

LEGISLATIVE CONSENT MEMORANDUM

NON-DOMESTIC RATING 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 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 UK Government’s stated policy objective is to implement a number of changes to the non-domestic rates (NDR) system in England as part of its *Business Rates Review*. The changes focus on measures to enable the shortening of revaluation periods from five years to three years, the introduction of new relief schemes, disclosure of information to ratepayers, matters not to be considered in alterations of lists, and administrative improvements to the system.
4. The UK Government is also seeking to implement the *Digitalising Business Rates Programme*. This is a joint programme led by HMRC, which was extended to include Wales at the Welsh Government’s request. It will provide the Welsh Government with a new opportunity to use linked non-devolved tax data, which we would not be able to access outside of this programme, to support the development of future NDR policy tailored to Wales.
5. On 29 March 2022, I made an Oral Statement setting out my plans for the short and medium-term reform of NDR. I recently consulted on a range of proposals for reform of the tax in Wales. These proposals will be pursued through Welsh Government legislation, where a difference in the timing and scope does not risk disadvantaging ratepayers in Wales. Having considered the options and approach to delivering our wider NDR reform agenda, I have decided that it is optimal for certain provisions for Wales to be made within the Bill.
6. The Bill provides an opportunity to bring about certain reforms earlier than would be possible otherwise and where certain functions of UK Government agencies will be altered, to ensure ratepayers in Wales are not disadvantaged. The Welsh Government has sought provisions for Wales where policy aims are aligned and there is benefit in securing levers to support ratepayers as soon as possible. We have also sought provisions to support our continued involvement in the *Digitalising Business Rates Programme*. This reflects the interconnected nature of, and administrative similarities between, the NDR systems in Wales and England.

Summary of the Bill

7. The Bill is sponsored by the Department for Levelling Up, Housing and Communities (DLUHC). UK Government officials have been collaborative in discussions with my officials on the development of the Bill. Clarity has been sought on where provisions would be beneficial to apply to both England and Wales, with the UK Government receptive to Welsh Government's request for the inclusion of certain provisions in the Bill.
8. The development of provisions is closely linked to the UK Government's *Business Rates Review*, which has been the subject of multiple consultations. A separate consultation on *Digitalising Business Rates* included a proposal to extend the programme to Wales.
9. The provisions for Wales in the Bill would ensure 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.
10. In addition to the above provisions for Wales, the Bill will ensure that valuation officers may disclose information about the valuation of hereditaments in England and Wales to rating officials in Northern Ireland, to support their statutory valuation functions, through Clause 11.
11. The Bill also includes provisions to enable the Welsh Ministers to make necessary consequential amendments, through Clause 17; and to commence certain provisions which apply in relation to Wales by way of statutory instrument and to make transitional, transitory or saving provision through Clause 19.
12. The Bill also includes provisions that do not apply in relation to Wales.

Provisions in the Bill for which consent is required

13. This memorandum concerns certain provisions in Clauses 1, 3, 10, 11, 12, 13, 15, 17 and 19, and the Schedule of the Bill, relating to NDR.
14. Local government finance, including 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 (GoWA).

15. 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 1 (Local rating: liability and mandatory reliefs for occupied hereditaments)

16. Clause 1 clarifies existing legislation concerning various relief schemes for occupied hereditaments on English and Welsh local lists by restating and restructuring provisions currently in section 43 and 44 of the Local Government Finance Act 1988 ("the 1988 Act"), in new Schedule 4ZA.
17. Clause 1 also introduces new NDR reliefs, namely improvement rates relief (in paragraph 3 of Schedule 4ZA) and heat networks rates relief (in paragraph 6 of Schedule 4ZA), which will apply in relation to occupied hereditaments on local lists situated in Wales (as well as in England).
18. The object of the improvement rates relief is to encourage occupiers to undertake improvements to their existing business premises that will result in a positive change in the rateable value, whilst remaining in occupation of their property.
19. The heat network relief would provide 100% relief for networks generating from a low carbon source and could incentivise the establishment of heat networks that would be able to gather and distribute renewable energy.
20. The meaning of "qualifying improvement works" and "heat network" will be prescribed in regulations made by the Welsh Ministers and subject to the negative procedure. Regulations to extend the period during which both reliefs may be available will be subject to the affirmative procedure with a draft laid before Senedd Cymru.

Clause 3 (Central rating: liability and mandatory reliefs)

21. Clause 3 clarifies existing legislation concerning liability and mandatory reliefs for hereditaments on English and Welsh central rating lists, including restating and restructuring much of the provisions currently in section 54 of the 1988 Act in new Schedule 5A.
22. Clause 3 also introduces charitable rate relief (paragraph 2 of Schedule 5A) and improvement relief (paragraph 3 of Schedule 5A) for eligible hereditaments on English and Welsh central lists.
23. The meaning of "qualifying improvement works" will be prescribed in regulations made by the Welsh Ministers under the negative procedure.

Regulations to extend the period during which this relief may be available will be subject to the affirmative procedure, with a draft laid before Senedd Cymru.

Clause 10 (Disclosure of valuation information to ratepayers)

24. Clause 10 amends the 1988 Act by inserting new paragraph 7B into Schedule 9, which will enable ratepayers to request Revenue and Customs information in respect of their hereditament from Valuation Officers (as agents of the Valuation Office Agency (VOA)) and allows Valuation Officers to supply information to ratepayers in relation to their hereditament or its rateable value. Valuation Officers will be permitted to control the release of information where they consider it would not be reasonable to disclose or where disclosure would contravene data protection legislation.
25. The provisions intend to ensure ratepayers are able to access information relevant to their hereditament.
26. Clause 10 applies in relation to England and Wales. The provisions which apply in relation to Wales will come into force in accordance with regulations made by the Welsh Ministers (see Clause 19).

Clause 11 (Disclosure of valuation information to Northern Ireland rating officials)

27. Clause 11 amends the 1988 Act by inserting new section 63D, which provides a statutory gateway for the Land and Property Services (LPS) (Northern Ireland's equivalent of the VOA) to be provided with Revenue and Customs information held by a Valuation Officer in respect of hereditaments in England and Wales. The LPS can request such information if it reasonably believes this will assist in performing its functions.
28. This clause extends to Northern Ireland. A similar provision in a Senedd Bill would be outside competence as it extends beyond England and Wales. However, as information may be disclosed about hereditaments in Wales, this Clause makes provision with regard to devolved matters.

Clause 12 (Sharing of non-domestic rating information between billing authorities and HMRC)

29. Clause 12 amends the 1988 Act by inserting new subsection (1A) into section 63A and new section 63E. Clause 12 will enable information to be shared between billing authorities and HMRC. Billing authorities will be able to access information held by HMRC in relation to other taxes, whilst HMRC will be able to access information held by billing authorities in relation to NDR.
30. The provisions are intended to assist HMRC and billing authorities in the carrying out of their functions.
31. Clause 12 applies in relation to England and Wales. It will also come into force in accordance with regulations made by the Welsh Ministers (see Clause 19).

Clause 13 (Requirements for ratepayers etc to provide information)

32. Clause 13 amends the 1988 Act by inserting new paragraphs 4B to 4M, 5ZA to 5ZF, and 5BA to 5BF into Schedule 9. Clause 13 will set out where 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.
33. 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.
34. 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).
35. The remainder of provisions in Clause 13 apply to England only, setting out requirements for information to be provided to valuation officers.
36. 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.
37. 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 (see Clause 19).

Clause 15 (Multipliers)

38. Clause 15 amends Schedule 7 of the 1988 Act by inserting Part A1 (which applies only in relation to England) before Part 1 and amending paragraphs 5 and 6. The Clause sets out provisions relating to the setting of the multiplier.
39. Certain provisions set out in Clause 15 apply in relation to Wales:
- Paragraph 3(a) corrects a drafting error in the Local Government and Elections (Wales) Act 2021, substituting the term ‘consumer’ for ‘retail’ in reference to the applicable prices index.
 - Paragraph 3(c) removes an abnormal rounding practice.
 - Paragraph 3(d) alters the procedure for making regulations from made affirmative to draft affirmative.

- Paragraph 4 removes a timing constraint in place whereby local authorities cannot be notified of the multiplier until the local government settlement has been agreed. The current constraint prevents local authorities proceeding with billing functions in a timely manner when the value of the multiplier is known at an earlier date.

Clause 17 (Consequential provision)

40. Clause 17 confers on the Welsh Ministers a regulation-making power to make consequential amendments which arise from this Bill. Such regulations will be subject to the affirmative procedure should they amend or repeal a provision made by primary legislation (as defined in Clause 17(10)). Any other regulations made under this power will be subject to the negative procedure.
41. The intent is to enable necessary consequential amendments to be made to ensure legislative clarity.

Clause 19 (Commencement and application)

42. Clause 19(4) and (5) confers on the Welsh Ministers a power to commence Clauses: 10; 12; 13(2), (4) and (6) (and 13(1) so far as relating to those subsections); 15(3)(a), (c)(ii), (d) and (4) (and 15(1) so far as relating to those subsections); and 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 relating to those paragraphs) in the Bill by way of regulations. Clause 19(7) enables the Welsh Ministers to make transitional, transitory or saving provision in connection with the coming into force of any provision. To the extent these powers relate to devolved provisions, it would be within the legislative competence of the Senedd to make similar provision in a Senedd Bill and as such the consent of the Senedd is required.

The Schedule (Consequential provision)

43. Consequential amendments which flow from the legislative changes made by Clauses 1, 3, 12, 13, 15, 17, and 19. 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.
44. 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.

Delegation of powers

45. The Bill at introduction includes limited delegated powers in relation to clause 13 and Part 4 of the Schedule.
46. 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.
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.

UK Government view on the need for consent

48. The Department for Levelling Up, Housing and Communities considers that Clauses 1, 3, 10, 11, 12, 13, 15, 17, 18, 19, 20 and the Schedule contain provisions which engage the legislative consent process.
49. The Welsh Government does not consider Clauses 18 and 20 engage the legislative consent process due to them being operative in nature and having no legal effect.

Reasons for making these provisions for Wales in the Bill

50. These changes can only be made by way of primary legislation. The possibility of making these changes through a future Welsh Government Bill has been considered. 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.
51. The changes in Clause 1 enable targeted support provided to ratepayers in Wales on a similar basis to those in England. They do not impose any financial implications upon the Welsh Government, rather they grant flexibility for the Welsh Government to establish a relief scheme. It is anticipated the UK Government will look to use this regulation-making power from 1 April 2024 onwards. By pursuing these provisions in the Bill, Welsh Ministers would not be disadvantaged in the manner in which they could design a scheme compared to their UK counterparts. Using a later Senedd Bill would disadvantage businesses and other ratepayers in Wales, compared with those in England, in the interim. Powers to establish improvement relief could help incentivise investment and be a tool to address concerns raised by representative bodies that the NDR system discourages investment. Similarly, powers to establish

heat networks relief would present an opportunity to provide relief and would support the development of the Welsh Government's heat strategy.

52. The changes in Clause 3 are primarily to correct an anomaly apparent in the system. As the central list operates across large geographical areas, often for ratepayers with high rateable values, it is important that there remains consistency between the tax-base in Wales and England. Delaying this change until a Welsh legislative vehicle is in place would leave those ratepayers at a comparative disadvantage and create a lack of clarity in law.
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.
54. 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 the provision confers/imposes a function on a reserved authority.
55. Clause 11 enables rating officials in Northern Ireland's LPS to have access to information held by a Valuation Officer that could assist them in carrying out their statutory functions. Information held by a Valuation Officer includes information about hereditaments and ratepayers in Wales. The Welsh Government supports the aims of the provisions in helping rating officials in Northern Ireland provide more accurate valuations to ratepayers and reduce the risk of revenue loss.
56. If the Senedd intended to enact similar provisions in a Senedd Bill, it would be outside competence as it extends beyond England and Wales.
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.

58. 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.
59. Changes in Clause 15 link to the workings of the multiplier. They are pursued at this time as they, in part, correct existing legislative errors and provide further legislative clarity. It would be illogical to leave errors unchanged for longer than necessary. Certain changes also provide for enhanced certainty for local authorities in carrying out their billing function, by enabling the implementation of a new multiplier into IT systems at an earlier date. This ensures ratepayers in Wales are able to receive timely bills and are not at a disadvantage compared to those in England.
60. Clause 17 enables the Welsh Ministers to make provisions that are consequential on the Bill in relation to Wales. This power is necessary to ensure clarity of law.
61. Clause 19 enables Welsh Ministers to commence Clauses: 10; 12; 13(2), (4) and (6) (and 13(1) so far as relating to those subsections); 15(3)(a), (c)(ii), (d) and (4) (and 15(1) so far as relating to those subsections); and 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 relating to those paragraphs), to ensure responsibility for commencing these provisions remains in Wales.
62. Changes in the Schedule are consequential in nature to the policy changes pursued in clauses throughout the Bill. These changes are necessary to provide clarity of law.
63. The above changes were introduced at the request of the Welsh Government, acknowledging the importance of timely introduction and cross-border consistency being beneficial for both ratepayers and the 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.

Financial implications

65. There are no costs associated with the Bill.

66. 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.

Conclusion

67. It is my view 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. The interconnected nature of the Welsh and English systems and the cross-border role of the VOA also supports the provision relating to sharing of information with ratepayers being taken forward at the same time and in the same legislative instrument. The *Digitalising Business Rates Programme* will provide all parties involved with better information to ensure more efficient and effective tax systems and would be difficult to achieve on a Wales only basis. The consent of the Senedd is sought for provisions in Clauses 1, 3, 10, 11, 12, 15, 17, 19 and the Schedule (excluding paragraphs 49 and 50) to be dealt with through this UK Bill. However, 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.

Rebecca Evans MS
Minister for Finance and Local Government
11th April 2023