

Report on the Legislative Consent Memorandum for the Non-Domestic Rating (Lists) (No. 2) Bill

Document sub-title

Introduction

1. On 14 September 2020 the Business Committee agreed, in accordance with Standing Order 29.4(i), to invite this Committee to consider the Legislative Consent Memorandum on the Non-Domestic Rating (Lists) (No. 2) Bill (“the LCM”), and to report to the Senedd by 5 November 2020. The Committee considered the LCM on 14 October 2020.

Background

2. The Non-Domestic Rating (Lists) (No. 2) Bill (“the Bill”) was introduced in the House of Commons on 8 September 2020. The LCM was laid on 9 September 2020 by Rebecca Evans MS, Minister for Finance and Trefnydd.

The Bill

3. The purpose of the Bill is to move the date for the next non-domestic rates (NDR) 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 (i.e. 31 December 2022).

4. A previous Bill (the Non-Domestic Rating (Lists) Bill) was introduced in the UK Parliament in June 2019 to bring the date for valuation forward a year from 1 April 2022 to 1 April 2021. In July 2018, the Cabinet Secretary for Finance had announced that the next NDR revaluation exercise for Wales would be brought forward in this way, to bring it in line with that in England. The Committee considered an LCM on that Bill on 3 July 2019, and reported that it was satisfied an LCM was necessary under Standing Order 29 and it saw no reason to object to the then Assembly agreeing to the legislative consent motion, which it did on 9 July 2019. However, the Bill fell when Parliament was prorogued in September 2019.



5. A further Bill with the same purpose was then introduced in the House of Lords on 18 March 2020. A LCM in respect of that Bill was laid before the Senedd on 28 April 2020 and a revised LCM was laid on 8 July 2020.

6. In light of the COVID-19 pandemic, the UK Government subsequently decided not to progress that Bill and determined to move the date of the next revaluation to 1 April 2023. Primary legislation is required to effect this change.

7. The Minister for Finance and Trefnydd announced on 11 August 2020 that the next NDR revaluation in Wales would take place on 1 April 2023. This is to ensure that property values in Wales reflect the impact of the pandemic on economic conditions, and it aligns with the date announced by the UK Government.

Provisions in the Bill for which consent is sought

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

8. The valuation cycles for non-domestic properties are governed by the Local Government Finance Act 1988 (the 1988 Act). The Bill amends the 1988 Act and postpones the NDR revaluation from 2022 until 2023 in England and Wales, and adjusts the deadline for the submission of proposed NDR lists from 30 September in the year preceding revaluation to 31 December:

- Clauses 1(2)(b) and 1(3)(b) amend sections 41(5) and 52(5) of 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;
- 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;
- The LCM states that the amended clauses do not contain any subordinate legislation making powers for Welsh Ministers. (The LCM notes that to allow for the work necessary to assess all properties and draw up new lists to apply from 1 April 2023, the specified date for the Valuation Office Agency (VOA) to use for assessing the value of every non-domestic property (the Antecedent Valuation Date or “AVD”) will need to be set as 1 April 2021, which will be achieved through an Order laid before the Senedd. The enabling power for this Order is contained within a provision not amended by the Bill.)

Legislative Competence

9. 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 business rates.
10. Consent is required because these provisions fall within the legislative competence of the Senedd insofar as they have the effect of modifying functions of valuation officers of the Valuation Office Agency (VOA), who compile and maintain the valuation data.
11. However, the VOA is an executive agency sponsored by HMRC and valuation officers, as holders of an office that has functions of a public nature, are a “public authority” under paragraph 8(4) of Part 1 of Schedule 7B to the Government of Wales Act 2006 (GOWA 2006). Paragraph 10(1) of Part 1 of Schedule 7B to GOWA 2006 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”, and neither the VOA or HMRC are listed as devolved Welsh authorities under Schedule 9A of GOWA 2006.
12. Therefore, the consent of HM Treasury would be required to change the date or frequency of NDR revaluations and adjust the deadline for the submission of proposed NDR lists through an Act of Senedd Cymru.

Reasons for making these provisions for Wales in a UK Bill

13. The LCM notes that considerable preparatory work is required in preparing new rating lists to take effect on 1 April 2023 and making ratepayers aware of the prospective changes. The confirmation of the valuation date in legislation provides the statutory basis for this work.
14. Welsh Government states that the possibility of making this change to the date 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.
15. As outlined above, the Bill brought forward by UK Government will also ensure that the timing of the revaluation in Wales aligns with that in England, and that valuations are carried out in a consistent manner.

Committee View

16. As was the case with the previously Non-Domestic Rating (Lists) Bill introduced in July 2019, the Committee notes that Welsh Government believes this Bill is an appropriate legislative vehicle

to implement changes to NDR revaluation. The Committee accepts Welsh Government's argument that the current Bill is appropriate for reasons of "timing and coherence".

17. The Committee had supported the proposal in the 2019 Non-Domestic Rating (Lists) Bill to bring revaluation forward to 2021. However, it recognises that in light of the impact of the Covid-19 pandemic on businesses and business property values, there is a need to reflect this in NDR revaluation, and that it also remains important to have a coherent NDR regime across England and Wales.

18. The Committee is satisfied that the current Bill makes provision for a purpose within the legislative competence of the Senedd and that an LCM is necessary under Standing Order 29, and sees no reason to object to the Senedd agreeing to a Legislative Consent Motion associated with this Memorandum..