



Mike Hedges MS
Chair, Legislation, Justice and Constitution Committee

5 February 2025

Dear Mike,

Thank you for your letter of 23 January 2025 following the Legislation, Justice and Constitution Committee's scrutiny session of the Visitor Accommodation (Register and Levy) Etc. (Wales) Bill on 20 January. I am writing to provide you with the further information requested by the Committee.

I would also like to note for clarification an issue raised during the committee discussion on 20 January regarding the regulation making power in the Bill under section 9 (5). In the committee discussion, I noted that the power is intended to be used in unforeseen circumstances, and I provided an example related to an emergency situation. It is important to highlight that while the power is intended to future-proof situations that we have not been able to account for at this point, which would be unforeseen, it is not limited to emergency situations.

Question 1: In the discussion on 20 January 2025, it was explained to the Committee that, should a visitor accommodation provider exclusively offer stays of more than 31 nights in duration, such a provider would not be subject to the mandatory registration requirement in section 5(1) of the Bill in respect of that accommodation. The Committee would be grateful if you could consider and explain whether and how section 5(1) of the Bill, when read with section 2(1), adequately captures this policy intention, given that the types of visitor accommodation listed in paragraphs (a)-(d) in the definition of "visitor accommodation" in section 2(1) do not explicitly reference being made available for stays of 31 nights or less.

The visitor accommodation listed in sections (a)-(d) are 'typical' visitor accommodation. They have the typical characteristics of visitor accommodation and are generally provided to visitors. We recognise that these visitor accommodation types are unlikely to provide stays longer than 31 nights (and if they do it would often be by exception), and therefore it was not necessary to apply the 'short-term basis' criteria to (a)-(d).

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

The categories listed under (e)-(g) are likely to offer longer-term accommodation and may only provide this type of longer-term accommodation. For example, visitor accommodation in a room share provided to someone who is working in an area for a prolonged period. This may be the only type of accommodation which is being provided and without application of the short-term basis criteria there would be a requirement to register, even though the visitor in this sense is occupying the accommodation on a more permanent basis.

Question 2: In relation to the steps a principal council must take before introducing or changing the levy, section 25(9) provides that steps taken before those provisions come into force may satisfy the requirements of the section. Section 25 comes into force on the day after Royal Assent. Does that mean that principal councils could be taking those steps now on the assumed basis that these provisions will become law?

Undoubtedly principal councils would want certainty that any spend they undertake is not wasted effort nor money. Therefore, we would anticipate principal councils waiting until conclusion of the Bill process before undertaking or preparing to undertake any formal consultation, ultimately though it is a decision for each council to take based on their own advice.

Question 3: Section 37 contains an extensive power for the Welsh Ministers to impose requirements on accommodation providers in relation to advertising and billing, including the ability to impose civil sanctions and appeal provisions. In the Statement of Policy Intent you describe the power as “intentionally wide”. Why didn’t the Government develop policy on these matters and include it on the face of the Bill, rather than seeking an ‘intentionally wide’ power?

We recognise that it is highly likely that visitor accommodation providers would pass on the levy to visitors. This is an intended effect as an indirect tax on overnight visitor stays. Often indirect taxes like VAT or Air Passenger Duty do not have provisions that require a tax to be passed through but they are passed on to consumers nonetheless. We anticipate that should providers pass on the levy, they would do so in a clear manner and provide any necessary receipt or information requested by a visitor.

However, we note the risk for discrepancies in practice by providers which could lead to confusion. We have included this regulation making power should any confusion, misinformation or inaccuracies occur when providers charge the levy to visitors. We have no current intention to exercise this power, but it may be necessary in the future.

Question 4: Section 39 contains a power for the Welsh Ministers to issue statutory guidance on the levy or registration scheme. There is no Senedd procedure attached to this proposed power. Why would it be appropriate for the Government to issue statutory guidance without Senedd scrutiny?

The power to issue guidance is intended to facilitate the operation of the primary legislation. The guidance will largely be concerned with operational process and as such, Senedd scrutiny will have already taken place. It will clarify aspects of the law, not replace them. Guidance generally is not required to be subject to Senedd scrutiny. We will also be consulting before issuing guidance to ensure the views of stakeholders are reflected which ensures sufficient scrutiny.

Question 5: The Committee has previously expressed concerns over the extent of subordinate legislation powers used by the Government in relation to devolved taxation.

(a) Why has the Government chosen to seek a Henry VIII power in section 40 to extend the provisions in this Bill to berths and moorings?

We have consulted with the marine sector during the development of the policy. It became apparent that this sector operates in a different manner to other visitor accommodation types. Therefore, we will look to continue our discussions to consider how the levy may work in the context of moorings and berths.

(b) Why do you consider this approach more appropriate than bringing forward future proposals in a draft Bill?

This approach will provide an opportunity to continue to discuss the proposal with the sector. Should a levy apply to the sector, we would like it to be consistent with our proposals set out in the Bill. Therefore, regulation making powers to extend the act to moorings and berthing allows for such an approach.

(c) In written evidence to the committee, British Marine Wales has expressed concern over the potential future extension of the levy, stating that the Bill “shows little understanding of the leisure marine industry and the challenges and absurdities that will arise if the levy is applied to recreational boating”. Would you consider excluding recreational craft from the scope of the proposed power in section 40?

We must consider the matter from a point of fairness. Is it fair for someone on a yacht moored up in a marina overnight to not pay a levy but someone staying in a nearby hotel to be subject to the levy? We recognise there would be some practical challenges in applying the levy to moorings and berths. The inclusion of regulation making powers allows for further consultation to consider these practicalities.

Question 6: Have you considered whether the Welsh Government should be under a statutory duty to consult before using any of the proposed powers in the Bill?

Where appropriate, we would intend to consult on use of regulations. However, this would be considered on a case-by-case basis, therefore we do not think it necessary to be under a statutory duty.

Question 7: Paragraph 5 of Schedule 1 includes a new permitted disclosure of protected taxpayer information for the purposes of the Welsh Revenue Authority’s functions. This is wider than disclosure in relation to the levy. Can you explain why this is necessary?

The proposed change will widen the WRA’s permitted ways they can disclose Protected Taxpayer Information (PTI) to instances where this information can be shared in accordance with the WRA’s general functions, namely the collection and management of devolved taxes and the visitor levy. This amendment to the TCMA is necessary to effectively administer the visitor levy as well as the collection and management of the devolved taxes.

It has been identified over the WRA’s 8 years of operation that there are certain scenarios where they are unable to communicate effectively with taxpayers about their cases due to restrictions on sharing PTI.

Being able to make disclosures of this nature will assist the WRA in its day-to-day operation of the levy and its existing taxes. This brings WRA in line with HMRC. The Information Commissioner's Office have been consulted on the proposed change and are content with the rationale for this change to be made to TCMA as a whole rather than just for the visitor levy. The full explanations and rationale for this change are stated in the Data Protection Impact Assessment that has been published alongside the Bill.

Question 8: Paragraph 17 of Schedule 1 removes an existing requirement for the Welsh Revenue Authority to seek the approval of the tribunal before issuing a taxpayer notice requiring taxpayers to provide information or documents. Why have you chosen to remove that element of taxpayer protection in this Bill?

This Bill will remove the requirement for the WRA to seek tribunal approval before issuing a taxpayer notice in relation to the devolved taxes and the visitor levy. This will improve the efficiency of administration of all taxes the WRA collects and manages. The decision to issue an information notice will still be an appealable decision to ensure appropriate checks and balances are still in place. This brings the WRA's powers in line with HMRC's.

Question 9: Does the Government consider that any of the provisions of the Bill require the consent of HM The King or the Prince of Wales? If so, when do you anticipate that any required consents will be received?

Officials are of the view that given the property interests of the Duchy of Cornwall in Wales (which revert to the Crown when there is no Duke of Cornwall) that the consent of the Duke of Cornwall and the King will be required in relation to all the provisions in the Bill which deal with registration of visitor accommodation and the creation of a levy on overnight stays in visitor accommodation.

Consent is generally sought following the completion of stage 2 and must be obtained and signified to the Senedd prior to the commencement of stage 4.

Question 10: In its latest annual report, the Office for the Internal Market (OIM) identified visitor levies as an area of regulatory development that is affecting, or had the potential to affect, the UK internal market. Have you had any discussions with the OIM on this issue or, if not, what are your views on the OIM's comments?

We have not had any discussions with the Office for the Internal Market specifically about the visitor levy. We are proposing is a local discretionary tax power for principal councils to use or not use. Local taxes are a devolved matter where we can legislate.

Question 11: Have any concerns been drawn to your attention that any provisions in this Bill could be impacted by the operation of the UK Internal Market Act?

No concerns have been drawn to my attention.

Question 12: Should the Bill be passed and enacted, when do you envisage the registration provisions in Part 2 of the Bill and the accompanying subordinate legislation being fully in force?

Provisions in Part 1 (provisions relating to the definitions of visitor accommodation, Part 3 (the visitor levy, including amendments to TCMA 2016) and Part 4 (miscellaneous provisions) come into force when the Bill receives Royal Assent.

Part 2 of the Bill shall come into force via orders made by statutory instrument. We intend to commence Part 2 by principal council area so that we can phase the introduction of registration across Wales, prioritising those areas that intend to use a visitor levy first and then areas which have a higher proportion of visitor accommodation. We aim to have completed the registration roll out by 2028.

Yours sincerely,

A handwritten signature in black ink that reads "Mark Drakeford". The signature is written in a cursive style with a large initial 'M'.

Mark Drakeford AS/MS

Ysgrifennydd y Cabinet dros Gyllid a'r Gymraeg
Cabinet Secretary for Finance and Welsh Language