

REPORT TO: East Lothian Council

MEETING DATE: 29 August 2023

BY: Executive Director for Place

SUBJECT: Scottish Government Visitor Levy (Scotland) Bill:
Consultation Response

1 PURPOSE

- 1.1 To enable Council to consider the proposed response to the Scottish Government's consultation on the Visitor Levy (Scotland) Bill.

2 RECOMMENDATIONS

- 2.1 The Council is recommended to agree the proposed consultation response set out within Appendix 1, to be submitted by 15 September 2023.

3 BACKGROUND

- 3.1 The Scottish Government has proposed a new law which would allow local authorities to introduce an additional charge when someone pays for overnight accommodation. MSPs on the Scottish Parliament's Local Government, Housing and Planning Committee are looking at the details of the proposals and are seeking views from interested parties, including local authorities, industry groups, businesses, and the public.
- 3.2 Policy Objectives - The overall policy objective of the Bill is to give a discretionary power to local authorities to introduce a levy on stays in overnight accommodation in all, or part, of their area if they choose to do so. Giving local authorities this power is expected to "strengthen local democracy by [providing] a discretionary new fiscal power that [local authorities] can choose to use in their areas if they consider it appropriate to do so." Funding raised from a visitor levy will be required to be spent on the visitor economy, such as facilities or services substantially for or used by visitors, providing a local authority with new resources it can use for these purposes. This may be particularly relevant in areas where public

services are under additional pressure due to the number of visitors to an area.

- 3.3 Previous Consultation - Between November 2018 and January 2019 the Scottish Government facilitated a national discussion on tourist taxes in Scotland to “seek views and build a common and shared understanding of the issues, opportunities, and challenges.” The findings of that consultation can be accessed here [The Principles of a Local Discretionary Transient Visitor Levy or Tourist Tax - gov.scot \(www.gov.scot\)](http://www.gov.scot)
- 3.4 East Lothian Council will submit the detailed response to the current consultation’s 13 questions noted in Appendix 1. Submissions are required by 15 September 2023.
- 3.5 Further background on the Bill, including the full text, explanatory notes, policy memorandum, and financial memorandum can be found online at [Scottish Government Visitor Levy \(Scotland\) Bill Consultation Response August 2023](#)

4 POLICY IMPLICATIONS

- 4.1 The Economic Development Service will consider the implications of the Bill and proposed powers through the process of developing its new Local Economy Strategy, currently ongoing. This may include commissioning at cost additional analysis of the local tourism economy in the context of the proposed powers to consider the local context and impact, including estimating the level of funds that might be raised for reinvestment in local tourism support and / or infrastructure.

5 INTEGRATED IMPACT ASSESSMENT

- 5.1 Impact assessments will be undertaken if any changes to policy are proposed in the future.

6 RESOURCE IMPLICATIONS

- 6.1 Financial – none
- 6.2 Personnel – none
- 6.3 Other – none

7 BACKGROUND PAPERS

- 7.1 Full text of the explanatory notes, policy memorandum, and financial memorandum can be found online at [Scottish Government Visitor Levy \(Scotland\) Bill Consultation Response August 2023](#)
- 7.2 The findings from the Scottish Government's earlier consultation on a Visitor levy for Scotland can be found online at [The Principles of a Local](#)

[Discretionary Transient Visitor Levy or Tourist Tax - gov.scot](http://www.gov.scot)
www.gov.scot

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**Appendix 1 – East Lothian Council Response to Visitor Levy (Scotland)
Bill Consultation September 2023**

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?

We believe this is an appropriate power for local authorities to have. However, we would note that it is important to fully consider the individual and aggregate impact on visitors, local authorities, accommodation providers, and other businesses linked to the tourism industry in terms of cost, administrative burden, complexity, impact on competitiveness, and market distortion etc. Note that East Lothian has not made such an assessment.

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.

General impact

Generally, the locality-by-locality implementation of a TVL is likely to impact different areas differently, e.g. for areas with lower numbers of overnight visitors the cost vs. benefit case may not make it practical to implement due to the likely high cost of administering a collection system. At a high-level, issues that may arise include:

- **Regional Variability** - implementing a levy on a locality-by-locality basis means that different areas within the country may have varying 'tax' rates. This could lead to disparities in tourism costs and may influence tourists to choose certain places over others based on price considerations.
- **Competitive Disadvantages** - localities with higher rates may face a competitive disadvantage compared to areas with lower or no levy. Tourists may opt for destinations where the tax burden is lighter, potentially impacting the flow of visitors in specific areas.
- **Administrative Complexity** - Managing and enforcing a levy on a locality-by-locality basis is likely to be administratively complex, this may result in additional costs and implementation challenges over e.g. a national or regional levy.

Alternatively, a national (or regional) scheme may have the following advantages:

- **Consistent and Predictable** - a national levy would provide a more uniform, predictable, and transparent pricing structure for tourists

across the entire country. This would make it easier for tourists to plan their trips and budget for their expenses.

- Equal Impact - with a national implementation, all regions and localities are subject to the same rate, eliminating regional disparities in cost and potentially promoting a more equitable distribution of tourism revenues across the country.
- Simplified Administration - implementing a levy nationally may be administratively simpler than managing different schemes in various areas. This would centralise the collection process and reduce duplication.
- Revenue Generation Potential - a national levy has the potential to generate more significant revenue, as it captures all tourist activities throughout the country, rather than focusing solely on certain areas.

Regardless of whether a levy is implemented on a locality-by-locality basis or nationally / regionally, there are several common potential impacts on the tourism industry and visitor activity:

- Tourist Behaviour - the introduction of a tourist tax can influence tourists' decision-making processes. Higher taxes may lead some visitors to reduce their spending or choose cheaper alternatives, affecting businesses in the tourism sector (for example shorter stays, cheaper accommodation, or stay in a no-levy area and only visit a levy area).
- Tourist Demand - Depending on the rate, some tourists might be discouraged from visiting the country altogether, while others may still visit but adjust their spending patterns accordingly (e.g. spend less on accommodation and more on activities or more on accommodation and less on eating out).
- Revenue Allocation - if effectively managed, the revenue generated from the levy could be reinvested in tourism infrastructure, local development, or environmental conservation, benefiting both tourists and local communities and helping to mitigate negative impacts and promote regenerative tourism.
- Industry or Business Viability - the impact on the tourism industry's overall profitability and viability will depend on how businesses adapt to the levy and any changes in tourist demand. Some businesses might face challenges or negative impacts to varying degrees, while others could thrive.

Overall, the success of the proposed levy will depend on careful consideration of the 'tax' rate, the implementation approach, and how the generated revenue is used. Proper communication with tourists and stakeholders in the

industry is also crucial to manage expectations and mitigate potential negative impacts.

Local Authority Finances and Administration

There are on-going challenges relating to public finances, and in particular the significant range of challenges facing the Local Government sector. Alongside this, East Lothian Council is facing very significant, immediate, and on-going recurring financial challenges associated with supporting population growth. This has placed the Council in a critical financial situation, one that will require difficult and real decisions which may impact on the provision of vital essential services and support for our sectoral growth obligations, including the construction of enabling infrastructure.

In this context the Council will have to consider the introduction of a levy for East Lothian or in collaboration with regional partners to secure funding for support of our local tourism sector, one which is critical to our local economy.

Funding generated from a levy could be used to ensure we were able to continue to invest in infrastructure and support the delivery of tourism activities in East Lothian. This assumes the benefits would significantly outweigh the costs and noting that East Lothian Council has not yet commissioned any research in this area.

Considerations:

- There would be an increased administration burden and cost on both the LA and local businesses. Many of East Lothian's accommodation providers are micro and SMEs and may need support with this added requirement.
- A dedicated Council team would have to identify and manage businesses in scope for levy, and support the collection of charges and follow up debtors, offering end-to-end management of the scheme.
- Implementing and managing the scheme requires not only allocating management staff resources but also technology, and administrative support. Councils will need to ensure they have the necessary expertise and capacity to handle the added workload and responsibilities.
- Councils may need to collaborate with other LAs, tourism organisations, and stakeholders to ensure consistent implementation of the scheme and share best practice. They may also need to coordinate with relevant agencies and authorities for effective enforcement and information sharing.
- Councils may need to develop relationships with booking platforms to manage payments, refunds, and exemptions.

Overall, the Visitor Levy (Scotland) Bill potentially places significant operational responsibilities on Councils, requiring them to set up and manage the scheme, enforce compliance, and handle various administrative and procedural tasks associated with the levy and penalties. Councils would need to fund the costs associated with research into the potential sums that would be raised vs. the costs and to undertake the necessary consultations prior to any decision being made on whether to recommend introduction.

Local accountability and flexibility

If a tourism levy were collected locally, and local tourism officers and the tourism industry had a say in how it was spent, this could offer several opportunities:

- Industry Tailored Investments – local tourism officers and the tourism industry are intimately familiar with the needs and challenges the sector faces. Inviting the industry to contribute to how the levy is spent would enable investments in projects and initiatives that directly address the specific requirements and opportunities within the sector. This could lead to more targeted and effective use of funds.
- Focused Marketing and Promotion – local tourism officers and the tourism industry know best how to market and promote the destination to attract visitors. With control over levy spending, they can allocate resources to marketing efforts that are likely to yield the highest returns, such as advertising campaigns, online marketing strategies, smartphone applications, or participation in national and international travel expos.
- Infrastructure Improvements - tourism businesses often rely on local infrastructure to cater to tourists. By having a say in levy spending, the industry can help prioritise investments in infrastructure improvements that enhance the overall visitor experience, such as upgrading transportation networks, enhancing public amenities, improving digital connectivity, or developing tourist attractions.
- Environmental and Cultural Conservation - sustainable and regenerative tourism is becoming increasingly important. Local tourism officers and the industry can allocate funds from the levy towards initiatives focused on environmental conservation, protecting cultural heritage sites, and promoting responsible tourism practices. This can help preserve the attractions that draw tourists in the first place.
- Tourism Workforce Development – a skilled and knowledgeable workforce is crucial for a successful tourism industry. The levy funds could be used to invest in training programmes, workshops, and educational opportunities for those working in the tourism sector, improving service quality, staff development, and retention.

- Collaborative Decision-Making - involving the tourism industry in levy spending decisions fosters collaboration between the public and private sectors. This partnership can lead to a better understanding of each other's needs and objectives, ultimately leading to more coherent and effective tourism strategies.
- Adaptability and Flexibility - the tourism industry's ability to respond quickly to market changes is often crucial. With input on levy spending, they can react promptly to emerging trends or unexpected challenges, adjusting investments as needed to maintain competitiveness and attractiveness as a destination, e.g. changes in spending patterns following an economic shock, shifts in seasonality, or the impact of government legislation like controls on short term lets.
- Local Economic Growth - when local tourism officers and the tourism industry have a say in levy spending, they can prioritise projects that have a positive impact on the local economy. This can lead to increased employment opportunities, support for local businesses, and overall economic growth.

However, it's essential to strike a balance and ensure that there is appropriate oversight and accountability in how the levy funds are managed. Transparency in decision-making and regular reporting on the allocation and impact of funds can help build trust among stakeholders and the broader community.

Additionally, there should be mechanisms to include input from various tourism-related businesses, not just large entities / specific interest groups and accommodation providers, to ensure representation and inclusivity in the decision-making process.

Ultimately, empowering the tourism industry to influence how a locally collected levy is spent can lead to more strategic and effective use of funds, benefitting both the industry and the local community.

It is suggested with the BRIA that the impact on local markets would have to be modeled / considered by individual local authorities / regions prior to the introduction of a levy. This is likely to be a complex activity where most local authorities will need to procure outside services to undertake such assessments at cost.

If a national approach is not considered appropriate, then given the complexity of assessing, introducing, and administering a TVL it is likely that a regional approach would be a robust and cost-effective method of introduction for many local authorities.

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?

We agree with the definitions, however ministers should consider how 'wild' camping and motor caravans are treated within any proposals, for example would a power exist to collect a levy from those using under-pressure rural or coastal areas for camping, could a levy be applied to motor caravans parked overnight outwith an established camp / caravan site? In both instances this type of activity can put pressure on local infrastructure and resources.

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.

Setting the levy as a percentage of the chargeable transaction would seem reasonable at first glance. However, this could be complicated for the operators and the LAs to calculate and verify. If the levy is based on a percentage of overnight rates, Councils would need to know those variable overnight rates, and the number of guests charged at those variable rates to be able to calculate and verify that the information being provided by the operator was correct. Some businesses charge at a rate that constantly varies depending on demand (i.e. one stay may include a number of differently priced nights).

A fixed rate per occupant per night, no matter the cost of the accommodation, would be easier to administer and collect. This simplified structure would mean that operators would only need to confirm and evidence the number of visitors, not the variable rate charged against each room and the number of related visitors. A set rate per night would be easily understood by all parties. However, there is also a case to be made that a percentage charge would generate income from visitors more in line with ability to pay i.e. those staying at more expensive properties would in turn pay more and give more back to the local tourism area as would a tiered system based on cost of the room per night with a cap in place.

Whether a set fee or a percentage, there should be either a set rate or percentage applicable across the country or a minimum and maximum amount set nationally. Our preference would be for a set rate whether a fixed fee or percentage. This would ensure that there is a fair, equitable, and transparent scheme that is easy to understand for visitors making the decision where to stay and for businesses collecting the levy. For example, a large percentage of tourism visitors do not arrive and stay in one place, they travel across the country and e.g., if they know they will need to add on a set percentage/fixed fee to the cost of the trip this would be helpful. This would also help the travel trade and the businesses when setting their rates.

There is a potential issue for businesses where administration is controlled centrally, not locally (e.g. head office out with East Lothian). Also, a potential issue where businesses are charged for some of their properties in one area

and not charged in other areas or are charged different amounts, using different reporting and collection systems.

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?

Please see earlier responses.

We believe that any levy should be easy to administer for local authorities, low cost and easy to understand and administer for businesses, for investment decisions to be managed and influenced locally to take account of local context and need, that it should be easy for tourists to understand, and for the specific and overall benefits to be clearly demonstrable. It is however likely that a levy system that includes significantly differing levy rates or where investments are made for significantly different purposes is likely to lack transparency and increase market distortion.

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?

A good example of an exemption category would be people staying overnight to attend hospital treatment. If exceptions were to be identified nationally there would need to be a clear and definitive list of exemptions with clear administration procedures, e.g. would the exempt categories need to evidence exemption prior to booking and making payment? The operation and administration of exemptions could be complex e.g. if medical treatment is unplanned and there is not time to have the necessary evidence and exemption in advance. This would see another level of administrative burden / complexity for the businesses who would need to charge the levy and then go through a process to rebate the individual. The business would need to have a straightforward way of evidencing in that the levy was not collected in their reporting, one that does not impact data protection principles.

Whilst the ability to set local exemptions would be welcomed, this is likely to add to the complexity of the overall national approach and negatively affect transparency. This should therefore be carefully considered.

It would be prudent to consider whether exemptions or any exemption system may encourage an 'industry of avoidance' that might place added burdens on businesses.

The levy would place additional costs onto businesses who were placing workers in overnight stays for example in construction and could contribute to further inflationary pressures sectorally, e.g. construction.

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?

The guidance around being able to introduce and review and for LAs to be able to introduce a joint scheme across e.g. regions is welcomed. As an alternative to introducing a national scheme, regional working may be a cost effective and efficient way of collecting levy payments and / or collaborating in setting a levy.

The proposals around the consultation, content and publicity proposals are acceptable.

We agree that the implementation period is correct (18 months) and that it should be set nationally.

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)

Councils have the expertise to operate the scheme, however there are significant implications for resources which will need to be factored in.

This includes setting up the necessary infrastructure, processes, and systems to collect and manage the levy from liable businesses. Councils will be responsible for maintaining a register of liable operators offering overnight accommodation. This involves collecting and updating information about the names of liable operators, addresses of accommodation places, and other relevant details as required by the legislation. We would question how the liable businesses would be identified.

There would need to be clear instruction on how often invoices would be issued and what payment terms would be.

To ensure that local schemes are transparent and easy to operate clear national guidance relating to levy administration and collection should be provided. The aim should be that there is a simple and transparent / aligned process for businesses across Scotland to engage with.

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?

We agree that the net proceeds should only be used for "developing, supporting, and sustaining facilities and services which are substantially for or used by persons visiting the area of the local authority".

However, we would question the inclusion of the term 'leisure purposes', should this be clarified to include business tourism? For example, "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 (including those traveling for business)".

The levy income after LA costs have been deducted should be allocated to projects which further the local economy strategy's tourism objectives, the national Outlook 2030 aims, and the ambitions of NSET.

There is likely to be some scope to interpret the statement, especially in relation to the term 'substantially for or used by persons visiting'. Published guidance should make interpretation clear and straight forward, for example would this extend to the maintenance of roads and footways in a town or city with significant seasonal visitor footfall, or to pay for additional refuse collections in a popular rural area?

There should be sufficient flexibility to allow for the operation or enhancement of DMMO activities and to support private sector and community projects that will enhance the visitor economy, including the provision of grants.

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?

We believe that any levy should be easy to administer for local authorities, low cost and easy to understand and administer for businesses, for investment decisions to be managed and influenced locally to take account of local context and need, that it should be easy for tourists to understand, and for the specific and overall benefits to be clearly demonstrable.

Ample and appropriate input must be gathered from the tourist industry and accommodation providers in Scotland as to the likely impact of any proposed scheme and its administration. Ministers must be confident that the scheme will be beneficial and that participation following local consultation is likely to be straight forward and transparent.

The administrative burden on accommodation providers of any levy scheme is likely to be high. Best practice from the experience of operating visitor levies / tourist taxes should be sought from e.g. around Europe and guidance issued. Business input into the best approach to administering any scheme, the calculation / level of any levy, and systems for collection and enforcement should be considered key, e.g. are there lessons to be learned and examples of best practice or schemes / systems that work well elsewhere that can feed into lowering the burden on the businesses?

Councils would rely on businesses providing accurate information and to verify the amount due. There is a duty on the liable person to make returns to the LA setting out their own assessment of the levy due with 30 days of the end of each relevant period. With separate assessments for each set of premises. The LA can set the relevant period e.g., quarterly and the form that the return requires to take as well as the length of time that records require to be kept and available for audit. There could be multiple relevant periods, different forms and retention times applicable to operators who have premises in various Council areas further complicating and adding more administration burden. Clear guidance and a national approach to administering collection of levies should be explored.

There should be detailed information, instructions, and training made available for businesses to enable them to undertake whatever the final requirements might be. A dedicated national 'helpline' should be set up.

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?

Councils will need to implement procedures to collect the levy from liable persons. This includes issuing levy demands, ensuring prompt payments, and taking appropriate enforcement actions in case of non-payment or non-compliance.

Councils have the power to impose penalties on certain persons for non-compliance with the legislation. This involves assessing penalties, issuing penalty notices, and managing the process of penalty collection.

Councils will need to set up mechanisms for checking sums due, records of levy collection, records of payment and for reviewing penalties and handling appeals.

Councils will be responsible for conducting reviews of their decisions, enforcement actions, and penalties. They will also need to handle appeals filed by affected parties through the proper channels, such as the First-tier Tribunal.

This will be another significant resource/cost implication for councils that would need to be funded by the levy scheme. Economies of scale could be secured through a National or Regional Schemes.

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?

The issues the Scottish Government propose to deal with in regulations, per the delegated powers memorandum, appear broadly appropriate and allow for a degree of flexibility following the introduction of the Bill.

In particular, the Scottish Government should take cognisance of feedback from industry stakeholders in this area and consider how any future changes made to the legislative landscape might impact visitors and businesses, e.g. in terms of clarity and administration.

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)?

Local Government

The costs set out for local authorities suggests a wide range, it is therefore likely to 'catch all' cases, though we would expect that for all authorities setting up schemes is likely to be towards the higher end of estimates. As noted elsewhere it is likely that operating regionally or nationally in this regard would deliver efficiency savings.

In particular, the T-2 costs are likely to be higher than estimated, especially those associated with 'consultation and decision-making' where this includes the cost of carrying out local economic analysis prior to a decision to implement, and the cost of consulting fully.

Accommodation providers

The data and assumptions used in Annex E of the BRIA should be re-tested with input from the sector / accommodation providers and / or sector representatives. In particular, the relevance of the data and assumptions used for micro / small accommodation providers (E.3 scenario B), in particular regarding the degree to which collection and payment might be automated, the time needed to 'learn' any new levy system, the impact of managing enquires for guests, the impact of managing any exemptions, and the impact of operating across local authority boundaries.