



Llywodraeth Cymru
Welsh Government

***WELSH TAX ACTS etc.
(POWER TO MODIFY)
BILL***

Explanatory Memorandum
incorporating the
Regulatory Impact Assessment and
Explanatory Notes

June 2022

Welsh Tax Acts etc. (Power to Modify) Bill

Explanatory Memorandum to the Welsh Tax Acts etc. (Power to Modify) Bill

This Explanatory Memorandum has been prepared by the Economy, Treasury and Constitution Group of the Welsh Government and is laid before Senedd Cymru.

It was originally prepared and laid in accordance with Standing Order 26.6 in December 2021, and a revised Memorandum is now laid in accordance with Standing Order 26.28.

Member's Declaration

In my view the provisions of the Welsh Tax Acts etc. (Power to Modify) Bill, introduced by me on the 13 December 2021, would be within the legislative competence of Senedd Cymru.

Rebecca Evans MS
Minister for Finance and Local Government
Member in charge of the Bill

28 June 2022

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PART 1 – EXPLANATORY MEMORANDUM

1. Description

- 1.1 It is intended that the Welsh Tax Acts etc. (Power to Modify) Bill (“the Bill”) will introduce a power to enable future amendment of certain elements of tax legislation in Wales, when required. The Bill confers a regulation-making power on the Welsh Ministers to enable them to modify the Welsh Tax Acts¹ (and subordinate legislation made under them) in specific circumstances. This regulation making power will be subject to either a draft or made affirmative procedure, depending on the urgency of the regulations.
- 1.2 The Bill seeks to balance providing the Welsh Ministers with a mechanism to respond to external events that impact on devolved taxes and the associated revenues whilst equally acknowledging the essential role of Senedd Cymru (“the Senedd”) in scrutinising the Welsh Government and the legislation it introduces.

2. Legislative Competence

- 2.1 The Senedd has the legislative competence to make the provisions in the Welsh Tax Acts etc. (Power to Modify) Bill pursuant to Part 4 of the Government of Wales Act 2006 (“GOWA 2006”) as amended by the Wales Act 2017.

¹ For brevity, this document uses the label “the Welsh Tax Acts” to capture the Tax Collection and Management (Wales) Act 2016 (“the TCMA”), the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (the “LTTA”) and the Landfill Disposals Tax (Wales) Act 2017 (the “LDTA”) and the subordinate legislation made under those Acts.

3. Purpose and intended effect of the legislation

Reason for the Bill and explanation of its timing

3.1 Following the introduction of land transaction tax and landfill disposals tax in 2018, (known collectively as “the devolved taxes”) the Welsh Government has considered, with the assistance of its stakeholders, what the appropriate tools might be to ensure changes can be made to the Welsh Tax Acts at short notice in certain circumstances. This intervention is primarily needed to protect revenues available for essential Welsh public services. At present for example, every time there is a UK budget or fiscal event the Welsh Government takes the risk that there may be a change which impacts a devolved tax that results in a direct budgetary impact on Welsh Government resources and which the Welsh Ministers cannot react to in a timely manner.

3.2 The Welsh Ministers’ intended purpose in introducing this 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 a number of external circumstances and where necessary in some cases retrospectively too. In summary:

- i. to ensure the devolved Welsh taxes are not imposed where to do so would be incompatible with any international obligations;
- ii. to protect against tax avoidance in relation to devolved Welsh taxes;
- iii. to respond to changes made by the UK government to ‘predecessor’ UK taxes (that is, one where we have an equivalent devolved tax²) which affect, or may affect the amount paid into the Welsh Consolidated Fund³, and
- iv. 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.

3.3 The regulation making power will not be used to achieve routine policy changes to the devolved taxes. For such changes the Welsh Government will use powers that already exist in the Welsh Tax Acts or, where necessary, will introduce primary legislation. It is clear that the more significant the change is, the greater the need to make those changes in consultation with Welsh citizens and interested stakeholder groups, and in all cases with appropriate Senedd scrutiny.

² Predecessor taxes’ currently refers to Stamp Duty Land Tax and Landfill Tax – the UK equivalents for the taxes that are now devolved taxes in Wales.

³ Under section 118(1) Government of Wales Act 2006.

- 3.4 The ability to make changes to tax legislation very quickly will enable the Welsh Ministers to respond rapidly and effectively to scenarios where immediate changes are desirable. An intervention of this kind may be appropriate where the Welsh Ministers need to promptly ‘close-down’ tax avoidance schemes or ensure compliance with international obligations, if required. In the case of tax avoidance, the Welsh Revenue Authority (WRA) already has a range of powers available to it and is actively using them to ensure everyone pays the right amount of tax and no-one gains an unfair advantage. In some cases, though, a legislative change may also be needed to provide further clarity or to tighten the application of the provisions in question. The ability to stop avoidance activity seeks to protect the revenues on which public services depend. As set out in paragraph 8.7 of the Regulatory Impact Assessment, the costs of not being able to halt avoidance activity as quickly as possible will depend on the activity targeted. It could amount to significant amounts of lost tax revenue.
- 3.5 To provide an example, our LTT revenues generated by large non-residential transactions are potentially vulnerable to aggressive and concerted avoidance attacks. In the period April to October 2021 there were 110 transactions where consideration given was more than £2 million. They have generated in total £52 million of revenues; 73% of the revenues generated by all non-residential transactions. It would only take a small number of the buyers in those transactions to seek to avoid the tax to significantly impact the revenues in a relatively short period of time. The Welsh Ministers need to have agile powers to stop such avoidance activity with near immediate effect should it occur.
- 3.6 The intended effect of the legislation is primarily to provide the Welsh Ministers with a proportionate mechanism to protect Welsh revenues if those revenues will be affected by external circumstances, for example, where the UK government introduces a change to a predecessor tax at short notice and with immediate effect, which could have implications for businesses, the property market, the environment and could also have a direct budgetary impact on the resources available to the Welsh Government through the block grant adjustment process.
- 3.7 The 2020 consultation paper: *Tax Devolution: Enabling changes to the Welsh Tax Acts*⁴ (“the 2020 consultation”) highlights the example of the introduction of the Stamp Duty Land Tax (SDLT) higher rates for additional dwellings in 2016 which increased the SDLT effort⁵. The higher rates in Wales raised around £60 million in 2018-19. The Welsh Government was only in a position to respond to this adjustment and introduce a similar

⁴ *Tax Devolution in Wales - Enabling changes to the Welsh Tax Acts* (July 2020) is available to view at: <https://gov.wales/enabling-changes-to-welsh-tax-legislation>. See Chapter 4, scenario 4.

⁵ “the SDLT effort” refers to the amount of tax that the predecessor tax to land transaction tax collects. If the effort is greater, the block grant adjustment will increase resulting in a larger reduction to the Welsh Government’s budget, reducing overall resources. If the SDLT effort decreases the opposite occurs, resulting in more resources for the Welsh Government overall.

regime via an amendment to the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (the “LTTA”) during its passage through the Senedd. Had this amendment not been possible, the block grant adjustment would have been far larger than the revenues from land transaction tax, resulting in a reduction to the overall resources available to the Welsh Government. In these types of scenarios, without the powers being introduced by the Bill, the Welsh Government would either need to operate with a reduced budget or find alternative ways of raising such revenues to maintain existing resource levels.

3.8 Conversely, where the UK government makes changes which reduce UK tax revenues from SDLT, the block grant adjustment will decrease and the Welsh Government’s budget will increase. In these types of scenarios when tax reductions are made to UK predecessor taxes there may be a need to act quickly to reduce potentially undesirable distortions to markets which could harm businesses in Wales.

3.9 The above paragraphs outline a land transaction tax scenario, but the same principles (in relation to tax effort by a predecessor tax) will apply to all associated devolved taxes. Currently, there are two devolved taxes both with a predecessor tax: land transaction tax (“LTT”) which replaced UK SDLT, and landfill disposals tax (“LDT”) which replaced UK landfill tax.

Policy background

3.10 The Wales Act 2014⁶ amended the Government of Wales Act 2006⁷ to provide for the establishment of devolved taxes and the disapplication of the predecessor UK taxes in Wales.

3.11 The Tax Collection and Management (Wales) Act 2016⁸ established a clear and strong governance framework in Wales to support the effective collection and management of Welsh devolved taxes and also established the Welsh Revenue Authority (“WRA”). Following this legislation, the two devolved taxes were introduced in Wales in 2018⁹.

3.12 This Bill is intended to provide an additional fiscal lever to respond to external circumstances which impact on our devolved taxes. Like every executive, the Welsh Government needs a proportionate and effective suite of tools to manage those tax powers strategically and effectively in order to protect taxpayers and the public finances. This Bill will contribute to the

⁶ Wales Act 2014 is available at:

<http://www.legislation.gov.uk/ukpga/2014/29/contents/enacted>

⁷ Government of Wales Act 2006 is available at:

[Government of Wales Act 2006 \(legislation.gov.uk\)](http://www.legislation.gov.uk/ukpga/2006/22/contents/enacted)

⁸ Tax Collection and Management Act 2016 is available at:

<http://www.legislation.gov.uk/anaw/2016/6/contents/enacted>

⁹ The Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (the “LTTA”) and the Landfill Disposals Tax (Wales) Act 2017 (the “LDTA”).

drive for stable tax devolution by enabling the Welsh Government to protect its finances which are used to fund public services.

- 3.13 Tax devolution itself is a relatively recent constitutional change, with the devolved taxes only commencing operation four years ago. This Bill is not the final word or the long term ‘answer’ to how we make urgent changes to our tax legislation, but rather a pragmatic step to take now as we move towards an architecture for making tax changes that is right for Wales.

Provisions of the Welsh Tax Acts etc. (Power to Modify) Bill

- 3.14 The Bill confers a regulation making power on the Welsh Ministers to enable them to modify the Welsh Tax Acts (and subordinate legislation made under them) in specific circumstances. This is intended primarily to provide the Welsh Ministers with a proportionate mechanism to protect Welsh revenues if those revenues are affected by external circumstances. The specific parts of the Bill and the reasons why they are considered necessary are set out below.

Section 1: Power to modify the Welsh Tax Acts

- 3.15 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. The exercise of the regulation making power is subject to four purpose tests which are intended to significantly constrain the use of the power. The purpose tests target those areas where it is anticipated that external events may require a response by the Welsh Ministers to protect the Welsh Government revenues and taxpayers. The Welsh Ministers must consider that the modification is either necessary or appropriate before using the power in response to that event and may only use the power for one or more of the following purposes:

- a) to ensure that landfill disposals tax and land transaction tax are not imposed where to do so would be incompatible with any international obligations;
- b) to protect against tax avoidance in relation to landfill disposals tax and land transaction tax;
- c) to respond to changes to ‘predecessor’ UK taxes (that is, stamp duty land tax or landfill tax) which affects or may affect the amount paid into the Welsh Consolidated Fund; and
- d) to respond to decisions of the courts/tribunals which affect or may affect the Welsh Tax Acts, or regulations made under them.

- 3.16 Any new devolved taxes created before the sunset clause applies (which will prohibit the Welsh Ministers from making further regulations using the power in section 1 - see paragraph 3.57-3.60) may be approved by the Senedd for inclusion in the list of Welsh Tax Acts. If this occurs, all four purpose tests would apply to the new devolved tax if there is a UK

predecessor tax. If the new devolved tax does not have a predecessor tax, then only purpose tests (a), (b) and (d) will be relevant.

3.17 The following scenarios are intended solely to indicate the types of circumstances in which the regulation making power in section 1 could be used for each of the purpose tests. The examples do not identify any known issues in relation to the Welsh Tax Acts.

3.18 The intended effect is as follows:

Purpose (a):

The Welsh Ministers may wish to make changes at short notice in order to ensure that the devolved taxes are not imposed where this would result in non-compliance with certain international obligations such as, for example, where a new trade deal or double taxation agreement is concluded with another country which has implications for the devolved taxes.

Scenario 1:

LTTA Part 5: Application of LTTA and TCMA to certain persons and bodies

3.19 Part 5 of the LTTA makes provision about the application of the LTTA and the Tax Collection and Management (Wales) Act 2016 to certain persons and bodies, including companies, partnerships and trusts.

3.20 It is possible that future treaty obligations could result in new entities, such as non-UK investment vehicles, requiring a similar treatment to similar UK entities (or be provided with specifically crafted rules) when buying property in the UK. Such changes could potentially meet the requirements of the purpose test in section 1(1)(a) where that equivalent treatment arose due to compliance with an international obligation.

Scenario 2:

LDTA Part 3: Taxable Disposals Made at Authorised Landfill Sites

3.21 Part 3 of the LDTA makes provision about how the tax is to be charged on taxable disposals at authorised landfill sites, including the persons on whom the tax is chargeable, the calculation of tax, reliefs, registration and accounting requirements, and payment, recovery and repayment of the tax.

3.22 There are a number of Parts of the LDTA which contain definitions arising from the UK's past membership of the EU. An example is the definition of non-hazardous waste (requirement 5 of section 16(1) LDTA). It

is possible that future trade agreements and treaties could contain requirements for common definitions between the contracting countries or entities, which do not correspond with the existing definitions. In this scenario, section 1(1)(a) could be used to ensure compliance with international obligations.

Purpose (b):

The Welsh Ministers may make legislative changes to protect against avoidance activity that can then be stopped with immediate effect. This includes cases where the Welsh Revenue Authority and/or the Welsh Government consider that increased clarity in the legislation will put beyond doubt the intended application of the legislative provisions, and potentially benefit taxpayers by stopping the promotion of avoidance opportunities that do not actually exist. Such action has been taken by the UK government to protect tax regimes and taxpayers in the past and the Welsh Ministers wish to be able to take similar action.

Scenario 1:

LDTA Part 2: The Tax and Taxable Disposals

3.23 Part 2 of the LDTA provides the rules in relation to taxable disposals and exempt transactions, setting out the conditions that must be met for there to be a taxable disposal of waste to landfill. There are a number of concepts that are key to the operation of the tax, for example, disposal of the material as waste, and that the use of the material which is incidental to its disposal by way of landfill does not negate an intention to discard material. It is possible that changes using the power in the Bill could be needed to counter avoidance activity by, perhaps, seeking to exploit a perceived lacuna in those definitions to seek to dispose of waste by landfill without incurring a tax charge. In these cases, the Welsh Ministers may use section 1(1)(b) to rectify the issue and prevent further avoidance.

Scenario 2:

LTTA Part 3: Calculation of tax and reliefs

3.24 Part 3 of the LTTA makes provision in relation to the calculation of tax, the bands and tax rates, and reliefs available (including the reliefs Targeted Anti-avoidance Rule). The rules relating to the specific reliefs are in Schedule 2 (so far as they apply to pre-completion transactions) and Schedules 6 to 22. Any perceived avoidance opportunities could be closed quickly by making changes using the regulation making power in this Bill and the made affirmative procedure. This would prevent, at pace, new entrants into the avoidance arrangements seeking to exploit the reliefs.

Purpose (c):

The Welsh Ministers may make changes in response to changes made by the UK government to predecessor UK taxes which will affect the Welsh block grant adjustment and therefore the revenues available for essential public services

Scenario 1:

LTTA Part 6: Returns and payments

3.25 Part 6 of the LTTA makes provision about when returns and payment of the tax are to be made including the deferral rules and procedures. The UK government could change their rules on notifiable transactions. For example, currently, freehold transactions with consideration of less than £40,000 are not a notifiable transaction in both SDLT and LTT. If the UK government were to increase that figure, that would represent a tax simplification for SDLT taxpayers as fewer transactions would result in a filing obligation. However, there would also be tax liability consequences too as an increase in the notification figure would, without other changes, result in tax not being paid under the respective higher residential rates rules. The change by the UK government may therefore result in a change to the amounts paid into the Consolidated Fund, thus triggering purpose test 1(1)(c). In this instance, the Welsh Ministers may choose to replicate the UK changes to reduce the filing obligations (subject to Senedd approval) but limit it so that it applies only to those transactions liable to the main residential rates of LTT.

Scenario 2:

LDTA Part 2: The Tax and Taxable Disposals

3.26 Part 2 of the LDTA provides the rules in relation to taxable disposals and exempt transactions, setting out the conditions that must be met for there to be a taxable disposal of waste to landfill. There are a number of concepts that are key to the operation of the tax, for example, disposal of the material as waste, and that the use of the material which is incidental to its disposal by way of landfill does not negate an intention to discard material.

3.27 It is possible that the UK government could make changes to the predecessor tax that result in a tightening of the definitions so that more activity came within the scope of their tax, perhaps even creating what would amount to an additional condition for LDT purposes. This could impact both on the amount paid into the Consolidated Fund (as the predecessor tax would be making a greater tax effort than previously), and could also impact on the environment as Wales became a cheaper place

to dispose of waste. Accordingly, the Welsh Ministers may consider making regulations that meet the purpose test in section 1(1)(c) to lessen the impact on the Consolidated Fund. Whilst a number of regulation making powers are already provided to make such changes, they are subject to the draft affirmative procedure and cannot be made with retrospective effect (back to the date of an announcement by the Welsh Ministers). The powers within the Bill will enable regulations to be made via the made affirmative procedure, and, where the relevant conditions are met, also allow regulations to have retrospective effect.

Purpose (d):

The Welsh Ministers may make changes if a court or tribunal decision identified an issue that the Welsh Ministers considered could benefit from legislative change (including decisions relating to the UK predecessor taxes, other taxes, or other laws that affect the devolved taxes), or to provide greater clarification of the law.

Scenario 1:

LTTA Part 6: Returns and payments

- 3.28 Part 6 of the LTTA makes provision about when returns and payment of the tax are to be made including the deferral rules and procedures. A court decision could find that any aspect of the rules did not operate as the WRA and many advisers believed. Clarification of the rules may be necessary to ensure the LTT regime continues to operate in a cohesive manner. That clarification could be required with near immediate effect. For example, any finding that changes taxpayers existing filing obligations or what constitutes a notifiable transaction could undermine the effective self-assessment of LTT. The powers in this Bill would enable any such clarification, if considered necessary or appropriate, through triggering the purpose test in section 1(1)(d) and this could be actioned at pace if considered urgent using the made affirmative procedure.

Scenario 2

TCMA Part 5: Penalties

- 3.29 Part 5 makes provision for and in connection with the imposition of penalties in relation to devolved taxes. It is most likely that the need to use the power in the Bill will arise for this Part as a result of court decisions. For example, a court decision could find that the meaning or application of 'special circumstances' or 'reasonable excuse' is narrower than originally was considered reasonable, so that either taxpayers will not be provided with penalty reductions in appropriate circumstances, or, conversely, that the reductions should be provided in many more situations so as to render

the penalty regime ineffective. The use of the power within section 1(1)(d) in these types of circumstances would enable clarity of the law for taxpayers and WRA alike, ensuring that the rules operate effectively.

- 3.30 The purposes are limited to ensure that use of the power is restricted, recognising the balance between providing the Welsh Ministers with ability to respond to external events in a flexible and agile way, and the importance of Senedd scrutiny of the Welsh Ministers' actions.

Section 2: Regulations under section 1 - supplementary

- 3.31 Section 2 provides that regulations may make changes to the devolved taxes including imposing changes to the amounts payable by taxpayers. Section 2 also permits regulations made using the power in section 1 to impose tax and impose or extend prospective penalties and those regulations may also have retrospective effect. However, section 2 sets out that a new penalty or a change to an existing penalty may not be imposed retrospectively.

Retrospective effect

- 3.32 The Welsh Ministers consider it is necessary for there to be the potential to make legislative changes retrospectively, where considered necessary or appropriate, on a case-by-case basis. This is because the ability to respond to external events that may impact the Welsh Government's revenues mean that the legislation needs to have effect from a date earlier than the regulations are made. For example, in the case of avoidance activity it may be appropriate for the effect of the legislation to apply from a date when the Welsh Ministers announced that changes would be made to combat a particular avoidance activity. In relation to changes to the predecessor taxes, the Welsh Ministers may announce that changes will be made to the devolved taxes to increase or decrease the tax effort, and that it is desirable for those changes to have effect from an earlier date than the regulations are made when they comply with the rules on making retrospective changes.

- 3.33 Section 2 introduces a restriction which prevents regulations made by the Welsh Ministers which have retrospective effect from applying from a date further back than the date the legislative change was warned or announced, either by an Ministerial oral or written statement. The restriction will only apply in cases where there is a 'negative' tax impact (that is, where there is any new liability or increased liability to land transaction tax or landfill disposals tax) on a taxpayer.

- 3.34 However, the restriction will still allow the Welsh Ministers to use the power to make changes with retrospective effect further back than the date of any announcement where that change reduces the tax charged. For example, if responding to a UK Budget change this would ensure that Welsh taxpayers can benefit from the reduction at the same time as taxpayers in England.

3.35 Section 2 also restricts the ability to reduce or withdraw an entitlement to a tax credit for LDT purposes retrospectively only as far back as the date of a Ministerial announcement (either by an oral or written statement). These restrictions do not apply where the effect of the regulations is to increase or introduce a new tax credit into the LDT regime.

3.36 It is recognised that the use of retrospective legislation is controversial and accordingly section 3 places a duty upon the Welsh Ministers to publish a statement on the use of the power to make regulations with retrospective effect (see paragraph 3.42).

Tax Collection and Management (Wales) Act 2016

3.37 Section 2 sets out that regulations under section 1 may not modify the provisions of Part 2 of the Tax Collection and Management (Wales) Act 2016 (TCMA). The intended effect is to carve out the provisions which established the WRA. It is not anticipated that the 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. These would be considered routine policy changes which may be addressed over a longer period of time likely through primary legislation.

3.38 Section 2 also prohibits regulations made using the power in section 1 from making changes to any rules that relate to the investigation of criminal offences. Sections of the Welsh Tax Acts provide the Welsh Ministers with powers to make amendments to certain UK legislation by regulations.

Amending tax rates and bands of devolved taxes

3.39 Section 2 also sets out that regulations under section 1 may not modify regulations specifying tax bands and tax rates for land transaction tax¹⁰ and landfill disposals tax¹¹. The intended effect is to carve out the LTT and LDT rates and bands regulation making powers as these are already subject to the made affirmative procedure, and so immediate changes can already be made to these provisions. These powers have been used a number of times since the two devolved taxes started operating in April 2018 and are considered to be operating effectively. This also has the effect of further narrowing the scope of the made affirmative power in this Bill to make changes to the Welsh Tax Acts.

¹⁰ Sections 24(1) and paragraphs 27(4) and 28(1) of Schedule 6 to the Land Transaction Tax and Anti Avoidance of Devolved Taxes (Wales) Act 2017.

¹¹ Sections 14(3), 14(6) and 46(4) of the Landfill Disposals Tax (Wales) Act 2017.

Amending existing scrutiny procedure of Senedd Cymru in relation to the Welsh Tax Acts

3.40 Section 2 sets out that regulations under Section 1 may not alter any existing scrutiny procedure of Senedd Cymru relating to the making of a statutory instrument under any provision of the Welsh Tax Acts. This restriction will apply to all regulation making powers, whenever they were inserted into the Welsh Tax Acts. This will include to those that exist already and any subsequently created by any means.

3.41 For example, regulations already subject to the draft affirmative procedure within the Welsh Tax Acts will not be able to be changed to be made subject to the made affirmative procedure.

Section 3 - Policy statement: regulations under Section 1 which have retrospective effect

3.42 Section 3 sets out a duty on the Welsh Ministers to publish a statement on their approach to the making of regulations 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. An updated draft of that statement has been published at Stage 3.

3.43 Examples of when the Welsh Ministers may consider making regulations with retrospective effect include, but are not limited to:

- i. 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,
- ii. where a change is made by the UK government that has immediate effect and increases amounts of tax raised by a predecessor tax which will have a material effect on the block grant adjustment,
- iii. where avoidance needs to be halted,
- iv. where a court decision means the legislation may not be interpreted as intended by the Senedd when it was enacted, and
- v. where regulations have been made using powers in the Act (either by draft or made affirmative procedure) and the Welsh Ministers wish to amend the effect of the regulations, so that the changes have effect from the same date that the original regulations had effect.

3.44 The use of legislation with retrospective effect will normally be limited to cases where the impact of the regulations is to confer a benefit to Welsh taxpayers. To provide an example, if the Welsh Government wanted Welsh taxpayers to benefit from a reduction in their tax liability from the same date that a similar change was introduced in England (be that as a result of adopting the same or a different policy), or, where the tax's compliance with

international obligations is considered appropriate before the date the regulations were made.

3.45 Where liabilities are increased by retrospection, and taxpayers could have reasonably expected retrospective changes to be introduced, the Welsh Ministers may make regulations that increase a taxpayer's liability. For example, where tax avoidance is identified, Ministers may announce that the scheme will be closed down through future regulations from the date of that announcement. However, where the regulations create or increase a liability to a devolved tax, they may only be made with retrospective effect to the date the Welsh Ministers have made an oral or Written Statement to the Senedd. The same restrictions also apply where the regulations reduce or withdraw an entitlement to a tax credit for LDT purposes.

Section 4 – Procedure for regulations made under section 1

3.46 Section 4 sets out that the power to make regulations under Section 1 is exercisable by statutory instrument. The Bill will permit the Welsh Ministers to make regulations using either the draft or made affirmative procedure. The Welsh Ministers will seek to use the draft affirmative procedure where possible, meaning the regulations can only come into effect once the Senedd has approved the making of them. The Welsh Ministers will use these regulations where there is less immediacy required and there is time for the Senedd to approve the regulations before they are made.

3.47 However, the Welsh Ministers may use the made affirmative procedure where they consider it necessary by reason of urgency (for example where the regulations will need to have effect immediately or shortly thereafter, and so before a draft affirmative set of regulations could be approved by the Senedd). This will ensure that changes may, where appropriate, come into force as soon as the regulations are made, whilst awaiting Senedd approval. That approval must be given within a maximum period of 60 days¹² to enable those regulations to remain in effect. A full justification for the need to act urgently and introduce a change through made affirmative regulations will be set out in the Explanatory Memorandum to those regulations.

3.48 The regulations subject to the made affirmative procedure have provisional effect until either the Senedd vote or the regulations fall as a result of the Senedd vote not taking place within the required 60 day period. If the Senedd approves the regulations, they will then have permanent effect.

3.49 For both draft affirmative and made affirmative regulations, the intention is that the scrutiny period provided strikes the right balance between the desire to provide good scrutiny and to ensure that legislative certainty is provided to the changes contained in the regulations. The Welsh Ministers

¹² Calendar days beginning with the day on which the regulations are made, but excluding any periods during which the Senedd dissolved or in recess for more than 4 days.

will propose a timescale before the vote that reflects both the date by which the regulations need to come into force by, the complexity of the issues involved and length of time needed to provide suitable scrutiny, and the desire for early certainty to be provided to taxpayers (and the number of taxpayers impacted).

3.50 To ensure sufficient time for Senedd scrutiny, any motion to approve regulations made under the made affirmative procedure cannot be considered and voted upon by the Senedd until 28 days has elapsed, from and including, the date of making the regulations. The 28-day period does not include any period during which Senedd Cymru is dissolved or is in recess for more than 4 days.

Section 5 - Regulations ceasing to have effect: supplementary

3.51 Section 5 of the Bill 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 failed regulations will have effect during the period from the date upon which they come into force until they are rejected or the expiry of the 60-day period. Any new tax liability or increased tax liability introduced by the failed regulations will be treated as if it never existed, and any withdrawal or reduction of an entitlement to a tax credit will also be treated as if it never arose. Similarly, any liability to a penalty or to an increased amount of a penalty which occurred as a result of the failed regulations and which was incurred whilst the failed regulations were still in force, will be treated as if it never arose.

3.52 Section 5 also makes provision for situations where actions may have been carried out as a direct result of the failed regulations. For example, where inspections of premises or examination of documents have taken place during the period when the regulations were valid. In those cases, any actions taken remain valid, despite the failed regulations.

3.53 In all cases 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.

Section 6 – Review of operation and effect of this Act

3.54 The Welsh Ministers will be placed under a duty to review the operation and effect of the Act and publish the conclusions of that review within 4 years of the date that the Act came into force (the day after the Bill receives Royal Assent). The review is to be a single obligation and no further review of the legislation is required.

3.55 Following the publication of the conclusions of the review and before the five-year anniversary of the Act coming into force, the Welsh Ministers will

publish a statement confirming whether the regulations permitted by section 7 of the Bill to extend the lifespan of the regulation making power for a further period of up to 5 years will be made or not.

3.56 The review could potentially cross reference the work the Minister for Finance and Local Government has committed to in establishing new arrangements for making changes to the Welsh Tax Acts, but there is no direct dependency between the review and the new arrangements.

Section 7 - Expiry of the power under section 1

3.57 The inclusion of a sunset clause will prohibit the Welsh Ministers from making further regulations using the power in section 1 five years after the date that the Act came into force. However, section 7 provides a single opportunity for the Welsh Ministers to make regulations, allowing the power within section 1 to continue in force for a further period of up to five years. Section 7 also provides that the regulations to delay the expiry of the power are exercisable by statutory instrument and are exercisable only once.

3.58 The regulations providing for the extension of time to the power provided by section 1 are subject to the draft affirmative procedure (a draft of the regulations must be laid before the Senedd and approved before they can have effect).

3.59 Furthermore, the regulations cannot be laid in draft before the conclusions of the review have been published. Nor can the Senedd approve the regulations after the initial five-year period has passed.

3.60 Finally, the expiry of the power provided in section 1 does not affect any of the regulations made by the Welsh Ministers before the expiry of the power. That is, those regulations will continue in force following expiry of the Welsh Ministers' ability to make new regulations.

Implementation and delivery

3.61 The Bill provides for implementation through enabling the Welsh Ministers to make subordinate legislation and this power is summarised in Table 1 of this Explanatory Memorandum.

3.62 As set out in paragraph 3.54-3.56 the Welsh Ministers will be placed under a duty to review the operation and effect of the Act and the use of the power to make regulations four years after the legislation has commenced.

3.63 The Bill will come into force on the day after the day on which it receives Royal Assent.

Territorial extent

3.64 The Bill applies in relation to Wales.

4. Consultation

Consultation on proposals to enable changes to the Welsh Tax Acts

4.1 The 2020 consultation paper: *Tax Devolution in Wales - Enabling changes to the Welsh Tax Acts*¹³ (“the 2020 consultation”) was a Welsh Government consultation developing devolved tax arrangements in Wales. The 2020 consultation sought views on whether the Welsh Ministers have the appropriate tools to ensure they can make changes to the Welsh Tax Acts at short notice in a number of circumstances. It set out the Welsh Government’s proposal to provide the Welsh Ministers with flexible and proportionate powers, to make changes to the Welsh Tax Acts, subject to appropriate Senedd scrutiny. The consultation proposed providing the Welsh Ministers with three powers to respond to external circumstances in which changes may need to be made immediately, or very quickly, to the Welsh Tax Acts.

4.2 The 2020 consultation also set out a proposal for a Senedd “lock”. This “lock” was intended to be applied to the use of the regulation making power in certain circumstances as a way of responding to concerns that the power was unusually broad. The “lock” required a Senedd vote to unlock the use of the power to make regulations. This would mean that the general principles of the regulations would be scrutinised before they were drafted.

Consultation responses

4.3 Views on the 2020 consultation were invited as part of a consultation period which began on 16 July 2020 and ended on 15 October 2020. The consultation was publicised via Twitter and an email circulation list to over 90 individual Welsh Treasury stakeholders, and to key representative bodies.

4.4 The Welsh Government held several online stakeholder engagement events and webinars during the consultation period, including with the Chartered Institute of Taxation’s Welsh Technical Committee, and a wider technical briefing also hosted by the Chartered Institute of Taxation (attended by around 200 delegates). A working group session was also held with the Institute of Chartered Accountants in England and Wales, and with the UK Government and devolved administrations.

¹³ *Tax Devolution in Wales - Enabling changes to the Welsh Tax Acts* (July 2020) is available to view at: <https://gov.wales/enabling-changes-to-welsh-tax-legislation>

- 4.5 The level of interest in the consultation was reasonable given this was a small, technical consultation. The responses came from four individuals, and from four organisations. Two of these were professional bodies, one an academic institution, and one a local government association. Responses came from respondents in Wales, or the Wales branch of UK-wide organisations.
- 4.6 The *Consultation – summary of responses*¹⁴ sets out that stakeholders were broadly supportive of the principle of using regulation making powers if specific external circumstances impact on the Welsh Tax Acts. They noted in particular the vulnerability of devolved taxes, and revenues, to tax changes made at the UK level to predecessor taxes. However, it was suggested that strict criteria, such as the Senedd lock, should be in place before the powers may be used. This was considered necessary as the use of the power was open ended and could be used to apply to unspecified unknown or undefined ‘other circumstances of exceptional need’.
- 4.7 Following further reflection, the Welsh Government determined that the use of the power ought to be restricted and that the practical operation of such a lock is challenging. Paragraph 3.15 of this Explanatory Memorandum sets out that the exercise of the regulation-making power will be subject to four purpose tests which are intended to constrain the use of the power. The modification must be considered either necessary or appropriate and can only be exercised to modify the Welsh Tax Acts (or related subordinate legislation) for the specified, limited purposes set out in the Bill.
- 4.8 The original policy intention as set out in Chapter 3 of the 2020 consultation was that there should be three regulation-making powers to enable the Welsh Ministers to amend the Welsh Tax Acts (or subordinate legislation made under those Acts).
- 4.9 ‘**Power 1**’ was to enable the Welsh Ministers to make changes to legislation to stop avoidance or evasion activity, comply with international obligations where required, or deal with other circumstances of “exceptional need”. This was intended to cover unknown future situations (‘unknown unknowns’) but also to capture situations such as a need to make changes to legislation where there has been an adverse court decision.
- 4.10 In line with consultation responses, ‘evasion’ has been removed as it was considered unnecessary given that this would already be an offence under the existing law, and ‘other circumstances of exceptional need’ has now been removed, with the purposes for making the regulations specifically covering court and tribunal decisions only. It is considered not appropriate to use regulation making powers for any undefined or specified circumstances.

¹⁴ *Consultation – summary of responses, Enabling changes to the Welsh Tax Acts* (December 2020) is available at: <https://gov.wales/sites/default/files/consultations/2020-12/enabling-changes-to-the-welsh-tax-acts-summary-of-response.pdf>.

4.11 **‘Power 2’** was intended to provide the Welsh Ministers with a power to make changes where they consider it to be expedient in the public interest to do so. The power could therefore have been used to make changes of any type to any provision of the current Welsh Tax Acts and related subordinate legislation. It was intended, in particular, to provide the Welsh Ministers with a route to be able to make changes to the Welsh Tax Acts in response to changes made by the UK government at UK Budgets where there is an impact on the block grant adjustment and therefore on revenues available to the Welsh Government.

4.12 This power has now been narrowed to specifically only cover circumstances where the Welsh Ministers need to respond to changes to predecessor taxes which would impact the amount paid into the Welsh Consolidated Fund.

4.13 **‘Power 3’** enabled the Welsh Ministers to make draft affirmative regulations (the ‘subsequent regulations’) to amend the regulations created by the use of ‘Power 1’ or ‘Power 2’ (the ‘original’ regulations). On further analysis, however, it became apparent that there is an overlap between the original two powers (in that ‘Power 2’ is broad enough to cover everything that Power 1 would cover), and that it may be challenging to identify which power ought to be used for which purposes. The conclusion is that the separate amending powers being sought were really the same power, namely a power to amend the Welsh Tax Acts (or related subordinate legislation) in specific circumstances, and that a single regulation making power was all that was needed, subject to either a draft or made affirmative procedure depending on the urgency of the regulations.

Reasons for not consulting on a draft Bill

4.14 The provisions included in the Bill align to the principles set out in the consultation published in July 2020 and the specific proposals have been refined in light of the responses received. A number of changes particularly to the operation of the procedures for making the regulations have also been developed subsequently following detailed consideration. These changes have been shared and expertise and input sought from key tax and accountancy representative bodies. Given the level of consultation responses and the length of the legislation, it was considered more appropriate and efficient to share and invite comment on the legislation from key stakeholders rather than publish a draft Bill as part of a full consultation.

Future consultation on regulations made under this Bill

4.15 In many cases the Welsh Ministers will not invite comment on the intention to legislate using the powers provided by the Bill, the nature of the change or on its timing prior to making regulations. However, subject to the risk of forestalling, consideration will be given on a case-by-case basis to

engaging informally, and in confidence, with key stakeholders, before and during the drafting of regulations to establish whether the legislation will achieve its objective. In particular, where the regulations are to respond to changes made by the UK government to a predecessor tax, or the coming into force date does not need to be immediate, there may be opportunities for engagement. Details of any consultation, or detailed reasoning for not undertaking such consultation, will be set out in the Explanatory Memorandum accompanying any future regulations

5. Power to make subordinate legislation

5.1 The Bill contains provisions to make subordinate legislation. Table 1 sets out in relation to these:

- i. the person upon whom, or the body upon which, the power is conferred;
- ii. the form in which the power is to be exercised;
- iii. the appropriateness of the delegated power; and
- iv. the applied procedure; that is, whether it is “made affirmative”, “affirmative”, “negative”, or “no procedure”, together with reasons why it is considered appropriate.

5.2 The Welsh Government will consult on the content of the subordinate legislation where it is considered appropriate to do so. The precise nature of consultation will be decided when the proposals are formalised.

Table 1: Summary of powers to make subordinate legislation in the provisions of the Welsh Tax Acts etc. (Power to Modify) Bill

Section:	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
Section 1 (1a-d)	Welsh Ministers	Regulations	<p>The Welsh Ministers require the power to modify the Welsh Tax Acts and regulations made under those Acts. This power will only be used where the Welsh Minister consider that the modifications are necessary or appropriate for or in connection with any of the following purposes:</p> <ul style="list-style-type: none"> a) ensuring that landfill disposals tax and land transaction tax are not imposed where to do so would be incompatible with any international obligations b) protecting against tax avoidance in relation to landfill disposals 	Draft Affirmative or Made Affirmative	<p>The draft affirmative procedure is prescribed where the Welsh Ministers identify there is a need to respond quickly to external circumstances.</p> <p>The made affirmative procedure is prescribed in cases where the Welsh Ministers consider it necessary for reasons of urgency.</p>

Section:	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			<p>tax and land transaction tax;</p> <p>c) responding to a change to a predecessor tax which affects, or may affect, the amounts paid into the Welsh Consolidated Fund under section 118(1) of the Government of Wales Act 2006 (c. 32);</p> <p>d) responding to a decision of any court or tribunal which affects, or may affect, the operation of any of the Welsh Tax Acts or regulations made under those Acts.</p>		
Section 7	Welsh Ministers	Regulations	The Welsh Ministers require the power to provide a single opportunity for the Senedd to approve regulations laid by the Welsh Ministers which will extend the power to make	Draft affirmative	The draft affirmative procedure will allow the Senedd to scrutinise the need to extend the lifespan of the regulation making power for up to a further 5

Section:	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			regulations for a period of up to a further 5 years from the date of anticipated expiration as a result of the sunset clause.		years before this may come into effect.

5.3 There are no powers to make directions or issue codes and guidance in the provisions of the Bill.

PART 2 – REGULATORY IMPACT ASSESSMENT (RIA)

Welsh Tax Acts (Power to Modify) Bill

Preferred option: to introduce legislation containing a power for the Welsh Ministers to make draft or made affirmative regulations in relation to the Welsh Tax Acts which can be used to ensure that changes can be made to the Welsh Tax Acts at short notice to respond to a number of external circumstances:

- v. to ensure the devolved Welsh taxes are not imposed where to do so would be incompatible with international obligations;
- vi. to protect against tax avoidance in relation to devolved Welsh taxes;
- vii. to respond to changes made by the UK government to ‘predecessor’ UK taxes (that is, one where we have an equivalent devolved tax) which affect, or may affect the amount paid into the Welsh Consolidated Fund; and
- viii. to respond to decisions of the courts/tribunals which affect or may affect the operation of the devolved Welsh Taxes, or any regulations made under them.

There are no costs as a result of the Bill directly. The costs will arise as and when any secondary legislation is prepared. The administrative and implementation costs, and the timeframe, of introducing such changes through secondary legislation are not known at this stage. A full and robust impact assessment, including estimated costings, would be completed for any future regulations made under the power provided by this Bill to effect changes to the Welsh Tax Acts. This will form part of the Welsh Government’s obligation to publish an Explanatory Memorandum at the time the regulations are made or laid in draft and will include rationale for why the regulations should be subject to either the draft or made affirmative procedure, and any consequences of not making the regulations.

Stage: Amendments	Appraisal period: 2021/22 - 2022/23	Price base year: None
Total Cost Total: Not known Present value: None	Total Benefits Total: Not known Present value: None	Net Present Value (NPV): None

Administrative cost

Costs: The Bill operates to enable changes to be made to the Welsh Tax Acts in certain circumstances through regulations made by Welsh Ministers. There are therefore no administrative costs as a result of the Bill directly. The costs will arise as and when any secondary legislation is prepared. This is likely to incur an administrative cost for the Welsh Government and potentially to the Welsh Revenue Authority (WRA) but there is, currently, uncertainty regarding this cost, because the specific type of change is unknown. However, in many cases the costs to the Welsh Government and WRA are likely to be met within existing budgets.

As the changes will be exceptional and unforeseen, it is hard to group them in advance. For example, for instances of tax avoidance, there could be an amendment to give effect to the original intended effect of the legislation. However, conceivably that could necessitate other changes (such as the need to alter a tax return form), or additional processes could be needed. Such changes may carry a cost. However, this could potentially be offset by marginal savings on further compliance activity, or litigation, if the legislative change prevents further instances of avoidance occurring.

The number of times the power to make secondary legislation will be used is not known at this stage; however, it is anticipated to be small and limited to the specified circumstances, especially as the lifespan of the regulation making power is restricted in terms of lifespan (see paragraph 3.57). The amount of secondary legislation will be kept under review as part of the future work the Minister for Finance and Local Government has committed to in establishing new arrangements for making changes to the Welsh Tax Acts.

In summary, there are no costs attached as a result of the Bill directly. The future administrative costs incurred through secondary legislation are unknown, as it is not possible to quantify the volume and nature of potential future changes required to the Welsh Tax Acts, which the Welsh Ministers may respond to using the power provided by the Bill. The level of uncertainty is such that attempting to provide costs will generate figures that are potentially misleading and/or a range of costs that is too wide to add real value.

Transitional: Not known	Recurrent: Not known	Total: Not known	PV:
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Cost-savings: There are no anticipated transitional cost-savings. However, a key objective of the Bill is enabling future cost-savings through the provision of a mechanism to allow the Welsh Ministers to respond quickly to UK Government tax policy changes that impact on devolved taxes and consequently on the block grant. This will protect Welsh revenues. There could also be further marginal costs saving in WRA’s compliance or litigation costs if future tax avoidance cases are prevented. An example of a recent change is the introduction of temporary changes to the Land Transaction Tax rates in July 2020. Although the Welsh Government has existing made affirmative powers in this instance to deal with rate changes, the assumption is that there may be future occasions when there are further changes to which the Welsh Ministers will need to respond to quickly.

Transitional: Not known	Recurrent: Not known	Total: Not known	PV:
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Net administrative cost: Not known

Compliance costs

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. The compliance costs are therefore unknown.

Transitional: Not known	Recurrent: Not known	Total: Not known	PV:
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Other costs

There are no other anticipated costs.

Transitional:	Recurrent:	Total:	PV:
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Unquantified costs and disbenefits

There are no direct impacts as a result of the Bill itself. There will be unquantified administrative costs as a result of regulations made by this legislation. It is not possible to quantify these additional costs at this time and the cost estimates and cost savings are not known. However, separate Regulatory Impact Assessments, including estimated costings, will be completed for any regulations made using the powers in the Bill.

Benefits

A key benefit of the Bill is to provide the Welsh Ministers with an agile and proportionate mechanism to make changes to the Welsh Tax Acts in response to tax policy changes made by the UK government to 'predecessor' UK taxes (that is, one where Wales has an equivalent devolved tax¹⁵), whilst ensuring scrutiny by the Senedd. In particular, the power will be used to protect Welsh Government tax revenues, or to provide taxpayers with timeous reductions in their liabilities. Currently, if the UK government brings in, with immediate effect, a change to a 'predecessor tax' which has impacts on Welsh devolved taxes and consequently on the Welsh block grant, then the Welsh Ministers have limited recourse for responding to that change in a timely and proportionate way. An additional benefit is that the Bill aims to provide an additional tool to stop avoidance of the devolved Welsh taxes when identified.

It is not possible to quantify this benefit, but it could be considerable. However, the cost estimates would depend on the type of change made and these are unknown at this time.

Total: Not known

PV:

¹⁵ Predecessor taxes' currently refers to Stamp Duty Land Tax and Landfill Tax – the UK equivalents for the taxes that are now devolved in Wales.

Key evidence, assumptions and uncertainties

A key aim of the Bill is to provide an appropriate, flexible mechanism to overcome potential uncertainties (that is, to provide a proportionate mechanism to respond to tax policy changes introduced at short notice by the UK government that impact on the Welsh Government resources). In particular, this is evidenced by the series of changes the UK government has made to Stamp Duty Land Tax on a relatively regular basis, and often with immediate effect, or very shortly after the announcement.

To provide an example, on 1 April 2016, the UK government brought into effect a new charging regime with new, higher rates of stamp duty land tax on purchases of dwellings where the buyers already own an interest in another dwelling. The Welsh Ministers are not able to introduce a new charge through our existing regulation-making powers. In this instance, we were able to introduce a similar charge through the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 when it was progressing through the Senedd scrutiny stages. However, if this had not been the case, then our block grant adjustment would have been far larger than the revenues from land transaction tax, resulting in a significant reduction to our resources, or a need to increase rates on other taxpayers. This is demonstrated as the higher rates on additional dwellings raised around £60 million in Wales 2018-19. The potential cost here depends on the scale of the UK government policy change but could be very significant.

7. Options

7.1 Two options are outlined below and the advantages and disadvantages of each are briefly considered. The options are:

- Option 1 – do nothing
- Option 2 – implement a Bill to enable the Welsh Ministers to make changes to the Welsh Tax Acts using made or draft affirmative regulations in order to respond to a number of external circumstances where a change to the Welsh Tax Acts is required to have effect immediately or very soon thereafter

7.2 This is followed by analysis of the costs and benefits of the two options in Chapter 8.

7.3 The *2020 Tax Devolution in Wales – Enabling changes to the Welsh Tax Acts*¹⁶ consultation set out the need to ensure that changes can be made to the Welsh Tax Acts at short notice in a number of circumstances such as:

- i. to stop avoidance of the devolved Welsh taxes,

¹⁶ Tax Devolution: Enabling changes to the Welsh Tax Acts (July 2020) available to view at: <https://gov.wales/enabling-changes-to-welsh-tax-legislation>

- ii. to comply with international obligations,
- iii. to respond to a tribunal or higher courts decision, and
- iv. in response to tax policy changes made by the UK government to 'predecessor' UK taxes (that is, one where Wales has an equivalent devolved tax¹⁷).

7.4 It is considered that there are only two options available presently or in the near future, that could be taken forward to make specific changes to the Welsh Tax Acts at short notice: to either rely on existing mechanisms or to implement a new proportionate and agile mechanism to introduce such changes through secondary legislation. The consultation responses were broadly in favour of implementing a Bill.

7.5 A further option considered in the consultation was the introduction of a Bill equivalent to the UK government's annual Finance Bill. A Welsh Finance Bill would essentially include revenue raising measures and some tax setting decisions, and would provide a mechanism for making changes to the Welsh Tax Acts. The consultation document sets out that a key consideration is the volume of secondary legislation generated by the Welsh Tax Acts and whether it is practical to consolidate that legislation in an annual, or less frequent, Bill. Since the taxes went live in April 2018, eleven sets of secondary legislation have been made. This includes four annual inflation-based rises to the rates payable for landfill disposals tax and two providing the temporary tax reduction period between 27 July 2020 and 30 June 2021.

7.6 As set out in paragraph 3.57, this Bill includes a sunset clause limiting the lifespan of the regulation-making power. The Minister for Finance and Local Government has committed to establishing a long-term architecture for making changes to the Welsh Tax Acts, which will include consideration of whether an annual, or less frequent, Finance / Taxation Bill is appropriate for Wales.

7.7 Given the link between the tax effort made by the UK 'predecessor taxes' – that is, those taxes that have been devolved to Wales - and their impacts on the Welsh Government's resources through the block grant adjustment, an ability to respond quickly, flexibly and outside of the Welsh budget process is essential. Therefore, elements of this Bill may still need to be part of that longer term solution. Making changes outside an annual legislative vehicle is complex. The Minister for Finance and Local Government has committed to achieving an accessible framework for our taxpayers and their advisers than is sometimes the case for UK government changes.

7.8 Finally, the Welsh Government has indicated in its response¹⁸ to the Finance Committee's "*Inquiry into a legislative budget process*"¹⁹ that a

¹⁷ Predecessor taxes' currently refers to Stamp Duty Land Tax and Landfill Tax – the UK equivalents for the taxes that are now devolved in Wales.

¹⁸ October 2020 <https://senedd.wales/laid%20documents/cr-ld13501/cr-ld13501-e.pdf>

¹⁹ August 2020 <https://senedd.wales/laid%20documents/cr-ld13398/cr-ld13398-e.pdf>

Finance Bill covering taxation and spending plans will raise a number of complexities and would need very careful consideration. This option is not considered within the scope of this assessment.

Option 1: Do nothing

7.9 In this scenario, should it be identified that one of the types of changes set out in paragraph 3.2 is required to the Welsh Tax Acts at short notice, the Welsh Government would be able to use one of three existing legislative mechanisms to action the change:

- the existing Emergency or ‘fast-track’ Bill process. This would enable the Welsh Ministers to implement a change at relatively²⁰ short notice. There would be both financial and reputational costs or risks to the Welsh Government attached to using these types of mechanisms which have rarely been previously used and only in exceptional circumstances, with shortened or limited scrutiny opportunities. An Emergency Bill incurs ‘business as usual’ Senedd costs and broadly follows the usual four Stages of the Senedd’s consideration of a Bill, but with some significant alterations to progress through the Stages quickly. Fast-track Bills are not Emergency Bills, and do not have the same requirements, nor are they subject to the same Standing Orders. A fast-track Bill would move through the Stages in the shortest time possible but still according to the requirements of Standing Orders for a normal Bill. Such a Bill would also incur ‘business as usual’ Senedd and Welsh Government costs. Paragraphs 2.7-2.27 of the 2020 *Enabling changes to the Welsh Tax Acts*²¹ consultation sets out in detail the Emergency and ‘fast-track’ Bill processes.
- the existing standard primary legislation process, which is likely to take around 12-18 months. This legislative mechanism would ensure thorough extended evidence and scrutiny processes, but would not enable the Welsh Ministers to make a required change to the Welsh Tax Acts at short notice.
- in certain instances, the existing secondary legislation powers in the Welsh Tax Acts. Whilst there are a number of powers that enable changes to be made, such as the ability to create, amend or repeal reliefs from land transaction tax, they are mainly subject to the draft affirmative procedure. This means the regulations can only come into effect once the Senedd has approved the making of them. This will delay the date by which a change can come into force. In contrast, the UK government has the ability to make changes to existing taxes with immediate effect through the Provisional Collection of Taxes Act 1968. The Welsh Tax Acts permit only tax rates and tax bands to be changed by regulations subject to the made

²⁰ That is, for these types of legislative mechanisms, a change may be implemented once the Emergency Bill or expedited Bill has Royal Assent, which is typically reached in around three months.

²¹ Available at: <https://gov.wales/enabling-changes-to-welsh-tax-legislation>

affirmative procedure. Furthermore, there are parts of the Welsh Tax Acts where specific regulation-making powers were not taken; in LTT one key area is the provisions relating to the calculation of tax. For example, it is unlikely that if the Welsh Government were to consider the introduction of a new surcharge that this could be fully achieved through the existing suite of regulation-making powers.

Option 2: Implement a Bill to enable regulations to be introduced to make changes to the Welsh Tax Acts in certain circumstances at short notice

7.10 In this scenario, the Welsh Ministers will be provided with powers to introduce secondary legislation to make certain changes at short notice to the Welsh Tax Acts. For each of the types of changes outlined in paragraph 3.2, this would mean that the Welsh Ministers would have a tool in place to respond promptly and proportionately:

- i. **To stop avoidance of the devolved Welsh taxes.** The ability to stop avoidance activity is in the interests of Welsh citizens as it will protect the revenues on which public services depend. It is unfair for people to seek to avoid their tax liabilities. The ability of the Welsh Government to respond as quickly as possible to stop this activity is essential.
- ii. **To comply with international obligations.** The ability to quickly make changes the Welsh Ministers consider appropriate to ensure compliance with international obligations is aimed primarily at upholding the reputation of Wales and the Welsh Government.
- iii. **To respond to a tribunal or higher courts decision.** This is intended to capture situations such as a need to make changes to legislation where there has been an adverse court decision. The power would be used sparingly in these circumstances.
- iv. **Where changes are made to predecessor UK taxes by the UK government that will affect the Welsh block grant adjustment and the overall amount of Welsh Government resources.** Responding in a timely manner would enable changes to be made to the devolved taxes to protect the revenues available for our essential public services in Wales. Equally, it will also provide the Welsh Government, if the UK government reduces its tax effort through a predecessor tax, with the opportunity to provide similar reductions to Welsh taxpayers sooner than using existing mechanisms.

8. Costs and benefits

8.1 The cost analysis for Options 1 and 2 is primarily an assessment of the different legislative mechanisms, providing a broad comparison of the typical costs that would be incurred if the Welsh Ministers needed to make a legislative change to the Welsh Tax Acts at short notice to respond to an external circumstance. The key assumption is that the resource required to take forward an Emergency or fast-track Bill, primary legislation, or to use existing secondary legislation powers, is likely to be broadly equivalent to the resource required for the Welsh Ministers to respond using the regulation making power set out in option 2. Any minor additional costs or cost-savings would be absorbed within existing activities and running costs with little impact.

8.2 The key costs would be dependent on both the type of legislative change that is needed, and also the cost of implementing the change. The administrative and implementation costs, and the timeframe, of introducing such changes through secondary legislation are not known at this stage. Overall, there could be compliance costs, and potentially cost-savings, for some businesses and citizens. However, this is dependent upon the changes made in the future. This assessment assumes that any implementation costs (for example, changes to WRA systems or processes) would be the same regardless of which legislative mechanism is used to bring in the change.

8.3 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. This will form part of the Welsh Ministers obligation to publish an Explanatory Memorandum at the time the regulations are made or laid in draft and would explain why the regulations should be subject to either the draft or made affirmative procedure, and any consequences of not making the regulations.

Option 1 – do nothing

Costs

8.4 In this option, in order to respond to an identified need for change the Welsh Government would make a decision on which existing legislative mechanism to utilise depending on the specific circumstances. The costs would be dependent on type of legislative mechanism is taken forward, whether that is by an emergency, fast-track, primary legislation or existing secondary powers.

Emergency / fast-track Bill

8.5 For an Emergency Bill or fast-track legislation this would incur the typical Welsh Government administrative costs associated with this type of legislation. The compressed timescales combined with the requirements of an Emergency or 'fast-track' Bill may require a significant allocation of Welsh Government resources, albeit for a short period. In addition to input from policy, legal services, legislative counsel and translation, it would likely require additional support being brought in to form a 'Bill team' (typically as a minimum a Bill Manager and Deputy Bill Manager). The cost would be dependent on the complexity and size of the legislation.

Primary legislation

8.6 For primary legislation, this 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 in that a 'Bill team' would be formed; however, these costs will span a longer time-frame, typically around 12-18 months.

8.7 Critically, using primary legislation would not enable the Welsh Ministers to respond at pace if a change was identified and required. The impact of this delay is likely to depend upon the type of change. This includes:

- i. Accepting that any **avoidance activity** will continue in Wales for around 12-18 months. The costs of not being able to halt avoidance activity as quickly as possible will depend, of course, on the activity targeted. It could amount to significant amounts of foregone tax revenue. There could also be an element of increased WRA resource cost on further compliance activity (and possibly litigation expenses) in tackling any additional cases arising in the meantime.
- ii. Accepting that Wales will not comply with its **international obligations** for around 12-18 months. The potential cost here is generally likely to be more reputational.
- iii. Accepting that the Welsh Ministers will not be able to respond to **tribunal or higher court decisions** for around 12-18 months, resulting in potential reputational and financial costs. It is difficult to anticipate costs associated with the use of the power in relation to this area as it could vary considerably.
- iv. Accepting that the Welsh Ministers will not be able to respond to **changes made to predecessor taxes** and subsequent adjustments to the Welsh block grant²² for around 12-18 months, resulting in a potential loss of revenue for Wales. In this scenario, the Welsh Government would either need to operate with a reduced budget or find alternative ways of

²² The portion of the resources available from the UK government that is allocated to Wales.

raising such revenues to maintain existing resource levels. Conversely, it could also result in delays in providing changes that reduce the tax burden on Welsh taxpayers.

To provide an example, the higher rates in Wales raised around £60 million in 2018-19. Had Wales not been in a position to respond and introduce a similar regime to the UK government in the period between 25 November 2015 and 1 April 2016, the combination of an increase to the block grant adjustment and foregoing the additional revenues would have resulted in a significant reduction to the Welsh Government's overall resources. This is because the SDLT would have been making a greater tax effort and the block grant adjustment would have been adjusted to include that greater effort. This was an issue that did not arise as LTT had yet to come into force and a higher rates regime was included in the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 following the Welsh Government seeking views on its approach to higher rates of land transaction tax.

8.8 The inability to respond promptly to changes made to predecessor UK taxes is most likely to have a significant impact on Welsh revenues. The potential cost depends on the scale of policy change implemented by the UK government on the predecessor taxes to those devolved to Wales. This could be significant; for example, scenario 4 in Chapter 4 in the 2020 *Tax Devolution: Enabling changes to the Welsh Tax Acts*²³ consultation provides the recent example of the introduction of the SDLT higher rates for additional dwellings in 2016 which increased the tax effort²⁴. The higher rates in Wales raised around £60 million in 2018-19. Had Wales not been in a position to respond and introduce a similar regime (through an amendment to the Land Transaction Tax and Anti-avoidance of Devolved Taxes Act (Wales) 2017 during its passage through the Senedd) the block grant adjustment would have been far larger than the revenues from land transaction tax, resulting in a reduction to the overall resources available to the Welsh Government.

8.9 In addition, using existing primary or emergency legislative mechanisms would potentially also create additional administrative costs for the WRA (and taxpayers) to collect (or pay) tax from those taxpayers who paid based on the current law, rather than the law including the changes contained in the primary legislation prior to Royal Assent. The potential cost is unknown as it would depend on the nature of the change

²³ Tax Devolution: Enabling changes to the Welsh Tax Acts (July 2020) available to view at: <https://gov.wales/enabling-changes-to-welsh-tax-legislation>

²⁴ "the SDLT effort" refers to the amount of tax that the predecessor tax to land transaction tax collects. If the effort is greater, the block grant adjustment will increase resulting in a larger reduction to the Welsh Government's budget, reducing overall resources. If the SDLT effort decreases the opposite occurs, resulting in more resources for the Welsh Government overall.

introduced. This would be the case if, for example, the legislation included a date for the changes having effect that was, say, the date the bill was introduced. In nearly all cases it is likely that the tax paid would be based on the current law and not based on the changes. The use of the Emergency or 'fast-track' Bill procedures may reduce some of that uncertainty due to the shorter timescales, but would not remove it entirely.

- 8.10 It should be noted that for both Emergency, 'fast-track' and primary legislation, the tax effects of any change could potentially, with Senedd approval, on rare occasions be applied with retrospective effect. This could help mitigate the risk of increased loss of revenue for the Welsh Government, particularly for primary legislation given the time it can take for a Bill to pass through the Senedd stages. There could, however, still be a potential cost (for example, increased number of queries) to both Welsh Government and the WRA associated with the uncertainty created as to what law will apply to a taxable event or activity until the legislation receives Royal Assent and commences.

Secondary legislation

- 8.11 There will be a number of situations where the existing powers in the Welsh Tax Acts could be used to make changes. For example, there are regulation making powers in land transaction tax to create, amend or repeal reliefs. These powers are generally subject to the draft affirmative procedure, so the regulations can only come into force once the Senedd have approved the draft regulations. In some circumstances, this will delay the date by which a change can come into force and is likely to result in continued reduced revenues, and potential delayed transactions as taxpayers wait for the new changes to come into force (if the change means they may pay less tax).
- 8.12 There may be certain urgent circumstances where it would be appropriate for the Welsh Ministers to introduce secondary legislation using the new regulation-making powers under the made affirmative procedure, rather than existing powers subject to the draft affirmative procedure. It is not anticipated that there will be any difference in administration costs between the two procedures. However, there are possible minor costs or cost savings for the Welsh Government as a result of the draft affirmative regulations coming into force later than if the made affirmative procedure had been used. It is not possible to quantify these costs or cost savings as the nature of the change is not known at this stage.
- 8.13 A further key consideration is that there are significant areas where the powers to make the desired changes do not exist meaning that only the primary legislation route can be taken. For example, one key area is the provisions relating to the calculation of tax for land transaction tax. In these areas, the Bill will provide the power to introduce regulations using either the draft affirmative procedure or made affirmative procedure, whichever

the Welsh Ministers consider appropriate depending on the nature of the change.

Benefits

8.14 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 and this would incur additional resource. There are also several dis-benefits, including potential shortened or limited scrutiny opportunities, reputational risk of using a mechanism which has rarely been used previously and only in exceptional circumstances, and potential increased administrative costs and a delay in the legislation coming into force.

Option 2

Costs

8.15 In this option there are administrative and resourcing requirements to:

- i) introduce the primary legislation to enable the Welsh Ministers to make future draft or made affirmative regulations; and
- ii) introduce future made or draft affirmative regulations as required.

8.16 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 identifiable separate costs of introducing this legislation.

8.17 Further principal costs arising from this option, once the Bill providing the powers receives Royal Assent, are the administrative costs to the Welsh Government and WRA of developing and implementing the secondary legislation, and to the Senedd in scrutinising the legislation.

8.18 The potential costs savings for option 2 are dependent on the type of change, as set out in paragraph 3.2:

- i. Enabling the Welsh Ministers to halt **avoidance** activity as quickly as possible by providing further clarity and putting beyond doubt the intended application of the legislative provisions. The costs savings of being able to promptly halt avoidance activity as quickly as possible will depend, of course, on that activity.
- ii. Enabling the Welsh Ministers to ensure the Welsh Tax Acts, where appropriate, comply with **international obligations**. Although the potential cost savings here are minimal, in the event that the Welsh

Tax Acts do not comply with international obligations, there are potential reputational costs.

- iii. Enabling the Welsh Ministers to **respond to a tribunal or higher courts decision**. It is difficult to anticipate costs associated with the use of the power in relation to this area as it could vary considerably, but it is intended to capture situations such as a need to make changes to legislation where there has been, from the Welsh Government's or Welsh Revenue Authorities perspective, an adverse court decision.
- iv. Enabling the Welsh Ministers to respond to **changes made to predecessor taxes** that impact on the Welsh block grant. There are potential significant cost savings for the Welsh Government and taxpayers. Without this option, the Welsh Government could be in the scenario that it either needs to operate with a reduced budget or find alternative ways of raising such revenues to maintain existing resource levels.

Impact on taxpayers and WRA of the use of the made affirmative procedure

8.19 It is proposed that in some urgent circumstances regulations would be made using the made affirmative procedure. This procedure differs from the draft affirmative procedure as the effect of the regulations can be made, and come into force, before the Senedd has approved the making of the regulations. The regulations subject to the made affirmative procedure have provisional effect until the Senedd vote. If the Senedd approves the regulations, they will have permanent effect. If the regulations fail to secure the approval of the Senedd, taxpayers who have paid more tax as a result of those unsuccessful changes will be entitled to claim a repayment of that overpaid tax from the WRA. The risk of the regulations is to be borne by the Welsh Government alone and not by Welsh taxpayers.

8.20 Where WRA systems and processes need to be altered to give effect to legislative changes, this may incur development and implementation costs. There may also be resource costs for the WRA in supporting an increase in queries from taxpayers or their advisers in response to the changes. Should the regulations subsequently fail, further systems/process changes may be needed to revert to the previous rules, supporting taxpayers to ensure they pay the right amount of tax. However, this would depend on the exact nature of the legislative provisions and how any changes were implemented. The cost is likely to be low, but it is not possible to quantify specifically at this point as this is likely to vary from case to case. Any potential implementation costs would be the same regardless of which legislative route was taken.

Retrospection

8.21 As set out at paragraph 3.31 of the Explanatory Memorandum, changes to tax legislation will normally take effect from no earlier than the date the regulations are made. However, a change which takes effect from a date earlier than the date of making will be possible but will be wholly exceptional. An example is provided 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. In this scenario, the use of retrospection in terms of costs is intended to protect Welsh Government revenues and mitigate the potential impacts of UK tax policy changes that impact on devolved taxes and consequently on the Welsh block grant.

8.22 Paragraph 3.45 sets out that the Welsh Ministers are prohibited from applying retrospective effect from a date further back than the date the legislative change was warned or announced, either by a Ministerial oral or written statement. The restriction will only apply in cases where there is a 'negative' tax impact - that is, where there is any new liability or increased liability to land transaction tax or landfill disposals tax on a taxpayer. However, the restriction will still allow the Welsh Ministers to use the power to make changes with retrospective effect further back than the date of any announcement where that change reduces the tax charged. For example, if responding to a UK Budget change this would ensure that Welsh taxpayers can benefit from the reduction at the same time as taxpayers in England.

Benefits

8.23 The Welsh Government set out in the *2020 Tax Devolution: Enabling changes to the Welsh Tax Acts* consultation²⁵ three key benefits in relation to the introduction of the Welsh Tax Acts:

- Improving the efficiency and effectiveness with which public resources are used in Wales
- Boosting the resources available for public bodies in Wales to invest in improving well-being, and
- Delivering enhanced fiscal levers for the Welsh Ministers and using these levers to improve outcomes for the people of Wales.

8.24 These benefits are aligned to the requirements of the *Well-being of Future Generations (Wales) Act 2015*²⁶ which came into effect in April 2016. The Act seeks to improve social, environmental, economic and

²⁵ Tax Devolution: Enabling changes to the Welsh Tax Acts (July 2020) available to view at: <https://gov.wales/enabling-changes-to-welsh-tax-legislation>

²⁶ Well-being of Future Generations (Wales) Act 2015, available to view at: <http://www.legislation.gov.uk/anaw/2015/2/contents/enacted>

cultural well-being in Wales and help to create a country that we all want to live in, now and in the future.

8.25 This proposed legislation is intended to continue to support the identified benefits of the Welsh Tax Acts in the following ways:

1. Improving the efficiency and effectiveness with which public resources are used in Wales

8.26 The legislation is intended to provide an additional tool to quickly close down identified avoidance activity, ensuring that those liable to the Welsh devolved taxes pay the amount of tax, and at the time, the Senedd intended when passing the Welsh Tax Acts.

2. Boosting the resources available for public bodies in Wales to invest in improving well-being

8.27 The legislation supports the aim to adapt a tax collection and management system to meet Welsh priorities. It provides an additional tool to ensure the Welsh Ministers can make changes to the Welsh Tax Acts in a flexible and proportionate way, particularly in response to the UK government making changes to predecessor taxes which may have impacts on the Welsh Government's overall resources. This will enable the Welsh Government to protect its finances which are used to fund public services.

3. Delivering enhanced fiscal levers for the Welsh Ministers.

8.28 The Bill aims to provide the Welsh Ministers with an additional fiscal lever to respond to external circumstances and make changes via secondary legislation (using either the draft or made affirmative procedure) in areas of the Welsh Tax Acts where currently the only option would be to either introduce primary legislation, with longer timescales, or emergency legislation²⁷.

8.29 A key feature of using the made affirmative procedure in some circumstances is that the effect of the changes can be brought in with immediate effect thereby increasing revenues, or decreasing where the Welsh Government's policy is to do so. This will provide clarity to taxpayers and their representatives.

8.30 Enabling the Welsh Government to make immediate changes to the devolved taxes will also minimise the potential impact on the Welsh Government's overall resources. Enabling legislative changes to have

²⁷ Or in some cases the already existing draft affirmative powers but where the change is deemed to be necessary immediately.

immediate effect also ensures taxpayers can benefit from those changes as quickly as possible. This gives the Welsh Ministers better control over the budget for Welsh public services. This is in line with the well-being goal to create a prosperous Wales, allowing the Welsh Ministers to use enhanced fiscal levers to improve outcomes for the people of Wales as timeously as possible.

8.31 Furthermore, the made affirmative power could also be utilised in scenarios where the Welsh Ministers have existing powers to make regulations but need to make an urgent change. To provide an example, the Welsh Ministers may already introduce a new relief for Land Transaction Tax through regulations. However, introducing a new relief using a made affirmative power provides an additional benefit that the relief could become effective immediately, rather than once the draft affirmative procedure in the Senedd has been completed, which takes a minimum of three sitting weeks, meaning that Welsh taxpayers are able to claim the relief as early as possible (although Senedd approval is still required for the regulations to stay in force).

8.32 The rationale to introduce a change through new made affirmative regulations rather than a pre-existing draft affirmative regulation power will be set out in the Explanatory Memorandum when the power is used. It will include issues such as: urgency, competitive/distortive difference between UK taxes and Welsh taxes, tax at stake, and, absence of other routes, other than primary legislation, to achieve the change.

8.33 Finally, an additional benefit is that this enhanced fiscal lever will ensure the Welsh Ministers have a greater degree of parity to the UK government, as the UK government already has the ability to make changes to existing taxes with immediate effect through the Provisional Collection of Taxes Act 1968. In contrast, the Welsh Tax Acts permit only tax rates and tax bands to be changed by regulations subject to the made affirmative procedure. This approach has the benefit that it is familiar and well understood by tax practitioners. In these urgent cases, the Welsh Minister will write to the Llywydd to inform her of the use of the made affirmative procedure. In addition, the period beyond which such regulations may not remain in effect without the approval of the Senedd will be 60 sitting days. This will, for example, allow sufficient time for the relevant committees to take evidence and to write their respective reports, and for stakeholders to provide comments on the changes. In many situations the Senedd will have more opportunity to consider the proposed changes than the UK Parliament is afforded in relation to its Finance Bills or taxes changes made outside Finance Acts²⁸.

²⁸ For example, the Stamp Duty Land Tax Act 2015 ([Stamp Duty Land Tax Act 2015 \(legislation.gov.uk\)](https://legislation.gov.uk))

Summary

- 8.34 Option 2 is the Welsh Government's preferred option. It is considered that the benefits of this option is that it will provide the Welsh Ministers with appropriate and proportionate powers to make changes to the Welsh Tax Acts at short notice in certain circumstances, whilst ensuring that appropriate scrutiny time is provided to the Senedd. This is particularly significant where changes are made to predecessor UK taxes by the UK government which could have significant implications for the resources available to the Welsh Government for essential public services.
- 8.35 The principal costs arising from this option, once the Bill providing the powers receives Royal Assent, are the administrative costs to the Welsh Government and WRA of developing and implementing the secondary legislation, and there will also be compliance costs, and potentially increased or decreased tax liabilities, for some businesses and citizens. However, these costs are not known at this time and are dependent upon the changes made in the future. A separate impact assessment, including estimated costings, will be completed when the powers provided are used to make regulations to effect changes to the Welsh Tax Acts.

9. Competition Assessment

9.1 The Bill itself is not expected to change the fundamental requirements on businesses. Due consideration will be given to competition assessments for the consequential secondary legislation.

The competition filter test	
Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of firms?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

10. Integrated Impact Assessment Summary

The Welsh Government's Commitment

10.1 The Welsh Government's tax policy priorities align with the commitments in the *Programme for Government (2021)*²⁹, to continue to demonstrate its commitment to creating a more equal, fairer and socially just Wales. Devolved taxation can be a powerful lever for influencing behaviour change, as well as generating revenue to support public spending to meet the needs of Wales and enabling us to develop more progressive taxes. It also allows us to develop a more strategic approach to central and local taxation in Wales, ensuring it is better able to tackle the needs and priorities of citizens and businesses.

10.2 This primary legislation contributes to the national wellbeing goal of 'a prosperous Wales', recognising the core role of taxation in funding public services. The ultimate objective of the Bill is to provide the Welsh Ministers with a proportionate mechanism to protect Welsh revenues raised through devolved taxes that are available for our essential public services in Wales, and to avoid adverse implications for businesses, the property market, and the environment. There is clear alignment between this objective and the five ways of working as set out in the Well-being of Future Generations Act.

Prevention and the long term

10.3 The legislative proposals taken forward by this Bill are a short-term preventative measure to enable the Welsh Ministers to respond agilely when a change is required to the Welsh Tax Acts at short notice. It is clear that this legislation is needed to protect revenues available for essential public services in Wales. At the moment, every time there is a UK budget cycle there is a risk that there may be a change that impacts on a devolved tax and has a direct budgetary impact on resources. This is particularly the case as Covid-recovery measures continue to be implemented.

10.4 The Bill aims to balance the need to address a gap in the short-term – that is the lack of a mechanism to respond to an urgent need to make a change to the Welsh Tax Acts. The legislation is intended as a pragmatic legislative solution for the current circumstances of our devolution journey, while longer term solutions are established. The legislation can be viewed within the lens of a broader tax strategy, including the reforming and strengthening of relationships with UK government and other devolved administrations.

²⁹ Available to view at: <https://gov.wales/programme-government>

10.5 As set out in paragraph 3.57, this Bill includes a sunset clause limiting the lifespan of the regulation making power. The Minister for Finance and Local Government has committed to establishing a long-term architecture for making changes to the Welsh Tax Acts, which will include consideration of the need for an annual, or regular, Finance / Taxation Bill.

Collaboration and involvement

10.6 Following the devolution of land transaction tax and landfill disposals tax in 2018, the Welsh Government has considered, with our stakeholders and partners, over the last 3 years what the right and appropriate tools might be to ensure we can make changes to the “Welsh Tax Acts” at short notice in certain circumstances. Collaboration on the development of this Bill reflects the technical nature of the proposals. The 2020 policy consultation *Tax Devolution in Wales - Enabling changes to the Welsh Tax Acts consultation*³⁰ received a small but reasonable nature of responses mostly from professional tax and accountancy bodies. Both the policy proposal and the draft legislative provisions are the result of close working and sharing of ideas and expertise with stakeholders. The Welsh Revenue Authority (WRA) has also been a key partner involved in developing the proposal and planning its delivery.

10.7 There is also ongoing wider stakeholder engagement on devolved taxation more generally, and specifically around the operation of the WRA, and wide-ranging internal stakeholder engagement. It is recognised that it is important to continue raising awareness of Welsh taxes, and we are focusing on major fiscal events, such as the Welsh Budget, to increase understanding of the implications of fiscal devolution for people and businesses. We have strong working partnerships with the WRA and HMRC to enable quick and effective dissemination of key information through established operational channels. These include working with professional bodies and producing webinars and videos for tax professionals. The Tax Engagement Group enables us to discuss developments in tax policy with those who can represent the views of Welsh taxpayers. Further details of engagement activity on tax more generally is provided in Section 13 of the Welsh Government's Welsh Tax Policy Report 2021, published on 21 December 2021³¹. This remains a

³⁰ *Tax Devolution in Wales - Enabling changes to the Welsh Tax Acts* (July 2020) is available to view at: <https://gov.wales/enabling-changes-to-welsh-tax-legislation>

³¹ *Welsh Tax Policy Report 2021* (December 2021): [Welsh Tax Policy Report 2021 \(gov.wales\)](https://gov.wales/welsh-tax-policy-report-2021)

priority as set put in the Welsh Government's updated Tax Policy Framework³².

Impacts

- 10.8 The Bill operates to provide the Welsh Ministers with power to make secondary legislation in order to respond to a number of external circumstances. There are therefore limited impacts as a result of the Bill directly. A separate robust impact assessment with estimated costings would be completed each time the powers are used to make regulations to effect changes to the Welsh Tax Acts. The Welsh Government will consult on the content of the subordinate legislation where it is considered appropriate to do so. The precise nature of consultation will be dependent on the nature of the proposals.
- 10.9 Alongside the costs and benefits presented in the draft regulatory impact assessment, a number of other potential impacts have been considered and an integrated impact assessment carried out. A summary of the impact assessments is set out below.
- 10.10 Ministers are required to have due regard to the United Nations Convention on the Rights of the Child when exercising any of their functions. The results of this assessment demonstrate that there are no potential negative impacts on children and young people arising from the Bill. In addition, no specific impacts have been identified in relation to EU Citizens rights that relate to young people up to the age of 18 as a result of this legislation. The impact assessment is available at Annex 1 of the Integrated Impact Assessment.
- 10.11 An Equality and Human Rights Impact Assessment concluded that there are no specific impacts of the legislation on people with protected characteristics under the Equality Act 2010. However, not implementing this legislation could result in future reduced revenue for the Welsh Government, which in turn would mean less resource to spend on public services in Wales. Arguably, any reduction in revenue is likely have a disproportionately large effect, or disbenefit, on lower income households in Wales, as those who benefit the most from public services tend to be those on below average income. Some protected groups are proportionally more likely to fall into this category. Therefore, introducing this Bill and protecting public service spend could be seen as an indirect positive action for these groups. A full impact assessment is available on request.

³² *Tax Policy Framework* (November 2021) is available to view at:
<https://gov.wales/sites/default/files/publications/2018-10/tax-policy-framework.pdf>

- 10.12 The compatibility of the Bill with the European Convention on Human Rights (ECHR) has been considered prior to the introduction of the legislation. That analysis has found that the Bill is unlikely to contain provisions that are incompatible with the ECHR. The Bill does include provision for retrospective effect. It is recognised that legislation that affects past transactions or events, even if not technically retrospective, may engage the rights set out in Schedule 1 to the Human Rights Act 1998 (“the Convention rights”). The Welsh Government considers that the Bill strikes an appropriate balance between the legislature’s role in scrutinising tax policy changes, the Rule of Law and the unique nature of tax policy changes and their immediate fiscal and economic impacts. There is a public interest in managing those changes to maintain revenue consistency and fund wider public services and avoid market volatility. The approach proposed is not unprecedented and we consider that the public interest arguments are clear.
- 10.13 A Data Protection Impact Assessment has been conducted and concluded the Bill does not produce any new requirements relating to privacy or the sharing of information. There will be no impact as a consequence of this legislation.
- 10.14 Impact on the Welsh Language has been explored through a Welsh Language Impact Assessment and concluded that there are no specific impacts of the legislation on the use of Welsh Language or on Welsh Language communities. The Bill supports the effective operation of the devolved taxes, which can in turn help to achieve our Welsh language policy aims directly. A full impact assessment is available on request.
- 10.15 Consideration of the impact of the duty on biodiversity, climate change and natural resources concluded that there would be no negative impact on these areas. A Strategic Environmental Assessment and an Impact Assessment on Carbon Budgets is not required.
- 10.16 The statutory Justice Impact Assessment (JIA) summarises the outcome of engagement with the Ministry of Justice. The assessment concluded that the proposals are likely to have no or minimal impact on the justice system. The impact assessment is available at Annex 2 of the Integrated Impact Assessment.
- 10.17 The rural proofing screening assessment concluded there is no negative impact as a result of this legislation.
- 10.18 A socio-economic impact assessment concluded there is no negative impact as a result of this legislation. An indirect benefit of any future regulations enabled by the powers in this legislation could be the protection of Welsh revenues and consequently public services in Wales. This includes protection for taxpayers potentially too if the changes we were

bringing forward were to reduce rates or bands to ensure we are competitive.

11. Post-implementation review

- 11.1 The Bill provides powers for future use through secondary legislation as and when required. As set out at paragraph 3.50, the Welsh Ministers will be placed under a duty to review the operation and effect of the Act and publish the conclusions of that review within 4 years of the date that the Act came into force. The review is to be a single obligation and no further review of the legislation is required.

- 11.2 Following the publication of the conclusions of the review, the Welsh Ministers will publish a statement confirming whether the regulations permitted by section 7 of the Bill to extend the lifespan of the regulation-making power will be made or not.

Annex 1 - Explanatory Notes

WELSH TAX ACTS etc. (POWER TO MODIFY) BILL

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes are for the Welsh Tax Acts etc. (Power to Modify) Bill (“the Bill”) introduced into Senedd Cymru on 13 December 2021, as amended at Stage 2. They have been prepared by the Permanent Secretary’s Group of the Welsh Government in order to assist the reader of the Bill.
2. The Explanatory Notes should be read in conjunction with the Bill but are not part of it. They are not meant to be a comprehensive description of the Bill. Where a section or part of a section of the Bill is self-explanatory and does not seem to require any further explanation or comment, none is given.

BACKGROUND AND SUMMARY OF THE BILL

3. Senedd Cymru (“the Senedd”) has passed three Acts that relate to taxation; the Tax Collection and Management (Wales) Act 2016 (‘TCMA’), the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (‘LTTA’) and the Landfill Disposals Tax (Wales) Act 2017 (‘LDTA’). These three Acts are collectively referred to as the ‘Welsh Tax Acts’ in the Bill.
4. The Bill provides the Welsh Ministers with a power to make changes, by means of regulations, to the Welsh Tax Acts and regulations made under those Acts, if the Welsh Ministers consider that it is necessary or appropriate to make those changes for or in connection with any of the four purposes specified in the Bill.
5. The regulations can be made either under the draft affirmative procedure, or in urgent cases only, under the made affirmative procedure (discussed further below).

COMMENTARY ON SECTIONS

Section 1 - Power to amend the Welsh Tax Acts etc.

6. **Section 1(1)** provides that the Welsh Ministers may make regulations which modify the Welsh Tax Acts and regulations made under them if the Welsh Ministers consider that the modifications are necessary or appropriate for or in connection with any of the following purposes –

Subsection 1(1)(a) – to ensure that land transaction tax and landfill disposals tax are not imposed where to do so would be incompatible with any international obligations. The power in section 1 might be used for this purpose, for example, where a trade deal or double taxation agreement is concluded with another country and the imposition of landfill disposals tax or land transaction tax in a particular case is contrary to that deal or agreement.

Subsection 1(1)(b) – to protect against tax avoidance in relation to landfill disposals tax and land transaction tax. The Welsh Ministers may wish to take such action where they consider that amendment of the legislation will put its intended application beyond any doubt, as well as in cases where a perceived loophole is being exploited. Tax avoidance is not defined in the Bill. It therefore takes its natural meaning.

Subsection 1(1)(c) – to respond to changes made to the predecessor taxes which affect, or may affect, the amounts paid by the Secretary of State into the Welsh Consolidated Fund. The predecessor taxes are defined in section 1(4) as being stamp duty land tax and landfill tax.

Subsection 1(1)(d) – to respond to a court or tribunal decision which affects, or may affect the operation of the Welsh Tax Acts or regulations made under those Acts. These decisions need not necessarily be decisions on the provisions of the Welsh Tax Acts themselves, or their associated regulations. Decisions affecting the predecessor taxes or on general points of law may also be capable of affecting the operation of the Welsh Tax Acts and their associated regulations.

7. Section 1(2) places certain restrictions on the general power provided to the Welsh Ministers by section 1. Those restrictions are set out in section 2(3) and are discussed further below.
8. Sections 1(3) and 1(4) provide a series of definitions.

Section 2 - Regulations under section 1 - supplementary

9. Section 2(1) permits regulations made using the power in section 1 to impose landfill disposals tax and land transaction tax and to impose or extend a penalty.
10. Section 2(2) allows regulations made using the power in section 1 to have retrospective effect, as long as-
 - the regulations do not retrospectively impose any new penalty or extend any existing penalty (section 2(2)(a));
 - those regulations that retrospectively create or increase a liability to land transaction tax or landfill disposals tax, do not have effect to a date earlier than the date of an oral or written statement to the Senedd by the Welsh Ministers (section 2(2)(b));
 - those regulations that retrospectively reduce or withdraw an entitlement to a landfill disposals tax credit, do not have effect to a date earlier than the date of an oral or written statement to the Senedd by the Welsh Ministers (section 2(2)(c)).
11. Section 2(3)(a) allows the regulations made using the power in section 1 to make different provision for different purposes.
12. Section 2(3)(b) allows the regulations made using the power in section 1 to make incidental, consequential, supplementary etc. provision.
13. Sections 2(1) to 2(3) are not an exhaustive list of what regulations made using the power in section 1 may do.
14. Section 2(4)(a) prevents the power in section 1 from being used to modify Part 2 of the Tax Collection and Management (Wales) Act 2016. Those provisions relate primarily to the creation of the Welsh Revenue Authority and its governance.
15. Section 2(4)(b) and (c) prevent the regulation-making power in section 1 from being used to modify regulations setting rates and bands for land transaction tax or tax rates for landfill disposals. The Welsh Ministers already have the power to modify those tax rates and bands by means of further regulations, which are subject to the made affirmative procedure.
16. Section 2(5) prohibits regulations made under section 1 from making provision that relates to the investigation of criminal offences.

17. Section 2(6) prohibits regulations made using the power in section 1 from altering any Senedd procedure for making statutory instruments under the Welsh Tax Acts. For example, regulations subject to the draft affirmative procedure within the Welsh Tax Acts cannot be changed to be made subject to the made affirmative procedure.
18. Section 2(7) provides that the regulation-making power in section 1 does not affect any other power the Welsh Ministers already have to make regulations in the Welsh Tax Acts. Equally, the power in section 1 is not affected by the ability of the Welsh Ministers to make regulations using existing powers in the Welsh Tax Acts.

Section 3 - Policy statement: regulations under Section 1 which have retrospective effect

19. Section 3(1) places a duty on the Welsh Ministers to publish a statement on their policy with respect to the exercise of the power to make regulations that have retrospective effect.
20. Section 3(2) provides that the statement must be published before the end of the period of three months beginning with the date the Bill receives Royal Assent.
21. Section 3(3) allows the Welsh Ministers to revise their statement of policy. If they do so, this revised statement must be published.

Section 4 - Procedure

22. Section 4(1) provides that the power to make regulations under section 1 is exercisable by statutory instrument.
23. Section 4(2) provides that a statutory instrument containing regulations under section 1 may be made either under the draft affirmative or, where the Welsh Ministers consider there is a need to make them urgently, under the made affirmative procedure.
24. Under the draft affirmative procedure, a statutory instrument cannot be made unless a draft of the instrument has been laid before Senedd Cymru and approved by it.
25. Under the made affirmative procedure a statutory instrument can be made and can come into force before it has been approved by the Senedd. Where the made affirmative procedure is used, section 4(4) provides that the instrument must be laid before Senedd Cymru, and section 4(5) provides that the Senedd must approve the regulations within a maximum period

of 60 days³³ in order for the regulations contained in the instrument to remain in effect after that period ends. Section 4(6) provides that where the Senedd votes on a motion to approve the instrument before the end of the 60-day period and the instrument is not approved, the regulations contained in the instrument will cease to have effect at the end of the day on which the vote takes place. Section 4(7) provides that any motion to approve the instrument made under the made affirmative procedure cannot be moved in the Senedd (and so the instrument cannot be considered and voted upon by the Senedd) until 28 days have elapsed from (and including) the date the regulations are made³⁴.

Section 5 – Regulations ceasing to have effect: supplementary

26. Section 5 sets out what happens if a statutory instrument containing regulations under section 1 is made under the made affirmative procedure but fails to achieve Senedd approval (and so the regulations contained in that instrument cease to have effect).
27. Section 5(2) provides that any liability, or increased liability, to land transaction tax or landfill disposals tax that would not have arisen but for the regulations is to be treated as never having arisen.
28. Section 5(3) provides that any withdrawal of an entitlement to a tax credit, or reduction in such an entitlement (in relation to landfill disposals tax) that would not have occurred but for the regulations is to be treated as never having occurred.
29. Section 5(4) provides that any liability to a penalty, or an increase to the amount of a penalty, that would not have occurred but for the regulations is to be treated as never having arisen.
30. Section 5(5) provides that anything done under or in reliance on the regulations is not affected by the fact that the regulations have ceased to have effect. This will ensure that actions taken by the taxpayer in accordance with the regulations during the period they had effect are not unlawful, and also will similarly protect actions taken by the Welsh Revenue Authority.

³³ The 60-day period does not include any period during which Senedd Cymru is dissolved or is in recess for more than 4 days.

³⁴ The 28-day period does not include any period during which Senedd Cymru is dissolved or is in recess for more than 4 days.

Section 6 – Review of operation and effect of this Act

31. Section 6 imposes a duty on the Welsh Ministers to review the operation and effect of the Act and publish the conclusions of that review within 4 years of the date that the Act came into force.

Section 7 – Expiry of the power under section 1

32. Section 7(1) provides that the power to make regulations in section 1 expires five years after the date that the Act comes into force, unless the Welsh Ministers make regulations under section 7(2) to extend that period for a further period of up to 5 years.
33. The power in section 7(2) may be exercised only once (section 7(3)).
34. A statutory instrument containing regulations under that power must be made under the draft affirmative procedure.
35. Section 7(5) provides that the regulations, however, cannot be laid in draft before the conclusions of the review set out in section 6 have been published and that the Senedd cannot approve the regulations after the initial five-year period has ended.
36. Section 7(6) provides that regulations made under section 1 before the expiry of that power continue in force following its expiry.

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Annex 2 - Index of Standing Order requirements

Table 2: Index of Standing Order requirements

Standing order		Section	pages
26.6(i)	Statement the provisions of the Bill would be within the legislative competence of the Senedd.	Member's declaration	Pg 1
26.6(ii)	Set out the policy objectives of the Bill.	Chapter 3 - Purpose and intended effect of the legislation	Pg 4, para 3.1 -3.4
26.6(iii)	Set out whether alternative ways of achieving the policy objectives were considered and, if so, why the approach taken in the Bill was adopted.	Part 2 – Regulatory Impact Assessment	Pg 29, para 7.1, and pg 31-32, para 7.9 – 7.10
26.6(iv)	Set out the consultation, if any, which was undertaken on: (a) the policy objectives of the Bill and the ways of meeting them; (b) the detail of the Bill, and (c) a draft Bill, either in full or in part (and if in part, which parts).	Chapter 4 – Consultation	Pg 18, para 4.1 – 4.2 Pg 20, para 4.14
26.6(v)	Set out a summary of the outcome of that consultation, including how and why any draft Bill has been amended.	Chapter 4 – Consultation	Pg 18-20, para 4.3-4.13

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Standing order		Section	pages
26.6(vi)	If the Bill, or part of the Bill, was not previously published as a draft, state the reasons for that decision.	Chapter 4 - Consultation	Pg 20, para 4.14
26.6(vii)	Summarise objectively what each of the provisions of the Bill is intended to do (to the extent that it requires explanation or comment) and give other information necessary to explain the effect of the Bill.	Annex 1 – Explanatory Notes	Pg 49 - 54
26.6(viii)	Set out the best estimates of: (a) the gross administrative, compliance and other costs to which the provisions of the Bill would give rise; (b) the administrative savings arising from the Bill; (c) net administrative costs of the Bill's provisions; (d) the timescales over which such costs and savings would be expected to arise; and (e) on whom the costs would fall.	Part 2 – Regulatory Impact Assessment	Pg 26
26.6(ix)	Any environmental and social benefits and dis-benefits arising from the Bill that cannot be quantified financially.	Part 2 – Regulatory Impact Assessment	Pg 39-41, para 8.23 -8.33
26.6(x)	Where the Bill contains any provision conferring power to make subordinate legislation, set out, in relation to each such provision: <ul style="list-style-type: none"> the person upon whom, or the body upon which, the power is conferred and the form in which the power is to be exercised; 	Chapter 5 - Power to make subordinate legislation	Pg 21, para 5.1

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Standing order		Section	pages
	<ul style="list-style-type: none"> • why it is considered appropriate to delegate the power; and • the Senedd procedure (if any) to which the subordinate legislation made or to be made in the exercise of the power is to be subject, and why it was considered appropriate to make it subject to that procedure (and not to make it subject to any other procedure). 		
26.6(xi)	Where the Bill contains any provision charging expenditure on the Welsh Consolidated Fund, incorporate a report of the Auditor General setting out his or her views on whether the charge is appropriate.	The requirement of Standing Order 26.6(xi) does not apply to this Bill	
26.6(xii)	Set out the potential impact (if any) on the justice system in England and Wales of the provisions of the Bill (a “justice impact assessment”), in accordance with section 110A of the Act.	Part 2 – Regulatory Impact Assessment	Pg 47, para 10.16
26.6B	Where provisions of the Bill are derived from existing primary legislation, whether for the purposes of amendment or consolidation, the Explanatory Memorandum must be accompanied by a table of derivations that explain clearly how the Bill relates to the existing legal framework.	The requirement in Standing Order 26.6B for a Table of Derivations is not applicable to this Bill as the Bill is a standalone piece of legislation	
26.6C	Where the Bill proposes to significantly amend existing primary legislation, the Explanatory Memorandum must be	The requirement of Standing Order 26.6C does not apply to this Bill	

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Standing order		Section	pages
	accompanied by a schedule setting out the wording of existing legislation amended by the Bill, and setting out clearly how that wording is amended by the Bill.		