

# LEGISLATIVE CONSENT MEMORANDUM

## WALES BILL

1. This Legislative Consent Memorandum is laid under Standing Order ("SO") 29.2. SO29 prescribes that a Legislative Consent Memorandum must be laid, and a Legislative Consent Motion may be tabled, before the National Assembly for Wales if a UK Parliamentary Bill makes provision in relation to Wales for a purpose that falls within, or modifies the legislative competence of the National Assembly. This Bill modifies the Assembly's legislative competence, as further described below. It also makes provision in respect of which a Written Statement must be laid in accordance with SO30, and this Memorandum should therefore be read in conjunction with the Written Statement, which has been tabled at the same time.
2. The Wales Bill ("the Bill") was introduced in the House of Commons on 20 March. The Bill, amendments tabled to the Bill and the Impact Assessment are available at: [Bill documents — Wales Bill 2013-14 — UK Parliament](#)

The Command Paper 'Wales Bill: Financial Empowerment and Accountability', which was published alongside the Wales Bill, is available at: [www.gov.uk/government/publications/wales-bill](http://www.gov.uk/government/publications/wales-bill)

### Summary of the Bill and its Policy Objectives

3. The Bill is sponsored by the Wales Office. The UK Government's expressed policy objectives for the Bill are to make the National Assembly for Wales ("the Assembly") and the Welsh Government more accountable to the people of Wales for raising the money they spend, and to improve the system of elections to the Assembly.
4. The Bill is in four parts:
  - Part 1, clauses 1 to 5, makes changes to the National Assembly for Wales and the Welsh Assembly Government.
  - Part 2, clauses 6 to 22, establishes new tax and borrowing arrangements. It devolves responsibility for tax on land transactions and disposals to landfill, creates borrowing powers, and creates the possibility, subject to approval in a referendum, of a 10 pence reduction in income tax across each rate band, coupled with the power for the Assembly by resolution to impose a Welsh rate of income tax in compensation. It also creates the possibility of new devolved taxes, and provides competence to legislate on budgetary procedures.
  - Part 3, clauses 23 and 24, covers two miscellaneous issues: limits on housing revenue account debts, and the relationship between the Law Commission and Welsh devolved institutions.
  - Part 4, clauses 25 to 29, sets out commencement, extent, and other matters.
  - Schedule 1 gives detail on the tax referendum, while Schedule 2 covers amendments consequential to the devolution of tax on land transactions.

## **Provisions in the Bill for which consent is sought**

5. The provisions in the Bill modifying the Assembly's legislative competence and for which consent is sought are in clauses 6, 7, 14, 17 and 21.

### Clause 6: Taxation: introductory

6. Clause 6 inserts a new Part 4A (comprising four Chapters) into the Government of Wales Act 2006 ("GOWA 2006") in order to modify the Assembly's competence to provide fiscal powers over fully devolved taxes.
7. The clause describes the structure of the new Part 4A, defines "devolved taxes" and provides the introductory Chapter 1. It explains that the Assembly's competence would be modified by enabling it to:
  - introduce a new devolved tax on transactions involving interests in land (Part 4 Chapter 3 - covered below under Clause 14);
  - introduce a new devolved tax on disposals to landfill (Part 4 Chapter 4 - covered below under Clause 17).
8. Should the Assembly decide to establish a body to collect and manage its devolved taxes, Clause 6 (section 116B) would confer legislative competence on the Assembly to appoint civil servants to that body, provided their functions relate to the collection and management of devolved taxes and/or local government finance matters. Regardless of on whom the Assembly confers the power to appoint those civil servants, the costs associated with their appointment would be borne by the Welsh Ministers.
9. Changes to the new Part 4A, including the devolution of additional devolved taxes to Wales, may be amended by Order in Council, although this would be subject to the affirmative resolution procedure in the Assembly and both Houses of Parliament before it could become law.
10. Clause 6 would amend the legislative competence to ensure that, if in the future an Order is made devolving additional taxes to Wales, existing exceptions (which include, for example, motor vehicle insurance) would not prevent provision about taxes on those matters.

### Clause 7: Amendments relating to the Commissioners for Revenue and Customs

11. Clause 7 includes amendments to Parts 2 and 3 of Schedule 7 to GOWA 2006 to allow the Assembly, with the consent of HM Treasury, to remove or modify the functions of HMRC where those functions relate to devolved taxes.

### Clause 14: Welsh tax on transactions involving interests in land

12. Currently stamp duty land tax is payable on the purchase or transfer of property or land in the UK where the amount paid is above a certain threshold (Scotland is excluded by the Scotland Act 2012, although those amendments have not yet come into effect). Clause 14 would allow the Assembly to introduce its own land

transaction tax, and links the introduction of the new Welsh tax to the disapplication of stamp duty land tax in Wales.

13. Clause 14 includes Chapter 3 of the new Part 4a for insertion into GOWA 2006 which describes the tax and when it may be chargeable. It also lists those who would be exempt from paying the tax:
  - in Government: a Minister of the Crown; the Welsh Ministers, the First Minister and the Counsel General; the Scottish Ministers; and a Northern Ireland department; and
  - in Parliament: The Corporate Officer of the House of Lords; The Corporate Officer of the House of Commons; The Assembly Commission; The Scottish Parliamentary Corporate Body; and The Northern Ireland Assembly Commission.

#### Clause 17: Welsh tax on disposals to landfill

14. Currently landfill tax is charged on the disposal of waste to landfill in England and Wales or Northern Ireland (landfill in Scotland is excluded by the Scotland Act 2012, although those amendments have not yet come into effect). Clause 17 provides the mechanism for allowing the Assembly to introduce its own tax on disposals of waste to landfill.
15. Clause 17 introduces a new Chapter 4 into Part 4A of GOWA 2006, which sets out the scope of the Welsh Government's power to introduce a tax on disposals to landfill made in Wales. Section 116N(1) provides that a tax charged on disposals to landfill made in Wales would be a devolved tax and section 116N(2) explains when a disposal is a disposal to landfill. Subsection (2) ensures that the devolved tax could not be charged on disposals to which UK landfill tax applies, thereby linking the commencement of the new devolved tax to the disapplication of the UK landfill tax in Wales.

#### Clause 21: Budgetary procedures

16. Clause 21 would provide the Assembly with competence to legislate for its own budgetary procedures by inserting this as a new subject in paragraph 13 of Part 1 of Schedule 7 to GOWA 2006. Subsection (2) of the clause also defines what budgetary procedures comprise.
17. The clause would enable the Assembly to legislate in relation to procedures for scrutinising and setting the annual budget of Welsh Ministers, other "relevant persons" and any other body receiving payments from the Welsh Consolidated Fund by virtue of an enactment (either Parliamentary or Assembly). It would, for example, allow the Assembly to pass an annual Finance Act in place of the current annual budget motion.
18. As the Assembly would also have competence for devolved taxes (i.e. transactions involving interests in land, and disposals to landfill), the budgetary procedures could include the determination of the tax rates in relation to these taxes, tax receipt forecasts, variances, borrowing for current and capital purposes and amounts for

repaying borrowing, in addition to authorising how much "relevant persons" (defined in the Bill) may spend.

19. In order to legislate for new budgetary procedures, Part 2 of Schedule 7 of GOWA 2006 is amended by subsection (3) of clause 21 to permit the Assembly to modify those sections in GOWA 2006 which refer to the current budget motion process - i.e. sections 119 (so far as it relates to the estimated payments described and not the Secretary of State's duty in subsection (3) of that section), 120(2), and 125 to 128. As the Assembly may also need to make limited modifications to other provision in Part 5 of GOWA 2006, subsection (3) inserts a new sub-paragraph into paragraph 5 of Part 2 of Schedule 7 enabling an Act of the Assembly to make amendments to other sections in Part 5 or section 159 of GOWA 2006 provided they are (a) incidental to, or consequential on, provisions in an Assembly Act relating to budgetary procedures or devolved taxes, and (b) consented to by the Secretary of State.
20. Should a referendum decide that there should be devolution of income tax rate-varying powers to Wales, it would be for the Assembly to decide whether the Assembly resolution setting the Welsh rate of income tax should be considered as part of the budgetary procedures.

### **Rationale for using this UK Bill**

21. It is the view of the Welsh Government that it is appropriate to deal with these provisions in this UK Bill because the provisions could not be made by Assembly Act. The provisions are not currently within the legislative competence of the Assembly but are instead modifying that competence by extending it for the future. The provisions implement a number of the recommendations of the Silk Commission's Part 1 report, which the Welsh Government has accepted in their entirety.

### **Financial implications**

22. Discussions are ongoing between the Welsh Government and UK Government on the costs of implementing the financial reforms that would be brought about by the measures included in the Wales Bill.
23. Alongside the introduction of the new Welsh taxes (in April 2018), HM Treasury would apply a reduction to the Welsh block grant to reflect the Welsh Government's new revenue-raising powers. Discussions are ongoing to agree what the level of this reduction would be.
24. As the Welsh budget would bear the volatility generated by the revenues from fully devolved taxes, the Wales Bill provides the Welsh Government with a short term borrowing capability to manage this volatility. The operation of the overall funding system, in which devolved tax revenues would interact with the block grant and with borrowing powers, is a matter of ongoing discussion with HM Treasury.
25. It is not expected that the new borrowing powers - to manage volatility or for capital investment purposes - would have a significant administrative overhead.

26. The UK Government has said that any additional costs associated with the establishment of new Welsh taxes on transactions involving interests in land and on disposals to landfill (net of savings to the UK Government because it would no longer collect or administer UK stamp duty land tax and UK landfill tax in Wales) would be borne by the Welsh Government, however it would work constructively with the Welsh Government to minimise any such costs.
27. Were there to be a "yes" vote in a referendum to introduce a new Welsh rate of income tax, the UK Government considers that the associated costs should be borne by the Welsh Government. No discussions have taken place with the UK Government on those costs, however in its Impact Assessment on the Wales Bill, the UK Government comments that the cost of updating HMRC's IT systems and operational processes to support the changes to income tax powers brought about by the Scotland Act 2012 have been estimated to be about £40-45 million, with annual running costs of around £4.2 million. The UK Government notes that while lessons learned following the work for Scotland may help minimise implementation costs in Wales, as could the smaller population, other factors could serve to increase costs, including the greater economic activity on the border between Wales and England (which may increase the number of enquiries), the need to expand the capacity of HMRC's Welsh language helpline, and additional compliance costs related to the treatment of certain tax reliefs and incomes such as Gift Aid and tax relief for pension schemes.

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