excuse ceased.

Penalties for inaccurate information or documents

55 Penalties for inaccurate information or documents

- (1) This section applies if—
- (a) in complying with an information notice, a person provides inaccurate information or produces a document that contains an inaccuracy, and
 - (b) condition A, B or C is met.
- (2) Condition A is that the inaccuracy is careless or deliberate.

- (3) An inaccuracy is careless if it is due to a failure by the person to take reasonable care.
- (4) Condition B is that the person knows of the inaccuracy at the time the information is provided or the document produced but does not inform the relevant local authority at that time.
- 5 (5) Condition C is that the person—
- (a) discovers the inaccuracy some time later, and
 - (b) fails to take reasonable steps to inform the relevant local authority.
- (6) The person is liable to a penalty as determined by a relevant local authority.
- 10 (7) Where the information or document contains more than one inaccuracy, a penalty is payable for each inaccuracy.

Concealing, destroying etc. documents

56 Concealing, destroying etc. documents following information notice

- 15 (1) A person must not conceal, destroy or otherwise dispose of (or arrange for the concealment, destruction or disposal of) a document that is the subject of an information notice addressed to the person, unless subsection (2) or (3) applies.
- (2) Subsection (1) does not apply if the person acts after the document has been produced to an authorised officer in accordance with the information notice, unless an authorised officer has notified the person that the document must continue to be available for inspection (and has not withdrawn the notification).
- 20 (3) Subsection (1) does not apply, in a case to which section 30 applies, if the person acts after the expiry of the period of 6 months beginning with the day on which a copy of the document was produced in accordance with that section unless, before the expiry of that period, an authorised officer made a request for the original document under section 30(2)(b).

25 **57 Concealing, destroying etc. documents following information notification**

- (1) A person must not conceal, destroy or otherwise dispose of (or arrange for the concealment, destruction or disposal of) a document if an authorised officer has notified the person that the document is to be, or is likely to be, the subject of an information notice addressed to that person, unless subsection (2) applies.
- 30 (2) Subsection (1) does not apply if—
- (a) at least 6 months has expired since the person was (or was last) so notified, or
 - (b) an information notice has been given to the person requiring the document to be produced.

Assessment and enforcement of penalties

35 **58 Assessment of penalties**

- (1) Subsection (2) applies where—
- (a) a person becomes liable for a penalty under this Chapter, and
 - (b) the relevant local authority decides to impose a penalty in respect of that liability.

- (2) The relevant local authority must—
- (a) assess the penalty, and
 - (b) notify the person.
- (3) An assessment of a penalty under this Chapter must be made within the period of 12 months beginning with the date on which the person became liable to the penalty, subject to subsections (4) and (5).
- (4) In a case involving an information notice against which a person may appeal, an assessment of a penalty under section 52 or 53 must be made within the period of 12 months beginning with the latest of the following—
- (a) the date on which the person became liable to the penalty,
 - (b) the end of the period in which notice of an appeal against the information notice could have been given, and
 - (c) if notice of such an appeal is given, the date on which the appeal is determined or withdrawn.
- (5) An assessment of a penalty under section 55 must be made—
- (a) within the period of 12 months beginning with the date on which the inaccuracy first came to the attention of an authorised officer, and
 - (b) within the period of 6 years beginning with the date on which the person became liable to the penalty.

59 Enforcement of penalties

A penalty under this Chapter must be paid before the end of the period of 30 days beginning with the date on which the notification under section 58 was issued.

60 Failure to comply with time limit

A failure by a person to do anything required to be done within a limited period of time, does not give rise to liability to a penalty under section 52 or 53 if the person did it within such further time (if any) as an authorised officer may have allowed.

61 Power of local authorities to reduce, suspend or waive penalties

- (1) A relevant local authority may reduce a penalty under this Chapter if it considers it appropriate to do so because of special circumstances.
- (2) In subsection (1), “special circumstances” does not include ability to pay.
- (3) In subsection (1), the reference to reducing a penalty includes a reference to—
 - (a) waiving a penalty entirely,
 - (b) suspending a penalty, and
 - (c) agreeing a compromise in relation to proceedings for a penalty.
- (4) In this section, references to a penalty include references to any interest in relation to the penalty.

Interest

62 Interest on unpaid levy

- (1) Interest is payable on the amount of any unpaid levy from the day after the date on which the levy must be paid in accordance with section 26(2).
- (2) If an amount is paid to the relevant local authority in respect of the unpaid levy, the amount on which interest is payable is reduced by that amount.
- (3) Interest under this section is calculated at the rate specified in provision made under section 64.

63 Interest on penalties

- (1) Interest is payable on the amount of any unpaid penalty from the date on which the penalty is due to be paid until it is paid.
- (2) Interest under this section is calculated at the rate specified in provision made under section 64.

64 Rate of interest

- (1) The rate of interest that applies for the purposes of sections 62 and 63 is the rate specified by the Scottish Ministers in regulations.
- (2) Regulations under subsection (1) may—
- (a) provide for different rates for different penalties,
 - (b) provide for circumstances in which alteration of a rate of interest is or is not to take place,
 - (c) provide that alterations of rates are to have effect for periods beginning on or after a day determined in accordance with the regulations in relation to interest running from before that day, as well as from, or from after, that day.
- (3) Regulations under subsection (1) are subject to the negative procedure.

Power to change penalty provisions

65 Power to change penalty provisions

- (1) The Scottish Ministers may by regulations make further provision about penalties under this Part.
- (2) Provision under subsection (1) includes provision—
- (a) about the circumstances in which a penalty is payable,
 - (b) about the amounts of penalties,
 - (c) about the procedure for issuing penalties,
 - (d) about enforcing penalties.
- (3) Regulations under subsection (1) may not create criminal offences.
- (4) Regulations under subsection (1) may modify any enactment, including this Act.

- (5) Regulations under subsection (1) do not apply to a failure which began before the date on which the regulations come into force.
- (6) Regulations under subsection (1) are subject to the affirmative procedure.

CHAPTER 3

RECOVERY OF UNPAID AMOUNTS

66 Summary warrant

- (1) This section applies where a person fails to pay a local authority—
 - (a) an amount of the levy payable in accordance with section 26(2),
 - (b) a penalty imposed on the person under Chapter 2 of this Part.
- (2) The local authority may apply to the sheriff for a summary warrant.
- (3) An application for the purpose of subsection (2) must be accompanied by a certificate which—
 - (a) complies with subsection (4), and
 - (b) is signed by an officer of the local authority.
- (4) A certificate complies with this subsection if—
 - (a) it states that—
 - (i) the person has failed to pay the sum payable by the person in the time required by or under this Act,
 - (ii) the local authority has subsequently demanded payment from the person, and
 - (iii) the period of 14 days beginning with the day on which the demand is made has expired without payment having been made, and
 - (b) it specifies the sum payable by the person.
- (5) The sheriff must grant a summary warrant in (or as nearly as may be in) the form prescribed by Act of Sederunt.
- (6) A summary warrant granted under subsection (5) authorises the recovery of the sum payable by—
 - (a) attachment,
 - (b) money attachment,
 - (c) earnings arrestment,
 - (d) arrestment and action of furthcoming or sale.
- (7) Subject to and without prejudice to section 39(1) of the Debt Arrangement and Attachment (Scotland) Act 2002—
 - (a) the sheriff officer's fees, and
 - (b) any outlays reasonably incurred by that officer,

in connection with the execution of a summary warrant granted under subsection (5) are to be chargeable against the person in relation to whom the summary warrant was granted.

- 5 (8) No fees are to be chargeable by the sheriff officer against the person in relation to whom the summary warrant was granted for collecting, and accounting to the local authority for, sums paid to that officer by that person in respect of the sum payable.

CHAPTER 4

REVIEWS AND APPEALS

67 Reviews

- 10 (1) The Scottish Ministers must by regulations make provision for and in connection with reviews by a relevant local authority of—
- (a) decisions made by the authority in connection with the operation of a VL scheme,
 - (b) enforcement action taken by the authority under Chapter 1 of this Part,
 - (c) penalties imposed by the authority under Chapter 2 of this Part.
- 15 (2) Regulations under subsection (1) may, in particular, make provision for or in connection with—
- (a) the procedure to be followed in connection with reviews,
 - (b) the manner in which reviews are to be conducted,
 - (c) the time limits within which reviews are to be conducted,
 - 20 (d) the circumstances under which reviews are to be conducted,
 - (e) the powers of authorities in conducting reviews,
 - (f) the steps that may be taken by authorities following the outcome of reviews,
 - (g) the postponement of any levy, penalty or interest pending a review,
 - (h) the suspension of any requirement contained in an information notice issued under section 27 or 28 pending a review.
- 25 (3) Regulations under subsection (1) are subject to the affirmative procedure.

68 Appeals

- 30 (1) The Scottish Ministers must by regulations make provision for and in connection with appeals to the First-tier Tribunal for Scotland against—
- (a) decisions made by a relevant local authority in connection with the operation of a VL scheme,
 - (b) enforcement action taken by a relevant local authority under Chapter 1 of this Part,
 - (c) penalties imposed by a relevant local authority under Chapter 2 of this Part.

- (2) Regulations under subsection (1) may, in particular, make provision for or in connection with—
- (a) the time limits within which appeals are to be brought,
 - (b) the circumstances under which appeals may be brought or not brought,
 - 5 (c) the steps that may be taken by a relevant local authority following the outcome of an appeal,
 - (d) the effect of any decision taken in relation to an appeal on a decision to which the appeal relates,
 - (e) the postponement of any levy, penalty or interest pending appeals,
 - 10 (f) the suspension of any requirement contained in an information notice issued under section 27 or 28 pending appeals.
- (3) Regulations under subsection (1) must require a review to have been conducted under or by virtue of section 67 in relation to the decision, enforcement action or penalty in question before an appeal may be brought.
- 15 (4) Regulations under subsection (1) are subject to the affirmative procedure.

PART 6

REGISTERS OF LIABLE PERSONS AND INFORMATION SHARING

69 Registers of liable persons

- (1) A relevant local authority may establish and maintain a register of liable persons.
- 20 (2) Any register established under subsection (1) must include—
- (a) the names of all liable persons offering overnight accommodation in the area covered by a VL scheme (or schemes) operated by the relevant local authority,
 - (b) the addresses (or other descriptions) of all places at which overnight accommodation is provided in the area covered by a VL scheme (or schemes),
 - 25 and
 - (c) such other information as the relevant local authority considers necessary to allow it to carry out its functions under this Act.

70 Power to share information

- (1) A relevant local authority may, in the circumstances mentioned in subsection (2), disclose relevant information to—
- (a) the relevant local authority's authorised officer as described in section 27,
 - (b) any local authority with which the relevant local authority has introduced a joint VL scheme under section 11(3),
 - 30 (c) a person authorised by the relevant local authority under section 21 to carry out a function or functions of the authority.
 - 35

- (2) The circumstances are that disclosure of the relevant information is—
- (a) necessary for the performance of a function conferred by, or by virtue of, this Act, or
 - (b) otherwise necessary for or in connection with the operation of a VL scheme.
- 5 (3) Where relevant information is disclosed to a person mentioned in subsection (1)(a) or (c)—
- (a) that person may only use the information, or subsequently disclose it to any other person, as is necessary for or in connection with the function conferred on that person in relation to the VL scheme to which the information relates, and
 - 10 (b) any other person to whom the information is subsequently disclosed may only use it for the same purpose.
- (4) In this section, “relevant information” means—
- (a) in relation to disclosure under subsection (1)(a)—
 - 15 (i) the names and addresses of all liable persons offering overnight accommodation in the area covered by a VL scheme or schemes operated by the relevant local authority,
 - (ii) the addresses (or other descriptions) of all places at which overnight accommodation is provided in the area covered by a VL scheme (or schemes),
 - 20 (iii) any information or representations provided to the relevant local authority by or on behalf of a liable person in connection with any review or appeal by virtue of regulations made under section 67 or 68, and
 - (iv) such other information as the relevant local authority considers necessary to allow the recipient of the information to carry out the recipient’s functions under this Act.
 - 25 (b) in relation to disclosure under subsection (1)(b) or (c)—
 - (i) the information mentioned in sub-paragraphs (i) to (iv) of paragraph (a), and
 - 30 (ii) any information provided to, or any documents produced to or inspected by, an authorised officer under Chapter 1 of Part 5 of this Act.
- (5) Nothing in this section authorises a disclosure of information that would be in contravention of the data protection legislation (within the meaning given by section 3 of the Data Protection Act 2018).

PART 7

FINAL PROVISIONS

70A Report on operation of Act

- (1) The Scottish Ministers must, as soon as reasonably practicable after the end of the reporting period—
- (a) review the operation of this Act, and

(b) prepare a report on that review.

(2) The report must, in particular, set out an assessment of—

(a) the impact of VL schemes introduced under this Act on businesses and communities,

(b) the processes followed by relevant local authorities when introducing, administering, reporting on and reviewing VL schemes,

(c) how the net proceeds of VL schemes have been used by relevant local authorities,

(d) any exemptions or rebates applying to the payment of the levy under VL schemes,

(e) any guidance which has been issued in accordance with section 20A,

(f) the use of the compliance and enforcement powers under Part 5, and

(g) any other matters as the Scottish Ministers consider appropriate.

(3) any other matters as the Scottish Ministers consider appropriate.

(a) publish the report, and

(b) lay the report before the Scottish Parliament.

(4) In this section, “the reporting period” is the period beginning with the day of Royal Assent and ending on—

(a) the day which is three years after the day on which the first VL scheme comes into effect, or

(b) such earlier day which is after the day on which the first VL scheme comes into effect as may be determined by Ministers.

71 Interpretation of Act

(1) In this Act—

“chargeable transaction” has the meaning given by section 3(2),

“the levy” is to be construed in accordance with section 1,

“the liable person” is to be construed in accordance with section 7,

“overnight accommodation” has the meaning given by section 4(1),

“relevant local authority” has the meaning given by section 21(2),

“visitor” is to be construed in accordance with section 3(1)(b),

“VL scheme” is to be construed in accordance with section 11(1)(a).

(2) References in this Act to the making of returns are to be construed in accordance with section 22(1).

72 Regulation-making powers

Any power of the Scottish Ministers to make regulations under this Act includes power to make different provision for different purposes.

73 Ancillary provision

- 5 (1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision that they consider appropriate for the purposes of, in connection with or for giving full effect to this Act or anything done under it.
- (2) Regulations under subsection (1) may modify any enactment, including this Act.
- (3) Regulations under subsection (1)—
- 10 (a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act,
- (b) otherwise, are subject to the negative procedure.

74 Commencement

- (1) This Part comes into force on the day after Royal Assent.
- (2) The other provisions of this Act come into force on the date the Scottish Ministers appoint by regulations.
- 15 (3) Regulations under subsection (2) may include transitional, transitory or saving provision.

75 Short title

The short title of this Act is the Visitor Levy (Scotland) Act 2024.

Visitor Levy (Scotland) Bill

[AS PASSED]

An Act of the Scottish Parliament to give local authorities the power to impose a levy in respect of persons staying in certain types of accommodation overnight.

Introduced by: Shona Robison
Supported by: Tom Arthur
On: 24 May 2023
Bill type: Government Bill

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