

Data Protection Impact Assessment Visitor Levy (Scotland) Bill

May 2023

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Version date: 24 May 2023

Review date:

Review Date	Details of update	Completion date	Approval date
Stage 2	DPIA will be reviewed to reflect any amendments		
Stage 3	DPIA will be reviewed to reflect any amendments		
Royal Assent	DPIA will be reviewed to reflect any amendments		

The purpose of this report is to assess the potential for privacy impacts and GDPR implications associated with proposals that make up the Visitor Levy (Scotland) Bill (“the Bill”).

This document will also provide an evaluation of how the protection of personal data has been considered, and demonstrate how the rights to privacy and confidentiality of the users are appropriately protected through mitigations.

The Bill will give local authorities a discretionary power to apply a visitor levy (VL) on overnight visitor stays in accommodation in all or parts of their area. This will be a discretionary power, for a Council to use if it chooses to do so. The proceeds raised from a VL will be able to be used for developing, supporting and sustaining facilities and services which are substantially for or used by those visiting the area for leisure purposes.

The core aims of the Bill are:

- to provide local authorities with a discretionary power to introduce a local visitor levy on overnight accommodation in all or part of their area, should they wish to do so;
- to provide a broad national framework for the establishment of local visitor levies by local authorities, including the basis of the charge, extent, and enforcement.

The Bill will provide local authorities with a new fiscal lever to improve and promote the visitor offer in their area. A power to introduce a VL has been a long-term ask from local government – the Bill has been developed in response to this ask, and forms an important part of our commitment to agreeing a fiscal framework with local government. This, in turn, is also an important part of the ongoing work on the Local Governance Review, which considers how powers, responsibilities and resources are shared across national and local spheres of government, and with communities.

The discretionary power to introduce a VL will provide local authorities with additional resources to support local tourism strategies, and support our ambitious national

tourism strategy (Scotland Outlook 2030), with a vision for Scotland to be a world leader in tourism by 2030.

The Scottish Government engaged with a range of stakeholders from the tourism industry, local authorities and the wider business community in Scotland in a National Discussion on a visitor levy. The National Discussion, which included six roundtable events across Scotland, each chaired by a Scottish Government Minister, ran between 23 November 2018 and 25 January 2019. A formal public consultation was then conducted for 12 weeks between September and December 2019, encouraging engagement with members of the public, local authorities, tourism businesses and national organisations in the realms of taxation. In addition to this engagement we reached out to stakeholders in Europe to learn about the variety of tourist tax approaches across Europe.

It is important to note throughout this assessment that the Bill is establishing a discretionary power for local authorities to use if they so wish. In exercising this new power, local authorities must have regard to their existing statutory duties under the Data Protection Act 2018.

This Data Protection Impact Assessment (DPIA) works in conjunction with the [Article 36\(4\) ICO](#) consultation form submitted in advance of this, as the proposal requires consultation with the Information Commissioner's Office (ICO).

1. Contact and schedule information

1.1 SG department

Local Government and Analytical Services Division

1.2 Contact email

Alisdair.Grahame@gov.scot

1.3 Data protection support email Data protection officer

dpa@gov.scot
dataprotectionofficer@gov.scot

1.4 Is your proposal primary legislation, secondary legislation or other form of statutory measure?

Primary legislation

1.5 What stage is the legislative process at? Please indicate any relevant timescales and deadlines.

The Bill is due to be introduced in the Scottish Parliament on 24 May 2023

2. Introductory information

2.1 Summary of proposal

The Bill will give a local authority the power to introduce and administer a VL in all or part of their area. The levy will apply to all overnight accommodation.

A local authority, should they wish to introduce a levy, will design a scheme including when and where a VL will apply, alongside any local exemptions it wishes to introduce. Prior to the introduction of a VL a local authority would be required to consult with communities and relevant stakeholders.

The use of personal data in the policy relates to a local authority's assessment for liability of and/or collection of a levy. Personal data may be used in four aspects:

1. The power for a local authority to create a register of accommodation providers, for the purposes of administering the levy;
2. The power for a local authority to request information from eligible accommodation providers, and third parties (through an information notice), where the information is reasonably required for the purpose of checking an accommodation provider's liability for a VL;
3. The power for a local authority to disclose relevant information to a person authorised by the local authority to carry out functions relating to administration and enforcement; and
4. The administration of any local exemptions a local authority chooses to introduce to a VL. The Bill will not contain any national exemptions, and the intention is that a local authority may choose to create appropriate exemptions, taking into account national guidance. As an additional measure the Bill will include a power for Scottish Ministers to set national exemptions through secondary legislation, for use if required.

2.2 Description of the personal data involved

Please also specify if this personal data will be special category data, or relate to criminal convictions or offences

For the purposes of creating a register for local authorities, personal data of accommodation providers to be held by local authorities may include: name, address, postcode, phone number.

For enforcement purposes, a local authority may request the following additional personal data from an accommodation provider: bank account information, company or sole trader records. This information will only be considered personal data if the information relates to the sole trader, partner or company director as an individual rather than as the representative of a legal person.

For administering local exemptions set by local authorities for a VL scheme, local authorities may also require access to personal data. The extent to which this will be required will be determined by the local authority in setting any local exemptions, and by Scottish Ministers if they exercise their power to create national exemptions.

2.3 Will the processing of personal data as a result of the proposal have an impact on decisions made about individuals, groups or categories of persons?

If so, please explain the potential or actual impact. This may include, for example, a denial of an individual's rights, or use of social profiling to inform policy making.

Register

For the purposes of creating a register of accommodation providers, the processing of personal data is not expected to have an impact on decisions made about individuals, groups or persons. For those accommodation providers liable for Non-Domestic Rates, the local authority will already hold this information. For accommodation providers subject to short-term lets legislation, local authorities are in the process of registering these providers which will result in them holding this information.

Information notices

For the purposes of requesting an information notice from an accommodation provider to assess liability to a VL, the processing of personal data is not expected to have an impact on decisions made about individuals, groups or persons. For accommodation providers registered for non-domestic rates, local authorities have existing powers to request information that is "reasonably required" for the purpose of issuing any demand or other document relating to non-domestic rates. The Bill effectively extends these powers to all accommodation types liable for a VL for the purposes of checking eligibility.

The Bill sets out that information should only be provided in an Information Notice if information or a document is reasonably required for the purpose of checking the liable person's liability to pay the levy, and it is reasonable for the person to be required to provide the information or to produce the document.

The Bill also sets out the types of information that are not required to be included in information notices. This includes; journalistic material; privileged information; and any personal records as defined in Section 33 of the Bill.

Disclosing information to third parties

For the purposes of disclosing relevant information to another local authority (with which the relevant local authority has introduced a joint VL scheme with) or a person authorised to carry out the functions of the local authority, the processing of personal data is not expected to have an impact on decisions made about individuals, groups or persons. The Bill sets out that such information can only be disclosed to enable the local authority to carry out its functions in relation to administering a VL. The Bill provides a definition of 'relevant information', which includes the names and addresses of persons offering overnight accommodation that are liable for the levy; the addresses (or other descriptions) of all overnight accommodation liable for a VL; 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; and any such

information as the local authority considers necessary to carry out its functions under the Bill. The Bill specifically states that it does not authorise a disclosure of information that would be in contravention of the data protection legislation.

Exemptions

For the purposes of administering exemptions, the processing of personal data will be dependent on the extent and scope of the exemption. In processing data a local authority will be required to adhere to existing data protection legislation. In establishing a VL scheme a local authority as a public body will be required to carry out its own data protection impact assessment if the processing of data is likely to result in a high risk to the rights and freedoms of individuals.

2.4 Necessity, proportionality and justification

Legislating for a VL levy is a well-considered, necessary and proportionate measure to support Scotland's tourism ambitions and to provide local authorities with a new fiscal lever they can use if they choose to do so. A VL has been a longstanding ask from local government, and legislating for a new local power is an example of our commitment to increase fiscal flexibilities.

The Bill has been designed to ensure that any data processing requirements on local authorities replicate existing information gathering powers.

As a discretionary power, it will be up to local authorities to demonstrate compliance with data protection legislation prior to the introduction of a VL scheme.

2.5 Will the implementation be accompanied by guidance or by an associated Code of Conduct?

To support local authorities in using their discretionary power, we are committed to developing national guidance in collaboration with local government and the tourist industry. This guidance will aim to provide best practice on the processing of data by local authorities for the purposes of administering the levy.

3. Data Controllers

Organisation

Local authority

Activities

The controller may collect and process personal data as part of a register of accommodation providers, used to assess liability of a VL, and for any enforcement actions relating to payment of a VL.

The controller may also collect and process personal data during its administration of any national and local exemptions to the levy.

Is the organisation a public authority or body as set out in Part 2, Chapter 2, Section 7 of the Data Protection Act 2018?

Yes

Lawful basis for processing under UK General Data Protection Regulation (UK GDPR) Article 6 for the collection and sharing of personal data – general processing

Article 6(1)(e) – processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller.

Lawful basis for processing under UK General Data Protection Regulation (UK GDPR) Article 9 – special category data or Article 10 – criminal convictions data

N/A – there is no requirement in the Bill for controllers to process special category data.

Law Enforcement – if any law enforcement processing will take place – lawful basis for processing under Part 3 of the Data Protection Act 2018

N/A

Legal gateway for any sharing of personal data between organisations

N/A - The Bill will create a power for a local authority to request information from accommodation providers, where that information is reasonably required for the purposes of checking liability for a VL. We do not expect this information to include personal data. Guidance developed with local government and the tourist industry will seek to establish proportionality and best practice in relation to the processing of personal data by local authorities.

Organisation

Accommodation Provider

Activities

Accommodation providers will already be data controllers in respect of their day to day record keeping activities by collecting and processing guests' data (name, address, contact details). However, there is no requirement for an accommodation provider to process or share personal data with a local authority for the purposes of collecting and remitting a VL.

The controller may also collect and process personal data in regard to any record keeping for any local exemptions to a VL, as designated by the local authority. This would be up to the local authority to determine.

Is the organisation a public authority or body as set out in Part 2, Chapter 2, Section 7 of the Data Protection Act 2018?

No

Lawful basis for processing under UK General Data Protection Regulation (UK GDPR) Article 6 for the collection and sharing of personal data – general processing

Article 6(1)(c) – processing is necessary for compliance with a legal obligation to which the controller is subject.

Lawful basis for processing under UK General Data Protection Regulation (UK GDPR) Article 9 – special category data or Article 10 – criminal convictions data

N/A – there is no requirement in the Bill for controllers to process special category data.

Law Enforcement – if any law enforcement processing will take place – lawful basis for processing under Part 3 of the Data Protection Act 2018

N/A

Legal gateway for any sharing of personal data between organisations

N/A - The Bill will create a power for local authorities to request information from accommodation providers, where that information is reasonably required for the purposes of checking liability for a VL. We do not expect this information to include personal data. Guidance developed with COSLA and the tourist industry will seek to establish proportionality and best practice in relation to the processing of personal data by local authorities.

4. Consultation

4.1 Have you consulted with the ICO using the Article 36(4) form?

(please provide a link to it)

If the ICO has provided feedback, please include this.

Yes. Policy officials met with the ICO on 16 December 2022. The following feedback was provided:

“Controllership

We discussed controllership and the importance of ensuring from an early stage who is intended to be the data controller for the register of accommodation providers. The discussion indicated that current thinking is to ensure that LAs would be the intended data controllers.

Any new powers / obligations / duties drafted within the legislation may engage section 6(2) Data Protection 2018 and create new controllers.

We discussed recent legislation which has been passed relating to short term lets. Between this and the information held by LAs on non-domestic rates, it is likely that LAs are already holding much of the information that will be required in a visitor levy scheme. The short term lets requirement has allowed LAs to gather the information on short term lets already. Therefore, it is possible many LAs probably will not need to hold additional registers to collect the information. It will be important to ensure that data can flow as intended and can be assisted by looking at how data is already flowing via existing pieces of legislation.

We have produced some detailed guidance on controllership which you may find useful to look at when determining the role each organisation should play.

Exemptions - Special Category Data

We mentioned the national exemptions and the data protection considerations that should be taken into account when thinking about the sharing of this data. We discussed that there is a strong possibility of information being collected for the exemptions to be considered special category data under data protection laws.

Where there is a requirement for accommodation providers to share information with LAs of any exemptions, it will be important to consider how data will flow as intended. There will need to be a lawful basis under Article 6 of the UK GDPR and an Article 9 additional condition for processing for any special category data or an article 10 condition if there is sharing of criminal offence data with LAs.

The bill team may wish to consider including a specific mechanism to share the information within the bill. Our discussion mentioned that the draft bill is not likely to specify how LAs are going to prove individuals residing in the accommodation fall under an exemption. There was a suggestion that payment should be made initially by individuals and then payment recovered from LAs, as this would provide a more privacy friendly proposal. LAs may wish to consider how much personal data they will need to retain once an exemption has been demonstrated. LAs will want to consider what is necessary and proportionate for retention, and consider the data minimisation principle.

DPIA and Risk Management

We discussed the importance of drafting a DPIA to ensure that any risks to the rights and freedoms of individuals have been considered and mitigated.

Drafting a DPIA at an early stage will help you understand what needs to be incorporated into the legislation to manage any risks that have been identified.

Consultation

We discussed consultation with relevant bodies and we understand that this is taking place with LAs and other bodies. It will be important to ensure that any bodies that may have controllership obligations are consulted from an early stage to help identify

any risks which may be posed that would need to be looked at as part of the DPIA process.

The DPIA should also contain details of the consultation process, such as who was consulted and how, and whether the stakeholder has amended any potential processing activities as a result of concerns.

Organisations you consult with will also be able to advise whether they have an existing lawful basis to process the data. Where they do not have a lawful basis, this can help inform any mechanisms that should be included in the draft bill.

Guidance for LAs

The bill team may also wish to consider whether there will be any need to produce guidance (statutory or otherwise) in order to encourage consistency with the way personal data is processed under the legislation. It will be worth considering whether any guidance should be consulted / co-authored with any other bodies (eg through COSLA or a local gov working group).

No further Actions at this stage for the 36(4) consultation.”

4.2 Do you need to hold a public consultation and if so has this taken place? What was the result?

Yes, a formal public consultation was undertaken in 2019. Responses to the consultation were published in March 2020.

The consultation asked 33 questions on the design of a visitor levy. 42% of respondents supported visitor levy set out mostly at the local level. 36% supported a wholly national framework. On exemptions, 78% of respondents thought that these should be set nationally.

Respondents were evenly divided as to whether accommodation providers should be ultimately responsible for collection and remittance of a levy.

4.3 Were there any Comments/feedback from the public consultation about privacy, information or data protection?

Yes, issues were raised with respect to General Data Protection Regulation (GDPR) compliance in handling of customer data.

To address these concerns, the Bill has been designed in a way to ensure that no additional personal data will be required for processing for the administration of a VL.

Following the 2019 consultation, the Scottish Government introduced legislation for the registration of short-term lets. The Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022 allows for a local authority to create a public register of short-term lets in their area. This means a local authority will already possess the personal data required to populate the entry for a short-term let provider on a VL register. The remaining accommodation providers will be liable for Non-Domestic Rates, with a local authority already holding personal information via

the existing valuation roll. While the VL Bill will provide local authorities with a power to create a new register of accommodation providers, they will not be required to process any new personal data.

In relation to the administration of exemptions, the VL Bill does not create any national-level exemptions and so does not introduce any associated data protection burdens. The Bill provides powers to local authorities to designate local exemptions and provides Scottish Ministers with powers to create national exemptions through subordinate legislation.

5. Further assessment and risk identification

5.1 Will the proposal require the creation of new identifiers, or require the use of existing ones?

No

5.2 Will the proposal require regulation of:

- technology relating to processing
- behaviour of individuals using technology
- technology suppliers
- technology infrastructure
- information security

No

5.3 Will the proposal require establishing or change to operation of an established public register (e.g. Accountancy in Bankruptcy, Land Register etc.) or other online service/s?

No

5.4 Please provide details of whether the proposal will involve the collection or storage of data to be used as evidence or use of investigatory powers (e.g. in relation to fraud, identify theft, misuse of public funds, any possible criminal activity, witness information, victim information or other monitoring of online behaviour)

N/A

5.5 Would the proposal have an impact on a specific group of persons e.g. children, vulnerable individuals, disabled persons, persons with health issues, persons with financial difficulties, elderly people? (Please specify) In what way?

No

5.6 Is there anything potentially controversial or of significant public interest in the policy proposal as it relates to processing of data? For example, is the public likely to view the measures as intrusive or onerous?

Are there any potential unintended consequences with regards to the provisions e.g. would the provisions result in unintended surveillance or profiling.

Have you considered whether the intended processing will have appropriate safeguards in place? If so briefly explain the nature of those safeguards and how any safeguards ensure the balance of any competing interests in relation to the processing.

No

5.7 Are there consequential changes to in other legislation that need to be considered as a result of the proposal or the need to make further subordinate legislation to achieve the aim?

The Bill will provide Scottish Ministers with a power to make regulations on national exemptions. In light of the VL being a discretionary local power any national exemptions will be limited. However, any such exemptions established through subordinate legislation may impact data protection arrangements of local authorities as the relevant data controllers.

5.8 Will this proposal necessitate an associated code of conduct? If so, what will be the status of the code of conduct (statutory, voluntary etc.)?

To support local authorities in using their discretionary power, we are committed to develop national guidance in collaboration with local government and the tourist industry. This guidance will aim to provide best practice on the processing of data by local authorities for the purposes of administering the levy.

5.9 Have you considered whether the intended processing will have appropriate safeguards in place, for example in relation to data security, limitation of storage time, anonymisation? If so briefly explain the nature of those safeguards

Please indicate how any safeguards ensure the balance of any competing interests in relation to the processing.

Yes – the Bill will not introduce any further data protection requirements that local authorities do not already utilise.

As this is a local power, local authorities will also be subject to data protection legislation and engagement with the ICO prior to the introduction of a visitor levy. We expect this process to address any data protection concerns relating to administration of the register of accommodation providers, and for any exemptions.

5.10 Will the processing of personal data as a result of the proposal have an impact on decisions made about individuals, groups or categories of persons? If so, please explain the potential or actual impact. This may include, for example, a denial of an individual's rights or use of social profiling to inform policy making.

No – the data controllers identified in this assessment will not be required to hold any additional personal data than they currently hold for the purposes of their existing duties and functions.

5.11 Will the proposal include automated decision making/profiling of individuals using their personal data?

No

5.12 Will the proposal require the transfer of personal data to a 'third country'? (Under UK GDPR this is defined as country outside the UK.)

No

6. Risk Assessment

Risk

6.1.1 Risk to individual rights

- **right** to be informed
- **right** of access
- **right** to rectification
- **right** to erasure
- **right** to restrict processing
- **right** to **data** portability
- **right** to object
- **rights** in relation to automated decision making and profiling

Will this initiative result in any detriment if individuals do not want their personal data to be processed? This is particularly relevant if special category data is being processed

Solution or mitigation

Local authorities will already be collecting and processing personal data of accommodation providers. The Bill has been designed as to ensure no new data protection burdens are placed on local authorities or accommodation providers.

In relation to requests for information by a local authority for enforcement purposes (such as business account or sole trader records), the Bill has been drafted to ensure that only information that is reasonably required for the purpose of checking eligibility is required. In addition, the proposed national guidance will set out best practice on information needed for enforcement purposes.

Likelihood (Low/Med/High)

LOW

Severity (Red/Amber/Green)

Green

Result

Reduced

Risk

6.2.1 Privacy risks

Purpose limitation

Solution or mitigation

The Bill does not require accommodation providers to process personal data.

Local authorities will already be collecting and processing personal data of accommodation providers due to existing legislation (Non-domestic rates, short term lets licensing).

In relation to requests for information by a local authority for enforcement purposes (such as business account or sole trader records), the Bill has been drafted to ensure that only information that is reasonably required for the purpose of checking eligibility is required.

Likelihood (Low/Med/High)

LOW

Severity (Red/Amber/Green)

Green

Result

Reduced

Risk

6.2.2 Privacy risks

Transparency – data subjects may not be informed about the purposes and lawful basis for the processing, and their rights

Solution or mitigation

The Bill does not require accommodation providers to process personal data.

Local authorities will already be collecting and processing personal data of accommodation providers due to existing legislation (Non-Domestic Rates, short term lets licensing).

In designing and implementing a VL scheme, a local authority will be required to adhere to its statutory data protection duties. The Bill also requires a local authority to consult with businesses prior to the introduction of a VL. The proposed national guidance will provide best practice on consulting.

Likelihood (Low/Med/High)

LOW

Severity (Red/Amber/Green)

Green

Result

Reduced

Risk

6.2.3 Privacy risks

Minimisation and necessity

Solution or mitigation

The Bill does not require accommodation providers to process personal data.

Local authorities will already be collecting and processing personal data of accommodation providers due to existing legislation (Non-Domestic Rates, short term lets licensing).

In relation to requests for information by a local authority for enforcement purposes (such as business account or sole trader records), the Bill has been drafted to ensure that only information that is reasonably required for the purpose of checking eligibility is required.

Likelihood (Low/Med/High)

LOW

Severity (Red/Amber/Green)

Green

Result

Reduced

Risk**6.2.4 Privacy risks**

Accuracy of personal data

Solution or mitigation

The Bill does not require accommodation providers to process personal data.

Local authorities will already be collecting and processing personal data of accommodation providers due to existing legislation (Non-Domestic Rates, short term lets licensing).

Likelihood (Low/Med/High)

LOW

Severity (Red/Amber/Green)

Green

Result

Mitigated

Risk**6.3.1 Security risks**

Keeping data securely

Retention

Solution or mitigation

The Bill does not require accommodation providers to process personal data.

Local authorities will already be collecting and processing personal data of accommodation providers due to existing legislation (Non-domestic rates, short term lets licensing).

Where a local authority wishes to establish a separate register of accommodation providers, we would expect this need to be proportionate to the needs of administering a levy.

Likelihood (Low/Med/High)

LOW

Severity (Red/Amber/Green)

Green

Result

Mitigated

Risk

6.3.2 Security risks

Transfer – data may be lost in transit

Solution or mitigation

The Bill does not require accommodation providers to process personal data.

Local authorities will already be collecting and processing personal data of accommodation providers due to existing legislation (Non-Domestic Rates, short term lets licensing).

Where a local authority wishes to establish a separate register of accommodation providers, we would expect this need to be proportionate to the needs of administering a levy.

Likelihood (Low/Med/High)

LOW

Severity (Red/Amber/Green)

Green

Result

Mitigated

Risk

6.3.3 Security risks

Solution or mitigation

N/A - the Bill does not require either data controller (Local Authority or accommodation provider) to process any additional personal data.

Likelihood (Low/Med/High)

LOW

Severity (Red/Amber/Green)

Green

Result

Mitigated

Risk

6.4.1 Other risks

Solution or mitigation

N/A - the Bill does not require either data controller (Local Authority or accommodation provider) to process any additional personal data.

Likelihood (Low/Med/High)

LOW

Severity (Red/Amber/Green)

Green

Result

Mitigated

Data Protection Officer (DPO)

The DPO may give additional advice, please indicate how this has been actioned.

Advice has been sought from DPO throughout the drafting of this assessment

All advice and comments have been incorporated where possible.

I confirm that the Visitor Levy (Scotland) Bill has been sufficiently assessed in compliance with the requirements of the UKGDPR and Data Protection Act 2018

Name and job title of a IAO or equivalent

Ellen Leaver, Deputy Director – Local Government and Analytical Services Division

Date each version authorised

4 April 2023



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