

## **British Marine Scotland's response to the Local Government, Housing and Planning Committee's [Calls for Views](#) on the Visitor levy (Scotland) Bill – closes 15<sup>th</sup> September '23.**

**Q1. What are your views on whether local authorities should have a power to place a levy (a type of additional charge or fee) on top of the price charged for overnight accommodation in their area?**

No comment except to stress that, before any such powers are granted to local authorities, the definitions in the Bill need to be improved. Specifically the "types of accommodation" listed should be amended as it is flawed to list and define "boat moorings or berthings" as a type of accommodation. Our view is supported by the Scottish Tourism Alliance and RYA Scotland.

If Part 2 Section 4 (2) of the Bill is not amended, the powers conferred to local authorities are likely to have serious adverse and unfair consequences on Scotland's leisure marine operators and boaters for reasons summarised in response to Questions 3 and 6.

**Q2. Given that the Bill is likely to result in different councils introducing a visitor levy in different ways or not doing so at all, what impact do you think the Bill will have in your area and across different parts of Scotland? For example, this could include any impact (positive or negative) on local authority finances, local accountability and flexibility, businesses, or on numbers of overnight visitors.**

British Marine Scotland, which represents leisure marine operations across Scotland and its islands, is concerned that if the Bill, as introduced, is enacted it would have a hugely adverse impact on Scotland's leisure marine sector, including on harbour authorities and community organisations (often volunteer led) that also provide boat moorings and/or berthings.

Making berth providers liable for the levy is unfair and may well lead to a reduction in available boat moorings and berthing in those local authority areas where the levy is applied. Due to the nature of leisure boating and mooring provision it would be hugely onerous and complex to apply the levy and boaters would face significant additional costs. That could lead to a decline in boating across Scotland and a reduction in the economic contribution that boating makes to the Scottish economy, which last year provided a direct GVA of £73.9million. (Source, British Marine KPI report March 2023). All this whilst boaters themselves, unlike land-based visitors, add little, if any, additional pressure to local services such as roads, housing and local waste and recycling facilities.

**Q3. Do you agree with the Bill's definitions of a "chargeable transaction" and of "overnight accommodation"? If not, what definitions do you think would be better?**

British Marine Scotland understands a key concept of the Bill is for the "levy to be charged on the purchase of overnight accommodation". It also notes the levy is to be charged in respect of a "chargeable transaction" and "becomes payable when a person take entry to overnight accommodation in pursuance of the transaction".

However, the Bill's definitions of both "chargeable transaction" and "overnight accommodation" become dangerously confused by the Bill wrongly including "boat moorings and berthings" as a type of accommodation in Part 2, Section 4 (2). This is because the chargeable transaction between a leisure marina (or other provider of boat moorings or berthings) and the boater is NOT for "the purchase for the value of the right to reside in or at overnight accommodation" which is how the Bill, in Part 2 Section 3, defines a "chargeable transaction" that make the levy applicable.

Regarding leisure marine, the chargeable transaction between a marina (or other mooring provider) and a boater (often described as mooring or berthing fees) is for explicitly the purchase of a safe haven for the boat concerned, be that a berth or mooring, and the fees may cover associated marine services such as utilities, lifting out, maintenance and repair services and on-site boat storage. However, marine services do

not include overnight accommodation, nor do the chargeable transactions relate to overnight accommodation nor to the right to overnight accommodation.

Without refining the definitions for overnight accommodation by amending Part 2, Section 4 (2), it is highly ambiguous how the legislation could apply to the leisure marine sector. Unless subsection (2) (h), that is “boat moorings or berthings”, is deleted (or a national exemption is introduced for leisure marine) the legislation will be open to varying interpretations by local authorities which could result in absurd and unfair scenarios for both berth or mooring providers and boaters which would seriously damage Scotland’s leisure marine sector.

By retaining “boat moorings and berthings” in Part 2, Section 4 (2) of the Bill, the levy could be applied to all mooring and berthing charges. This is irrespective of whether the moored boat has capacity for onboard accommodation, whether the boater(s) stays ashore overnight, and irrespective of whether the mooring or berth is located within the boater’s own local authority area where he or she will already be contributing to the cost of local services by paying council tax.

The Bill, as introduced, risks boaters facing duplicate, or even triplicate, charges at any one time as listed “accommodation” providers will be liable for applying the levy. For example, a boater would be charged by a harbour authority or other berth provider for providing a main berth for this boat i.e. a seasonal or annual berthing contract. In addition, if cruising and using a short-term mooring for the time period set out in Part 2 Section 3 (3) of the Bill the boater would incur a further VL charge by another berth or mooring provider, and if the boater were to choose, for any number of reasons, to purchase overnight accommodation ashore, he would incur a third VL charge.

Part 2 Section 4 of the Bill (Meaning of overnight accommodation) is not only flawed by including “boat moorings or berthings” as a type of accommodation but its wording is also ambiguous and could lead to different interpretations and confusion. For example, the wording in subsection (1), that is, “otherwise than as the visitor’s only or usual place of residence” is contradictory as it defines a person as a “visitor” when he is in his “only or usual place of residence”. Subsections 2(h) and 3(b) pose considerable complexities and confusion when applied to leisure marine berthing and boating.

In terms of leisure boat moorings or berthings there are ‘residential berths’ which are used by boaters as their permanent / primary place of residence and is their registered address for council tax. Secondly, there are ‘other leisure berths’ which are provided to boaters through a range of short-term and longer-term contracts including annual and rolling contracts. There is no industry standard for ‘visitor berths.’ Vacant berths may or may not be used by a boat that is cruising and seeking to stop for a short period of time.

Short-term berthing contracts – potentially for less than 24 hours - may be required when a boater is cruising (“undertaking a journey”) and requires a berth or mooring for “one or more overnight stops”. However, it is unclear how this legislation could reasonably apply to the leisure marine sector when taking account of both subsection 2(h) and subsection 3(b) in Part 2 Section 4 of the Bill.

With regard to Part 2 Section 4 3(b) the Policy Memorandum sets out the reasons why the VL is not applicable to cruise ships, including the argument that “a cruise ship is not fixed in one location and those on board it are travelling to a number of locations whilst in the one vessel” Given the nature of boating we believe there is an equally strong case for making leisure marine, especially the providers of boat moorings and berthings, exempt from the levy.

**Q4. What are your views on the Bill’s proposal to allow councils to set the levy as a percentage of the chargeable transaction? Are there any other arrangements that you think might be better? If so, please give examples and a short description of the reasons why.**

British Marine Scotland believes it would be wrong for any local authority in Scotland to make a provider of boat moorings or berthings liable to pay the levy, irrespective as to how the levy is set.

Unless “boat moorings or berthings” can be deleted from Part 2, Section 4 (2), or the Scottish Government agrees to use its regulatory powers to introduce a national exemption for leisure marine, British Marine Scotland would want its concerns reflected in the Government’s own guidance to local authorities. It would then need assurance from individual local authorities that, irrespective of its new permissive powers, the local authority would apply sense by introducing its own local exemption to avoid making local berth and mooring providers liable for paying the visitor levy.

Only by taking such action would local authorities be able to stop a disproportionate burden being placed on local berth providers who would otherwise be required to set up a hugely complex and most likely unworkable processes for making levy charges and returns. By introducing an exemption for local berth and mooring providers, local authorities would prevent unfair charges being levied against boaters, many of whom could well be local residents themselves or visitors that don’t even stay onboard their boats overnight. Any other course of action is likely to damage the reputation of the local authority, add to its own administrative burden associated with introducing and enforcing the levy, and would contribute to the harm this legislation is likely to cause Scotland’s leisure marine sector.

**Q5. What are your views on the absence of an upper limit to the percentage rate (which would be for councils to decide) and that it could be different for different purposes or different areas within the local authority area, but not for different types of accommodation?**

Scotland’s leisure marine customers include people who purchase onshore overnight accommodation. Therefore, British Marine Scotland would be concerned if there was no nationally agreed upper limit to the percentage rate that local authorities could set the levy at. If some local authorities were able to charge much higher visitor levies, businesses would face an unlevel playing field which could, in turn, adversely impact the wider economy, including the leisure marine sector in different parts of the country.

British Marine Scotland has already explained why it is wrong to list “boat moorings or berthings” as types of accommodation and make berth providers liable for the levy, not least because they do not provide accommodation. We ask that this is resolved by introducing an appropriate amendment or, failing that by introducing an exemption for leisure marine. If neither action is taken, it would be wrong for boat mooring or berth providers to face the same levy rate as real accommodation providers such hotels, camp sites and bed & breakfast establishments.

**Q6. The Bill would allow councils to apply local exemptions and rebates to some types of guests if they choose to. It also allows the Scottish Government to set exemptions and rebates on a national basis where it considers it appropriate. What are your views on the Bill’s proposals in relation to exemptions and rebates?**

British Marine Scotland welcomes the fact the Bill makes provision for exemptions and rebates to be applied nationally through subsequent regulations brought forward by the Scottish Government. It also accepts there may be a case for allowing local authorities to introduce their own exemptions and rebates. However, we think it would be far better to get the primary legislation right so that the need to introduce retrospective exemptions and calls for rebates is minimised.

Part 2 Section 4 subsection (2) (h) “boat moorings or berthings” inadvertently sweeps up leisure marine boating into this legislation, even though there are numerous reasons why marinas, harbour authorities and other mooring providers should be exempt from being liable to pay the levy. Many of the reasons are set out above but to highlight just a few -

- a. Boat moorings or berthings are for the purpose of providing safe haven for boats as opposed to providing or enabling visitor accommodation.
- b. The primary function of a boat is a mode of waterborne transport, not accommodation.
- c. The chargeable transaction between a boater and mooring or berth provider is for the berthing or mooring of a boat and, where relevant, for other marine services that do not include overnight accommodation.
- d. Boat moorings and berthings are for all types of leisure boats, including fishing boats, RIBs, racing yachts and cruising boats many of which do not even have capacity for accommodation.
- e. Boat mooring and berthing charges do not take account of whether a boat has capacity for onboard accommodation and to do so would place an unreasonable burden on mooring providers.
- f. Equally it would not be feasible or fair to expect mooring providers to track whether or not boaters stay onboard their moored boats overnight.
- g. It would be impossible for boat mooring and berth providers to fairly calculate and apply the levy charges as required under Part 2 Section 5 of the Bill.
- h. It would be unfair to charge boaters for a levy that is aimed at levying a fee from visitors purchasing overnight accommodation when boaters are not necessarily visitors, they do not purchase onboard accommodation as part of a mooring contract and may not even stay onboard whilst their boat is moored.

Unless boat moorings and berthings are deleted from Part 2 Section 4 of the Bill, or a national exemption for leisure marine is introduced, the Government and local authorities are likely to face many challenges as to fairness of the legislation and calls for exemptions and rebates. It is neither proportionate nor fair to make berth and mooring providers liable for the levy.

**Q7. Do you agree with the Bill's requirements around the introduction and administration of a visitor levy scheme, including those relating to consultation, content, and publicity (Sections 11 to 15)? Are there any other requirements you think should be met before any introduction of the levy in a given area?**

As previously stated, British Marine Scotland believes it would be wrong for any local authority in Scotland to make a provider of boat moorings or berthings liable for the levy. Therefore, early and genuine consultation with Scotland's leisure marine sector and its UK-wide trade body, British Marine, would be absolutely critical if neither the Scottish Parliament nor the Scottish Government has intervened to prevent mooring and berth providers being held liable for the levy.

**Q8. What are your views on the Bill's requirements for local authorities in respect of records keeping, reporting, and reviewing? (Sections 16, 18 and 19)**

No comment.

**Q9. The Bill requires that net proceeds of the scheme should only be used to "achieve the scheme's objectives" and for "developing, supporting, and sustaining facilities and services which are substantially for or used by persons visiting the area of the local authority for leisure purposes." Do you agree with how the Bill proposes net proceeds should be used and if not, how do you think net proceeds should be used?**

Whilst we have no comment to make on the direct question posed, we are conscious that one of the key drivers for the legislation is to help reduce pressure on local facilities and services and, through a visitor levy, help sustain those services for the benefit of residents and visitors alike. With this in mind, Parliament should take account of the fact that boaters place very little, if any, additional pressure on local services such as roads, parking, housing or other accommodation, nor on local waste and recycling facilities. Therefore, it would be very unfair for boaters to be hit by visitor levy charges and the considerable

associated administration costs that will be inevitable if boat moorings or berthings are not removed from Part 2 Section 4 of the Bill.

**Q10. What are your views on the Bill's requirements for accommodation providers to identify the chargeable part of their overnight rates, keep records, make returns, and make payments to relevant local authorities? Are there any other arrangements that you think would be better, for example, by reducing any "administrative burden" for accommodation providers?**

As previously stated, British Marine Scotland strongly disagrees with the assertion that harbour authorities, leisure marinas and community organisations, in providing boat moorings and berthings, are accommodation providers. They are not. This is why it makes no sense to make them liable for the visitor accommodation levy.

Furthermore, it is unrealistic to expect berth providers, which range from local harbour authorities and marinas (many of which are micro businesses) to community boat clubs led by volunteers, to be able to "identify the chargeable part of their overnight rates, keep records, make returns, and make payments to their relevant local authorities" when, unlike hotels and other static, land-based, accommodation businesses, they do not charge for accommodation but for the berthing or mooring of boats.

The Financial Memorandum that accompanies the Bill sets out likely costs that would be associated with undertaking or commissioning necessary updates or changes to existing "property management systems" to collect, record and remit visitor levy revenue accurately in accordance with requirements. It refers to initial set up costs and ongoing management costs and suggests that in the first year alone the estimated total costs to a micro business could exceed £1k and anywhere between £3k to £10k for SMEs. Yet nowhere does it mention marine, boats or berths. Under 'Costs arising to different sectors' (page 4) it states that costs to "accommodation providers have been established through a number of engagement exercises with the industry". However, neither British Marine Scotland, nor to the best of our knowledge, were any marinas invited to engage in those exercises. Perhaps this is because at the time mooring providers were correctly considered not be "accommodation providers". That said, we believe the costs on leisure marinas and other mooring providers would be far higher than the costs estimated in the Financial Memorandum as they would have to establish entirely new systems in order to try and calculate and apply the levy charges fairly. Furthermore, as this could well prove impossible means they could be faced with inspections and even financial penalties which would adversely impact their operations and financial stability.

In considering the administrative burden it would place on "liable persons" it is worth noting that Scottish marinas are largely small or micro businesses. Other berth providers include small voluntary-led community organisations that provide vital boating amenities around our coasts. We already know that such organisations struggle to attract and retain sufficient volunteers to maintain the services they offer. Forcing them to calculate, charge and return visitor levies from boaters using moorings would be hugely challenging and is bound to deter people from volunteering. With a loss of staff, increased financial and administrative burdens, it would be very hard for such organisations, located in the off-lying regions and island communities, to maintain their services. This in turn could lead to loss in vital moorings. This is another example why including boat moorings or berthings in Part 2, Section 4 of the Bill risks adversely harming Scotland's leisure marine tourism. It may well reduce cruising options around the northern and western coasts and jeopardise revenue and all year round-employment opportunities for residents living in some of Scotland's most fragile communities.



There are no conceivable arrangements that could be feasibly put in place to lessen the excessive administrative burden that marinas and other mooring providers would face and why it is critical the Bill is amended.

**Q11. Do you have any comments on Part 5 of the Bill (Enforcement and Penalties and Appeals)? Are there any other arrangements that you think might be more appropriate in ensuring compliance and reducing the risk of avoidance?**

No comment other than to repeat the fact that berth and mooring providers should not be made liable for the visitor levy. To do so would place an excessive burden on them and, in our view, it would be unworkable and, unless an amendment or exemption is introduced, this is likely to trigger expensive and time-consuming enforcement actions, penalties being charged, and appeals being lodged. We believe it would damage Scotland's leisure marine industry and only add to the challenges that local authorities will face when undertaking the required preparation for the introduction of the levy and its subsequent enforcement.

**Q12. Do you have any comments on the issues that the Scottish Government proposes to deal with in regulations after the Bill has been passed? (Set out in the Delegated Powers Memorandum) Are there any that you think should be included in the Bill itself rather than being dealt with by regulations and if so, why?**

British Marine Scotland is pleased to note that Part 2 Section 4 subsections (4) (c) of the Bill makes provision for Scottish Ministers, by regulations, "to remove a type of accommodation from being included in (2)". However, as stated in our response to Q 6 we think it would be far better if the Bill was corrected during its passage through Parliament by an amendment, removing "boat moorings or berthings" from the "types of accommodation" listed.

**Q13. Do you have any comments on the accuracy of the estimated costs for the Scottish Government, local authorities, accommodation providers and others as set out in the Financial Memorandum and Business and Regulatory Impact Assessment (BRIA)?**

Please refer to our response under Question 10. British Marine Scotland did not anticipate the Bill would define boat moorings and berthings as a type of accommodation that would make berth and mooring providers liable to pay the levy. Nor was British Marine Scotland, or to its knowledge, any Scottish marina invited to participate in the engagement exercises that informed the estimated costs set out in the Financial Memorandum. As indicated above we can only assume that was because marinas at that time were correctly not considered to be accommodation providers. We are therefore unable to comment in any detail on the estimated costs although, given our knowledge of leisure marine, we know that the costs would be excessively high for berth and mooring providers to try and apply the levy.

Given our evidence set out in this response we trust that the Committee will encourage Parliament to carefully assess Part 2 Section 4 of the bill and take steps to remove "boat moorings and berthings" from the text. This would enable leisure marinas and other berth or mooring providers to be assured they will not be made liable for the levy, nor will their customers face unfair charges associated with the levy.

**PLEASE NOTE - British Marine Scotland would welcome the opportunity to provide the Committee with further information on behalf of Scotland's leisure marine sector by attending a meeting of the Committee, where it would be happy to answer any questions Committee members may have and / or provide clarification on any of the points made in this written response.**