
NORTH AYRSHIRE COUNCIL

12 September 2023

Audit and Scrutiny Committee

Title: Call In: Visitor Levy Consultation

Purpose: To allow the Committee to consider a call-in request in respect of the decision taken by Cabinet at its meeting on 29 August 2023, in which having welcomed the principle of having fiscal flexibility at a local level, irrespective of whether it was ultimately exercised, the Cabinet agreed (a) to authorise officers to respond to consultations on the Visitor Levy (Scotland) Bill as detailed in Appendix 1 to the report by expressing support for the introduction of a levy, subject to further exploration of costs and benefits; and (b) to note the formation of an internal Visitor Levy Officer Working Group which would engage with the Tourism Forum, businesses and regional stakeholders to inform any future emerging proposals related to the implementation of a visitor levy.

Recommendation: That the Committee considers the terms of the call-in request and agrees, or otherwise, to make a recommendation to the Cabinet.

1. Executive Summary

- 1.1 In terms of the Scheme of Administration (Section 5), the Audit and Scrutiny Committee has a remit to consider call-in request and invite at least one of the Members who has requested the reference to call-in to attend the Committee to explain the request.
- 1.2 This report sets out the background to the call-in request in respect of the decision taken by Cabinet at its meeting on 29 August 2023 in relation to the report on a response to the Visitor Levy (Scotland) Bill consultation.

2. Background

- 2.1 The Cabinet, at its meeting on 29 August 2023, considered a report and agreed a response to the Visitor Levy (Scotland) Bill consultation.
- 2.2 A request was received in terms of the call-in procedure set out in the Council's Scheme of Administration and Standing Orders, that the Audit and Scrutiny Committee examine the decision taken by the Cabinet.

2.3 The call-in request, which was signed by Councillors Billings, Todd Ferguson and Stalker is in the following terms:-

Reason for Call In

“The decision of the Cabinet was to respond to the consultation ‘in support of the introduction of a levy’. We do not agree that North Ayrshire Council should be in support of the introduction of a levy at this time. There is insufficient detail in the draft legislation to ensure that any levy would be reasonable, proportionate and not have an overall harm on the visitor industry of North Ayrshire and Arran.

We consider that the responses in the consultation document are incomplete, unworkable and do not reference a number of very important issues that have been raised in discussion with constituents. These are:

The need for a Visitor Levy: The case for a Visitor Levy has not yet been made as there are concerns that a levy will be burdensome, expensive to operate, and removed local control of visitor funds. The cost of operating a business is already high in Scotland with high levels of taxation and VAT at 20% on all visitor services which is significantly more than many countries where visitor levies are applied. In addition, the cost of carrying on business on North Ayrshire’s islands is already higher than the mainland.

Existing Visitor Gifting Schemes: There are several voluntary visitor gifting schemes operating on Arran, which cost nothing to run and raise considerable amounts of money that is then used for the benefit of visitors to Arran. The imposition of a centralised compulsory visitor levy will harm the functioning of these schemes and reduce the funds available for use on Arran.

Where the funds are spent: A centrally controlled visitor levy will remove local decision-making about how donations from visitors will be spent. If there is going to be a visitor levy then the local authority must undertake full engagement with its visitor businesses and communities and agree how the funds raised should be spent and in what proportion across the local authority area.

Definition of Chargeable Transaction: The consultation response states that using the total overnight charge would be preferable to what the Bill suggests, which is just the accommodation element of the stay. Using the total overnight charge would be unworkable, unfair and anticompetitive. This is because:

- Accommodation providers regularly offer a bundled offer that could include a combination of accommodation, breakfast, dinner, parking, leisure facilities, spa treatments, and ferry travel. These are often used to promote the business and attract visitors out of season. It would be totally unreasonable for a guest staying at a multiservice accommodation providers (such as a hotel or bed & breakfast) to pay the visitor levy on the total cost of their stay.

- Having a levy on the total cost of stay would be unworkable as it would be impossible to know what was and was not included. For example, if the levy were to be on the total cost of the stay, would that be for guests who purchase the bundle up front or for all guests even if they only book a room up front but then go on to purchase breakfast, dinner and spa treatments? What about hotel guests who only book a room and then pay as they go for additional services?
- If hotel guests have to pay the levy on more than just the room then hotels would have two prices, one for guests charging services to the room and the second for people not staying at the hotel but using its services.
- Hotels would lose custom because guests could go to local restaurants and not have to pay the levy, giving a competitive advantage to service providers who don't offer accommodation, such as restaurants, hairdressers, spa and leisure facilities.
- Local engagement and publicity – it is essential that local authorities engage with providers, stakeholders and communities about the local operation of any visitor levy scheme they plan to introduce. The local authority must develop a publicly available plan on how the money raised will be spent and the distribution of spend across the local authority. Each year local authorities must report on the performance of the levy with details about the money raised, cost of administration, what and where the funds were spent and the benefits provided to visitors.

Others – other various concerns are:

How will the levy be applied to visitors' bills?

When will visitors be told that a levy is payable?

Will the levy be subject to VAT?

What impact will there be on commission-based accommodation sales (such as to Booking.com)?"

Desired Outcome

"The desired outcome is to change the consultation paper as follows:

Section 1 – North Ayrshire Council considers that a visitor levy should not be imposed on Scotland's visitors. Scotland is already an expensive place to do business with high levels of taxation. The Visitor Levy is an additional tax on doing business that will be burdensome, expensive to operate and damage Scotland's tourist industry.

However, if a visitor levy system were to be approved then each local authority must have full discretion regarding implementation and control over the design, set-up, implementation and spend of any scheme within their area.

Section 2 – in addition to the current wording the following to be added:

Several visitor gifting schemes operate within North Ayrshire, in particular on Arran. They are operated at no cost by community led charities. They raise and distribute large sums of money for the direct benefit of visitors to Arran. The imposition of a visitor levy will harm the operation of these schemes which operate on good will and voluntary contributions.

Accommodation providers will be impacted by this legislation, in particular smaller providers with less resources to cope with the administration requirements. Tourism is already being harmed by the imposition of short-term licensing and the imposition of a visitor levy will create a further deterrent on small businesses.

Section 3 – remove the current wording and replace with:

Using the definition of ‘overnight accommodation’ is a simple and easily understandable definition.

There is some concern that some providers may attempt to inflate the costs of any additional items (such as breakfast and parking) to reduce the visitor levy. However, businesses already have to separate accommodation, food and other services for other taxation purposes. Also, to have the levy on the full cost of the overnight stay would add significant complexity and create disparity between visitors. There is such complexity to what a stay at a hotel includes and when additional services are paid for that charging the levy on more than just the overnight accommodation would be totally unworkable, burdensome and anticompetitive (as hotels would have higher prices for its resident guests compared with non-residents, and compared with nearby restaurants, leisure facilities etc).

The definition of ‘overnight accommodation’ must define if that is the rate inclusive or exclusive of VAT. Some smaller providers operate below the VAT threshold and don’t charge VAT. A % levy charged after VAT would further disadvantage larger providers and would be a tax on a tax.

There must be a consistent approach about when and how visitors are informed about the compulsory visitor levy. In the UK there is a requirement for pricing to be transparent and include all the costs associated with the purchase. However, if accommodation providers can advertise accommodation without the visitor levy, at what point must providers inform their guests of this compulsory additional charge?

If accommodation providers are required to show a price that includes the visitor levy then providers who use 3rd party sales outlets (such as Booking.com) which the vast majority of providers do, will be charged commission on the total price of the stay including the levy. Commission could be as high as 20% which would result in a loss to providers who will still need to pay the full levy.

It is essential that the levy is only payable on a 'chargeable transaction'. If visitors were to stay overnight for free then no levy should be payable. Examples of when this are when visitors are stranded on islands due to ferry cancellations and stranded visitors are accommodated in halls and temporary accommodation that makes no charge.

Section 4 – replace the current wording with:

If the levy is a % then it must be on the accommodation only element of the stay. However, an alternative would be a set £ fee per night. This would be simpler to calculate and would be more transparent. However, depending on the level at which the levy is set it may need to be tiered depending on the cost of accommodation.

Section 5 – add to the current wording:

Local authorities should have the flexibility to limit the levy for a single stay. This could be by a cap on the number of chargeable nights or setting a maximum charge for a single stay. This would lessen the burden on long-stay visitors who are often working in the area.

Local authorities should have the flexibility to change the rates depending on the demand for accommodation at different times of year. This would lessen the impact for visitors in low seasons.

Section 6 – retain current wording

Section 7 – add the following:

It is essential that local authorities undertake a full assessment as to the implications on the introduction of a visitor levy and that the findings on this assessment should be made public.

Then, prior to making any decision about introducing a visitor levy the local authority must undertake a comprehensive consultation with businesses, stakeholders and the public regarding the local implementation of the levy system, that includes details of how and where funds raised are to be used.

The operation of the visitor levy must be made public and contain details of how the funds raised will be spent and the distribution of funds across the local authority area.

Each year the Local Authority should be required to report on the total money raised, the proportion used for administration, what the funds were spent on and to what benefit to visitors. This will ensure that the scheme remains viable, and that visitors and residents retain confidence in the levy scheme.

Section 8 – retain current wording

Section 9 – retain current wording

Section 10 – replace current wording with:

- The requirement for providers to keep detailed records of the chargeable part of their overnight rates will be an additional burden for many, especially small providers. However, using the total overnight charge (including additional non-accommodation items such as food or use of leisure facilities) is not a viable option as it would be complex and create a significant competitive disadvantage for accommodation providers.
- Using a flat rate per night of stay is likely to be less complex and easier to manage. Any flat rate may need to be tiered so as not to disadvantage lower cost accommodation providers, such as campsites.
- Where an accommodation provider operates businesses in more than one local authority, they may have to manage reporting at different levy rates to different local authorities. If they have a central booking system this may become even more complex.

Accounting software used by many small businesses may not provide the flexibility to manage the levy and exemptions which could add to administrative burden and complexity for the providers.”

- 2.4 A copy of the original report presented to Cabinet on 29 August 2023 is attached as Appendix 1 to this report. A briefing note has been provided by the Interim Head of Service, Economic Growth & Employability and is attached at Appendix 2.
- 2.5 The call-in request is valid for consideration by the Committee. The request was received within the appropriate timescale, it was signed by three Elected Members and details were provided on both the reason for the call-in and the desired outcome.
- 2.6 The Elected Members who have submitted the call-in will be invited to address the Committee to explain the call-in request. The appropriate Cabinet Member, will then be invited to clarify the reasons for the decision. The relevant senior officer will also be present to provide information on the report presented to Cabinet and on issues raised by the the call-ins received. The Committee will have an opportunity to ask questions of both parties and of those officers in attendance.
- 2.7 The Committee will then debate the call-in request and decide whether or not it agrees with the decision of the Cabinet.
- 2.8 The Audit and Scrutiny Committee therefore has to:
 - i) decide if it agrees or not with the decision of the Cabinet; and
 - ii) consider what alternative action the Committee would recommend to the Cabinet if it does not agree with the decision.
- 2.9 When the matter is considered by the Cabinet, the Chairperson or another member of the Audit and Scrutiny Committee will have the right to attend the Cabinet and speak in support of any recommendation.

2.10 In the event the Cabinet declines to accept the recommendation from the Audit and Scrutiny Committee, the matter will be referred to Council for determination. The decision of the Council will be final.

3. Proposals

3.1 It is proposed that the Committee considers the call-in request.

4. Implications/Socio-economic Duty

Financial

4.1 The financial implications are outlined in the Visitor Levy Consultation report attached at Appendix 1.

Human Resources

4.2 The human resource implications are outlined in the Visitor Levy Consultation report attached at Appendix 1.

Legal

4.3 The legal implications are outlined in the Visitor Levy Consultation report attached at Appendix 1.

Equality/Socio-economic

4.4 The equality/social-economic implications are outlined in the Visitor Levy Consultation report attached at Appendix 1.

Climate Change and Carbon

4.5 The climate change and carbon implications are outlined in the Visitor Levy Consultation report attached at Appendix 1.

Key Priorities

4.6 The key priorities are outlined in the are outlined in the Visitor Levy Consultation report attached at Appendix 1.

Community Wealth Building

4.7 The community wealth building implications are outlined in the Visitor Levy Consultation report attached at Appendix 1.

5. Consultation

5.1 No formal consultation has been undertaken at this stage.

Craig Hatton
Chief Executive

For further information please contact **Craig Stewart, Committee Services Officer**, on 01294 324130 or by email, craigstewart@north-ayrshire.gov.uk

Background Papers

N/A

NORTH AYRSHIRE COUNCIL

29 August 2023

Cabinet

Title: Visitor Levy Consultation

Purpose: To seek Cabinet approval to respond to active consultations on the Visitor Levy (Scotland) Bill; and set out working arrangements for exploration of the potential benefit and impact of a visitor levy.

Recommendation: It is recommended that Cabinet:

- a) Approves responding to consultations on the Visitor Levy (Scotland) Bill in support of the introduction of a levy, subject to further exploration of costs and benefits.
- b) Notes the formation of an internal Visitor Levy Officer Working Group which will engage with the Tourism Forum, businesses and regional stakeholders to inform any future emerging proposals related to the implementation of a visitor levy.

1. Executive Summary

- 1.1 The Visitor Levy (Scotland) Bill has been introduced to the Scottish Parliament. Under the proposals within the Bill, the implementation of a visitor levy would be optional for each local authority, but, if implemented, would allow councils to collect a levy on overnight stays by visitors.
- 1.2 The levy scheme has the potential to deliver additional income to North Ayrshire Council to support services used by visitors. However, there are costs associated with setting up and operating a visitor levy scheme and these need to be evaluated against potential scheme income to inform any decision to implement a visitor levy within North Ayrshire.
- 1.3 This report sets out the background to the current consultation and required next steps to assess the viability of introduction of a visitor levy and provides a basis for responding to consultations on the current Bill.

2. Background

Visitor Levy Bill

- 2.1 On 24th May 2023 the Scottish Government introduced the Visitor Levy (Scotland) Bill. This will give local authorities in Scotland a discretionary power to apply a levy to the

accommodation portion of overnight visitor stays in all or part of their area, to help fund relevant local activities and services. The Scottish Government has indicated that the levy will give councils 'additional fiscal flexibility' and states that the levy should be used to 'facilitate achievement of objectives that relate to developing, supporting or sustaining facilities or services which are substantially for or used by those visiting the scheme area for leisure purposes'. Local authorities intending to introduce a levy are required to conduct a series of consultations and give 18 months notice prior to implementation. This means that the earliest a levy could be introduced in Scotland is 2026.

- 2.2 The levy will be a percentage of the accommodation portion of an overnight stay and applies to most types of accommodation, including hotels, hostels, guest houses, camping sites, caravan parks and boat moorings. The percentage rate will be set by each local authority, with no cap on the level, however existing schemes elsewhere typically apply a levy of between 1% and 7%. The levy can vary by location or date but not by accommodation type.
- 2.3 There is no Scottish Government financial support to set up a scheme; and each local authority will need to meet the set-up and recurring costs of running a scheme. The Scottish Government estimates costs of £110,000-£480,000 for set up, with recurring annual costs of between £190,000-£500,000 per local authority. Not all local authorities will have sufficient visitor spend on accommodation for a scheme to be cost-effective, and careful consideration needs to be given by each local authority to the viability of a scheme in their area. The identified new costs are consultation and decision-making costs, including establishing a governance model, set-up costs and ongoing admin costs, including monitoring, enforcement and communications. Those costs need to be weighed against the potential income a levy might generate.
- 2.4 Accommodation providers will also have costs associated with the introduction of a levy, in terms of setup and administration, which could include changes to systems, staff training, preparing returns to local authorities, additional record-keeping and explanation of the scheme to visitors.
- 2.5 Potentially many local authorities in Scotland will set up schemes, with much duplication of cost and effort, however, the Bill creates provision for two or more local authorities to act jointly to create a scheme. This creates provision to work regionally within Ayrshire to explore operational and financial benefits that may arise from a regional approach, if appropriate and beneficial.

Visitor Levy Bill Consultation

- 2.6 Following the introduction of the Bill there is now a further round of consultations by the Scottish Government and SLAED, closing on 1st and 15th September, seeking views on the proposals in the Bill, and on the implications for local authorities and businesses.
- 2.7 In previous consultations, North Ayrshire Council has agreed to support taxation powers being given to Local Authorities, which included the visitor levy, and responded to Scottish Government consultations and it is proposed to maintain in principle support to the Bill through the current consultation, subject to exploration of financial and operational arrangements.

- 2.8 The Bill consultation seeks responses to the consultation in a questionnaire format, and the proposed Council response is attached as Appendix 1. In completing the questionnaire, engagement with the Tourism Forum, an Elected Member Briefing session and engagement with officers at East and South Ayrshire Councils has taken place to incorporate views of members and to provide consistency of approach across Ayrshire, where appropriate.
- 2.9 The response to the Bill will also inform responses to ongoing consultations on the visitor levy by SLAED and the Government Finance Committee.

Next Steps

- 2.10 As it is not possible to undertake detailed assessment of the viability of a visitor levy scheme in advance of responding to the Visitor Levy Bill consultation, essential work needs to be done to explore the options for a delivery model, assess the opportunities, and undertake detailed analysis of potential costs and financial benefit of a scheme based on suitable information. Accordingly, a short-life officer working group will be formed with council officers from relevant services to explore the financial and operational implications of the Visitor Levy to be able to recommend future proposals related to the implementation of a visitor levy. It is anticipated that this process will include engagement with the Tourism Forum and industry stakeholders. It is also anticipated that working arrangements will include engaging with East and South Ayrshire councils to clarify any regional implications or opportunities within the process of identifying options for the implementation of a visitor levy scheme.

3. Proposals

- 3.1 It is recommended that Cabinet:
- a) Approves responding to consultation on the Visitor Levy (Scotland) Bill in support of the introduction of a levy, subject to further exploration of costs and benefits.
 - b) Notes the formation of an internal Visitor Levy Officer Working Group which will engage with the Tourism Forum, businesses and regional stakeholders to inform any future emerging proposals related to the implementation of a visitor levy.

4. Implications/Socio-economic Duty

Financial

- 4.1 There are no financial implications from responding to consultations, creating an internal working group and engaging with our colleagues in neighbouring local authorities. A future paper will be brought to Cabinet outlining the findings of the working groups.

Human Resources

4.2 Responding to consultations and taking part in working groups will be coordinated within existing staff resource.

Legal

4.3 None

Equality/Socio-economic

4.4 None

Climate Change and Carbon

4.5 None

Key Priorities

4.6 This proposal is linked to the priority outcome contained in the Council Plan for North Ayrshire to have vibrant, welcoming and attractive places.

Community Wealth Building

4.7 None

5. Consultation

5.1 Consultation has taken place with the member/officer Tourism Forum and feedback from members has been reflected in the draft response to the Visitor Levy Bill consultation.

RUSSELL McCUTCHEON
Executive Director (Place)

For further information please contact **Neale McIlvanney, Interim Head of Service, Growth, Investment and Employability**, on nealemcilvanney@north-ayrshire.gov.uk.

Background Papers

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SLAED Response to Visitor Levy (Scotland) Bill Consultation

1. 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?

In principle North Ayrshire Council is in favour of local authorities having this discretionary power, however the means of calculation and guidelines on scheme design, set-up and implementation need further consideration.

2. 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.

- Local authorities will have to meet front-end costs in the two years prior to the introduction of the scheme. This leaves them financially exposed and means that once the scheme is operating it may be some time before the costs are repaid and the scheme delivers useable proceeds.
- Businesses equidistant from a visitor attraction may fall either side of a local authority boundary, with different/no levies, making one more attractive to/cost effective for a visitor.
- Local authorities with a large number of accommodation providers will potentially have a large financial boost to their visitor facilities and services, making them more attractive and widening the gap between those in honey-spot areas and those in more disadvantaged areas, which are the areas that could potentially benefit most from investment in tourism.
- Accommodation providers considering location of their business or setting up an additional business may decide to locate outwith a levy area.
- Local authorities may be under pressure to ringfence levy spend in the area in which the levy is raised. E.g. in North Ayrshire, almost half of our visitor accommodation is on Arran.

3. 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?

The definition of a chargeable transaction is too open to abuse. An accommodation provider could essentially offer a 'free' bed and present an overnight charge which they can attribute to breakfast, parking, servicing, marketing, etc. This could prove very difficult to manage and take up local authority time and resources, reducing potential scheme income.

4. 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.

Unless the levy is a percentage of the overall transaction it is open to abuse. Accommodation providers could claim that most of the cost of the stay is non-chargeable. A flat percentage on the whole transaction or a flat £ charge is more transparent and more manageable. However, while a flat £ charge is more manageable it would have to be tiered so those who provide lower cost accommodation (e.g. campsites) were not disproportionately affected.

5. 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?

The Bill should contain an absolute upper limit to the percentage rate. It would be more flexible if it could be varied for different types of accommodation, particularly if a local authority is trying to encourage growth of certain types of accommodation providers within its area, perhaps to bring a wider offering to appeal to more types of visitors.

6. 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?

While exemptions and rebates would make the scheme fairer (e.g. islanders staying in accommodation on the mainland due to a hospital appointment), the practicalities of managing exemptions could be challenging for the accommodation providers. For instance, would they have to ask all of their guests why they are staying there? It seems like an invasion of privacy. It also means the scheme is open to potential abuse by visitors claiming their stay is for an exempt purpose, so there would need to be a level of 'proof' of exempt purposes, which again increases the administrative burden for all parties.

7. 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?

8. 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)

There will be a huge duplication of work across local authorities as they each establish systems to set up and then manage the scheme. This is an unnecessary front-end cost. A centrally designed scheme with suitable software and systems which could then be purchased/adopted by individual local authorities would be more cost-effective.

9. 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?

The Bill needs to allow flexibility about how the net proceeds should be used locally to reflect local circumstances. While the statement above does capture the spirit of the intention of the Bill, there should be acknowledgement of local circumstances informing what the net proceeds can be used for.

10. 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?

- Unless the levy is a percentage of the overall transaction it is open to abuse. Accommodation providers could claim that most of the cost of the stay is non-chargeable. A flat percentage on the whole transaction or a flat £ charge is more transparent and more manageable for the providers. However, while a flat £ charge is more manageable it would have to be tiered so the lowest cost providers and those who provide accommodation to arguably the most disadvantaged visitors (e.g. campsites) were not disproportionately affected.
- Where an accommodation provider operates businesses in more than one local authority, they may have to manage reporting at different levy rates to different local authorities. If they have a central booking system this becomes even more complicated.

- Accounting software used by many small businesses may not have the flexibility to manage the levy and exemptions which could add to the cost and complexity for the providers.


11. 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?

Enforcement could potentially be a very expensive aspect of the scheme. The powers given to local authorities to enter premises and seize documents seem very heavy-handed and there is potential for human rights/privacy issues with enforcement, e.g. an individual offering bed and breakfast in their own home.

12. 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?

13. 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)?

Appendix D

 <p>North Ayrshire Council Comhairle Siorrachd Àir a Tuath</p>	<p>Call In Request Form</p>
<p>We request in terms of paragraph 26.2 of the Standing Orders Relating to Meetings and Proceeding of the Council that the decision taken by the Cabinet be called in by the Audit and Scrutiny Committee.</p>	
<p>Names of Councillors Requesting Call In</p>	
<p>1. Timothy Billings</p>	
<p>2. Todd Ferguson</p>	
<p>3. Ronnie Stalker</p>	
<p>Details of the Decision Taken By The Cabinet (Please specify the Minute reference)</p>	
<p>Cabinet 29 September 2023 – item 12</p>	
<p>11 – Visitor Levy Consultation</p>	
<p>Reasons for Call In (Please specify your reasons for requesting that the Audit and Scrutiny Committee call in the decision)</p>	
<p>The decision of the Cabinet was to respond to the consultation ‘in support of the introduction of a levy’.</p> <p>We do not agree that North Ayrshire Council should be in support of the introduction of a levy at this time. There is insufficient detail in the draft legislation to ensure that any levy would be reasonable, proportionate and not have an overall harm on the visitor industry of North Ayrshire and Arran.</p> <p>General comment - The response to the consultation is not intended to form any commitment to introduce a visitor levy. This would be a matter for Council to decide and will be discretionary for all local authorities. While Cabinet supported the powers given in the Bill there is a recognised need to assess the operational implications and viability of a scheme before a decision is made to determine whether a scheme would be appropriate for North Ayrshire. Details of assessment process are set out in the Cabinet paper.</p> <p>We consider that the responses in the consultation document are incomplete, unworkable and do not reference a number of very important issues that have been raised in discussion with constituents. These are:</p> <p>The need for a Visitor Levy: The case for a Visitor Levy has not yet been made as there are concerns that a levy will be burdensome, expensive to operate, and removed local control of visitor funds. The cost of operating a business is already high in Scotland with high levels of taxation and VAT at 20% on all visitor services which is significantly more than many countries where visitor levies are applied. In addition, the cost of carrying on business on North Ayrshire’s islands is already higher than the mainland.</p> <p>General comment – The Visitor Levy (Scotland) Bill gives Councils discretion regarding the introduction of a scheme, and if introduced it gives discretion to vary the scheme geographically or over different dates. A scheme can only be introduced after extensive consultation with</p>	

providers, stakeholders and communities.

Existing Visitor Gifting Schemes: There are several voluntary visitor gifting schemes operating on Arran, which cost nothing to run and raise considerable amounts of money that is then used for the benefit of visitors to Arran. The imposition of a centralised compulsory visitor levy will harm the functioning of these schemes and reduce the funds available for use on Arran.

Where the funds are spent: A centrally controlled visitor levy will remove local decision-making about how donations from visitors will be spent. If there is going to be a visitor levy then the local authority must undertake full engagement with its visitor businesses and communities and agree how the funds raised should be spent and in what proportion across the local authority area.

General comment – As per the comment above, the Bill states that a scheme can only be introduced after extensive consultation with providers, stakeholders and communities with discretionary circumstances set out in the provisions.

Definition of Chargeable Transaction: The consultation response states that using the total overnight charge would be preferable to what the Bill suggests, which is just the accommodation element of the stay. Using the total overnight charge would be unworkable, unfair and anticompetitive. This is because:

- Accommodation providers regularly offer a bundled offer that could include a combination of accommodation, breakfast, dinner, parking, leisure facilities, spa treatments, and ferry travel. These are often used to promote the business and attract visitors out of season. It would be totally unreasonable for a guest staying at a multiservice accommodation providers (such as a hotel or bed & breakfast) to pay the visitor levy on the total cost of their stay.
- Having a levy on the total cost of stay would be unworkable as it would be impossible to know what was and was not included. For example, if the levy were to be on the total cost of the stay, would that be for guests who purchase the bundle up front or for all guests even if they only book a room up front but then go on to purchase breakfast, dinner and spa treatments? What about hotel guests who only book a room and then pay as they go for additional services?
- If hotel guests have to pay the levy on more than just the room then hotels would have two prices, one for guests charging services to the room and the second for people not staying at the hotel but using its services.
- Hotels would lose custom because guests could go to local restaurants and not have to pay the levy, giving a competitive advantage to service providers who don't offer accommodation, such as restaurants, hairdressers, spa and leisure facilities.
- Local engagement and publicity – it is essential that local authorities engage with providers, stakeholders and communities about the local operation of any visitor levy scheme they plan to introduce. The local authority must develop a publicly available plan on how the money raised will be spent and the distribution of spend across the local authority. Each year local authorities must report on the performance of the levy with details about the money raised, cost of administration, what and where the funds were spent and the benefits provided to visitors.

General comment – The commentary provided in the Call-in form expands on the general comment included in the questionnaire, which recognises that clarity on the operational implications of the definition of a chargeable transaction is needed, because the implications of the definition that will impact on businesses in varying ways. There is no inherent conflict between the proposed response and the details in the call-in.

Others – other various concerns are:

How will the levy be applied to visitors' bills?

When will visitors be told that a levy is payable?

Will the levy be subject to VAT?

What impact will there be on commission-based accommodation sales (such as to Booking.com)?

Desired Outcome

(Please specify your desired outcome)

The desired outcome is to change the consultation paper as follows:

Section 1 – North Ayrshire Council considers that a visitor levy should not be imposed on Scotland's visitors. Scotland is already an expensive place to do business with high levels of taxation. The Visitor Levy is an additional tax on doing business that will be burdensome, expensive to operate and damage Scotland's tourist industry.

However, if a visitor levy system were to be approved then each local authority must have full discretion regarding implementation and control over the design, set-up, implementation and spend of any scheme within their area.

General comment – The Bill gives local authorities the discretion to impose a levy or choose not to. It is not the intention within the response to indicate that the Council would impose a levy, but rather that the Council would be in favour of having the necessary powers to do so if a levy was considered appropriate by the Council following extensive research, consultation and planning.

Section 2 – in addition to the current wording the following to be added:

Several visitor gifting schemes operate within North Ayrshire, in particular on Arran. They are operated at no cost by community led charities. They raise and distribute large sums of money for the direct benefit of visitors to Arran. The imposition of a visitor levy will harm the operation of these schemes which operate on good will and voluntary contributions.

Accommodation providers will be impacted by this legislation, in particular smaller providers with less resources to cope with the administration requirements. Tourism is already being harmed by the imposition of short-term licensing and the imposition of a visitor levy will create a further deterrent on small businesses.

General comment – The cabinet report sets out a proposed process of analysing financial and operational impacts of the implementation of a scheme in North Ayrshire and that process would determine the suitability of a scheme to North Ayrshire. This process would assess the impact on local businesses and visitor gifting schemes as part of the wider consideration of the impact of a levy. The points raised in call-in are valid areas of exploration.

Section 3 – remove the current wording and replace with:

Using the definition of 'overnight accommodation' is a simple and easily understandable definition.

There is some concern that some providers may attempt to inflate the costs of any additional items (such as breakfast and parking) to reduce the visitor levy. However, businesses already have to separate accommodation, food and other services for other taxation purposes. Also, to have the levy on the full cost of the overnight stay would add significant complexity and create disparity between visitors. There is such complexity to what a stay at a hotel includes and when additional services are paid for that charging the levy on more than just the overnight accommodation would be totally unworkable, burdensome and anticompetitive (as hotels would have higher prices for its resident guests compared with non-residents, and compared with nearby restaurants, leisure facilities etc).

The definition of 'overnight accommodation' must define if that is the rate inclusive or exclusive of VAT. Some smaller providers operate below the VAT threshold and don't charge VAT. A % levy charged after VAT would further disadvantage larger providers and would be a tax on a tax.

There must be a consistent approach about when and how visitors are informed about the compulsory visitor levy. In the UK there is a requirement for pricing to be transparent and include all the costs associated with the purchase. However, if accommodation providers can advertise accommodation without the visitor levy, at what point must providers inform their guests of this compulsory additional charge?

If accommodation providers are required to show a price that includes the visitor levy then providers who use 3rd party sales outlets (such as Booking.com) which the vast majority of

providers do, will be charged commission on the total price of the stay including the levy. Commission could be as high as 20% which would result in a loss to providers who will still need to pay the full levy.

It is essential that the levy is only payable on a 'chargeable transaction'. If visitors were to stay overnight for free then no levy should be payable. Examples of when this are when visitors are stranded on islands due to ferry cancellations and stranded visitors are accommodated in halls and temporary accommodation that makes no charge.

General comment – the content of paragraph 1 is an expansion of the point made in the draft response approved by Cabinet. It is not considered that there is any conflict between the proposed wording and the approved draft response.

Paragraph 2 -At present, in the supporting papers to the Bill, indications from HMRC are that the levy will apply to overnight accommodation inclusive of VAT. This is a UK Government matter.

Paragraph 3 – Accommodation providers must advertise the price of accommodation including the visitor levy. The Bill states that 'a person must publish the cost of overnight accommodation made available for purchase by the liable person specifying separately the amount attributable to the accommodation portion of the accommodation and any deductions made for services, the percentage rate of the levy chargeable in respect of the accommodation, and the amount of levy chargeable in respect of the accommodation'.

Paragraph 4 – The Bill states that the commission payable to third party sites such as Booking.com is not subject to the levy.

Paragraph 5 – The Bill states that the levy applies to chargeable transactions only. The draft response already highlights impacts on island communities, and it is not considered that there would be any conflict with the Cabinet approvals response to specifically recognise this potential island impact.

Section 4 – replace the current wording with:

If the levy is a % then it must be on the accommodation only element of the stay. However, an alternative would be a set £ fee per night. This would be simpler to calculate and would be more transparent. However, depending on the level at which the levy is set it may need to be tiered depending on the cost of accommodation.

General comment – The Cabinet report draft response intended to highlight that government's proposals should clarify the chargeable transaction rate so as to create clear parameters for the operation of a levy, including that visitor services not part of the accommodation element of a stay. It is considered that the call-in wording also expresses this requirement for clarity in the provision for charging % of the chargeable transaction.

Section 5 – add to the current wording:

Local authorities should have the flexibility to limit the levy for a single stay. This could be by a cap on the number of chargeable nights or setting a maximum charge for a single stay. This would lessen the burden on long-stay visitors who are often working in the area.

Local authorities should have the flexibility to change the rates depending on the demand for accommodation at different times of year. This would lessen the impact for visitors in low seasons.

General comment – Long-stay visitors who are working in the area were considered in our response as a possible case for exemption from the levy, however in discussion with other local authorities it was noted that long-stay visitors also make use of and have an impact on visitor infrastructure and facilities.

The Bill does give flexibility to impose the levy geographically or over different time periods to

take into account quieter times of year or premium dates such as special events.

Section 6 – retain current wording - Noted

Section 7 – add the following:

It is essential that local authorities undertake a full assessment as to the implications on the introduction of a visitor levy and that the findings on this assessment should be made public. Then, prior to making any decision about introducing a visitor levy the local authority must undertake a comprehensive consultation with businesses, stakeholders and the public regarding the local implementation of the levy system, that includes details of how and where funds raised are to be used.

The operation of the visitor levy must be made public and contain details of how the funds raised will be spent and the distribution of funds across the local authority area.

Each year the Local Authority should be required to report on the total money raised, the proportion used for administration, what the funds were spent on and to what benefit to visitors. This will ensure that the scheme remains viable, and that visitors and residents retain confidence in the levy scheme.

General comment – The Bill (Part 3, section 12-14, 18) states that local authorities must undertake assessments, consultations and reviews and publish the results. In addition, local authorities are obliged to report the amount collected under the scheme, how the net proceeds have been used and the performance of the scheme relative to its objectives. The first report is due within 18 months of the date on which a scheme comes into force and thereafter every 12 months, with a further overall review of the scheme within three years and every three years thereafter.

Section 8 – retain current wording - Noted

Section 9 – retain current wording - Noted

Section 10 – replace current wording with:

- The requirement for providers to keep detailed records of the chargeable part of their overnight rates will be an additional burden for many, especially small providers. However, using the total overnight charge (including additional non-accommodation items such as food or use of leisure facilities) is not a viable option as it would be complex and create a significant competitive disadvantage for accommodation providers.
- Using a flat rate per night of stay is likely to be less complex and easier to manage. Any flat rate may need to be tiered so as not to disadvantage lower cost accommodation providers, such as campsites.
- Where an accommodation provider operates businesses in more than one local authority, they may have to manage reporting at different levy rates to different local authorities. If they have a central booking system this may become even more complex.
- Accounting software used by many small businesses may not provide the flexibility to manage the levy and exemptions which could add to administrative burden and complexity for the providers.

General comment – The Cabinet report draft response intended to highlight that government's proposals should clarify the chargeable transaction rate so as to create clear parameters for the operation of a levy, including that visitor services not part of the accommodation element of a stay. It is considered that the call-in wording also expresses this requirement for clarity in the provision for charging % of the chargeable transaction.

This form must be received by the Chief Executive's Office not later than 12

noon on the fifth Clear Working Day following, and not counting, the day on which the Cabinet Minute was issued.

	Date	Time
Received by Chief Executive		
Received by Committee Services	04/09/23	18:51
Acknowledged	05/09/23	08:09