

LEGISLATIVE CONSENT MEMORANDUM

RATING (CORONAVIRUS) AND DIRECTORS DISQUALIFICATION (DISSOLVED COMPANIES) BILL

1. This Legislative Consent Memorandum is laid under Standing Order (SO) 29.2. SO29 prescribes that a Legislative Consent Memorandum must be laid, and a Legislative Consent Motion may be tabled, before the Senedd Cymru if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies, the legislative competence of the Senedd.
2. The Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill (the Bill) was introduced in the House of Commons on 12 May 2021. The Bill can be found at: <https://bills.parliament.uk/bills/2861>

Policy Objectives

3. The UK Government's stated policy objective is to prevent material change of circumstances (MCC) non-domestic rating appeals, which cite COVID-19 related matters. 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 should or should not be shown on a rating list or as to the rateable value of a hereditament. The rationale for this 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.
4. 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.
5. 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 through the Retail, Leisure and Hospitality Rates Relief scheme alongside various packages of grant support aligned to the restrictions imposed at particular times. Welsh businesses have also been eligible for support provided on a UK-wide basis.
6. 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 expects to receive consequential funding but no further information is currently available.

7. Due to the retrospective nature of the provisions, the changes may only be achieved through primary legislation.

Summary of the Bill

8. The Bill is sponsored by the Ministry of Housing, Communities and Local Government (MHCLG).
9. 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. The Bill has no effect on the treatment of other types of appeal.
10. The Bill also includes provisions related to insolvency for which competency is not devolved to Wales.

Provisions in the Bill for which consent is required

11. This memorandum only concerns provisions in clause 1 of the Bill relating to the treatment of non-domestic rates appeals on grounds of a material change of circumstances citing Covid-19 related matters. The provisions in the Bill relating to the disqualification of directors concern non-devolved matters.
12. The Bill stipulates that where a relevant determination of liability is to be made by the VOA, no account should be taken of matters attributable to coronavirus, whether directly or indirectly.
13. Clause 1: The provisions set out in clause 1 of the Bill, with the exception of sub-clause 1(9), relate to Wales. 15. Consent is required for these provisions because they fall within the legislative competence of the Senedd Cymru, as NDR is not a reserved matter under the Government of Wales Act 2006. The clauses do not contain any subordinate legislation powers for Welsh Ministers.
14. The provisions prescribe assumptions that are to be applied to a prescribed class of hereditament in determining its rateable value. 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.

Reasons for making these provisions for Wales in The Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill

15. 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 discounted as no suitable legislative vehicle is planned within the time-scales

necessary for these provisions. 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).

16. 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.
17. 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.

Financial implications

18. There are no costs associated with the Bill: rather, 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.
19. The UK Government has indicated that £1.5bn of funding support will be provided following the successful passage of the Bill. The support in England will be administered on a discretionary basis by local authorities with the intention of supporting those negatively affected by the legislation. The Welsh Government awaits further information and expects to receive consequential funding in due course.

Conclusion

20. It is my view that it is appropriate to deal with these provisions in this UK Bill to mitigate the financial risks and for reasons of timing, as well as ensuring consistency within the NDR system and preserving the intended purpose of MCC as grounds for appeal. The interconnected nature of the Welsh and English systems and the role of the VOA in handling appeals also support the provisions being taken forward at the same time and in the same legislative instrument. The consent of the Senedd is sought for these provisions to be dealt with through this UK Bill.

Rebecca Evans MS
Minister for Finance and Local Government
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