

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

September 2023



1. Background

The Non-Domestic Rating Bill

1. The Non-Domestic Rating Bill¹ (the Bill) was introduced into the House of Commons and had its first reading on 29 March 2023. It is sponsored by the Department for Levelling-up, Housing and Communities.

2. The Explanatory Notes to the Bill as introduced state:

"This Bill implements a number of changes to the system of non-domestic rates (known as business rates) in England and Wales. The majority of the provisions for England give effect to conclusions of the government's Business Rates Review which covered the rating system in England.

*The Welsh Government has requested that a number of measures be applied to Wales."*²

3. The long title to the Bill states that it is a Bill to:

"Make provision about non-domestic rating".

4. A Committee of the whole House met to consider the Bill on Monday 22 May. Third reading also took place on 22 May. First reading in the House of Lords took place on 23 May. At the time we agreed our report, Report stage was scheduled to take place on 18 September 2023.

The Welsh Government's Legislative Consent Memorandum

5. Standing Orders 29.1 and 29.2 provide that a legislative consent memorandum is required when a relevant UK Bill makes provision in relation to Wales for any purpose within the legislative competence of the Senedd or which modifies the Senedd's legislative competence.

¹ [The Non-Domestic Rating Bill](#), as introduced (Bill 285)

² [The Non-Domestic Rating Bill, Explanatory Notes](#), March 2023, paragraph 1

6. On 11 April 2023, Rebecca Evans MS, Minister for Finance and Local Government (the Minister), laid before the Senedd a Legislative Consent Memorandum (the Memorandum) in respect of the Bill.³
7. We reported on the Memorandum on 21 June 2023.⁴
8. Paragraphs 8 to 10 of that report set out the clauses of the Bill which, at the time, the Welsh Government considered to require the Senedd's consent, and identified where disagreement existed between the Welsh and UK Governments.
9. Paragraphs 11 to 16 of that report describe the delegated powers in the Bill.
10. Paragraphs 17 to 19 of that report set out other matters relevant to the consideration of the Memorandum, and paragraphs 26 to 28 highlight relevant Welsh Government consultations related to non-domestic rates.
11. Paragraphs 20 to 25 of that report set out the Welsh Government's position on the Bill, as set out in the Memorandum.
12. Our report contained one conclusion and four recommendations. The Minister responded on 30 June 2023.⁵

The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 2)

13. On 1 August 2023, the Minister laid before the Senedd a Supplementary Legislative Consent Memorandum (Memorandum No. 2) in respect of the Bill.⁶

Update on the position since the publication of the Memorandum, and reasons for making provision for Wales in the Bill

14. Paragraphs 6 to 12 and 24 to 31 of Memorandum No. 2 provide an update on the position since the publication of the Memorandum.

³ Welsh Government, [Legislative Consent Memorandum on the Non-Domestic Rating Bill](#), April 2023

⁴ Legislation, Justice and Constitution Committee, [Report on the Welsh Government's Legislative Consent Memorandum on the Non-Domestic Rating Bill](#), June 2023

⁵ [Letter from the Minister for Finance and Local Government](#), 30 June 2023

⁶ Welsh Government, [Supplementary Legislative Consent Memorandum \(Memorandum No. 2\) on the Non-Domestic Rating Bill](#), August 2023

15. Paragraphs 13 to 22 of Memorandum No. 2 describe additional provisions in the Bill for which consent is required since the publication of the Memorandum.

16. At paragraph 6 of Memorandum No. 2 the Minister states that UK Government amendments were tabled to the Bill on 17 May 2023 to correct drafting errors to existing provisions within the Schedule to the Bill, but that these “did not affect the coverage” of the Memorandum laid on 11 April 2023 or, in her view, constitute a relevant provision made for the first time for the purposes of Standing Order 29.2(iii).⁷

17. At paragraph 25 of Memorandum No. 2 the Minister states “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.”

18. At paragraph 8 of Memorandum No. 2 the Minister notes that, in the Memorandum, she set out her view that it was not appropriate to recommend consent for clause 13 (Requirements for ratepayers etc to provide information) and paragraphs 49 and 50 in Part 4 of the Schedule (Consequential on Clause 13) until discussions with the UK Government in relation to those provisions had concluded.

19. The Minister goes on to state that Welsh Government officials and UK Government officials have continued their regular contact in relation to clause 13 and its consequential provisions within the Bill. The Minister states:

“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.

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

⁷ See also Memorandum No. 2, paragraph 24

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.

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.”⁸

20. The Minister adds:

“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.

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.

⁸ Memorandum No. 2, paragraphs 9 to 12

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.

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.

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.”⁹

21. The Minister therefore concludes that it is her 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.¹⁰

⁹ Memorandum No. 2, paragraphs 27 to 31

¹⁰ Memorandum No. 2, paragraphs 33 and 34

2. Committee consideration

22. We considered Memorandum No. 2 at our meeting on 11 September 2023. We also agreed our report at the same meeting.¹¹

Our view

Provisions requiring legislative consent

23. We note the Welsh Government's assessment of the provisions within the Bill that require the consent of the Senedd, as set out in Memorandum No. 2.

24. We note that Memorandum No. 2 reflects a change in position by the Minister, which has not followed amendments made to the Bill but which has followed further consideration of the Bill and discussion with the UK Government. This reflects the information set out in the Minister's letter to us on 1 June 2023.¹²

25. We agree that clause 13 of the Bill and paragraphs 49 and 50 in Part 4 of the Schedule (insofar as they apply in relation to Wales) require the consent of the Senedd.

Conclusion 1. We consider that clause 13 of the Bill and paragraphs 49 and 50 in Part 4 of the Schedule (insofar as they apply in relation to Wales) as set out in Memorandum No. 2 fall within a purpose within the legislative competence of the Senedd, as described in Standing Order 29, and therefore require the consent of the Senedd.

¹¹ [Legislation, Justice and Constitution Committee](#), 11 September 2023

¹² [Letter from the Minister for Finance and Local Government](#), 1 June 2023