

Report on the consideration of the Legislative Consent Memorandum arising from the Non Domestic rating (Nursery Grounds) Bill ('the Bill')

Committee View

The Economy, Infrastructure and Skills Committee is content with the Memorandum. Further background to the Bill and provisions for which consent are sought is below.

1. The Bill

- 1.1. The Non-Domestic Rating (Nursery Grounds) Bill (the "Bill") was introduced in the House of Commons on 23rd May 2018.
- 1.2. The Legislative Consent Memorandum ("LCM"), to which this note refers, was laid on 7 June 2018 by Mark Drakeford AM, Cabinet Secretary for Finance. The Welsh Government provide a summary of the Bill in its LCM.
- 1.3. Standing Order 29 provides that the Welsh Ministers must lay an LCM when a UK Bill makes provision in relation to Wales:
 - “(i) for any purpose within the legislative competence of the Assembly (apart from incidental, consequential, transitional, transitory, supplementary or savings provisions relating to matters that are not within the competence of the Assembly); or*
 - (ii) which modifies the legislative competence of the Assembly”.*

2 Provisions for which consent are sought:

- 2.1 The consent of the Assembly is sought for the entire Bill (which consists of two sections).
- 2.2 The Bill amends Schedule 5 to the Local Government Finance Act 1988 (non-domestic rating: exemption). The amendment provides that a building which is, or forms part of, a nursery ground and is used solely in connection with agricultural operations is an

agricultural building for the purposes of paragraph 1 of the Schedule. This has the effect that such buildings are exempt from non-domestic rating under section 51 of the Act.

- 2.3 The legislation has arisen as a result of the Court of Appeal decision in *Tunnel Tech Ltd V Reeves*¹. In this case it was held that the Valuation Office Agency's approach of treating buildings which are plant nursery grounds (which are not occupied with and used solely in connection with agricultural operations on agricultural land) as exempt, was an incorrect application of the law.
- 2.4 The Explanatory Notes to the Bill state that the amendments made by the Bill *"will ensure that ratepayers of such hereditaments will continue to not pay non-domestic rates, and aligns the law with the previous longstanding practice of the VOA and Government policy.*
- 2.5 The Bill will have effect from 1 April 2015 in relation to England and 1st April 2017 in relation to Wales. The Explanatory Memorandum to the Bill provides that the reason for the difference is that the VOA have not assessed any plant nursery grounds in Wales. This is not the case in England. 1st April 2017 has been chosen to ensure that no plant nursery grounds are assessed and included on the current non-domestic rating list (compiled on 1 April 2017).

3 Legislative competence

- 3.1 Local taxes to fund local authority expenditure (for example council tax and non-domestic rates) are exceptions to the fiscal, economic and monetary policy reservation in the Government of Wales Act 2006 (paragraph 15 of Schedule 7A). This means that the Assembly has competence to pass primary legislation on the subject matter of business rates.
- 3.2 As the subject matter is one for which the Assembly could legislate, an LCM is clearly necessary. The UK Government acknowledge that an LCM is necessary within the Explanatory Notes to the Bill.

4 Conclusion

- 4.1 On the basis of the legal advice received, the Committee felt that a LCM is required in relation to various provisions of the Bill.
- 4.2 The Economy, Infrastructure and Skills Committee considered the LCM at their meeting on 5 July 2017. They are content with the Memorandum.

¹ 2015 EWCA Civ 718