

Welsh Tax Acts etc. (Power to Modify) Bill:

Bill Summary

April 2022



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Executive Summary

Background

The **Wales Act 2014** gave new taxation and borrowing powers to Wales. The Act devolved both Stamp Duty Land Tax (SDLT) and Landfill Tax (LT) to the Senedd, which were replaced in April 2018 by Land Transaction Tax (LTT) and Landfill Disposals Tax (LDT) respectively in Wales.

The **Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017** and **Landfill Disposals Tax (Wales) Act 2017** were passed by the Senedd to enable the Welsh Government to administer LTT and LDT.

In October 2017, the Welsh Government established the **Welsh Revenue Authority (WRA)** through the **Tax Collection and Management (Wales) Act 2016** to collect and manage the devolved taxes.

These three Acts are collectively known as the Welsh Tax Acts. **The Bill** seeks powers to enable the Welsh Ministers to amend these Acts.

Purpose of the Bill

The **intended purpose** of the Bill is to enable changes to be made to the Welsh Tax Acts by regulations where the Welsh Ministers consider that such changes are necessary or appropriate, and where they are required to have effect immediately or shortly thereafter, in the following circumstances:

1. to ensure the devolved Welsh taxes comply with international obligations.
2. to protect against tax avoidance in relation to devolved Welsh taxes.
3. to respond to changes made by the UK government to SDLT and LT, which affect, or may affect the amount paid into the Welsh Consolidated Fund; and
4. to respond to decisions of the courts/tribunals which affect or may affect the operation of the Welsh Tax Acts, or any regulations made under them.

Provisions of the Bill

The Bill **consists of** eight sections.

Section 1. Power to modify the Welsh Tax Acts

Section 1 **provides that** the Welsh Ministers may by regulations (exercisable via either the draft or made affirmative procedure) modify the Welsh Tax Acts and regulations made under them to respond to the four circumstances as previously set out.

Section 2. Regulations under section 1: supplementary

Section 2 **provides that** regulations made under section 1 of the Bill may make changes to the devolved taxes including imposing changes to the amounts payable by taxpayers, impose and/or extend prospective penalties, and may also have retrospective effect. However, a new penalty or a change to an existing penalty may not be imposed retrospectively.

Section 3. Policy statement

Section 3 **sets out a duty** on the Welsh Ministers to publish a statement on their approach to the making of regulations under section 1 of the Bill which have retrospective effect. The statement must be published before the end of the period of three months beginning with the date of Royal Assent.

The Welsh Government has published its **Statement of Policy Intent** and **Draft Statement on Retrospection**.

Section 4. Procedure for regulations

Section 4 **specifies the** Senedd procedure for regulations made under section 1. Regulations will either be subject to the **draft or made affirmative procedure**. The EM **notes that** the Welsh Ministers “will seek to use the draft affirmative procedure where possible”.

Section 5. Regulations ceasing to have effect

Section 5 **sets out** what happens where regulations drafted under the made affirmative procedure cease to have effect as a result of having failed to obtain the Senedd’s approval. Consequently, any tax liabilities, entitlement to tax credits or

penalty liabilities imposed by the failed regulations will be treated as if they never arose.

Other sections

Section 6 contains definitions included in the Bill. **Section 7 specifies that** the Bill will come into force on the day after it receives Royal Assent and **Section 8 confirms the** short title of the Bill.

Costs and impacts of the Bill

Costs

The **Regulatory Impact Assessment (RIA)** included in the EM states there are no costs as a result of the Bill directly. However, costs will be dependent on the nature of future changes of the Welsh Tax Acts as and when any secondary legislation is prepared.

Consequently, a separate impact assessment, including estimated costings, would be completed when the powers provided by the Bill are used to make regulations to effect changes to the Welsh Tax Acts.

Benefits

The RIA **notes a key benefit** of the Bill is the ability to protect Welsh Government tax revenues, or to provide taxpayers with timely reductions in their liabilities although it is not possible to quantify this benefit until changes are known.

Integrated impact assessment

The RIA **states there are** limited impacts as a result of the Bill directly. A separate impact assessment would be completed each time Welsh Ministers use the powers to make regulations to effect changes to the Welsh Tax Acts.

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1. Background to the Bill

Part 2 of the **Wales Act 2014** gave new fiscal powers to the Senedd in the form of taxation and borrowing to increase the accountability of the Welsh Government to the people of Wales. The Act devolved UK Stamp Duty Land Tax (SDLT) and Landfill Tax (LT) to Wales.

SDLT and LT were replaced by Land Transaction Tax (LTT) and Landfill Disposals Tax (LDT) respectively in Wales. To legislate for these taxes the Welsh Government introduced the **Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017** and **Landfill Disposals Tax (Wales) Act 2017**. The Welsh Government also established the Welsh revenue Authority (WRA) through the **Tax Collection and Management (Wales) Act 2016** to administer the taxes.

1.1. Welsh Tax Acts etc. (Power to Modify) Bill

The Bill **seeks to** confer a regulation making power on the Welsh Ministers powers to amend the Welsh Tax Acts (and subordinate legislation made under them) in specific circumstances. The Welsh Tax Acts include:

- Tax Collection and Management (Wales) Act 2016
- Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017
- Landfill Disposals Tax (Wales) Act 2017

1.2. Tax Collection and Management (Wales) Act 2016

The **Tax Collection and Management (Wales) Act 2016** established the Welsh Revenue Authority (WRA) and its functions in relation to administering the devolved taxes in Wales. Key legislation included:

- the conferral of appropriate powers and duties on WRA in relation to the submission of tax returns and the carrying out of enquiries and assessments;
- civil investigation and enforcement powers, including powers allowing WRA to require information and documents and to access and inspect premises and other property;
- duties on taxpayers to pay penalties and interest in certain circumstances;
- rights for taxpayers to request internal reviews of certain WRA decisions and to appeal to the First Tier Tribunal against such decisions; and
- the conferral of criminal enforcement powers on WRA.

Section 2(3) of the Bill **sets out** that the Welsh Ministers may not modify the provisions of Part 2 of the Tax Collection and Management (Wales) Act 2016.

The **Explanatory Memorandum (EM)** accompanying the Bill noted that “it is not anticipated that Welsh Ministers would need to respond at short notice to changes to the establishment, membership and operation of a non-ministerial department of Welsh Government such as the WRA”.

1.3. Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017

The **Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017**

legislated for LTT to replace SDLT from April 2018. LTT is payable when property or land is purchased over a certain price threshold in Wales. The Act sets out the key principles of LTT, which includes:

- the types of transactions that would incur a charge to LTT and the person liable to pay the tax;
- the procedure for setting tax rates and bands;
- how the tax would be calculated and what reliefs may apply;
- specific measures to tackle tax avoidance;
- the application of the tax in relation to leases;
- the specific provisions applicable to a range of persons and bodies in respect of LTT;
- the provision for making a tax return and for the payment of the tax; and
- duties on taxpayers to make payments and pay penalties and interest in certain circumstances.

Section 2(3) of the Bill excludes powers for the Welsh Ministers to modify regulations specifying LTT tax bands and rates. **Section 24** of the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 already confers regulation making powers on the Welsh Ministers to change LTT rates and bands.

1.4. Landfill Disposals Tax (Wales) Act 2017

LDT is a tax on the disposal of waste to landfill. The Act **covers the following areas:**

- The definition of a “taxable disposal” on which LDT would be charged;

- The definition of an authorised landfill site and what was expected of landfill site operators in terms of their liability to pay the tax, the duty to register with WRA, how to account for LDT etc.;
- The application of LDT to disposals made other than at an authorised landfill site and who was liable for LDT on such disposals;
- How LDT would be calculated, what rate of tax would apply and what exemptions, reliefs and credits may apply;
- Duties on taxpayers to make payments and pay penalties and interest in certain circumstances; and
- The inspection of premises for the purpose of ascertaining a person's liability to LDT, and the sharing of information between certain public authorities for the purpose of LDT.

Like LTT, Section 2(3) of the Bill **excludes regulation making powers** specifying tax rates for LDT, which are set out in **Section 95** of the Landfill Disposals Tax (Wales) Act 2017.

2. Bill Summary

2.1. Purpose of the Bill

The EM **states the intended purpose** of the Bill is to enable changes to be made to the Welsh Tax Acts by regulations where the Welsh Ministers consider that such changes are necessary or appropriate and where they are required to have effect immediately or shortly thereafter. Those changes will be permitted in order to respond to four purposes:

1. to ensure the devolved Welsh taxes are not imposed where to do so would be incompatible with any international obligations;
2. to protect against tax avoidance in relation to devolved Welsh taxes;
3. to respond to changes made by the UK government to 'predecessor' UK taxes (SDLT & LT) which affect, or may affect the amount paid into the Welsh Consolidated Fund; and
4. to respond to decisions of the courts/tribunals which affect or may affect the operation of the Welsh Tax Acts, or any regulations made under them.

2.2. Provisions of the Bill

The Bill **contains eight sections**:

Section 1. Power to modify the Welsh Tax Acts

This section **provides that** the Welsh Ministers may by regulations (exercisable via either the draft or made affirmative procedure) modify the Welsh Tax Acts and regulations made under them to respond to four purposes set out above.

The EM **notes the purpose tests** are intended to constrain the use of the power. The tests target those areas where it is anticipated that external events may require a response by the Welsh Ministers to protect both revenues and taxpayers.

Section 2. Regulations under section 1: supplementary

Section 2 **provides that** regulations made under section 1 of the Bill may make changes to the devolved taxes including imposing changes to the amounts payable by taxpayers, impose and/or extend prospective penalties and may also have retrospective effect. However, a new penalty or a change to an existing penalty may not be imposed retrospectively.

The EM **notes the** Welsh Ministers consider it necessary for there to be the potential to make legislative changes retrospectively, where considered necessary, on a case by case basis.

The EM **explains this** is because the ability to respond to external events may require the legislation to apply from a date earlier than when the regulations are made.

Section 3. Policy statement

Section 3 **sets out a duty** on the Welsh Ministers to publish a statement on their approach to the making of regulations under section 1 of the Bill which have retrospective effect. The statement must be published before the end of the period of three months beginning with the date of Royal Assent.

Examples **provided in** the EM of when the Welsh Ministers may consider making regulations with retrospective effect include areas such as:

- where a change is made by the UK government that has immediate effect and provides a tax, and therefore commercial, advantage to entities liable to the

predecessor tax,

- where a change is made by the UK government that has immediate effect and raises significant amounts of tax by a predecessor tax and that will have a material effect on the block grant adjustment,
- where avoidance activity is undertaken,
- where a court decision means the legislation is found to not operate as intended by the Welsh Government and Senedd when it was enacted.

Section 3 **also permits** the Welsh Ministers to revise their policy statement (and requires any revised statement to be published).

The Welsh Government has published its **Statement of Policy Intent** and **Draft Statement on Retrospection**.

Section 4. Procedure for regulations

Section 4 **specifies the** Senedd procedure for regulations made under section 1.

Regulations will either be subject to the **draft or made affirmative procedure**.

The EM **notes the** Welsh Ministers “will seek to use the draft affirmative procedure where possible”.

Draft affirmative procedure

The use of a draft affirmative procedure means the regulations can only be made once the Senedd has approved them. The EM **notes that** the Welsh Ministers will use the draft affirmative procedure where there is less immediacy required and there is time for the Senedd to approve the regulations before they are made.

Made affirmative procedure

The made affirmative procedure **would be used** when changes are needed to have effect immediately or shortly thereafter. Made affirmative regulations will have provisional effect and must receive approval within a maximum period of 60 Senedd days to enable those regulations to become permanent.

Section 5. Regulations ceasing to have effect

Section 5 **sets out** what happens where regulations made under the made affirmative procedure cease to have effect as a result of having failed to obtain the Senedd’s approval.

The EM **mentions that** the failed regulations will have effect during the period from the date upon which they come into force until they are rejected. Any new tax liability or increased tax liability imposed by the failed regulations will be treated as if it never existed, and any withdrawal or reduction of an entitlement to a tax credit in respect of landfill disposals tax will also be treated as if it never arose.

Similarly, any liability to a penalty or to an increased amount of a penalty imposed by the failed regulations will be treated as if it never arose.

The EM **further highlights** that Section 5 also makes provision for situations where actions may have been carried out in reliance on the failed regulations, for example, where inspections of premises or examination of documents have taken place during the period when the regulations were in force. In those cases, any actions taken remain valid, despite the failed regulations”.

The EM **also notes** the intention of Section 5 is to:

...ensure that the risk of using the made affirmative procedure is to be borne by the Welsh Government alone and not by Welsh taxpayers, who are to be protected against challenges relating to anything done, or not done, in reliance on the failed regulations during the period that the failed regulations were in force.

Other sections

Section 6 contains definitions included in the Bill. **Section 7 specifies that** the Bill will come into force on the day after it receives Royal Assent and **Section 8 confirms the** short title of the Bill.

3. Costs and impacts of the Bill

The Regulatory Impact Assessment (RIA) **sets out** two options:

1. Do nothing
2. Introduce the primary legislation

3.1. Option 1. Do nothing

The RIA **notes the** costs would be dependent on the type of legislative mechanism that is taken forward.

Emergency / fast-track Bill

This mechanism would incur the typical Welsh Government administrative costs associated with this type of legislation. Given the compressed timescales involved with an emergency or fast-track Bill, there may be a requirement for a significant allocation of Welsh Government resources for a short period. The cost would be dependent on the complexity and size of the legislation.

Primary legislation

Primary legislation would incur the typical administration costs associated with the drafting and management of a Government Bill. The resourcing requirements are likely to be similar to those incurred for an emergency or expedited bill; however, these costs will span a longer time-frame, typically around 12-18 months.

Secondary legislation

The RIA noted that there will be a number of situations where the existing powers in the Welsh Tax Acts could be used to make changes. It is not anticipated that there will be any difference in administration costs between the draft and made affirmative procedures.

However, there are possible minor costs or cost savings for the Welsh Government that arise later where draft affirmative regulations come into force rather than if the made affirmative procedure had been used. The Welsh Government **said it is not possible** to quantify these costs or cost savings given the changes are not known as this stage.

The RIA **also highlighted** there are significant areas where the powers to make the desired changes through existing legislation do not exist meaning that only the primary legislation route can be taken.

Benefits

The RIA **states a benefit** of option 1 is that no resource is required at the present time to take this option forward. However, if the Welsh Government did need to make a change at short notice, and pre-existing secondary powers were not available, then it is likely an Emergency or 'fast-track' Bill would be required

3.2. Option 2. Introduce the primary legislation

The RIA **notes there are no costs** as a result of the Bill directly. However, it mentioned that the costs will arise as and when any secondary legislation is prepared.

Consequently, the administrative and implementation costs, and the timeframe, of introducing such changes through secondary legislation are not known at this stage.

The RIA **further notes** that it is possible the Bill will give rise to compliance costs in the future but, as with other elements, where these costs fall and their magnitude will depend upon the nature of future changes. However, when regulations are made by the Welsh Ministers exercising the power provided by the Bill there may be compliance costs arising on both the WRA and on taxpayers and their advisers.

A separate impact assessment, including estimated costings, **would be completed** when the powers provided by the Bill are used to make regulations to effect changes to the Welsh Tax Acts.

The RIA **also notes** that the “direct costs of introducing the proposed primary legislation will be met from current funding of the Welsh Government’s officials and legal services. There are no other costs associated with introducing this legislation”.

There would be administrative costs to the Welsh Government and WRA of developing and implementing the secondary legislation, and to the Senedd in scrutinising the legislation. The RIA **reports that** these costs would be broadly equivalent to those incurred under option 1.

Savings

The RIA **highlighted that** potential cost savings are dependent on the type of change and are difficult to anticipate given the changes are unknown. However, it is noted that a key objective of the Bill is enabling future cost-savings by protecting Welsh tax revenues.

Integrated impact assessments

The RIA **states there are** limited impacts as a result of the Bill directly. A separate impact assessment would be completed each time the powers are used to make regulations to effect changes to the Welsh Tax Acts.

The RIA **also notes the Bill** does not impact on the following areas:

- Children's and young people's rights
- Equality
- European Convention on Human Rights (ECHR)
- Data protection
- Welsh language
- Biodiversity, climate change and natural resources
- Justice Impact Assessment
- Rural proofing
- Socio-economic

4. Response to the Bill

The Minister for Finance and Local Government, Rebecca Evans MS, who is in charge of the Bill **made a statement in Plenary** on 14 December 2021.

Peter Fox MS **noted that** it was right to ensure that Welsh taxpayers are not left at a disadvantage compared to other taxpayers across the UK when changes are made to the predecessor taxes, as well as to close tax loopholes so that funds can be used to support public services in Wales.

However, the Member agreed with the Chartered Institute of Taxation (CIOT) and the Institute of Chartered Accountants in England and Wales (ICAEW) - who stated in **their response** to the Welsh Government's consultation on the Bill - that their default position is that tax legislation should be in primary legislation, particularly in the case where legislation relates to the exercise of tax powers, except in very exceptional circumstances.

The Member **pointed to** the need for a legislative basis to the budget and taxation-setting processes in Wales as he explained that by using regulations to make changes to taxation, the Bill could be used to go further than originally intended.

He noted the Welsh Government rejected a Senedd lock, which was originally proposed in its consultation document relating to the Bill and would have **meant that** the Senedd would need to agree to 'unlock' the powers for the Welsh Ministers to exercise them.

The Member also highlighted the potential ambiguity to when the proposed

powers in the Bill may be used and the complexity to primary tax legislation if a substantial volume of secondary legislation is required.

The Minister **responded**:

One of the substantive issues that you raised was, essentially, why not use a finance Bill, and I know that this has been an issue of interest to finance committees in the previous Senedd. My position does remain that I don't consider the timing right to introduce an annual budget or a finance Bill through which changes to Welsh tax Acts can be made.

She further noted:

A key consideration for the Welsh tax Acts specifically is that the volume of secondary legislation that these Acts have so far generated is not significant at all, and as we develop more devolved taxes then I think that, potentially, there could be a strengthened argument for an annual finance Bill, but I would even contend that if we did have an annual finance Bill, we'd still need the powers that are provided for within this Bill, because they enable Welsh Ministers to respond to external events that might not necessarily coincide with the Welsh Government finance Bill cycle. For example, the UK budget at which changes may occur isn't on a fixed cycle, and it often occurs more than once a year, and there are also other fiscal events at which changes can be announced, for example, the July 2020 stamp duty land tax rates provide, I think, an example of that.

The Minister also **commented that** "the Bill will enable Welsh Government to be far more responsive to wider changes, such as court decisions and avoidance activity, than is the case with either the UK Government's Finance Bill approach or the Scottish Government's approach, where changes are often made through a Finance Bill only".

The Minister went on to explain why existing powers are not being used:

In terms of why we are not using existing powers—so, thinking about primary legislation, for example—the Bill aims to provide an additional flexible tool to allow Ministers to respond at pace to external circumstances that impact on our devolved taxes. Primary legislation generally takes around 12 to 18 months to develop and complete that cycle of Senedd scrutiny, so it wouldn't enable us to respond in an agile way if we needed to do so at short notice, for example, to close down tax avoidance activity.

The Minister **further noted** that the Senedd lock "was intended to respond to concerns that the power would be unusually broad, but the Bill now, as currently drafted, has much reduced the scope of the power to those four purpose tests, which can only be used when considered necessary or appropriate." She stated:

And so that does, I think, sufficiently constrain the power so that a Senedd lock, which itself would have been unconventional and may set an unhelpful precedent for future made affirmative powers, wouldn't be appropriate, because we've narrowed things down with this Bill so much.

Llyr Gruffydd MS **also stressed** his view the Senedd should be moving towards a Finance Bill or an annual Budget Bill in time and agreed with the Minister "whether that happens or not, we still need the powers that the Government are seeking in the Bill before us today". The Member stated:

I've said in the past that I have no problem in principle with these kinds of powers being given to Welsh Ministers. It is entirely reasonable. Having the means to modify legislation at short notice in this way is something that I do think is reasonable, but it has to happen under particular circumstances. Failing to respond may lead to damaging or unfair implications. Under those circumstances, I think it's reasonable that we move in this direction. It is something that other Governments take for granted around the world. So, there is nothing unique in this.

However, the Member noted:

Having said all of that, before we can support legislation that empowers Ministers in this way, we all have to be confident that the necessary restrictions are in place to ensure that the parameters are clear, first of all in terms of under which circumstances the Minister can act, secondly, to what extent the Government can act, and then thirdly of course, that there are strong measures in place to ensure timely parliamentary scrutiny and consent, or as soon as possible once the decision is made. At first sight, the legislation looks quite reasonable on those fronts, but obviously I look forward to scrutinising the proposed legislation over the next few weeks and months.

He asked the Minister to confirm that the powers provided to Welsh Ministers in the Bill would be used only "under exceptional circumstances and only when there are no alternative options".

The Member also asked what consideration the Minister has given to "including more independent voices or perspectives in the process of deciding to operate these powers?"

The Minister **responded**:

...I'm sure that we will continue to return to the question as to whether or not a finance Bill is necessary at this point, but as I say, we will keep that under review as circumstances develop and change in future. Just to provide reassurance, I do think the parameters of the Bill are sufficiently clear, especially now that we've just narrowed it down to those four purposes for which the Bill should be used, which I've just outlined in response to Peter Fox. But we also recognise the real importance of the

need for proper scrutiny, which is why we've included some real, I think, significant safeguards within the Bill in terms of the procedure.

The Minister **also explained** why she felt the Bill ensures suitable scrutiny:

The Bill would allow for regulations subject to the draft affirmative procedure to be laid in draft for a minimum of 20 days before they're put to the vote. Obviously, if they're approved, those regulations can be made, and regulations can lay for a longer period than the 20 days before being put to the vote. Under the made affirmative procedure, we would look to have that period for 60 days. And obviously, if the vote is lost or the 60-day period expires, then those regulations cease to have effect from those dates, and we've put in place a view as to what we would do should those regulations fall. The safeguards that we've put around the made affirmative procedure in particular, I think, are important, because they would only be used when Welsh Ministers consider the regulations necessary by reason of urgency and only for the four purposes that I've described. An example, I think, would be a need to urgently respond when the delayed closure of a tax avoidance scheme would result in considerable loss of revenue.

In addressing the question raised about including independent parties when deciding to operate the proposed powers in the Bill, the Minister **stated** "I'm sure we'll have the opportunity to explore that in further depth in committee in due course, and on the floor, of course, of the Senedd".

5. Anticipated implementation timescales

The Bill contains no timescales for when the legislation is intended to receive Royal Assent. The expected timetable of the Bill is as follows:

- Bill introduction: 13 December 2021
- Stage 1 ends: 26 April 2022
- Stage 2 begins: 27 April 2022
- Stage 3 begins: 10 June 2022
- Stage 4: July 2022