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**Information provided by British Marine Wales in relation to the Visitor Accommodation (Register and Levy) Etc. (Wales) Bill**

**13 January 2025**

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We attach a copy of our submission to the Finance Committee as well as the supplementary information we provided. As you will see we are especially concerned by Section 40 of the Bill which makes provision for Ministers to introduce subordinate legislation at any time in the future to extend the Act in respect of berths and moorings provided for vessels.

Whilst we appreciate any such future regulations would be subject to consultation, the Bill's Explanatory Memorandum and Regulatory Impact Assessment, in relation to the appropriateness of the delegated power, incorrectly states berths and moorings are "a specific type of accommodation". To legislate as if they were, would be wrong and would be a continual cause of uncertainty for the leisure marine industry which supports recreational boating in Wales. We also think to threaten recreational boating, which is a form of sustainable tourism, in this way would be contrary to the purpose of the primary legislation.

To the best of our knowledge Government Officials failed to take up the offer to visit leisure marinas to inform the drafting of the Bill and none of the accompanying assessments offer any indication as to what possible justification there could ever be for extending the Welsh Visitor Levy to recreational berths and moorings which are not types of accommodation and are quite distinct from the berths and moorings used by cruise ships.

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**Please use this template to draft your responses to submit via the online consultation form.**

**Evidence from:** [British Marine Wales](#) which is part of British Marine, the UK-wide trade association representing the UK's leisure, superyacht and small commercial marine industry. The industry directly provides 38,000 FTE jobs and supports an additional 360,000 plus jobs through its contribution to wider tourism across the UK. Primarily made up of small and micro businesses it is distinct from other maritime sectors, such as commercial shipping and the cruise industry. British Marine's 1,300 plus members reflect the diversity of the marine industry which enables offshore, coastal, and inland boating, as well as the growing array of watersports. British Marine Wales' members include boatbuilders, marina operators, charter and hire boat companies, sea schools, chandlers and other marine service providers. Other British Marine members include those who regularly extend their operations into Wales - all enabling more sustainable tourism. This is because boating encourages people to get away from their cars and enjoy time on Welsh waters and beyond. In doing so boaters have little, if any, impact on local public services and infrastructure that are primarily utilised by local residents and land-based tourists.

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[Bil Llety Ymwelwyr \(Cofrestr ac Ardoll\) Etc. \(Cymru\) | Visitor Accommodation \(Register and Levy\) Etc. \(Wales\) Bill](#)

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You do not need to answer every question, only those on which you wish to share information or have a view.

## **General principles**

**1. What are your views on the general principles of the Bill and the need for legislation to deliver the Welsh Government's stated policy objective, which is to:**

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- **ensure a more even share of costs to fund local services and infrastructure that benefit visitors between resident populations and visitors;**
  - **provide local authorities with the ability to generate additional revenue that can be invested back into local services and infrastructure to support tourism;**
  - **support the Welsh Government's ambitions for sustainable tourism?**
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(We would be grateful if you could keep your answer to around 500 words).

British Marine Wales shares concerns expressed by other Welsh Tourism Alliance (WTA) partners that the Bill will add costs to hospitality businesses without necessarily providing any real or perceived 'added value' for their customers. It provides no assurance or transparency as to how the levies will be reinvested in the tourism offer as opposed to helping plug the general shortfall across local authority budgets. Moreover, the Government's own economic impact assessment suggests the levy will lead to a reduction in visitors and jobs, with little or no net benefit to Wales as a whole. It predicts losses will range between £17.7m and £26.8m in GVA or, if the costs are borne by accommodation providers alone, a loss of £40m.

Welsh tourism businesses are already struggling, with the nation having suffered the biggest closure rate of hospitality businesses in Great Britain since the pandemic. Since then, hospitality businesses have had to cope with the reduction in business rates relief and now face higher national insurance bills. To introduce this legislation at this time, with the aim of making tourism in Wales a success, seems perverse and will most likely be counterproductive.

Given the Government's objective to support 'sustainable tourism', we urge the Committee to consider the adverse, albeit perhaps unintended consequences, this legislation will have on recreational boating. Unless the meaning of 'Visitor Accommodation' is tightened (Part 1, 2) and the Bill makes clear that berths and moorings used by recreational craft will be exempt from any future extension of the Act (Section 40) the legislation will unfairly damage the leisure marine industry which is distinct from the visitor accommodation sector.

Unlike land-based visitors travelling and staying overnight in Wales, people participating in recreational boating – which is a sport and leisure activity - have little impact on the services and infrastructure that the Visitor Levy is designed to help fund, i.e. local authority roads, car parks, public conveniences etc. Boaters are largely self-contained, with their boats providing a more sustainable form of

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transport. When moored boaters do not add pressure to local authority services, such as waste facilities etc, but remain self-contained or use non local authorities facilities e.g. provided by a marina, club or the Canal & River Trust (CRT).

More generally visitors, especially boaters, already pay their own way. As [research](#) by the Tourism Alliance (September 2023) shows taxes on tourists in the UK are already higher than in many other competitor destinations. When taking account of the total tax (sales tax and tourism tax) paid by visitors to 12 overseas destinations it found the average tax rate paid by visitors to those destinations was 14%, compared to a 20% rate paid by visitors to the UK. Crucially, the overseas destinations that had a tourism tax also had a significantly lower rate of sales tax on tourism accommodation, so even with their tourism tax, visitors still paid less on accommodation tax than in the UK.

## The Bill's implementation

The Regulatory Impact Assessment is set out in Part 2 of the Explanatory Memorandum (<https://senedd.wales/media/g5ipwvwh/pri-ld16812-em-e.pdf>). This includes the Welsh Government's assessments of the financial and other impacts of the Bill and its implementation.

## **2. Are there any potential barriers to the implementation of the Bill's provisions? If so, what are they, and are they adequately taken into account in the Bill and accompanying Explanatory Memorandum and Regulatory Impact Assessment?**

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(We would be grateful if you could keep your answer to around 500 words).

Our primary objection to the Bill is its provision in Part 4, Section 40 – “Power to extend Act to berths and moorings”. Leisure berth and mooring providers do NOT provide visitor accommodation and for the Bill to suggest otherwise is incorrect.

Section 40 threatens to extend the Act to all berths and moorings. To do so would place an unreasonable burden on leisure mooring providers and damage our industry and government as it would be impossible to manage in a fair and reasonable way. This was the conclusion reached by the Scottish Parliament last year following a [recommendation by its lead committee](#), to remove “berths and moorings” from the Visitor Levy (Scotland) Bill. Although the Visitor Levy (Scotland) Act differs from this Bill, the same arguments regarding recreational boating and their moorings apply in Wales. Indeed, given the strong arguments made by the Scottish leisure marine sector which were backed by the wider

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tourism sector and later accepted by the Scottish Government, we were not surprised to hear that Welsh Officials had indicated recreational berths and moorings would not be in this legislation.

The references to “vessels” and “berths and moorings” in the Bill are oversimplistic and undermine the fairness of the legislation. The accompanying assessments make no mention of boating nor leisure marine and give no indication as to what possible justification there could extend the Act in respect of recreational berths and moorings. Leisure marinas are not Visitor Accommodation Providers (VAPs) nor, to our knowledge, have ever been recognised as such. They provide marine services, which includes providing safe spaces for boats, be that an on the water berth or storage ashore.

Any future regulations provided by Section 40, are likely to prove unworkable. They would be unfair to boaters who may not use, or even have, accommodation onboard. They would be unfair to Welsh mooring providers as they are not VAPs so could not comply with the Register nor be expected to pay the levy. To apply Parts 2 and 3 to Welsh leisure mooring providers would require significant changes to the primary legislation. This is because they do not enter into visitor accommodation contracts but rather contracts for moorings or berths and other marine services.

The vast majority of leisure berthing contracts do not specify a specific berth. Boats are frequently moved around. Part 1, Section 2 states that accommodation is not “visitor accommodation” if it is in a vessel that is not “permanently or semi-permanently situated in one place”. By that logic alone, it would be entirely wrong to apply the levy to leisure marinas who frequently move boats from one place to another.

We urge the Committee to recommend Section 40 is deleted as also recommended by the WTA and the RYA or, at very least, be amended given there is no conceivable justification to bring recreational berths and moorings into scope.

Section 40 is not only unjustified but unnecessary as Part 1 Section 2 makes provision for Ministers to vary the types of visitor accommodation where the levy becomes applicable. (507 words)

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### **3. Are any unintended consequences likely to arise from the Bill?**

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(We would be grateful if you could keep your answer to around 500 words).

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The Bill, specifically Part I, Section 2 (e) and Section 40, is a cause of concern to the leisure marine industry, particularly hire & charter boat businesses and marinas for the reasons previously explained to the Scottish Parliament in regard to the Visitor Levy (Scotland) Bill. Without amendments, this legislation will unfairly add costs to marine businesses who do not provide visitor accommodation.

The Bill fails to draw a distinction between recreational boats used for navigation and floating lodges or Airbnb type boats that are permanently situated in one place with the primary purpose of providing overnight accommodation. It also fails to distinguish between a cruise liner berth and a leisure mooring. It shows little understanding of the leisure marine industry and the challenges and absurdities that will arise if the levy is applied to recreational boating.

Re Section 40 - It would be reasonable if the intention was to reserve the right of Welsh Ministers to extend the Act to berths and moorings for cruise ships given their volume of passengers and the impact they may have on shore-based tourism. However, if this is the case, Section 40 should make clear the provision excludes berths and moorings for small recreational craft. Failing that, Section 40 should be deleted for the reasons set out under Q2 i.e. as it is neither justified nor necessary.

Recreational boating is both a sport and, by being on-the-water where boaters have little, if any, impact on local public services, is a type of sustainable tourism that should be strongly encouraged in Wales. Yet due to Bill's own confused definition of a "vessel" and the poor wording in Part I, Section 2 (e) boaters, together with the marine industry, are at risk of being unfairly hit by this legislation.

Re Part 1 Section 2 - 'Visitor Accommodation', for the purposes of the levy and in relation to recreational vessels, as defined by Recreational Craft Regulations, should only apply to those that are moored or berthed in a "permanent place" and with the primary purpose of providing overnight visitor accommodation on a commercial basis. For example, Airbnb type boats or floating lodges. Critically, all other recreational vessels should be exempt from the levy because their primary purpose is navigation (waterborne transport) and it is what distinguishes them from hotels, tents, mobile homes etc.

To be clear that only recreational vessels which are permanently situated in one place with the primary purpose of providing overnight accommodation come in scope would align with understanding elsewhere in the UK where visitor

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accommodation levies can already apply. By tightening the Bill in this way, the Senedd would provide much needed clarity for boaters and ensure the legislation does not unfairly impact marine businesses, such as charter companies and sea schools based in Wales as well as those that operate across the UK and beyond. (475 words)

#### **4. What are your views on the Welsh Government's assessment of the financial and other impacts of the Bill?**

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(We would be grateful if you could keep your answer to around 500 words).

We share the concerns expressed in the WTA detailed response about the lack of robust data to warrant this Bill.

As indicated above, British Marine Wales is disappointed by the Government's apparent lack of understanding about recreational boating and the industry which supports it. It is especially disappointing as prior to the introduction of the Bill, Government Officials involved in its drafting were invited to visit leisure marinas and to talk to the RYA but, to the best of our knowledge, did not take up those offers.

There is no evidence to show the Government has attempted to assess the financial and administrative impact this legislation will have on leisure marinas or on hire or charter boat companies. There is only a brief reference to berths and moorings in the Bill's Explanatory Memorandum and Regulatory Impact Assessment which but, in regard to the "appropriateness of the delegated power", incorrectly describe berths as "a specific accommodation type". As explained above, recreational berths and moorings are simply safe spaces for boats. They are more akin to a car park space, than a camping pitch or a hotel room. It is why The Yacht Harbour Association's Code of Practice, which is used by leisure marinas worldwide, defines a berth as "an area of water that has been allocated to the customer to moor his/her boat". (222 words)

### **Subordinate legislation**

The powers to make subordinate legislation are set out in Part 1: Chapter 5 of the Explanatory Memorandum (<https://senedd.wales/media/g5ipwvwh/pri-ld16812-em-e.pdf>).

The Welsh Government has also set out its statement of policy intent for subordinate legislation

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(<https://business.senedd.wales/documents/s155951/Statement%20of%20Policy%20Intent.pdf>).

**5. What are your views on the balance between the information contained on the face of the Bill and what is left to subordinate legislation? Are the powers for Welsh Ministers to make subordinate legislation appropriate?**

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(We would be grateful if you could keep your answer to around 500 words).

As explained above we do not think it appropriate to make provision under Section 40 for subordinate legislation to extend the Act to recreational berths and moorings. This is because it risks undermining sustainable tourism given such an extension would unfairly increase the costs of recreational boating in Wales. Even simply retaining Section 40 without any amendment will leave a lingering threat over our industry and without justification. .

Subordinate legislation in regard to Section 40 would most likely require substantial changes to the primary legislation. Even if that were possible, it is highly improbable that the regulations could be enforced in fair and efficient way. It is more likely it would lead to multiple costly challenges and could bring into question the merits of the original legislation. (128 words)

## **Other considerations**

**6. Do you have any views on matters related to the quality of the legislation?**

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(We would be grateful if you could keep your answer to around 500 words).

We have already commented on the incorrect assertion berths are a type of accommodation.

We also have concerns about the use of the word “semipermanently” in Part 1, 2. The word is open to so many different interpretations it is meaningless and causes confusion as the intention of this section, and so undermines the quality of the legislation. We therefore urge the Committee to recommend that the word “semipermanently” is deleted from the text of the Bill, or at least replaced by the word ‘predominantly’ which is defined and widely understood to mean ‘mainly’ or ‘mostly’.

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We think the Bill's definition of 'vessel' is of little help and could be open to multiple interpretations. The Recreational Craft Regulations (RCR) define a recreational vessel as "any watercraft of any type, excluding personal watercraft, intended for sports and leisure purposes of hull length from 2.5 metres to 24 metres, regardless of the means of propulsion". That definition makes no reference to recreational craft as being "designed or adapted for habitation". The Bill's definition of a vessel is questionable and could be interpreted as applying to many different types of craft, from boats with the most basic amenities that may make habitation possible, to floating lodges that have luxury house-like accommodation and are connected to onshore utilities.

We therefore suggest that the Committee recommends that the definition of a vessel be amended to make it clear that only vessels which are permanently or predominantly situated one place for the primary purpose of providing visitor overnight accommodation be in scope and that other recreational vessels whose primary purpose is navigation are exempt. (268 words)

**7. On 26 November, the Cabinet Secretary wrote to the Finance Committee with some indicative additional registration and enforcement provisions (<https://business.senedd.wales/documents/s155952/Letter%20from%20the%20Cabinet%20Secretary%20for%20Finance%20and%20Welsh%20Language%20Indicative%20Stage%202%20amendments%20that%20.pdf>) he intends to bring forward at Stage 2 of the legislative process ([https://senedd.wales/NAfW%20Documents/Assembly%20Business%20section%20documents/Guide%20to%20the%20Legislative%20Process/Guide\\_to\\_the\\_Legislative\\_Process-eng.pdf](https://senedd.wales/NAfW%20Documents/Assembly%20Business%20section%20documents/Guide%20to%20the%20Legislative%20Process/Guide_to_the_Legislative_Process-eng.pdf)).**

**Do you have any views on the indicative additional registration and enforcement provisions the Welsh Government intends to bring forward at Stage 2?**

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(We would be grateful if you could keep your answer to around 500 words).

**8. Are there any other issues that you would like to raise about the Bill, the accompanying Explanatory Memorandum and Regulatory Impact Assessment, or any related matters?**

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(We would be grateful if you could keep your answer to around 500 words).

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We are disappointed the Welsh Government appears not to have heeded the lessons learnt in Scotland last year when, after careful consideration of facts about berths and boating, the Scottish Parliament rejected plans to include berths and moorings in its visitor levy legislation, acknowledging it would be inappropriate to apply a visitor levy to the recreational boating sector.

Much of the arguments contained in the evidence submitted by British Marine Scotland to the Scottish Parliamentary Committee in 2023 is relevant this specific Bill, especially as it brings recreational boats into scope and includes a provision for that to be extended in respect to berths and moorings. Therefore, we ask that the Committee considers that evidence in conjunction with this response.

British Marine Wales would be happy to expand on the points raised above and provide any further clarification the Committee may require. We would also be delighted to facilitate a visit for the Committee to a British Marine Wales' business, such as a leisure marina, if that would be helpful. (170 words)

Submitted January 2025

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## **Supplementary information provided by British Marine Wales to the Senedd's Finance Committee in regard to its scrutiny of the Visitor Accommodation (Register and Levy) Etc. (Wales) Bill.**

Please see below evidence that our partner association, British Marine Scotland, sent to the Scottish Local Government, Housing and Planning Committee in September 2023 re the then Visitor Levy (Scotland) Bill.

Whilst we fully respect the independence of our nation and recognise the differences between the two pieces of legislation, we think there many similarities in regard to the risks now posed to recreational boating in Wales and those that posed in Scotland before the Scottish Parliament removed berths and moorings from its visitor levy legislation. The Scottish amendment provided much needed assurance and certainty that the leisure marine industry supporting recreational boating would not be affected.

Given our concerns about the Welsh Visitor Accommodation (Register & Levy) Bill which appears to include recreational boats as a type of visitor accommodation (Part 1, Section 2) and the uncertainty its poses by the provision to extend the levy to berths and moorings (Section 40) we would be grateful if you could consider the relevant, highlighted points below.

### **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 unlikely 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 as 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.

## Key extracts from the Scottish Parliament's Local Government, Housing and Planning Committee Stage 1 Report on Visitor Levy (Scotland) Bill, 10th Report, 2023 (Session 6)

79. Respondents to the call for views were broadly content with the types of accommodation covered although specific concerns were raised in respect of certain types, notably including boat moorings or berthings.

80. Both British Marine Scotland and the Royal Yachting Society suggested that the list should be amended as moorings or berthings should not be defined as a type of accommodation. Instead, they explained, they are primarily a safe haven for vessels. The British Ports Association stated that any move to increase costs for ports and harbours could impact the commercial viability of such facilities and reduce local tourist spend, "not to mention reduce the attractiveness of Scottish coastal areas to the sailing community". They therefore believe that "there is a strong case to remove recreational vessels and moorings from the scope of the rules". Scottish Land and Estates agreed that a levy on moorings "would be extremely difficult to administer" given that provision of a mooring was not the same as provision of accommodation and providers of moorings have no power to inspect a boat to see whether anyone is sleeping on it.

81. The STA agreed that boat moorings fees did not include the purchase of overnight accommodation and instead, boaters are charged for a safe haven for boats and marine services fees such as utilities, lifting out, maintenance and repair services, and on-site boat storage. The STA further pointed out that many of these vessels do not even have onboard accommodation.

82. Many mooring associations are small volunteer-led operations, and some individuals expressed concern that office bearers would become the "liable person" for keeping records and returning visitor levies. The Cruising Association expressed concern that the extra administrative burden caused by a levy "could become the final straw that would make many small providers withdraw entirely", thereby reducing the moorings available to visitors and the related income they bring to many remote and/or island communities.

83. In oral evidence, the Minister confirmed that he was "familiar with the concerns that have been raised by the sector, and I recognise them." He continued, "clearly, concern was expressed that the legislation might unintentionally capture certain activity in a way that was not consistent with the policy intention. We are having close discussions to ensure that such issues are fully understood. If required, we will lodge amendments to clarify the position at stage 2.

84. Others suggested that the levy should not apply to specific types of accommodation including low cost huts operated by mountaineering clubs on a not-for-profit basis, temporary campsites run by volunteers (of which there had been 82 in Scotland in 2023 by late October according to the Camping and Caravanning Club), or low-cost accommodation such as hostels, particularly for school and youth groups from less privileged areas.

Local Government, Housing and Planning Committee  
Stage 1 Report on Visitor Levy (Scotland) Bill, 10th Report, 2023 (Session 6)

**85. The Committee agrees that boat moorings or berthings should not be captured by the Bill and invites the Scottish Government to bring forward amendments at stage 2 to remove them from its scope. The Committee also invites the Scottish Government to respond to concerns in respect of mountaineering huts, temporary campsites and hostels as set out above.**

Subsequently, on 16th January 2024, Tom Arthur MSP, Scottish Minister for Community Wealth and Public Finance confirmed that the Scottish Government accepted the recommendation to remove moorings and berthings from the scope of a visitor levy. It later supported an amendment to remove berths and moorings from the legislation which, assisted by British Marine Scotland, was tabled by Stuart McMillan MSP, Convenor of the Scottish Cross Party Group on Recreational Boating and Marine Tourism.