

Agenda – Constitutional and Legislative Affairs Committee

Meeting Venue:	For further information contact:
Committee Room 1 – Senedd	Gareth Williams
Meeting date: Monday, 7 November 2016	Committee Clerk 0300 200 6565
Meeting time: 14.30	SeneddCLA@assembly.wales

1 Introduction, apologies, substitutions and declarations of interest
(14.30)

**2 Instruments that raise no reporting issues under Standing Order
21.2 or 21.3**
(14.30 – 14.35) (Pages 1 – 2)

CLA(5)–10–16 – Paper 1 – Statutory Instruments with clear reports

Affirmative Resolution Instruments

**SL(5)022 – The Residential Property Tribunal Procedures and Fees (Wales)
Regulations 2016**

Negative Resolution Instruments

**SL(5)023 – The Regulation of Private Rented Housing (Rent Repayment Orders)
(Supplementary Provisions) (Wales) Regulations 2016**

3 Paper(s) to note
(14.35 – 14.40)



**Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill:
Correspondence with the Cabinet Secretary for Finance and Local Government**

(Pages 3 – 12)

CLA(5)–10–16 – Paper 2 – Correspondence from the Committee to the Cabinet Secretary for Finance and Local Government, 21 October 2016

CLA(5)–10–16 – Paper 3 – Correspondence from the Cabinet Secretary for Finance and Local Government to the Committee, 1 November 2016

CLA(5)–10–16 – Paper 4 – Correspondence from the Cabinet Secretary for Finance and Local Government to the Committee, Annex, 1 November 2016

4 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:

(14.40)

(vi) the committee is deliberating on the content, conclusions or recommendations of a report it proposes to publish; or is preparing itself to take evidence from any person;

(ix) any matter relating to the internal business of the Committee, or of the Assembly is to be discussed.

5 Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill: Draft report

(14.40 – 15.10)

(Pages 13 – 36)

CLA(5)–10–16 – Paper 5 – Draft report

6 Constitutional and Legislative Affairs Committee: Forward work programme

(15.10 – 15.40)

(Pages 37 – 68)

CLA(5)–10–16 – Paper 6 – Research Service Briefing

CLA(5)–10–16 – Paper 7 – Legal Service Briefing

CLA(5)–10–16 – Paper 8 – Forward work programme

Date of the next meeting

Monday 14 November 2016

Statutory Instruments with Clear Reports Agenda Item 2

7 November 2016

SL(5)022 - The Residential Property Tribunal Procedures and Fees (Wales) Regulations 2016

Procedure: Affirmative

In light of sections 30 to 34 of the Housing (Wales) Act 2014 the Regulations make provision with regards to applications made under that Act in respect of rent stopping orders and rent repayment orders. The Regulations also provide a power for a residential property tribunal to close inactive applications.

In addition, the Regulations revoke and consolidate the provisions of the:

- Residential Property Tribunal Procedures and Fees (Wales) Regulations 2012;
- Residential Property Tribunal Procedures and Fees (Wales) (Amendment) Regulations 2014;
- Residential Property Tribunal Procedures and Fees (Wales) (Amendment No 2) Regulations 2014; and
- Residential Property Tribunal Procedures and Fees (Wales) (Amendment) Regulations 2015.

Parent Act: Housing (Wales) Act 2014

Date Made: Not stated

Date Laid: 18 October 2016

Coming into force date: Not stated



SL(5)023 - The Regulation of Private Rented Housing (Rent Repayment Orders) (Supplementary Provisions) (Wales) Regulations 2016

Procedure: Negative

These Regulations supplement the provisions of sections 32 and 33 of the Housing (Wales) Act 2014 which deal with rent repayment orders. Specifically, they deal with the making of rent repayment orders by a residential property tribunal on the application of a licensing authority, a local housing authority or a tenant of a dwelling.

Parent Act: Housing (Wales) Act 2014

Date Made: 17 October 2016

Date Laid: 21 October 2016

Coming into force date: 24 November 2016



Mark Drakeford AM
Cabinet Secretary for Finance and Local Government

21 October 2016

Dear Mark

Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill

Thank you for attending the Committee's meeting on [Monday 3 October 2016](#) to aid our scrutiny of the [Land Transaction Tax and Anti-avoidance of Devolved Taxes \(Wales\) Bill](#). I also acknowledge receipt of your letter of 18 October 2016.

During the meeting you stated that the powers to make subordinate legislation within the Bill corresponded with both the *Stamp Duty Land Tax Act 2015* and the *Land and Buildings Transaction Tax (Scotland) Act 2013*. We would welcome further clarification on how the 33 regulation and order making powers within the Bill compare with the legislation in place at Westminster and the Scottish Parliament. Should the powers differ between legislatures, we would be grateful to receive an explanation as to why you have chosen a different procedure.

We also questioned you about the use of either the negative or affirmative procedure under section 76(1), depending on the circumstances. The Explanatory Memorandum states that where the Welsh Ministers form the opinion that the effect of the regulations may lead to the imposition or an increase in an individual's liability to tax, the affirmative procedure is prescribed. We remain unclear how this opinion will be formed. What evidence or modelling will be used to judge whether the regulations have the effect of imposing or increasing a tax liability?



Finally, the purpose of section 76(2) of the Bill is to permit the amendment of primary legislation by regulations. It is a long standing principle that regulations that amend primary legislation are subject to the affirmative procedure. I would be grateful if you could explain why it is proposed that the affirmative procedure will not be used for regulations made under section 76(2).

It would be helpful to receive a response to this letter by 3 November 2016.

I am copying this letter to Simon Thomas AM, Chair of Finance Committee.

Yours sincerely

Huw Irranca-Davies

Chair





Huw Irranca-Davies AM
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

1 November 2016

Dear Huw

Thank you for your letter dated 21 October asking for clarification on a number of points in relation to the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill ("the Bill"). I have addressed the points raised below:

- **Powers to make subordinate legislation in SDLT and LBTT legislation**

Annex 1 to this letter contains a table identifying subordinate legislation powers in SDLT and LBTT legislation. These powers have been identified on the basis that the scope of the powers is the same, or similar to, the scope to the powers in the Bill.

The table should be read alongside the UK and Scottish provisions to ensure a complete understanding of the similarities and differences. I should also note that the table does not refer to those powers in SDLT or LBTT legislation which are not replicated in this Bill.

I have determined the appropriate subordinate legislation procedure by considering whether the regulations could have an effect on an individual's tax liability. Where the regulations make a substantive difference to the amount of tax for which buyers are liable (i.e. by imposing or increasing a charge to tax), they are subject to the affirmative or provisional affirmative procedure. Powers to make regulations as to matters which, by contrast, do not substantively affect the charge to tax and are technical or mechanical are subject to the negative procedure.

We consider that the smaller number of powers in SDLT legislation is because the UK Government tends to rely on the annual Finance Bill to make changes to SDLT legislation, and the broad power conferred by section 109 of the Finance Act 2003, which enables UK Treasury Ministers to vary any part of SDLT legislation, except the tax rates and bands.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Gohebiaeth.Mark.Drakeford@llyw.cymru
Correspondence.Mark.Drakeford@gov.wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

- **Approach to deciding whether regulations made under section 76(1) and 76(2) should be subject to the affirmative or negative procedure**

As the substance of this Bill is being scrutinised closely, it is not normally necessary for these regulations to be subject to the affirmative procedure, as they will be limited to making incidental, consequential, supplementary, transitional, transitory or saving provisions which are necessary to make sure the provisions in this Bill work properly.

However, it is possible that regulations made under this section might have the effect of changing a person's tax liability. To maintain consistency with the broader approach taken across the Bill, the affirmative procedure is prescribed in these cases.

The question of whether particular regulations will have this effect, and therefore be subject to the affirmative procedure, will need to be considered carefully on a case-by-case basis, taking into account the purpose of the regulations and their overall effect. For this reason, it is not possible to give an exhaustive list of cases where regulations would always be subject to the affirmative procedure, but I am committed to explaining how the Welsh Ministers have reached this decision in the explanatory memorandum accompanying any regulations made under this section.

I hope that these explanations are helpful. I am happy to provide any further information on the Bill and how I see it functioning if this would be helpful.

I am copying this letter to the Chair of the Finance Committee.

Yours sincerely



Mark Drakeford AM/AC

Ysgrifennydd y Cabinet dros Gyllid a Llywodraeth Leol
Cabinet Secretary for Finance and Local Government

CC: Simon Thomas AM, Chair of the Finance Committee

Annex 1 - Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill

Table 1: Subordinate legislation powers in SDLT, LBTT and LTTA legislation

Description of power	Subordinate legislation power in LTTA Bill	Equivalent provision in SDLT legislation	Equivalent provision in LBTT legislation
Power to add, remove or modify the list of exempt interests	Section 5(4) <i>Procedure: AFFIRMATIVE</i>	Section 48(5) FA 2003 <i>Procedure: NEGATIVE</i>	Section 5(4) LBTT(S)A 2013 <i>Procedure: AFFIRMATIVE</i>
Power to modify chargeable consideration provisions	Section 18(2) <i>Procedure: AFFIRMATIVE</i>	Section 50(2) FA 2003 <i>Procedure: NEGATIVE</i>	Section 17(2) LBTT(S)A 2013 <i>Procedure: NEGATIVE (but AFFIRMATIVE when amending primary legislation)</i>
Power to set tax bands and tax rates	Section 24(1) <i>Procedure: First regulations = AFFIRMATIVE, second and subsequent regulations = PROVISIONAL AFFIRMATIVE</i>	Not applicable (<i>tax bands and tax rates set through resolutions made under Provisional Collection of Taxes Act and annual Finance Act</i>)	Section 24(1) LBTT(S)A 2013 <i>Procedure: First regulations = AFFIRMATIVE, second and subsequent regulations = PROVISIONAL AFFIRMATIVE</i>
Power to add, modify or remove reliefs or modify section 31 (relief TAAR)	Section 30(6) <i>Procedure: AFFIRMATIVE</i>	Not applicable (<i>reliefs introduced, removed and modified through resolutions made under Provisional Collection of Taxes Act and annual Finance Act</i>)	Section 27(3) LBTT(S)A 2013 <i>Procedure: AFFIRMATIVE</i>
Power to make further provision about the application of LTT to companies	Section 33(7) <i>Procedure: AFFIRMATIVE</i>	No equivalent power	No equivalent power
Power to provide that certain schemes are not to be treated as unit trust schemes for purposes of LTT	Section 34(6) <i>Procedure: NEGATIVE</i>	Section 101(5) FA 2003 <i>Procedure: NEGATIVE</i>	Section 45(6) LBTT(S)A 2013 <i>Procedure: NEGATIVE</i>

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Power to make provision to ensure LTT has effect in relation to open-ended investment companies and transactions involving those companies	Section 35(1) Procedure: AFFIRMATIVE	Section 102(1) FA 2003 Procedure: NEGATIVE	Section 46(1) LBTT(S)A 2013 Procedure: NEGATIVE
Power to amend partnership provisions	Section 40(2) Procedure: AFFIRMATIVE	No equivalent power	Section 49(2) LBTT(S)A 2013 Procedure: AFFIRMATIVE
Power to amend trust provisions	Section 41(2) Procedure: AFFIRMATIVE	No equivalent power	Section 50(2) LBTT(S)A 2013 Procedure: AFFIRMATIVE
Power to substitute thresholds at which a transaction becomes notifiable	Section 45(10) Procedure: AFFIRMATIVE	No equivalent power	Section 30(7) LBTT(S)A 2013 Procedure: AFFIRMATIVE
Power to amend late payment interest start date in cases where the consideration is contingent or unascertained	Section 46(5) Procedure: AFFIRMATIVE	Section 87 FA 2003 Procedure: NEGATIVE	Section 217(2) RSTPA 2014 Procedure: NEGATIVE
Power to amend late payment interest start date in cases where relief is withdrawn	Section 48(5) Procedure: AFFIRMATIVE	Section 87 FA 2003 Procedure: NEGATIVE	Section 217(2) RSTPA 2014 Procedure: NEGATIVE
Power to amend period within which returns must be made	Section 51(1) Procedure: AFFIRMATIVE	Section 76(2) FA 2003 (<i>note power exercisable by Commissioners for Revenue and Customs not Treasury</i>) Procedure: NEGATIVE	Section 39(1) LBTT(S)A 2013 Procedure: NEGATIVE
Power to make regulations about the deferral of tax	Section 63(1) Procedure: AFFIRMATIVE	Section 90(2) FA 2003 (<i>note power exercisable by Commissioners for Revenue and</i>	Section 42 LBTT(S)A 2013 Procedure: NEGATIVE

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		<i>Customs not Treasury</i> Procedure: NEGATIVE	
Power to make provision about WRA certificates	Section 64(5) Procedure: NEGATIVE	Section 79(4) FA 2003 (<i>note power exercisable by Commissioners for Revenue and Customs not Treasury</i>) Procedure: NEGATIVE	No equivalent power
Power to modify the meaning of “residential property”	Section 71(10) Procedure: AFFIRMATIVE	Section 116(8) FA 2003 Procedure: NEGATIVE	Section 59(9) LBTT(S)A 2013 Procedure: AFFIRMATIVE
Power to make consequential etc. provision	Section 76(1) Procedure: NEGATIVE, but AFFIRMATIVE if the regulations have the effect of imposing or increasing liability to tax	No specific stand-alone power, but see section 109(6) FA 2003 (PROVISIONAL AFFIRMATIVE) and section 114(6) FA 2003	Section 67(1) LBTT(S)A 2013 Procedure: NEGATIVE (but AFFIRMATIVE when amending primary legislation)
Power to commence provisions in the Bill	Section 79(2) No procedure	No equivalent power	Section 70(2) LBTT(S)A 2013 No procedure
Power to add, remove or vary exemptions	Paragraph 7, Schedule 3 Procedure: AFFIRMATIVE	Paragraph 5, Schedule 3 FA 2003 Procedure: NEGATIVE	Paragraph 8, Schedule 1 LBTT(S)A 2013 Procedure: AFFIRMATIVE
Power to charge tax on the rent element of residential lease	Paragraph 27(2), Schedule 5 Procedure: AFFIRMATIVE	No equivalent power	No equivalent power
Power to specify residential	Paragraph 27(4), Schedule 5	Not applicable (<i>tax bands and tax</i>)	Paragraph 3, Schedule 19

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lease rates and bands	<i>(power can only be exercised if regulations made under paragraph 27(2), Schedule 5)</i> Procedure: First regulations = AFFIRMATIVE, second and subsequent regulations = PROVISIONAL AFFIRMATIVE	<i>rates set through resolutions made under Provisional Collection of Taxes Act and annual Finance Act)</i>	LBTT(S)A 2013 Procedure: First regulations = AFFIRMATIVE, second and subsequent regulations = PROVISIONAL AFFIRMATIVE
Power to specify lease rates and bands	Paragraph 28(1), Schedule 5 Procedure: First regulations = AFFIRMATIVE, second and subsequent regulations = PROVISIONAL AFFIRMATIVE	Not applicable (<i>tax bands and tax rates set through resolutions made under Provisional Collection of Taxes Act and annual Finance Act</i>)	Paragraph 3, Schedule 19 LBTT(S)A 2013 Procedure: First regulations = AFFIRMATIVE, second and subsequent regulations = PROVISIONAL AFFIRMATIVE
Power to specify alternative temporal discount rate	Paragraph 32, Schedule 5 Procedure: AFFIRMATIVE	Paragraph 8, Schedule 5 FA 2003 Procedure: NEGATIVE	Paragraph 7, Schedule 19 LBTT(S)A 2013 Procedure: NEGATIVE
Power to specify amount of relevant rent	Paragraph 36(1), Schedule 5 Procedure: AFFIRMATIVE	No equivalent power	No equivalent power
Power to prescribe further information in relation to alternative finance investment bonds	Paragraphs 8(1), 9(1), 12(b), 16 and 18(4) or (5), Schedule 10 Procedure: NEGATIVE	Paragraph 1, Schedule 61 FA 2009 Procedure: NEGATIVE	Paragraph 3, Schedule 8 LBTT(S)A 2013 Procedure: NEGATIVE
Power to prescribe minimum percentage of tax attributable to dwellings in multiple dwellings relief	Paragraph 6(6), Schedule 12 Procedure: NEGATIVE	No equivalent power	Paragraph 12, Schedule 5 LBTT(S)A 2013 Procedure: NEGATIVE
Power to add to list of “relevant public sector bodies” for	Paragraph 2(3)(g), Schedule 14	Paragraph 1, Schedule 9 FA 2003	No equivalent power (<i>relief does not exist in Scotland</i>)

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purposes of right to buy relief	Procedure: NEGATIVE	No procedure	
Power to prescribe proportion of tax in acquisition relief	Paragraph 3(1), Schedule 16 Procedure: AFFIRMATIVE	No equivalent power	Paragraph 6, Schedule 11 LBTT(S)A 2013 Procedure: NEGATIVE
Power to specify particular transaction eligible for relief for certain acquisitions involving public bodies	Paragraph 1(2), Schedule 19 Procedure: NEGATIVE	Section 66(2) FA 2003 Procedure: NEGATIVE	Paragraph 2, Schedule 16 LBTT(S)A 2013 Procedure: NEGATIVE
Power to add to list of public bodies for purposes of relief for certain acquisitions involving public bodies	Paragraph 1(4)(l), Schedule 19 Procedure: NEGATIVE	Section 66(4) FA 2003 Procedure: NEGATIVE	Paragraph 4, Schedule 16 LBTT(S)A 2013 Procedure: NEGATIVE
Power to add to list of health bodies eligible for relief	Paragraph 2(d), Schedule 19 Procedure: NEGATIVE	No equivalent power	No equivalent power (<i>relief does not exist in Scotland</i>)
Power to add to list of public bodies for purposes of relief for compliance with planning obligations	Paragraph 2(3)(e), Schedule 20 Procedure: NEGATIVE	Section 61(3) FA 2003 No procedure	Paragraph 5, Schedule 15 LBTT(S)A 2013 Procedure: NEGATIVE
Power to make provision about records to be kept or preserved for purposes of TCMA	Paragraph 7, Schedule 22 (introducing new section 39A TCMA) Procedure: NEGATIVE	Paragraph 4, Schedule 11 FA 2003 Procedure: NEGATIVE	Section 81 RSTPA 2014 Procedure: AFFIRMATIVE

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