

The Welsh Government's Legislative Consent Memorandum on the Finance Bill

June 2020

1. Background

The UK Government's Finance Bill

1. The UK Government's Finance Bill (the Bill)¹ was given its first reading on 17 March 2020. It is sponsored by HM Treasury.
2. The purpose of the Bill is to deliver legislation in relation to a wide range of policies introduced at the UK Government's 2020 Budget, including renewing annual taxes, delivering new tax proposals and maintaining administration of the tax system.

The Welsh Government's Legislative Consent Memorandum

3. In accordance with Standing Orders 29.1 and 29.2, a Legislative Consent Memorandum is required because provisions within the Bill modify or fall within the Senedd's legislative competence.
4. On 13 May 2020 the Minister for Environment, Energy and Rural Affairs, Lesley Griffiths MS, laid before the Senedd a Legislative Consent Memorandum (LCM)² in respect of the Bill.
5. The Business Committee agreed that the Legislation, Justice and Constitution Committee and the Finance Committee should report on the LCM

¹ Finance Bill (HC Bill 114), as introduced

² Welsh Government, [Legislative Consent Memorandum, Finance Bill](#), May 2020



by 2 July 2020.³ The Business Committee subsequently revised the deadline to 18 June 2020.⁴

Provision for which the Senedd's consent is required

6. Paragraphs 6 to 10 of the LCM set out the Welsh Government's assessment of which provisions require the consent of the Senedd.

7. The LCM explains that clause 93, which relates to charging for allocating allowances under emissions reduction trading schemes, contains provisions which require consent.

8. Clause 93(1) allows the UK Government to make regulations which provide for the allocation of emissions allowances in return for payment under any future UK Emissions Trading System.

9. Clause 93(2) provides examples of matters that such regulations may make provision for. Clauses 93(3) and (4) allow the UK Government to create schemes which set out the detail of the conduct and terms of allocations in return for payment, in particular setting out who may participate, the allowances that may be allocated and when and where allocations are to take place.

10. The LCM states:

“Consent is required for these provisions because they fall within the legislative competence of the Senedd in so far as they relate to environmental protection and climate change.”⁵

11. The UK Government does not agree with the Welsh Government that consent is required. The table on page 201 of the Bill's Explanatory Notes highlights that, although clause 93 extends and applies to Wales, the UK Government does not consider that a corresponding provision would be within the competence of the Senedd.⁶

12. Paragraphs 11 to 13 of the LCM set out the reasons for making the provisions for Wales in the Bill.

³ Business Committee, [Timetable for consideration of the Legislative Consent Memorandum on the Finance Bill](#), May 2020

⁴ Business Committee, [Revised timetable for consideration of the Legislative Consent Memorandum on the Finance Bill](#), June 2020

⁵ Welsh Government, LCM, paragraph 10

⁶ [Finance Bill, Explanatory Notes](#), Territorial extent and application in the United Kingdom, March 2020

13. The LCM states:

“The highest emitters of greenhouse gases in Wales currently participate in the European Union Emissions Trading System (“EU ETS”). A replacement policy will be required within the United Kingdom at the end of the transition period to the United Kingdom exiting the European Union. In 2018, the Welsh Government jointly consulted with the other Governments of the UK nations on a UK Emissions Trading Scheme, a domestic UK-wide scheme to replace the EU ETS.”⁷

14. The LCM adds:

“In order to avoid a policy gap, it is imperative to establish a functioning emissions trading system, including the auctioning of allowances, to come into force from the first day following the end of the transition period. Given the intention is to apply the auction within the context of a UK wide framework, with common rules for participants across the UK, it is appropriate for a UK Bill to make these provisions.”⁸

15. The LCM concludes:

“It is the view of the Welsh Government that it is appropriate to deal with these provisions in this UK Bill as there is a need for a common, UK wide auction process for a UK-wide emissions trading scheme. Additionally, provisions need to come into force at the same time across the UK, and the urgent timing does not allow for the introduction of a Bill in Wales.”⁹

2. Committee consideration

16. We considered the LCM at our meeting on 8 June 2020.¹⁰

Our view

17. We note the Welsh Government's reasons as to why, in its view, making provision for Wales in the UK Bill is appropriate.

⁷ Welsh Government, LCM, paragraph 11

⁸ Welsh Government, LCM, paragraph 13

⁹ Welsh Government, LCM, paragraph 15

¹⁰ [Legislation, Justice and Constitution Committee, 8 June 2020](#)

18. We note that the Welsh Government's view is that provisions contained in subsections (1) to (4) of clause 93 of the Bill require Senedd consent. We further note that the view of the UK Government is that consent is not required.

19. We agree with the view of the Welsh Government. In our view, the relevant provisions of clause 93 relate to a purpose that is within the legislative competence of the Senedd in accordance with section 108A of the Government of Wales Act 2006, and therefore consent of the Senedd should be sought.