

Report on the Legislative Consent Memorandum on the Non-Domestic Rating Bill

June 2023

Background

The LCM

1. On 11 April The Welsh Government laid a Legislative Consent Memorandum (LCM) on the Non-Domestic Rating Bill before the Senedd. Business Committee referred the LCM to the Economy, Trade and Rural Affairs Committee, the Local Government and Housing Committee, the Legislation, Justice and Constitution Committee and the Finance Committee with a reporting deadline of 22 June.
2. In the LCM the Minister states “further consideration will be required in relation to delegated powers in Clause 13 and paragraphs 49 and 50 of the Schedule.” On 18 May the Legislation, Justice and Committee wrote to the Minister asking 3 questions including for further detail around Clause 13 and Paragraphs 49 and 50 of the Schedule. The Minister responded to this letter on 1 June, details from this response are examined in this report.

About the Bill

3. The UK Non-Domestic Rating Bill (“the Bill”) was introduced in the House of Commons on 29 March 2023 by Michael Gove MP, the Secretary of State for Levelling up, Housing and Communities. The Bill is currently at its second reading in the House of Lords.
4. The Bill implements a number of changes to the system of non-domestic rates in England and Wales. The Bill does so by making amendments to the Local Government Finance Act 1988 (“the 1988 Act”). The majority of provisions in this



Bill give effect to the UK Government's Business Rates Review, which has been subject to multiple consultations. The Welsh Government has requested that a number of measures be applied in Wales in the Bill, and the LCM provides that UK Government officials have been "collaborative in discussions" with Welsh Government officials on the development of the Bill.

5. Paragraphs 16 to 44 of the LCM provides information regarding the clauses relevant to Wales. The key measures relating to Wales are described as ensuring that:

- targeted relief schemes could be established in the future, through clause 1;
- central list ratepayers are treated on a consistent basis across England and Wales where appropriate, through clause 3;
- valuation officers may be required to provide relevant information to a ratepayer about their hereditament upon request, through clause 10;
- information may be shared between His Majesty's Revenue and Customs (HMRC) and billing authorities, through clause 12;
- ratepayers are required to provide a taxpayer reference to HMRC supported by an associated compliance regime and related appeals mechanism, through clause 13;
- refinement to the process of setting the annual multiplier, with local authorities notified at an earlier date if possible, through clause 15.

6. Clauses 17 and 19 of the Bill provide the Welsh Ministers with regulation-making powers to make necessary consequential amendments, and to commence provisions which apply in relation to Wales and to make transitional, transitory or saving provision.

Provisions for which consent is sought

7. Non-domestic rates ("NDR") is a devolved matter in Wales. Local taxes to fund local authority expenditure (for example, council tax and non-domestic rates) are exceptions to the fiscal, economic and monetary policy reservation in the Government of Wales Act 2006 ("GoWA 2006") (paragraph 15 of Schedule 7A). This means that the Senedd has competence to pass primary legislation on the subject matter of NDR.

8. Clauses 1, 3, 10, 11, 12, 13, 15, 17 and 19 and the Schedule to the Bill make provision relating to NDR. The Welsh Government's LCM provides that consent is required for these clauses and the Schedule, because they make provision for a purpose within the legislative competence of the Senedd, notably the subject matter of NDR.

9. The UK Government's position is that the Legislative Consent Motion process is engaged for the clauses and Schedule listed above, and also for clauses 18 (Extent) and 20 (Short title).

Delegated Powers and Procedures

10. Regulation-making powers are conferred on the Welsh Ministers by the following clauses:

- i. Clause 1 introduces two new NDR reliefs which will apply in relation to occupied hereditaments on local lists situated in England and Wales, they are "improvement rates relief" and "heat networks rates relief". Clause 1 confers on the Welsh Ministers a regulation-making power to prescribe the meaning of "qualifying improvement works" and "heat network" and such regulations will be subject to the negative procedure. The Welsh Ministers may extend the period which the new reliefs will apply and these regulations are subject to the affirmative procedure with a draft laid before Senedd Cymru.
- ii. Clause 3 introduces charitable rate relief and improvement rate relief for eligible hereditaments on English and Welsh central lists. The Welsh Ministers will prescribe the meaning of "qualifying improvement works" by regulations, under the negative procedure. The power to extend the period which this relief will be available will be subject to the affirmative procedure, with a draft laid before Senedd Cymru.
- iii. Clause 15 amends the procedure for specific regulation-making powers already conferred on the Welsh Ministers in Schedule 7 to the 1988 Act, from made affirmative to draft affirmative. The Local Government and Elections (Wales) Act 2021 ("the 2021 Act") inserted sub-paragraphs 13A to 13C into paragraph 5 of Schedule 7 to the 1988 Act in relation to Wales. Sub-paragraph 13A provides the Welsh Ministers with regulation-making powers to change the mechanism by which the NDR multiplier is calculated for each financial year. Paragraph 3(d) of clause 15 of the

Bill amends sub-paragraph 13C by changing the made affirmative procedure that applied to such regulations, to the draft affirmative procedure. The LCM laid by the Welsh Government does not explain why the procedure is being changed for the regulation-making power, just over two years since the 2021 Act received royal assent.

- iv. Clause 17 confers on the Welsh Ministers a regulation-making power to make consequential amendments which arise from the Bill. Regulations which amend or repeal a provision made by primary legislation will be subject to the affirmative procedure. Any other regulations will be subject to the negative procedure.
- v. Clause 19 confers on the Welsh Ministers a power to commence a number of clauses in the Bill which relate to business rates, in so far as those provisions relate to Wales. These clauses are:
 - i. Clause 10 (Disclosure of valuation information to ratepayers),
 - ii. Clause 12 (Sharing of information between billing authorities and HMRC),
 - iii. Clause 13(2), (4) and (6), and 13(1) so far as it relates to these subsections (Requirements for ratepayers etc to provide information), Clause 15(3)(a), (c)(ii), (d) and (4) and 15(1) so far as it relates to those subsections (Multipliers), and
 - iv. Paragraphs 39(a), 46, 49(c) and (d), 50 and 53(a) of Part 4 of the Schedule, and 17(1)(d) and 40 of the Schedule so far as it relates to those paragraphs.

11. Regulation-making powers are conferred on the Commissioners for HMRC in clause 13(2), in relation to both England and Wales. Clause 13(2) introduces a new duty for ratepayers to provide information to HMRC, as part of the Digitalising Business Rates (DBR) reforms. Clauses 13(4) and (6) introduce penalties in connection with the duty and an appeals process. Commissioners for HMRC may amend the definition of “taxpayer reference” in paragraph 4F(1) of Schedule 9 to the 1988 Act, and may also provide that the new duty does not apply to certain person(s). Clause 13(2) provides that the Commissioners for HMRC must consult the Welsh Ministers before making regulations to the extent that the regulations make provision in relation to Wales.

12. Paragraphs 49(c) and 50 in Part 4 of the Schedule provide that Commissioners for HMRC may make provision in relation to notices served under paragraph 5ZA (penalties), or may change the amount of any penalty under that paragraph. Commissioners for HMRC must consult the Welsh Ministers before making such regulations.

13. The Welsh Government's LCM describes these provisions as "administrative provisions to ensure HMRC can maintain the Digitalising Business Rates Programme effectively." Paragraphs 45 to 47 of the LCM acknowledge that the Bill includes limited delegated powers in relation to clause 13 and Part 4 of the Schedule. The Welsh Government cites "insufficient time prior to the introduction of the Bill" as the reason why a firm agreement on the appropriate delegation of powers to the Welsh Ministers could not be reached in respect of clause 13 and Part 4 of the Schedule.

"47. The Welsh Government continues to engage with the UK Government on the appropriate conferral of delegated powers, with further discussions around these specific powers anticipated throughout the passage of the Bill."

Reasons for making these provisions for Wales in the Bill

14. These changes can only be made through primary legislation. The Welsh Government state they have considered using a Welsh Government Bill however:

The changes have been identified as suitable for pursuing through a UK Government Bill on the basis that they would be beneficial to implement as soon as practically possible. Awaiting the Welsh Government's planned Local Government Finance (Wales) Bill would lead to both the Welsh Government and ratepayers in Wales being put at a disadvantage and rescheduling the Senedd Bill would have wider negative impacts on our legislative programme.

15. In the LCM the Minister states that it is "optimal for certain provisions for Wales to be made within the Bill". Paragraphs 50 – 64 of the LCM set out the explanations for that view.

16. Paragraphs 55 to 56 of the LCM explain that the Welsh Government supports the inclusion of clause 11 because if the Senedd intended to enact similar provisions in a Senedd Bill, the provision would fall "outside competence as it extends beyond England and Wales". Clause 11 allows the Land and Property

Services in Northern Ireland to be provided with Revenue and Customs information held by a Valuation Officer in respect of hereditaments in Wales, which the Minister believes will help officials in Northern Ireland provide more accurate valuations to ratepayers. Even though the purpose of the provision relates to a devolved matter (NDR), such a provision would extend to Northern Ireland, and therefore extend beyond England and Wales.”

17. For other provisions, the Senedd would not be able to enact similar provisions in a Senedd Bill without the consent of HM Treasury, as those provisions confer or impose a function the Valuation Office Agency (VOA) which is a reserved authority for the purposes of paragraph 8 of Schedule 7B to GoWA 2006. These provisions are clauses 10, 12 and 13:

“53. Clause 10 enables ratepayers in Wales and England to be treated on a consistent basis. Given the interconnected nature of the relevant Welsh and English NDR regimes (with the VOA being a cross-border agency), it would be appropriate for provision for both to be taken forward at the same time in the same legislative instrument. If this provision did not apply in relation to Wales, Valuation Officers would be permitted to disclose valuation information in respect of a hereditament in England, but a similar power would not be available in relation to hereditaments in Wales. The provision will provide greater clarity and transparency as it will enable ratepayers to seek the evidence used to calculate the rateable values of their hereditaments. The conferral of a power on the Welsh Ministers to commence this provision by way of regulations in relation to Wales is intended to give Welsh Ministers control over the timing of implementation. An equivalent power is conferred on the Secretary of State in relation to England. The Welsh Government will work closely with the VOA to ensure that changes are introduced at a time when they are able to have the full desired effect. It is intended that these would be introduced during the course of the 2023 rating list and potentially prior to Royal Assent of the planned Local Government Finance (Wales) Bill, which is the next suitable legislative vehicle. [...]

57. Clauses 12 and 13 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. In order to deliver the programme, some of the Bill provisions will modify HMRC functions, by requiring them to share information with local authorities in Wales. Divergence of approach carries a risk that Welsh ratepayers, billing authorities, and the Welsh Government may not be able to benefit from the programme. If we do not maintain our involvement in the development of the programme, it may be more difficult and potentially costly and unfeasible for it to be re-extended to Wales at a later date.”

18. The LCM explains that a Local Government Finance (Wales) Bill is “planned”. However, the LCM does not provide further detail on future legislation other than acknowledging that clauses in this Bill applying to England only have been identified as being suitable for consideration for inclusion in a future Senedd Bill:

“63. The above changes were introduced at the request of the Welsh Government, acknowledging the importance of timely introduction and crossborder consistency being beneficial for both ratepayers and the Valuation Office Agency (VOA).

64. It is recognised that certain other provisions within the Bill would be desirable for Wales, without the same impact on ratepayers if implemented at a later date. It is acknowledged that if not introduced in line with the Bill there would be discrepancies between the two rating systems, however these provisions have been identified as having minimal risk of negative impact on ratepayers during the period where there is variation between the two systems. These have been identified as suitable for consideration for inclusion in a future Senedd Bill. As such, their application to Wales has not been sought in the Bill and they do not require an LCM.”

Other provisions to note

19. Clause 15(4) makes amendments to paragraph 6 of Schedule 7 to the Act. The Welsh Ministers must calculate the NDR multiplier for each financial year in relation to Wales, and must serve a notice on each billing authority stating the multiplier as so calculated.

20. Clause 15(4) omits sub-paragraph (4B), which had previously stated that a calculation is invalid unless one or both of the following conditions is fulfilled—: (a) it is made after the Senedd has approved the local government finance report for the year (or both reports if the Welsh Ministers are making two local government finance reports for the year); and/or (b) it is made on or after 1 March in the preceding financial year.

21. Paragraph 39 of the LCM provides that this amendment removes a timing constraint which: “prevents local authorities proceeding with bill functions in a timely manner when the value of the multiplier is known at an earlier date”.

Clause 13 and Part 4 the Schedule

22. As discussed above, The LCM explains that “The Bill at introduction includes limited delegated powers in relation to clause 13 and Part 4 of the Schedule.” “There was insufficient time prior to the introduction of the Bill to reach firm agreement on the appropriate delegation of powers to Welsh Ministers. However, as they make provision for a purpose within Senedd competence, they will require legislative consent.” It goes on to note that the Welsh Government is continuing to engage with the UK Government on the conferral of delegated powers.

23. In the LCM the Minister states that “further consideration will be required in relation to delegated powers in Clause 13 and paragraphs 49 and 50 of the Schedule. Whilst these matters remain under consideration I am not yet able to recommend the Senedd gives consent to this Bill in its entirety”.

24. The Minister’s letter from 1 June the Minister confirmed that following further engagement with the UK Government:

I can confirm that our discussions with the UK Government on this matter concluded during the Bill’s passage through the House of Commons. No amendments to the Bill are required as a result of those discussions. It is the Welsh Government’s intention to support the Bill provisions extended to Wales in their entirety.

25. The Minister’s letter also gave further detail around Clause 13 and the Digitalisation of Business Rates (DBR) Programme:

“The powers delegated to the Commissioners of HMRC are limited. They do not need to be exercised to enable the legislative framework set out in the Bill to operate, and will only

be used where a relevant administrative change to ensure the effective operation of the DBR programme by HMRC is considered necessary. Whilst any secondary legislation made under the delegated powers would alter the requirements placed on NDR ratepayers in Wales, it would also directly affect the functions conferred by the Bill on HMRC.

The Bill requires that the Commissioners of HMRC must consult the Welsh Ministers before making secondary legislation under the delegated powers and to the extent that it makes provision in relation to Wales. This approach will enable the aims of the DBR programme to be delivered and intended benefits realised in Wales. Only HMRC can deliver DBR for Wales, as the programme relies on the sharing and linking with information held by HMRC in relation to non-devolved taxes, as well as NDR”.

26. The Minister also committed to laying a supplementary LCM that will “clarify the Welsh Government’s position on this matter and address any amendments that are made to the Bill, in a timely manner.”

Financial Implications

27. The LCM sets out that there are “no costs associated with the Bill.” It also states “The UK Government intends to provide new reliefs following the successful passage of the Bill, the detail of which will be set out in secondary legislation. The Welsh Government awaits further information on any consequential funding that would arise from such schemes, in due course.”

The Welsh Government’s view

28. In the LCM the Minister states that “it is appropriate to deal with these provisions in this UK Bill, to ensure ratepayers in Wales are not disadvantaged compared to their English counterparts.” She also states the interconnected nature of the cross-border systems and the role of the VOA support taking forward this legislation at the same time in the same legislation. The Minister states that Digitalising Business Rates Programme will be beneficial and would be difficult to establish on a Wales only basis.

29. Whilst initially the LCM stated more consideration was needed before the Welsh Government could recommend the Senedd gives consent to this LCM in

her letter to LJC, discussed above, the Minister has provided an updated on the Welsh Government's position. She said, "It is the Welsh Government's intention to support the Bill provisions extended to Wales in their entirety."

The Committee's view

30. The Committee agrees with the Welsh Government's assessment in the LCM that the provisions of clauses 1, 3, 10, 11, 12, 13, 15, 17 and 19 and the Schedule satisfy the test in Standing Order 29 in that the Bill makes provision in relation to Wales for a purpose within the legislative competence of the Senedd, namely non-domestic rates. The Senedd's consent is therefore required for these provisions.

31. The Committee is sympathetic to the Minister's view that it is sensible to use this UK Bill to make these provisions for Wales as Members support the Government's objective to ensure rate payers in Wales are not put at a disadvantage by any changes made to English non-domestic rates. In principle the Committee supports consent for this LCM. However, the Committee do not wish to make a recommendation on this LCM until Members have seen and discussed the forthcoming supplementary LCM clarifying details around Clause 13 and Part 4 of the Schedule.