

# The Welsh Government's Legislative Consent Memorandum on the Non- Domestic Rating (Lists) (No. 2) Bill

November 2020

## 1. Background

### The Bill

1. The Non-Domestic Rating (Lists) (No. 2) Bill (the Bill)<sup>1</sup> received its first reading in the House of Commons on 8 September 2020. It is sponsored by the Ministry of Housing, Communities and Local Government.
2. The long title to the Bill, as introduced, states that it is a Bill to:

“Make provision to change the dates on which non-domestic rating lists must be compiled; and to change the dates by which proposed lists must be sent to billing authorities, the Secretary of State or the Welsh Ministers.”<sup>2</sup>
3. The purpose of this Bill is to move the date for the next non-domestic rates valuation to 1 April 2023 and adjust the deadline for the submission of proposed non-domestic rating lists from 30 September to 31 December in the year preceding revaluation.<sup>3</sup>

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<sup>1</sup> [Non-Domestic Rating \(Lists\) \(No. 2\) Bill 2019-21 \[Bill 174\]](#)

<sup>2</sup> Non-Domestic Rating (Lists) (No. 2) Bill

<sup>3</sup> [Legislative Consent Memorandum on the Non-Domestic Rating \(Lists\) \(No. 2\) Bill, September 2020](#), paragraph 3



**4.** At the time of writing this report, the Bill completed its passage through the House of Commons on 21 October 2020 and received its first reading in the House of Lords on the same day.

#### Previous Bills

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**5.** A previous Bill (the 2019 Bill)<sup>4</sup> was introduced in Parliament in June 2019 to bring the date for valuation forward a year from 1 April 2022 to 1 April 2021. The Senedd approved a legislative consent motion in respect of the 2019 Bill on 9 July 2019.<sup>5</sup> The Committee did not report on the Bill, because of the tight timetable. However, the 2019 Bill fell when Parliament was prorogued in September 2019.

**6.** A further Bill with the same purpose (the 2020 Bill)<sup>6</sup> was introduced in the House of Lords on 18 March 2020. A Legislative Consent Memorandum (LCM)<sup>7</sup> in respect of the 2020 Bill was laid before the Senedd on 28 April 2020 and a revised LCM was laid on 8 July 2020.

**7.** In light of the COVID-19 pandemic, the UK Government subsequently decided not to progress the 2020 Bill and determined to move the date of the next revaluation to 1 April 2023, resulting in the introduction of the new Bill in the House of Commons on 8 September 2020.

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**8.** On 9 September 2020 Rebecca Evans MS, the Minister for Finance and Trefnydd, laid before the Senedd an LCM<sup>8</sup> in respect of the Bill.

**9.** The Business Committee agreed to refer the LCM to the Economy, Infrastructure and Skills and the Legislation, Justice and Constitution Committees, with a reporting deadline of 5 November.<sup>9</sup>

#### Provision for which the Senedd's consent is required

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**10.** Paragraphs 19 to 21 of the LCM set out the Welsh Government's view of the provisions in the Bill that require Senedd consent.

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<sup>4</sup> [Non-Domestic Rating \(Lists\) Bill 2017-19 \[Bill 402\]](#)

<sup>5</sup> [Plenary](#), 9 July 2019

<sup>6</sup> [Non-Domestic Rating \(Lists\) Bill \[HL\] 2019-21 \[HL Bill 109\]](#)

<sup>7</sup> [Legislative Consent Memorandum on the Non-Domestic Rating \(Lists\) Bill](#), April 2020

<sup>8</sup> [Legislative Consent Memorandum on the Non-Domestic Rating \(Lists\) \(No. 2\) Bill](#), September 2020

<sup>9</sup> Business Committee, [Timetable for consideration of the Legislative Consent Memorandum on the Non-Domestic Rating \(Lists\) \(No. 2\) Bill](#), September 2020

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**11.** The LCM states:

“The Bill amends the Local Government Finance Act 1988 and postpones the non-domestic rates revaluation from 2022 until 2023 in England and Wales and adjusts the deadline for the submission of proposed non-domestic rating lists from 30 September in the year preceding revaluation to 31 December. These amendments are set out in clauses 1(2)(b), 1(3)(b) and 1(4) of the provisions in the Bill as they relate to Wales and consent is sought in respect of those provisions. The amended clauses do not contain any subordinate legislation powers for Welsh Ministers.”<sup>10</sup>

**12.** The UK Government is in agreement with the Welsh Government, but also identifies clauses 1(1) and 2 as requiring consent within its Explanatory Notes.<sup>11</sup>

Clauses 1(2)(b), 1(3)(b) and 1(4)

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**13.** Clauses 1(2)(b) and 1(3)(b) amend sections 41(5) and 52(5) of the *Local Government Finance Act 1988* (the 1988 Act) so as to move the requirement to prepare draft rating lists in both England and Wales from no later than 30 September to no later than 31 December preceding the new rating list coming into force.

**14.** Clause 1(4) amends sections 54A(4)(b) and 54A(5)(b) of the 1988 Act to provide that the next Welsh rating lists are to be compiled on 1 April 2023 rather than 1 April 2022. The usual interval between revaluations in relation to the Welsh lists remains five years after 2023.

**15.** Local taxes to fund local authority expenditure are exceptions to the fiscal, economic and monetary policy reservation in the *Government of Wales Act 2006* (the 2006 Act).<sup>12</sup> This means that the Senedd has competence to pass primary legislation on the subject matter of business rates.

**16.** The LCM notes:

“Consent is required for these provisions because they fall within the legislative competence of the Senedd Cymru insofar as they have the effect of modifying functions of valuation officers of the VOA.”<sup>13</sup>

**17.** However, the Valuation Office Agency (VOA) is an executive agency sponsored by HMRC and valuation officers, as holders of an office that has

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<sup>10</sup> LCM, paragraph 19

<sup>11</sup> UK Government, *Non-Domestic Rating (List) (No. 2) Bill, Explanatory Notes*

<sup>12</sup> *Government of Wales Act 2006*, paragraph 15 of Schedule 7A

<sup>13</sup> LCM, paragraph 20

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functions of a public nature, are a “public authority” under paragraph 8(4) of Part 1 of Schedule 7B to the 2006 Act.

**18.** Paragraph 10(1) of Part 1 of Schedule 7B to the 2006 Act provides that a provision of an Act of the Senedd may not remove or modify (or confer power by subordinate legislation to remove or modify) any functions of a public authority, other than “devolved Welsh authorities”. Both the VOA and HMRC are not listed as devolved Welsh authorities under Schedule 9A of the 2006 Act.

**19.** Therefore, the consent of HM Treasury would be required to change the date or frequency of non-domestic rates revaluations and adjust the deadline for the submission of proposed non-domestic rating lists through an Act of Senedd Cymru.

**20.** Paragraphs 22 to 24 of the LCM set out the reasons for making the provisions for Wales in the Bill.

**21.** The LCM notes:

“The possibility of making this change through a future Welsh Government Bill has been discounted because there is no suitable legislative opportunity within the timescale required to enable the VOA to complete the necessary valuation work. Also, using a later Welsh Government Bill would result in less certainty for businesses and other ratepayers in Wales in the interim.”<sup>14</sup>

**22.** The LCM also notes:

“The VOA assesses the value of every non domestic property with reference to a specified date, the Antecedent Valuation Date (AVD). To allow for the work necessary to assess all properties and draw up new lists to apply from 1 April 2023, the AVD will need to be set as 1 April 2021. This will be achieved through an Order laid before the Senedd.”<sup>15</sup>

**23.** The LCM concludes:

“It is the view of the Welsh Government that it is appropriate to deal with these provisions in this UK Bill for reasons of timing and coherence. The interconnected nature of the Welsh and English systems for administering revaluations for rating purposes also supports the provisions being taken forward at the same time and in the same legislative instrument.”<sup>16</sup>

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<sup>14</sup> LCM, paragraph 23

<sup>15</sup> LCM, paragraph 26

<sup>16</sup> LCM, paragraph 27

## 2. Committee consideration

**24.** We considered the LCM at our meeting on 12 October 2020.<sup>17</sup>

### Our view

**25.** We note the Welsh Government's assessment that clauses 1(2)(b), 1(3)(b) and 1(4) of the Bill (as introduced) require consent. We also note the UK Government's view that clause 1(1) and clause 2 also require consent, but recognise that these provisions are ancillary in nature.

**26.** We also note the Welsh Government's reasons as to why, in its view, making provision for Wales in the Bill is appropriate. In doing so, we acknowledge that modifying the functions of valuation officers of the VOA through an Act of the Senedd would require the consent of the Secretary of State. We further note that an Order, subject to the negative procedure, will be laid by the Welsh Government to set the Antecedent Valuation Date as 1 April 2021.

**27.** However, we wish to highlight our concern with the Welsh Government citing, as part of its justification for consenting to the UK Bill, reasons of "coherence" and "the interconnected nature of the Welsh and English systems for administering revaluations for rating purposes" (see paragraph 23 above). We do not consider such justification to be appropriate. As we have indicated previously in relation to our consideration of Statutory Instrument Consent Memoranda and Standing Order 30C Written Statements,<sup>18</sup> such justification lacks credibility in the context of devolution.

**28.** While therefore noting the approach adopted by the Welsh Government in relation to this Bill, we would welcome clarification as to whether similar changes in the future would be made through a Welsh Bill.

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<sup>17</sup> Legislation, Justice and Constitution Committee, 12 October 2020

<sup>18</sup> Legislation, Justice and Constitution Committee, Scrutiny of regulations under the European Union (Withdrawal) Act 2018: Progress report, February 2019

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