

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM NO.2)

NON-DOMESTIC RATING BILL

1. This Legislative Consent Memorandum (LCM) is laid under Standing Order (SO) 29.2. SO29 prescribes that a LCM must be laid, and a Legislative Consent Motion may be tabled, before Senedd Cymru if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies, the legislative competence of the Senedd.
2. The Non-Domestic Rating Bill (“the Bill”) was introduced in the House of Commons on 29 March 2023. The Bill can be found at: <https://bills.parliament.uk/bills/3442>

Policy objectives

3. The policy objectives for this Bill remain as set out in the first LCM [laid](#) on 11 April 2023.

Summary of the Bill

4. The Bill is sponsored by the Department for Levelling Up, Housing and Communities.
5. A summary of the Bill was provided in the first LCM, which remains accurate.

Update on position since the publication of the first LCM

6. Government amendments were tabled on 17 May 2023 to correct drafting errors to existing provisions within the Schedule to the Bill, but these did not affect the coverage of the first LCM I laid on 11 April, or constitute a relevant provision made for the first time for the purposes of SO29.2(iii).
7. Within the first LCM, I recommended that consent be given in respect of:
 - Clause 1 (Local rating: liability and mandatory reliefs for occupied hereditaments);
 - Clause 3 (Central rating: liability and mandatory reliefs);
 - Clause 10 (Disclosure of valuation information to ratepayers);
 - Clause 11 (Disclosure of valuation information to Northern Ireland rating officials);
 - Clause 12 (Sharing of non-domestic rating information between billing authorities and HMRC);
 - Clause 15 (Multipliers);
 - Clause 17 (Consequential provision);
 - Clause 19 (Commencement and application); and
 - The Schedule – excluding paragraphs 49 and 50 in Part 4 (Consequential provision)

8. However, the first LCM also set out my view that it was not appropriate to recommend consent for the following provisions until discussions with the UK Government in relation to those provisions had concluded:
 - Clause 13 (Requirements for ratepayers etc to provide information); and
 - Paragraphs 49 and 50 in Part 4 of the Schedule (Consequential on Clause 13).
9. Welsh Government officials and UK Government officials have continued their regular contact in relation to Clause 13 and its consequential provisions within the Bill, which are the subject of this supplementary LCM.
10. In laying the first LCM, I recognised that those discussions were ongoing in relation to the delegated powers in Clause 13. Provisions relating to the *Digitalising Business Rates Programme* were developed during February and March 2023, shortly before introduction of the Bill and following previous engagement on the other provisions which apply in relation to Wales. An exchange of letters with UK Government prior to the introduction of the Bill resulted in the extension of these provisions to Wales, but there was insufficient time prior to the introduction of the Bill to conclude consideration of the appropriate delegation of powers in Clause 13.
11. Following introduction of the Bill and the subsequent laying of the first LCM, discussions continued between officials to clarify the rationale for the approach to delegated powers and the UK Government's position on any alternative options. It was recognised that potential alternative approaches would carry a risk of divergence in the administration of the *Digitalising Business Rates Programme*, which HMRC is intended to operate in a consistent manner across Wales and England. I considered further advice from officials, informed by those discussions, before writing to UK Government to confirm my position.
12. The UK Government has committed to work collaboratively with the Welsh Government on the successful implementation of the *Digitalising Business Rates Programme* across England and Wales, and to routinely share relevant information and considerations at an early stage, especially where they relate to the possible use of delegated powers.

Additional provisions in the Bill for which consent is required

13. Local government finance, including non-domestic rating (NDR), is a devolved matter in Wales. Local taxes to fund local authority expenditure are an exception to the fiscal, economic and monetary policy reservation in Schedule 7A to the Government of Wales Act 2006.
14. I consider that the Senedd's consent is required in relation to the following provisions included in the Bill because they make provision for a purpose within the legislative competence of the Senedd, notably in the subject matter of NDR.

Clause 13 (Requirements for ratepayers etc to provide information)

15. Clause 13 amends the Local Government Finance Act 1988 by inserting new paragraphs 4B to 4M, 5ZA to 5ZF, and 5BA to 5BF into Schedule 9. Clause 13 will set out when and how ratepayers are required to provide information to HMRC or valuation officers. The Clause also sets out penalty regimes to address non-compliance and establishes an associated appeals process.
16. Some of the provisions in Clause 13 of the Bill apply in relation to England and Wales, namely clause 13(2), (4) and (6). Clause 13(2) inserts new paragraphs 4B to 4H into Schedule 9, which deal with the (new) duty on NDR ratepayers to provide a tax reference number to HMRC. The Commissioners for HMRC may make regulations to amend the definition of a tax reference number and/or to provide that the duty does not apply to certain person(s). These are administrative provisions to ensure HMRC can maintain the programme effectively. Such regulations can only be made in relation to Wales following consultation with the Welsh Ministers.
17. Clause 13(4) inserts new paragraphs 5ZA and 5ZB into Schedule 9 which creates a system of penalties imposed by HMRC where NDR ratepayers have failed to comply with the new duty. Clause 13(6) inserts new paragraphs 5BA to 5BC into Schedule 9 which deal with the reviews and appeals of the penalties introduced in Clause 13(4).
18. The remainder of provisions in Clause 13 apply to England only, setting out requirements for information to be provided to valuation officers.
19. The intent is for information shared under the provisions to enable the *Digitalising Business Rates Programme* to be administered by HMRC across Wales and England on a joint basis.
20. Clause 13(2), (4) and (6) – insofar as they apply in relation to Wales – will also come into force in accordance with regulations made by the Welsh Ministers.

The Schedule (Consequential provision)

21. Consequential amendments which flow from the legislative changes made by Clause 13 are contained in the Schedule. To the extent that the provisions in the Schedule to the Bill are consequential upon those clauses which fall within the legislative competence of the Senedd, they too would be within competence, and as such the consent of the Senedd is required.
22. Paragraphs 49(c) and 50 of the Schedule provide that the Commissioners of HMRC may, in respect of the duty on ratepayers to provide a tax reference number set out in Clause 13, make regulations in relation to notices or to change the amount of a penalty, respectively. These are administrative provisions to ensure HMRC can maintain the *Digitalising Business Rates Programme* effectively. Such regulations can only be made in relation to Wales following consultation with the Welsh Ministers.

UK Government view on the need for consent

23. The Department for Levelling Up, Housing and Communities considers that Clause 13 and Part 4 of the Schedule, contains provisions which engage the legislative consent process.

Welsh Government position on the Non-Domestic Rating Bill

24. I am content that the amendments made to the Bill during its passage through the House of Commons do not initiate the legislative consent process. These amendments corrected drafting errors in the introduced Bill and did not make relevant provision for the first time.

25. This supplementary LCM clarifies the Welsh Government's position in relation to Clause 13 and paragraphs 49 and 50 in Part 4 of the Schedule.

26. Clause 13 and paragraphs 49 and 50 in Part 4 of the Schedule (when read in conjunction with Clause 12) establish the necessary information gateways to enable the *Digitalising Business Rates Programme* to be implemented. The programme will be operated by HMRC across England and Wales, so that we are able to benefit from a powerful linked dataset, including HMRC tax data, that we would not otherwise be able to access. As the programme is being led by HMRC, it is considered necessary that the relevant delegated powers are conferred on the Commissioners of HMRC.

27. The Bill provides for a mechanism of engagement with the Welsh Government, which acknowledges the unique interaction between devolved NDR policy and the functions of a reserved authority, including in respect of non-devolved matters, that is the foundation of the *Digitalising Business Rates Programme*.

28. This is a complex matter, where a devolved policy area and the functions of a reserved authority are intentionally connected, in order to enable something new and innovative. Only HMRC can deliver the *Digitalising Business Rates Programme* for Wales, as it relies on the sharing and linking of information on non-devolved taxes held by HMRC, as well as information about NDR. As a consequence, any secondary legislation made under the powers delegated on the Commissioners of HMRC would directly affect the functions conferred by the Bill on HMRC, alongside altering the requirements placed on payers of non-domestic rates. This means that any of the options to enable the DBR programme to be delivered in Wales must involve compromise.

29. On balance, taking account of these competing considerations and the context for the specific provisions, I have concluded that the delegated powers conferred on HMRC and duty to consult Welsh Ministers are appropriate to facilitate the administration of the DBR system, which needs to operate in a consistent manner across England and Wales. This mechanism of engagement acknowledges the unique interaction between devolved NDR policy and the functions of a reserved authority. These powers are limited and do not need to be exercised to enable the legislative framework set out in the Bill to operate. They will only be used where a relevant administrative change

is considered necessary to ensure the effective operation of the DBR programme by HMRC.

30. There is no anticipated need or desire to legislate differently under the delegated powers in relation to Wales and the potential for an alternative approach would constitute a risk to the effective and consistent operation of the system. This approach will enable the aims of the DBR programme to be delivered and intended benefits to be realised in Wales.

31. If the Senedd intended to enact similar provisions in a Senedd Bill, it would be unable to do so without the consent of HM Treasury by virtue of the restriction in paragraph 8 of Schedule 7B to the Government of Wales Act 2006, on the basis that some of the provisions confer/impose a function on a reserved authority.

Financial implications

32. There are no costs associated with Clause 13 and paragraphs 49 and 50 in Part 4 of the Schedule of the Bill.

Conclusion

33. Following further consideration, it is my recommendation that the Senedd gives consent to Clause 13 and paragraphs 49 and 50 in Part 4 of the Schedule insofar as they apply in relation to Wales.

34. I, therefore, recommend the Senedd gives consent to this Bill in its entirety, to the extent that it applies in relation to Wales.

Rebecca Evans MS
Minister for Finance and Local Government
01 August 2023