

# Report on the Legislative Consent Memorandum for the Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill

November 2021

## Introduction

1. The Welsh Government laid a Legislative Consent Memorandum (LCM) (PDF 77.8KB) on the Bill before the Senedd on 21 September 2021. The Business Committee agreed (PDF 39.6KB), in accordance with Standing Order 29.4(i), to invite the Economy, Trade and Rural Affairs Committee and the Legislation, Justice and Constitution Committee to consider and report on the LCM on the Rating (Coronavirus) and Directors Disqualifications (Dissolved Companies) Bill, to the Senedd, by 18 November 2021.

## Background

2. The Bill is sponsored by the Ministry of Housing, Communities and Local Government (MHCLG) and was first introduced in the House of Commons on 12 May 2021. First Reading in the House of Lords was on 10 September 2021, with Committee stage scheduled for 10 November 2021.

3. The long title to the Bill notes that it is a Bill “to make provision about matters attributable to coronavirus that may not be taken account of in making certain determinations for the



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purposes of non-domestic rating; and to make provision in connection with the disqualification of directors of companies that are dissolved without becoming insolvent.”

## Overview of the Bill

**4.** Outside of regular non-domestic rates revaluations, a ratepayer can submit a challenge to the Valuation Office Agency on their property’s rateable value for a number of reasons, such as to correct factual errors or reflect a “material change of circumstances”. The process for this in Wales is governed by the Non-Domestic Rating (Alteration of Lists and Appeals) (Wales) Regulations 2005<sup>1</sup> and is summarised in [UK Government guidance](#).

**5.** The LCM laid by Welsh Government says that the stated policy objective of the Bill is “to prevent material change of circumstances (MCC) non-domestic rating appeals, which cite COVID-19 related matters.” It states that the Bill seeks to address this both prospectively and retrospectively, with the provisions applying to determinations in respect of local and central ratings lists, compiled or maintained for the purposes of whether a hereditament<sup>2</sup> should or should not be shown on a rating list or as to the rateable value of a hereditament.

**6.** The LCM explains that the rationale is that the use of MCC as grounds for appeal is intended to apply to isolated events which inhibit the activity of a business. The pandemic has affected large numbers of businesses and the wider economy. Wider economic effects are taken into account in the periodic statutory revaluations.

**7.** The LCM explains that throughout the pandemic, the Valuation Office Agency (VOA) has been dealing with an increased number of non-domestic rating appeals in Wales and England. Within the non-domestic rates (NDR) system, where factors affect the physical state or use of a property or its locality so that it is no longer usable or only partly usable, such as flooding, this may constitute grounds for a MCC appeal. Should an appeal be successful, the NDR liability would be reduced. This would in turn result in a reduction to the revenue collected and potentially affect the funding availability for local government services.

**8.** The LCM also points out that a significant package of targeted support has been provided to ratepayers in Wales most adversely affected by the pandemic. This has included 100% rates relief, alongside various packages of grant support aligned to the restrictions imposed at

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<sup>1</sup> SI 2005/758 (W.63) (as amended).

<sup>2</sup> A hereditament is, broadly, a unit of property to be assessed for non-domestic rate liability purposes.

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particular times. Welsh businesses have also been eligible for support provided on a UK-wide basis.

**9.** The UK Government has indicated that additional funding of £1.5bn will be made available once the Bill has received Royal Assent, to be administered by local authorities on a discretionary basis to businesses affected by the legislation. The Welsh Government states in the LCM that it “expects to receive consequential funding but no further information is currently available.”

**10.** The provisions for Wales in the Bill would ensure that any determination of NDR liability based on an appeal for MCC, whether it applies retrospectively for the duration of the 2017 rating list, or subsequently, does not take account of any matter directly or indirectly attributable to coronavirus (subject to a limited number of statutory exceptions). The Bill has no effect on the treatment of other types of appeal.

### **Provisions for which Senedd consent is sought**

**11.** The LCM only concerns provisions in **Clause 1** of the Bill relating to the treatment of NDR appeals on grounds of MCC citing Covid-19 related matters. The other provisions in the Bill relating to the disqualification of directors are reserved matters.

**12.** The Bill stipulates that where a relevant determination of liability is to be made, no account should be taken of matters attributable to coronavirus, whether directly or indirectly. The provisions set out in clause 1 of the Bill, with the exception of sub-clause 1(9), relate to Wales.

**13.** Consent is required for these provisions because they fall within the legislative competence of the Senedd, as NDR is not a reserved matter under the Government of Wales Act 2006.

### **Reasons for making these provisions for Wales in a UK Bill**

**14.** The LCM states that “due to the retrospective nature of the provisions, the changes may only be achieved through primary legislation.” The LCM states that “Though paragraph 2(8) of Schedule 6 to the Local Government Finance Act 1988 contains power now vested in the Welsh Ministers by virtue of section 162 and paragraph 30 of Schedule 11 to the Government of Wales Act 2006, to make such provision by way of regulations, such regulatory provision cannot be retrospective.”

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**15.** The possibility of making these changes through a future Welsh Government Bill has been discounted as no suitable legislative vehicle is planned within the time-scales necessary. The LCM goes on to explain that:

*"Using a later Welsh Government Bill would result in uncertainty for businesses and other ratepayers in Wales in the interim. It would also give rise to significant financial implications (see below).*

*"A Welsh Government Bill would need to be laid, debated, passed and commenced for the changes to be effective retrospectively. Any delay would increase the administrative burden on ratepayers, the VOA and Welsh local authorities. Consenting to provisions in the Bill would enable the matter to be resolved promptly, enabling resources to be better targeted and allowing targeted support to be introduced for ratepayers negatively affected by the legislation.*

*"The Bill would ensure that the treatment of appeals in Wales aligns with that in England and that Welsh ratepayers would be treated in a consistent manner."*

**16.** The Legislation, Justice and Constitution Committee (LJC) considered the LCM before this Committee, on Monday 18 October, and subsequently wrote to the Minister for Finance and Local Government to raise "issues of transparency and accessibility". The letter noted that the version of the Bill referred to in the LCM (the Bill as introduced in the House of Commons on 12 May) did not apply the provisions of Clause 1 of the Bill to Wales.

**17.** Amendments were made to the Bill by UK Government at report stage in the House of Commons on 9 September, to extend the provisions of Clause 1 to Wales. The amendments were made at the request of Welsh Ministers, but this was not referred to in the LCM subsequently laid before the Senedd on 21 September.

**18.** The letter from LJC Committee also noted the intention, as set out in the Minister's written statement in July, to "introduce regulations in Wales which will have a similar effect to the provisions to be included in the UK Bill, and those regulations would apply until such time as the UK Bill becomes law." The Committee's letter of 19 October said that as far as it was aware, those regulations had not been made, going on to say: "We have noted that UK Ministers made The Valuation for Rating (Coronavirus) (England) Regulations 2021 in March, and that clause 1(9) of the Bill will revoke the Regulations if and when the Bill is enacted." The LJC Committee's letter sought clarity from the Minister on this issue.

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**19.** This Committee has also noted that Welsh Government issued a six-week consultation on the introduction of such regulations to prevent appeals in relation to Covid-19, which ran from 16 August until 27 September. This consultation was also not referred to in the LCM.

**20.** On 1 November, Welsh Government laid The Valuation for Rating (Wales) (Coronavirus) Regulations 2021, in accordance with Standing Order 27.2 under the negative resolution procedure, to come into force on the same day.

**21.** Paragraph 12 of the Explanatory Memorandum for the regulations states that *"the primary purpose of this statutory instrument is to prevent further appeals, citing an MCC relating to COVID-19, from being lodged in order to protect public finances. For 2020-21, it was estimated that appeals lodged citing MCC related to COVID-19 measures presented a risk to NDR revenue in Wales of between £70m and £100m."*

**22.** The Minister for Finance and Local Government responded to LJC Committee's letter on 2 November, stating that the Bill had been introduced without prior discussion with Welsh Government as to whether provisions for Wales would be included, and pointing out that the timing of the Bill fell within the Senedd's pre-election period. The Minister said she wrote to the then Secretary of state for Housing, Communities and Local Government on 27 July asking for the provisions to be included. and received a response from the then Minister for Regional Growth and Local Government on 3 September confirming this would be done at report stage.

**23.** The Minister said that Welsh Government considered consultation on the regulations to be necessary, adding that:

*"As a result of timing constraints, it has not been possible to include a clause in the Bill revoking these Regulations. I intend to lay further regulations to revoke the Regulations, which will align with the timing of Royal Assent, should the Bill continue to progress."*

**24.** With regard to the lack of information in the LCM, the Minister said that 'background' was not included as the LCM *"focuses on the relevant provisions of the Bill for which consent is required."*

## **Financial Implications**

**25.** The LCM explains that there are no costs associated with the Bill. The Bill mitigates financial risks to the NDR system in Wales: *"the Bill would reduce financial risks. It is estimated that if the Bill were not enacted, there would be a loss in NDR revenue to Wales of between £70m and £100m."*

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## Committee View

**26.** The Committee agrees that the provisions in Clause 1 of the Bill require Senedd consent, and notes the arguments for making these provisions in a UK Bill at this time: for timely mitigation of significant financial risk, to ensure consistency of the NDR regimes between England and Wales, and to preserve the intended purpose of MCC as grounds for appeal.

**27.** Given the need to protect public finances from “significant financial risk”, the Committee thinks it would be helpful for Welsh Government to clarify, in advance of plenary debate on the legislative consent motion associated with this Bill, whether there are already any financial implications attributable to the subject of this LCM, in advance of bringing in the Valuation for Rating (Coronavirus) (Wales) Regulations 2021. The Bill was introduced in May 2021, therefore this issue has been a concern for some time. As noted in the Minister’s letter to LJC Committee, the Valuation for Rating (Coronavirus) (England) Regulations 2021 were introduced on 25 March 2021, whereas Welsh regulations were made on 28 October and came into force on the same date as those Regulations were laid before the Senedd on 1 November.

**28.** The LCM was laid on 21 September and referred to this Committee on 28 September. It would have significantly aided committee scrutiny if the LCM had contained more information, and been more transparent, about the process and timetable for secondary legislation in Wales, in advance of primary legislation potentially being passed.

**29.** In relation to consent being sought for changes to the NDR system in Wales through UK legislation, the Committee also draws Welsh Government’s attention to continued calls from Welsh stakeholders, including FSB Cymru and the Welsh Retail Consortium, for urgent and fundamental reform of business rates in Wales.

**30.** The Committee sees no reason to object to the Senedd approving the Legislative Consent Motion associated with this Memorandum.