

Report on the Legislative Consent Memorandum for the Non-Domestic Rating Bill

22 June 2023

1. Background

1. On 11 April 2023, the Minister for Finance and Local Government ("the Minister") laid a Legislative Consent Memorandum ("the LCM") on the Non-Domestic Rating Bill ("the Bill") before the Senedd.
2. On 25 April 2023, the Business Committee referred the LCM to the Local Government and Housing Committee ("the Committee"), the Economy, Trade, and Rural Affairs Committee, the Finance Committee and the Legislation, Justice and Constitution Committee for consideration, with a reporting deadline of 22 June 2023.
3. The Legislation, Justice and Constitution Committee wrote to the Minister on 18 May to request further information on the LCM.
4. We considered the LCM and the letter from the Legislation, Justice and Constitution Committee at our meeting on 24 May. We considered the Minister's response to the Legislation, Justice and Constitution Committee and correspondence between the Finance Committee and the Minister at our meeting on 15 June.

2. The LCM

5. Paragraphs 3 to 12 of the LCM summarise the Bill and its policy objectives. Paragraphs 48 and 49 set out the UK Government view on the need for consent.



6. Paragraph 5 of the LCM sets out the Welsh Government's conclusion that it is "optimal for certain provisions for Wales to be made within the Bill" and provides reasons at paragraphs 50 to 64 of the LCM.

3. Provisions for which consent is sought

The LCM

7. Non-domestic rates ("NDR") is a devolved matter in Wales. Local taxes to fund local authority expenditure (for example, council tax and non-domestic rates) are exceptions to the fiscal, economic and monetary policy reservation in the Government of Wales Act 2006 ("GoWA 2006") (paragraph 15 of Schedule 7A). This means that the Senedd has competence to pass primary legislation on the subject matter of NDR.

8. Clauses 1, 3, 10 to 13, 15, 17 and 19 of the Bill and the Schedule to the Bill make provision relating to NDR. The Welsh Government's LCM provides that consent is required for these clauses and the Schedule, because they make provision for a purpose within the legislative competence of the Senedd, notably the subject matter of NDR.

Clause 1

9. Introduces two new NDR reliefs which will apply in relation to occupied hereditaments on local lists situated in England and Wales, they are "improvement rates relief" and "heat networks rates relief". Clause 1 confers on the Welsh Ministers a regulation-making power to prescribe the meaning of "qualifying improvement works" and "heat network" and such regulations will be subject to the negative procedure. The Welsh Ministers may extend the period which the new reliefs will apply and these regulations are subject to the affirmative procedure with a draft laid before Senedd Cymru.

Clause 3

10. Introduces charitable rate relief and improvement rate relief for eligible hereditaments on English and Welsh central lists. The Welsh Ministers will prescribe the meaning of "qualifying improvement works" by regulations, under the negative procedure. The power to extend the period which this relief will be available will be subject to the affirmative procedure, with a draft laid before Senedd Cymru.

Clause 13 and Paragraphs 49(c) and 50 in Part 4 of the Schedule

11. Regulation-making powers are conferred on the Commissioners for HMRC in clause 13(2), in relation to both England and Wales. Clause 13(2) introduces a new duty for ratepayers to provide information to HMRC, as part of the Digitalising Business Rates (DBR) reforms. Clauses 13(4) and (6) introduce penalties in connection with the duty and an appeals process. Commissioners for HMRC may amend the definition of “taxpayer reference” in paragraph 4F(1) of Schedule 9 to the 1988 Act, and may also provide that the new duty does not apply to certain person(s). Clause 13(2) provides that the Commissioners for HMRC must consult the Welsh Ministers before making regulations to the extent that the regulations make provision in relation to Wales.

12. Paragraphs 49(c) and 50 in Part 4 of the Schedule provide that Commissioners for HMRC may make provision in relation to notices served under paragraph 5ZA (penalties), or may change the amount of any penalty under that paragraph. Commissioners for HMRC must consult the Welsh Ministers before making such regulations.

13. The LCM describes these provisions as “administrative provisions to ensure HMRC can maintain the Digitalising Business Rates Programme effectively.” Paragraphs 45 to 47 of the LCM acknowledge that the Bill includes limited delegated powers in relation to clause 13 and Part 4 of the Schedule. The Welsh Government cites “insufficient time prior to the introduction of the Bill” as the reason why a firm agreement on the appropriate delegation of powers to the Welsh Ministers could not be reached in respect of clause 13 and Part 4 of the Schedule.

“47. The Welsh Government continues to engage with the UK Government on the appropriate conferral of delegated powers, with further discussions around these specific powers anticipated throughout the passage of the Bill.”

14. In response to the Legislation, Justice and Constitution Committee’s letter, the Minister stated:

“I can confirm that our discussions with the UK Government on this matter concluded during the Bill’s passage through the House of Commons. No amendments to the Bill are required as a result of those discussions. It is the Welsh Government’s intention to support the Bill provisions extended to Wales in their entirety.”

Clause 15

15. Amends the procedure for specific regulation-making powers already conferred on the Welsh Ministers in Schedule 7 to the 1988 Act, from made affirmative to draft affirmative. The Local Government and Elections (Wales) Act 2021 ("the 2021 Act") inserted sub-paragraphs 13A to 13C into paragraph 5 of Schedule 7 to the 1988 Act in relation to Wales. Sub-paragraph 13A provides the Welsh Ministers with regulation-making powers to change the mechanism by which the NDR multiplier is calculated for each financial year. Paragraph 3(d) of clause 15 of the Bill amends sub-paragraph 13C by changing the made affirmative procedure that applied to such regulations, to the draft affirmative procedure. The LCM laid by the Welsh Government does not provide a detailed explanation as to the reasons why the Welsh Government is seeking to change the procedure for the regulation-making power, just over two years since the 2021 Act received royal assent.

16. The Minister provided additional information in response to the Legislation, Justice and Constitution Committee:

"The relevant regulation-making power allows Welsh Ministers to substitute the effect of the Consumer Prices Index on the setting of the non-domestic rating multiplier. This power has been exercised annually in recent years, to freeze the multiplier, as part of the package of support provided to ratepayers during the pandemic and subsequent economic pressures. As the related policy and funding decisions form part of the Welsh Government's Draft Budget, published in December each year, the timing constraints imposed by the existing procedures on the exercise of this power, including the interaction with the Senedd's consideration of the local government finance report, have proved themselves to present a practical challenge. In some years this has impacted negatively on the time available for Senedd scrutiny of the legislation, when the local government finance reports have been considered relatively soon after publication of the Draft Budget.

Clause 15(3)(d) removes the existing deadline (before the earlier of 1 March or the Senedd's approval of the local government finance report) for approval of the regulations by the Senedd and ensures that a draft of the regulations is scrutinised by the Senedd before it is made. I do not, therefore, consider that the change of procedure from made affirmative to draft affirmative amounts to a downgrading of scrutiny. If anything, in combination with the removal of

unnecessary timing constraints, it will help to ensure that the Senedd has appropriate time for scrutiny of the regulations.

Clause 15(4) removes the existing restriction on when the multiplier can be calculated and confirmed for billing authorities. This will ensure that billing authorities and ratepayers in Wales can be provided with clarity as early as possible and are not disadvantaged compared to those in England due to procedural constraints which do not enhance (and may in some circumstances constrain) scrutiny.

Taken together, these changes will: ensure the Senedd has a consistent opportunity for scrutiny before regulations are made; and reduce the risk of delayed non-domestic rates billing, to the benefit of local authorities and ratepayers in Wales."

Clause 17

17. Confers on the Welsh Ministers a regulation-making power to make consequential amendments which arise from the Bill. Regulations which amend or repeal a provision made by primary legislation will be subject to the affirmative procedure. Any other regulations will be subject to the negative procedure.

Clause 19

18. Confers on the Welsh Ministers a power to commence a number of clauses in the Bill which relate to business rates, in so far as those provisions relate to Wales. These clauses are:

- i. Clause 10 (Disclosure of valuation information to ratepayers),
- ii. Clause 12 (Sharing of information between billing authorities and HMRC),
- iii. Clauses 13(1), 13(2), 13(4) and 13(6)(Requirements for ratepayers etc to provide information),
- iv. Clauses 15(1), 15(3)(a), 15(3)(c)(ii), 15(3)(d) and 15(4) (Multipliers), and
- v. Paragraphs 17(1)(d), 39(a), 40, 46, 49(c) and (d), 50 and 53(a) of the Schedule.

Reasons for making these provisions in Wales

19. Paragraphs 50 - 64 of the LCM set out the Welsh Government's reasons for making provisions for Wales in the Bill. The LCM states:

"50. These changes can only be made by way of primary legislation. The possibility of making these changes through a future Welsh Government Bill has been considered. The changes have been identified as suitable for pursuing through a UK Government Bill on the basis that they would be beneficial to implement as soon as practically possible. Awaiting the Welsh Government's planned Local Government Finance (Wales) Bill would lead to both the Welsh Government and ratepayers in Wales being put at a disadvantage and rescheduling the Senedd Bill would have wider negative impacts on our legislative programme."

20. Paragraphs 55 to 56 of the LCM explain that the Welsh Government supports the inclusion of clause 11 because if the Senedd intended to enact similar provisions in a Senedd Bill, the provision would fall "outside competence as it extends beyond England and Wales". Clause 11 allows the Land and Property Services in Northern Ireland to be provided with Revenue and Customs information held by a Valuation Officer in respect of hereditaments in Wales, which the Minister believes will help officials in Northern Ireland provide more accurate valuations to ratepayers. Even though the purpose of the provision relates to a devolved matter (NDR), such a provision would extend to Northern Ireland, and therefore extend beyond England and Wales.

21. For other provisions, the Senedd would not be able to enact similar provisions in a Senedd Bill without the consent of HM Treasury, as those provisions confer or impose a function the Valuation Office Agency (VOA) which is a reserved authority for the purposes of paragraph 8 of Schedule 7B to GoWA 2006. These provisions are clauses 10, 12 and 13:

"53. Clause 10 enables ratepayers in Wales and England to be treated on a consistent basis. Given the interconnected nature of the relevant Welsh and English NDR regimes (with the VOA being a cross-border agency), it would be appropriate for provision for both to be taken forward at the same time in the same legislative instrument. If this provision did not apply in relation to Wales, Valuation Officers would be permitted to disclose valuation information in respect of a hereditament in England, but a similar power would not be available in relation to hereditaments in Wales. The provision will provide greater clarity and transparency as it will enable ratepayers to seek the evidence used to calculate the rateable values of their hereditaments. The conferral of a power on the Welsh Ministers to commence this provision by way of regulations in relation to Wales is intended to give Welsh Ministers control over the timing of implementation. An equivalent power is conferred on the Secretary of State in relation to England. The Welsh

Government will work closely with the VOA to ensure that changes are introduced at a time when they are able to have the full desired effect. It is intended that these would be introduced during the course of the 2023 rating list and potentially prior to Royal Assent of the planned Local Government Finance (Wales) Bill, which is the next suitable legislative vehicle. [...]

57. Clauses 12 and 13 establish the necessary information gateways to enable the Digitalising Business Rates Programme to be implemented. The programme will be operated by HMRC across England and Wales, so that we are able to benefit from a powerful linked dataset, including HMRC tax data, that we would not otherwise be able to access. In order to deliver the programme, some of the Bill provisions will modify HMRC functions, by requiring them to share information with local authorities in Wales. Divergence of approach carries a risk that Welsh ratepayers, billing authorities, and the Welsh Government may not be able to benefit from the programme. If we do not maintain our involvement in the development of the programme, it may be more difficult and potentially costly and unfeasible for it to be re-extended to Wales at a later date."

22. The LCM provides that a Local Government Finance (Wales) Bill is "planned". However, the LCM does not provide further detail on future legislation other than acknowledging that clauses in this Bill applying to England only have been identified as being suitable for consideration for inclusion in a future Senedd Bill:

"63. The above changes were introduced at the request of the Welsh Government, acknowledging the importance of timely introduction and cross-border consistency being beneficial for both ratepayers and the Valuation Office Agency (VOA).

64. It is recognised that certain other provisions within the Bill would be desirable for Wales, without the same impact on ratepayers if implemented at a later date. It is acknowledged that if not introduced in line with the Bill there would be discrepancies between the two rating systems, however these provisions have been identified as having minimal risk of negative impact on ratepayers during the period where there is variation between the two systems. These have been identified as suitable for consideration for inclusion in a future Senedd Bill. As such, their application to Wales has not been sought in the Bill and they do not require an LCM."

4. Committee consideration and conclusion

23. We considered the LCM at our meeting on 24 May. We also noted the letter from the Legislation, Justice and Constitution Committee to the Minister for Finance and Local Government. We noted the letter from the Finance Committee to the Minister for Finance and Local Government and the Minister's responses to both letters at our meeting on 15 June.

24. Most Members feel that they are able to recommend that the Senedd gives its consent for the UK Government to legislate on these devolved matters. One Member of the Committee, Mabon ap Gwynfor MS, disagrees with the majority view and believes that consent should not be granted. Mabon ap Gwynfor raised concern at the amount of time available to scrutinise the legislation and noted his preference for the provisions to be made through Senedd legislation where possible.