

Agenda – Constitutional and Legislative Affairs Committee

Meeting Venue:	For further information contact:
Committee Room 1 – Senedd	Gareth Williams
Meeting date: 22 January 2018	Committee Clerk
Meeting time: 14.30	0300 200 6362
	SeneddCLA@assembly.wales

1 Introduction, apologies, substitutions and declarations of interest

2 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3

(Pages 1 – 6)

CLA(5)–03–18 – Paper 1 – Statutory instruments with clear reports

Negative Resolution Instruments

2.1 SL(5)163 – The Building (Amendment) (Wales) Regulations 2017

2.2 SL(5)164 – The Regulated Services (Penalty Notices) (Wales) Regulations 2017

2.3 SL(5)169 – The Land Transaction Tax (Administration) (Wales) Regulations 2018

Affirmative Resolution Instruments

2.4 SL(5)167 – The Land Transaction Tax (Specified Amount of Relevant Rent) (Wales) Regulations 2018

2.5 SL(5)168 – The Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (Amendment to Schedule 5) Regulations 2018

2.6 SL(5)171 – The Landfill Disposals Tax (Tax Rates) (Wales) Regulations 2018



2.7 SL(5)172 – The Land Transaction Tax (Transitional Provisions) (Wales) Regulations 2018

3 Instruments that raise issues to be reported to the Assembly under Standing Order 21.2 or 21.3

Affirmative Resolution Instruments

3.1 SL(5)170 – The Land Transaction Tax (Tax Bands and Tax Rates) (Wales) Regulations 2018

(Pages 7 – 26)

CLA(5)–03–18 – Paper 2 – Regulations

CLA(5)–03–18 – Paper 3 – Explanatory Memorandum

CLA(5)–03–18 – Paper 4 – Report

4 Papers to note

4.1 Letter from the Secretary of State for Wales to the Llywydd re: The European Union (Withdrawal) Bill

(Pages 27 – 31)

CLA(5)–03–18 – Paper 5 – Letter from the Secretary of State for Wales to the Llywydd

4.2 Written statement by the Welsh Government: The EU (Withdrawal) Bill

(Pages 32 – 33)

CLA(5)–03–18 – Paper 6 – Written statement by the Welsh Government: The EU (Withdrawal) Bill

4.3 Letter from the Cabinet Secretary for Energy, Planning and Rural Affairs re: SL(5)150 The Agricultural Wages (Wales) Order 2017

(Page 34)

CLA(5)–03–18 – Paper 7 – Letter from the Cabinet Secretary

4.4 Written statement by the Welsh Government: Amendments to the UK's Trade Bill proposed by the Scottish and Welsh Governments.

(Pages 35 – 39)

CLA(5)–03–18 – Paper 8 – Written statement by the Welsh Government: Amendments to the UK's Trade Bill proposed by the Scottish and Welsh Governments.

4.5 Interparliamentary Forum on Brexit 2nd meeting, 18 January 2018

(Pages 40 – 41)

CLA(5)–03–18 – Paper 9 – Interparliamentary Forum on Brexit 2nd meeting, 18 January 2018

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

6 Legal advice note: consideration of subordinate legislation other than statutory instruments

(Pages 42 – 45)

CLA(5)–03–18 – Paper 10 – Legal advice note

7 The Powers in the EU (Withdrawal) Bill to make subordinate legislation

(Pages 46 – 74)

CLA(5)–03–18 – Paper 11 – Update paper

CLA(5)–03–18 – Paper 12 – Summary of consultation responses

CLA(5)–03–18 – Paper 13 – Research briefing

CLA(5)–03–18 – Paper 14 – CLA positions

CLA(5)–03–18 – Paper 15 – Legal advice

8 SICM(5)2 – The Control of Mercury (Enforcement) Regulations 2017: Draft Report

(Pages 75 – 77)

CLA(5)–03–18 – Paper 16 – Draft Report

9 Regulation of Registered Social Landlords (Wales) Bill: Draft Report

(Pages 78 – 96)

CLA(5)–03–18 – Paper 17 – Draft Report

10 Stronger Voice for Wales: Draft Report

(Pages 97 – 161)

CLA(5)-03-18 – Paper 18 – Update paper

CLA(5)-03-18 – Paper 19 – Draft Report

Date of the next meeting

29 January 2018

Statutory Instruments with Clear Reports Agenda Item 2

22 January 2018

SL(5)163 – The Building (Amendment) (Wales) Regulations

Procedure: Negative

These Regulations amend the Building Regulations 2010 (“the Building Regulations”) in relation to Wales.

Regulation 2(2) amends regulation 37A(1) of the Building Regulations. Regulation 37A of the Building Regulations applies where building work consists of the erection or material change of use of the types of building listed in paragraph (1). Where that regulation applies, those buildings must be provided with an automatic fire suppression system.

The types of building required to be provided with an automatic fire suppression system include rooms for residential purposes other than those listed as exceptions. Hostels were previously excepted from the requirement. The effect of the amendment in regulation 2(2) is that automatic fire suppression systems are now required to be provided in hostel rooms, other than those rooms which provide temporary accommodation to those who are ordinarily resident elsewhere.

Regulation 2(3) updates the list of competent person schemes that appear in Schedule 3 of the Building Regulations (self-certification schemes and exemptions from requirement to give a building notice or deposit full plans). A competent person scheme is a scheme that installers can register with to self-certify that their building work complies with the Building Regulations.

Parent Act: Building Act 1984

Date Made: 12 December 2017

Date Laid: 15 December 2017

Coming into force: in accordance with regulation 1(2)



SL(5)164 – The Regulated Services (Penalty Notices) (Wales) Regulations 2017

Procedure: Negative

Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 (“the Act”) establishes a new system of regulation and inspection of social care services in Wales, which replaces the system that was established under the Care Standards Act 2000.

Section 52 of the Act gives the Welsh Ministers (acting as the service regulator) the power to give a penalty notice to a person instead of bringing proceedings for an offence, but only in relation to those offences that are prescribed in regulations.

These Regulations prescribe the offences that may be dealt with by penalty notice.

Parent Act: Regulation and Inspection of Social Care Act 2016

Date Made: 14 December 2017

Date Laid: 18 December 2017

Coming into force date: 2 April 2018

SL(5)169 – Title of SI

Procedure: Negative

The Regulations provide for various matters relating to the administration of land transaction tax.

Part 2 of the Regulations sets out the circumstances in which the Welsh Revenue Authority (“WRA”) must issue a certificate following receipt of a land transaction return and other administrative matters relating to the certificate.

Part 3 of the Regulations prescribes evidence which must be submitted to the WRA where relief is claimed under Schedule 11 of the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 in the case of certain land transactions connected to alternative finance investment bonds.

Parent Act: Land Transaction and Anti-avoidance of Devolved Taxes Act 2017

Date Made: 4 January 2018



Date Laid: 8 January 2018

Coming into force date: 2 April 2018

SL(5)167 – The Land Transaction Tax (Specified Amount of Relevant Rent) (Wales) Regulations 2018

Procedure: Affirmative

These Regulations specify the amount of relevant rent under paragraph 36(1) (b) of Schedule 6 (Leases) to the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (the LTTA Act”) for the purposes of defining “the specified amount” in paragraphs 34 and 35 of that Schedule. The amount specified is £9,000.

Schedule 6 to the LTTA Act makes provision about the application of the Act in relation to leases. Part 5 of Schedule 6 makes provision about the amount of tax chargeable on lease transactions. Paragraph 33 of Schedule 6 confirms that tax charged under this Schedule is in addition to the tax calculated under the other provisions; paragraph 34 is an anti-avoidance provision designed to prevent possible manipulation in relation to lease transactions. Paragraph 35 provides for consideration other than rent for a mixed lease. Paragraph 36 provides definitions for “the relevant rent”, “*the specified amount*” and “annual rent”. In LTT only rent paid for non-residential property is taxed under these rules. Rents paid under residential leases are outside the scope of the tax.

Parent Act: Land Transaction and Anti-avoidance of Devolved Taxes Act 2017

Date Made: Not stated

Date Laid: Not stated

Coming into force date: Not stated



SL(5)168 – The Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (Amendment to Schedule 5) Regulations 2018

Procedure: Affirmative

These Regulations amend Schedule 5 to the Land Transaction and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (“the LTTA”) to extend the scope of the exceptions from the rates applicable to a higher rates transaction.

Schedule 5 (Higher Rates Residential Property Transactions) to the LTTA provides the rules identifying when the acquisition of a major interest (or an interest that is deemed to be a major interest) is a higher rates residential property transaction. The technical amendment to Schedule 5 made by these Regulations provides that where married couples (includes persons in a civil partnership and civil partners) acquire new or additional interests in their current main residence, the transaction is not a higher rates residential property transaction even where previously one of the spouse did not have a beneficial interest in that main residence. This technical change is to ensure that the higher rates rules are applied consistently to married couples and within Schedule 5.

Parent Act: Land Transaction and Anti-avoidance of Devolved Taxes Act 2017

Date Made: Not stated

Date Laid: Not stated

Coming into force date: Not stated

SL(5)171 – The Landfill Disposals Tax (Tax Rates) (Wales) Regulations 2018

Procedure: Affirmative

These Regulations specify the first standard rate, lower rate and unauthorised disposals rate for landfill disposals tax. The rates will apply to a taxable disposal made on or after 1 April 2018. Part 2 of the Landfill Disposals Tax (Wales) Act 2017 (“the Act”) sets out what constitutes a taxable disposal.



The standard rate is to be £88.95, the lower rate is to be £2.80 and the unauthorised disposals rate is to be £133.45.

Following the setting of the tax rates in these Regulations, the Welsh Ministers will have the power to change future rates in respect of landfill disposals tax with immediate effect, using the provisional affirmative procedure provided for in section 95 the Act.

Parent Act: Land Transaction and Anti-avoidance of Devolved Taxes Act 2017

Date Made: Not stated

Date Laid: Not stated

Coming into force date: Not stated

SL(5)172 – The Land Transaction Tax (Transitional Provisions) (Wales) Regulations 2018

Procedure: Affirmative

These Regulations make transitional provisions in respect of the introduction of land transaction tax (“LTT”) in Wales by the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (“the LTTA Act”). The provisions ensure that transactions which take place on or after 1 April 2018 receive treatment which is consistent, meaning that transactions are not taxed twice under LTT and Stamp Duty Land Tax (“SDLT”), or not taxed at all.

The Regulations also ensure that arrangements commenced prior to 1 April 2018 and for which certain reliefs (which exist in both regimes) were claimed will continue to be relieved under LTT (subject to certain conditions being met). Further, the Regulations will also provide for transitional rules for the purposes of determining whether a transaction completed on or before 26 November 2018 is a higher rates residential property transaction where a person’s main residence is being replaced.

Parent Act: Land Transaction and Anti-avoidance of Devolved Taxes Act 2017

Date Made: Not stated

Date Laid: Not stated



Coming into force date: Not stated



Agenda Item 3.1

Draft Regulations laid before the National Assembly for Wales under section 25(1) of the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY
INSTRUMENTS

2018 No. (W.)

**LAND TRANSACTION TAX,
WALES**

**The Land Transaction Tax (Tax
Bands and Tax Rates) (Wales)
Regulations 2018**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations specify the first tax bands and percentage tax rates for land transaction tax, which is introduced by the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (“the LTT Act”).

The tax bands and percentage tax rates in these Regulations have effect in relation to chargeable transactions with an effective date on or after 1 April 2018.

Separate tax bands and percentage tax rates apply to:

- Residential property transactions (*Table 1*);
- Higher rates residential property transactions (*Table 2*);
- Non-residential property transactions (*Table 3*); and
- Chargeable consideration which consists of rent (and therefore which is only relevant in the case of leases) (*Table 4*).

Tax is to be calculated in accordance with sections 27 and 28 of the LTT Act except where the chargeable consideration consists of rent. In these cases, tax is to be calculated in accordance with Part 5 of Schedule 6 to the LTT Act.

By virtue of section 24(8) of the LTT Act, transactions involving a mixture of residential and non-residential property are to be treated as non-residential property transactions (and the tax bands and percentage tax rates in Table 3 apply).

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a Regulatory Impact Assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Welsh Government, Cathays Park, Cardiff CF10 3NQ.

Draft Regulations laid before the National Assembly for Wales under section 25(1) of the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY
INSTRUMENTS

2018 No. (W.)

**LAND TRANSACTION TAX,
WALES**

**The Land Transaction Tax (Tax
Bands and Tax Rates) (Wales)
Regulations 2018**

Made ***

Coming into force ***

The Welsh Ministers make the following Regulations in exercise of the powers conferred on them by section 24(1) of, and paragraph 28(1) of Schedule 6 to, the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017(1).

In accordance with section 25(1) of that Act, a draft of these Regulations was laid before and approved by a resolution of the National Assembly for Wales.

Title and commencement

1.—(1) The title of these Regulations is the Land Transaction Tax (Tax Bands and Tax Rates) (Wales) Regulations 2018.

(2) These Regulations come into force on 1 April 2018.

(1) 2017 anaw 1.

Application

2. These Regulations have effect in relation to any chargeable transaction⁽¹⁾ with an effective date on or after 1 April 2018.

Tax bands and percentage tax rates

3. The Schedule to these Regulations specifies the tax bands and percentage tax rates for the purposes of section 24(1) of, and paragraph 28(1) of Schedule 6 to, the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017—

- (a) Table 1 specifies the tax bands and percentage tax rates for each band for residential property transactions;
- (b) Table 2 specifies the tax bands and percentage tax rates for each band for higher rates residential property transactions;
- (c) Table 3 specifies the tax bands and percentage tax rates for each band for non-residential property transactions; and
- (d) Table 4 specifies the tax bands and percentage tax rates for each band for transactions where the chargeable consideration consists of rent.

Name

Cabinet Secretary for Finance, one of the Welsh Ministers

Date

(1) See section 17 of the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 for the definition of “chargeable transaction”.

SCHEDULE Regulation 3

Table 1: Residential property transactions

<i>Tax band</i>	<i>Relevant consideration</i>	<i>Percentage tax rate</i>
Zero rate band	Not more than £180,000	0%
First tax band	More than £180,000 but not more than £250,000	3.5%
Second tax band	More than £250,000 but not more than £400,000	5%
Third tax band	More than £400,000 but not more than £750,000	7.5%
Fourth tax band	More than £750,000 but not more than £1,500,000	10%
Fifth tax band	More than £1,500,000	12%

Table 2: Higher rates residential property transactions

<i>Tax band</i>	<i>Relevant consideration</i>	<i>Percentage tax rate</i>
First tax band	Not more than £180,000	3%
Second tax band	More than £180,000 but not more than £250,000	6.5%
Third tax band	More than £250,000 but not more than £400,000	8%
Fourth tax band	More than £400,000 but not more than £750,000	10.5%
Fifth tax band	More than £750,000 but not more than £1,500,000	13%
Sixth tax band	More than £1,500,000	15%

Table 3: Non-residential property transactions

<i>Tax band</i>	<i>Relevant consideration</i>	<i>Percentage tax rate</i>
Zero rate band	Not more than £150,000	0%
First tax band	More than £150,000 but not more than £250,000	1%
Second tax band	More than £250,000 but not more than £1,000,000	5%
Third tax band	More than £1,000,000	6%

Table 4: Chargeable consideration which consists of rent

<i>Tax band</i>	<i>Relevant consideration</i>	<i>Percentage tax rate</i>
NRL zero rate band	Not more than £150,000	0%
First tax band	More than £150,000 but not more than £2,000,000	1%
Second tax band	More than £2,000,000	2%

Explanatory Memorandum to

The Land Transaction Tax (Tax Bands and Tax Rates) (Wales) Regulations 2018

This Explanatory Memorandum has been prepared by the Office of the First Minister and Cabinet Office of the Welsh Government and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Cabinet Secretary's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Land Transaction Tax (Tax Bands and Tax Rates) (Wales) Regulations 2018. I am satisfied that the benefits justify the likely costs.

Mark Drakeford AM – Cabinet Secretary for Finance
8 January 2018

1. Description

- 1.1 The purpose of this instrument is to specify the tax bands and percentage tax rates for land transaction tax (“LTT”), which is introduced by the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (“the LTT Act”).

2. Matters of special interest to the Constitutional Affairs Committee

- 2.1 None.

3. Legislative background

- 3.1 Section 24(1) of the LTT Act and paragraph 28(1) of Schedule 6 make provision to specify tax bands and percentage tax rates for LTT.
- 3.2 In accordance with section 25(1) of the LTT Act, these regulations will be subject to the affirmative procedure. However, any variation to the rates and bands contained in these regulations will need to be given effect through further regulations, which will be subject to a provisional affirmative procedure in accordance with section 25(2) of the LTT Act.

4. Purpose & intended effect of the legislation

- 4.1 These regulations will specify the first tax bands and percentage tax rates for LTT. They have effect in relation to land transactions with an effective date on or after 1 April 2018. Separate tax bands and percentage tax rates apply to:
- Residential property transactions;
 - Higher rate residential property transactions;
 - Non-residential property transactions; and
 - Chargeable consideration which consists of rent (and therefore which is only relevant in the case of non-residential leases).
- 4.2 The intended effect of the regulations is to provide for the first set of tax bands and tax rates which will be used to calculate the amount of LTT chargeable in respect of a land transaction. Following the setting of the first set of tax bands and rates, the Welsh Ministers will have the ability to change or introduce new bands and rates in LTT with immediate effect (as per the rules under the provisional affirmative procedure).
- 4.3 Tax is to be calculated in accordance with sections 27 and 28 of the LTT Act except where the chargeable consideration consists of rent. In these cases, tax is to be calculated in accordance with Part 3 of Schedule 6 to the LTT Act.
- 4.4 The tax bands and rates will apply to transactions liable to LTT. There will be some transactions which have an effective date after the go-live date that may remain liable to SDLT in accordance with the Land Transaction Tax (Transitional Provisions) (Wales) Regulations 2018, and the Wales Act 2014.

5. Consultation

- 5.1 The Welsh Government carried out a public consultation 'Tax Devolution in Wales – Land Transaction Tax' in relation to the Land Transaction Tax primary legislation from February to May 2015. Consultees included practitioners, advisory bodies, other stakeholders and the wider public. The consultation sought views on setting rates and bands in Wales and whether Welsh Ministers should have the ability to change or introduce new rates and bands in LTT with immediate effect. Some respondents thought the current SDLT rates and bands were suitable for Wales. However, there was also recognition of the fact that Wales has lower property values and suggested bands that could be adjusted to reflect this. Most respondents agreed that the setting of rates and bands would be a decision for Welsh Ministers. A detailed analysis of the responses to the consultation is available on the Welsh Government's website¹.
- 5.2 Following the responses to this consultation, and the feedback from stakeholders that setting rates and bands is a decision for Welsh Ministers, no consultation has been undertaken specifically on the actual rates and bands. However, a Treasury Paper on 'Land Transaction Tax: Setting Rates and Bands'² was published in September 2016. The focus of the research paper was to set out the context and issues which will need to be taken into consideration when setting tax rates and bands that are appropriate for Wales.
- 5.3 Regular engagement continued during the passage of the LTT Bill on tax rates and bands with key stakeholders, including the Tax Forum (tax experts and professional groups) and Tax Advisory Group.

6. Regulatory Impact Assessment

- 6.1 With very few exceptions, required by the provisions of the Wales Act 2014, stamp duty land tax will cease to apply in Wales from 1 April 2018. By providing a replacement tax, and specifically replacement tax bands and rates, public services in Wales will continue to receive the benefit of the revenues raised by a tax on land transactions.
- 6.2 Two options have been considered here;
 - Option 1: To replicate stamp duty land tax rates into LTT; and
 - Option 2: To introduce tax rates which differ to stamp duty land tax. ***This is the preferred option.***

Assessment of option 1

- 6.3 As LTT will replace stamp duty land tax, option 1 with tax rates the same as those currently prevailing would result in no impact compared to the current situation in Wales. No further assessment is made of this option.

Assessment of option 2

- 6.4 As option 2 would result in different tax rates compared to those which currently prevail in Wales, these would have some impact. An assessment of the first LTT rates and bands is provided below which covers each element of the tax. As the tax will replace stamp duty land tax, the impact is assessed in relation to the prevailing tax rates in Wales.

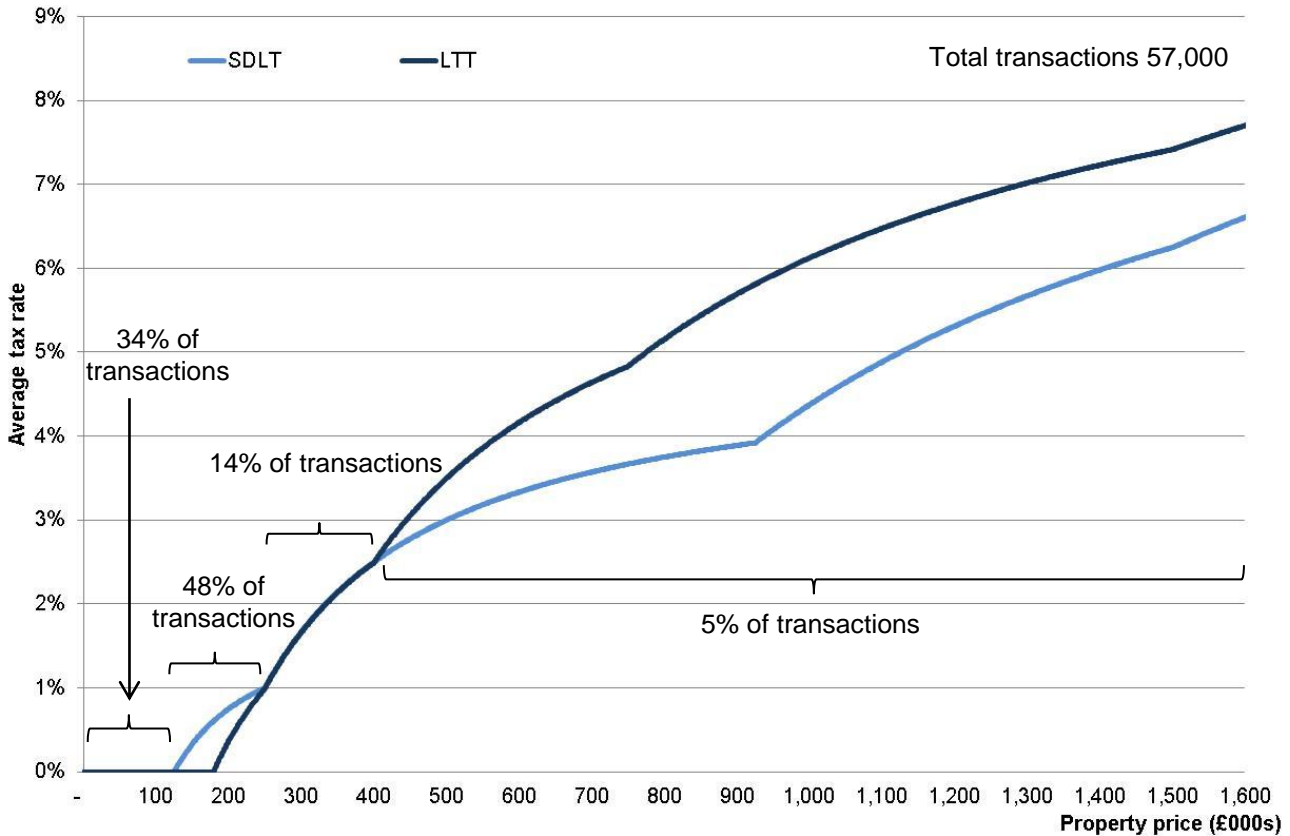
¹ <http://gov.wales/betaconsultations/finance/land-transaction-tax/?lang=en>

² <http://gov.wales/docs/caecd/publications/160915-ltt-bands-en.pdf>

Main residential rates

- 6.5 Overall in 2018-19 it is estimated around 32,000 transactions (56% of all residential transactions) will pay less tax following the introduction of LTT rates, and around 6,000 transactions (or 11%) will pay more relative to stamp duty land tax. The remainder, around 19,000 residential transactions, will continue to pay the same tax as with stamp duty land tax (which will be no tax unless the higher rates on residential transactions apply).
- 6.6 To assess the impact of LTT residential main rates, these are compared to the stamp duty land tax residential main rates. The chart below shows this, using the average tax rate as this allows the effect of the different tax rates and thresholds to be reflected.

Figure 1 – Average tax main residential rates of LTT and SDLT



Source: Welsh Government estimates based on HMRC administrative datasets
 NB numbers may not sum due to rounding

- 6.7 In total, there are estimated to be around 57,000 residential transactions in Wales in 2018-19. However, not all of these will be affected by the introduction of LTT as both stamp duty land tax and LTT have a zero average tax rate below £125,000. In Wales, it is forecast that around 19,000 transactions (around a third of transactions) will be in this price range in 2018-19 when LTT rates first apply. Therefore there will be no impact on transactions in this price band from the introduction of LTT.
- 6.8 For purchase prices between £125,000 and £180,000, stamp duty land tax would be liable up to a maximum of £1,100 for non-first-time buyers. With LTT, no tax will be liable regardless of whether the purchaser is a first-time buyer or not. It is estimated that there will be around 17,000 transactions (or around 30 per cent of transactions) in this price range. This price band includes the latest average house price in Wales; at £153,316 (ONS December 2017). Therefore no LTT will be liable at the current average house price in Wales, whereas with stamp duty land tax £566 tax would be liable.
- 6.9 Overall in 2018-19 around 36,000 transactions (or 63% of residential transactions) will therefore not be liable for LTT with the main rates as they will be below £180,000.
- 6.10 For residential transactions between £180,000 and around £400,000, the tax liable under LTT will be lower than stamp duty land tax (unless the transaction is undertaken by a first-time buyer). The tax rate from £180,000 up to £250,000 will be higher under LTT (3.5% compared to 2% under stamp duty land tax), but this is more than offset by the higher starting threshold with LTT. Around 18,000 (or around a third) of transactions are estimated to be within the £180,000 and £400,000 price band.
- 6.11 There will be a tax reduction for non-first-time buyers between £180,000 and £250,000 of up to £1,100. It is estimated that there will be around 10,000 (or around 18%) of transactions in this price band.
- 6.12 For transactions between £250,000 and £400,000 the tax liability for non-first-time buyers will be £50 lower with LTT than stamp duty land tax. It is estimated that there will be around 8,000 (or 14% of) transactions in this price band.
- 6.13 For transactions from around £400,000, the tax liability will be higher under LTT than stamp duty land tax. In 2018-19 this is forecast to affect less than 3,000 transactions - the top 5% of transactions. For a transaction at £500,000, the tax liability under LTT will be £17,450 compared to £15,000 under stamp duty land tax. Transactions from £500,000 upwards are expected to account for around 1,000 transactions (or around 2% of all transactions) in 2018-19. From £925,000 upwards, the maximum difference between stamp duty land tax and LTT is £17,450. There are expected to be less than 100 transactions at this price band.

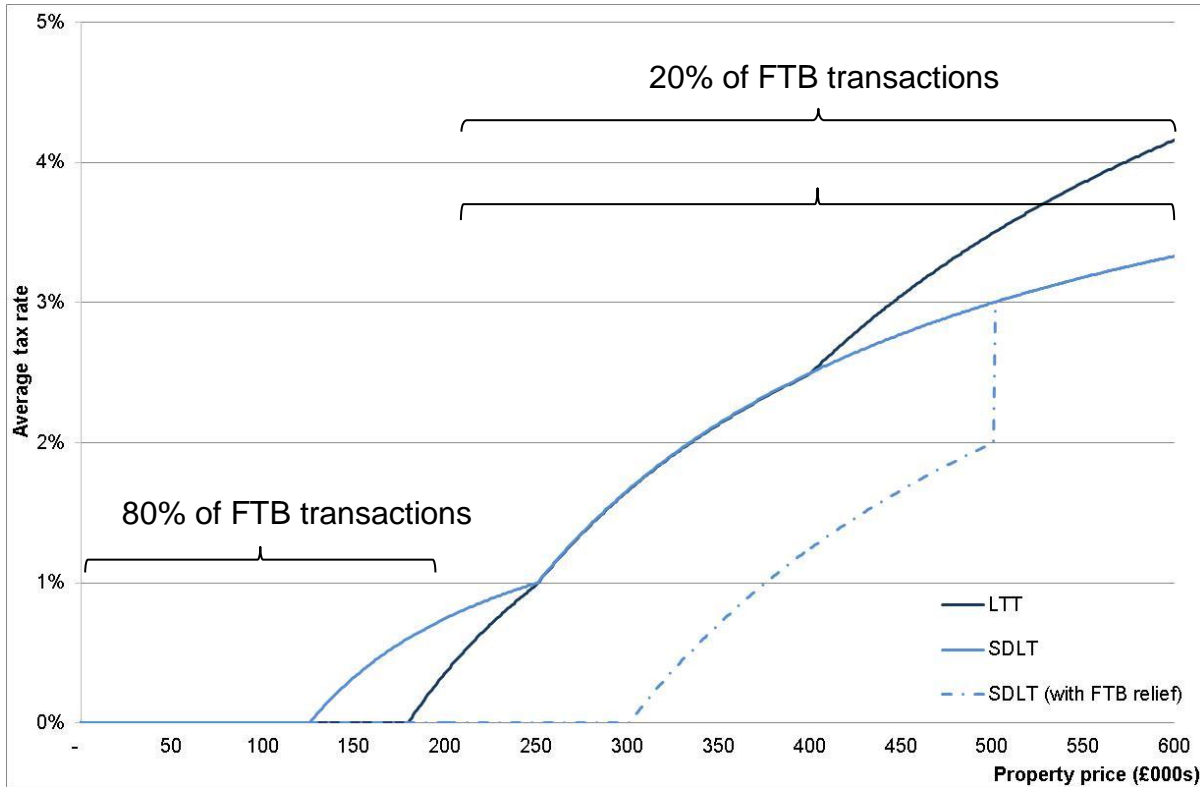
Table 1: summary of main residential rates

Property price	Change in tax from SDLT to LTT (excluding first-time buyers)
£125,000 or less	No change
£125,001-£180,000	Lower tax under LTT (up to £1,100 difference)
£180,001-£250,000	Lower tax under LTT (up to £1,100 difference)
£250,001-£401,000	Lower tax under LTT (up to £50 difference)
£401,001-£750,000	Higher tax under LTT (up to £8,700 difference)
£750,001+	Higher tax under LTT (up to £17,450 difference)

First-time buyers

6.14 Since the UK Autumn Budget 2017, under stamp duty land tax, first-time buyers (FTBs) do not pay tax up to £300,000 and then have a reduction in tax of £5,000 for transactions with consideration between £300,000 and £500,000. From £500,000, first-time buyers receive no reduction in stamp duty land tax. The stamp duty land tax rates, with and without the first-time buyer relief, and the LTT rates are shown in the below figure.

Figure 2 – Average tax main residential rates of LTT and SDLT with first-time buyers relief



Source: Welsh Government estimates based on HMRC administrative datasets

6.15 It is estimated that there are around 17,000 first-time buyer transactions in Wales – this represents less than a third of all residential transactions. The latest average first-time buyer price in Wales is £132,074 (ONS December 2017). There is limited information available about first-time buyers in Wales, however, it is estimated around 13,000 transactions or 80% of first time buyers in Wales buy homes costing below £180,000.

6.16 As the LTT threshold will be £180,000, the introduction of LTT will have no effect on first-time buyers up to this price - they will continue to pay no tax. From £180,000, first-time buyers in Wales will pay more tax compared to stamp duty land tax. This will affect around 4,000 transactions or the 20% highest priced first-time buyer purchases in Wales.

Higher rates residential property transactions

6.17 The higher rates for stamp duty land tax were introduced in April 2016. Therefore there is currently limited evidence about the effect of the higher rates in Wales. These rates most commonly apply to those acquiring buy-to-let properties and second homes. It is estimated there are around 14,000 of these transactions (around a quarter of the total residential market in Wales) in 2018-19.

6.18 LTT for higher rates residential property transactions (for example, buy-to-let and second home properties) will be 3% on top of the prevailing main residential rates, the same as stamp duty land tax. Overall, the differences between LTT and stamp duty land tax main rates are unlikely to create any significant changes in behaviour for higher rates residential property transactions.

- 6.19 The effective continuation of the higher rates from stamp duty land tax will mean those who purchase a property, which is not a higher rates residential property transaction, will continue to pay less tax and therefore be at an advantage over other buyers. The introduction of LTT should not have any additional impact on the markets for buy-to-let properties and second homes.
- 6.20 The total tax paid on additional residential properties will be different to that paid under stamp duty land tax. The tax on additional residential properties, through the higher rates, is effectively 3% on top of the main rates of LTT, which are different to stamp duty land tax. This will have similar implications relative to stamp duty land tax in terms of where more or less tax is paid following the introduction of LTT as for the main rates described above. In summary:
- For additional residential property transactions up to £125,000, LTT and stamp duty land tax will be the same;
 - For additional residential property transactions between £125,000 and around £400,000, LTT will be less than stamp duty land tax;
 - For transactions from around £400,000, LTT will be higher than stamp duty land tax; and
 - Consistent with stamp duty land tax, the difference in tax between those paying the higher rates on additional property transactions and those paying the main rates will be 3% of the property price.

Behavioural and wider economic effects

6.21 Changes in tax rates are expected to affect both prices and transactions. The impacts on these will be to alter them in the opposite direction to the change in the tax liability. These effects are difficult to quantify and are generally graded with a 'high' uncertainty rating by the Office for Budget Responsibility³. The general effects of these are described below.

Price effects

- 6.22 For non-first-time buyer transactions between £125,000 and £250,000, the tax will be reduced or removed altogether through the introduction of LTT, unless the transaction is undertaken by a first-time buyer. For these transactions prices may rise. However, this is unlikely to be a large effect given the size of the tax reduction. This price rise will benefit most existing property owners where the tax is reduced.
- 6.23 However, for those purchasing through a mortgage (assumed to apply to most transactions) the price rise together with the tax decrease is likely to result in a lower upfront cost. Whilst there will be slightly higher costs for future mortgage repayments, there will also be the additional benefit of owning a more expensive asset, which can be sold in the future.
- 6.24 The effect on prices is reversed where the tax increases; lowering prices where this applies. This will generally be for those purchasing properties for more than £400,000. It will also apply to first-time buyer purchases above £180,000, but with a more modest effect as the tax change is generally lower here.

Transaction effects

6.25 Overall the introduction of LTT will slightly increase the number of residential transactions. With transactions - like the price effect - the effect will work in the opposite direction to the change in tax. For non-first-time buyer transactions between £125,000 and £250,000, more transactions may occur through the reduction in tax. On the other hand, for properties over £400,000, it is estimated that there may be fewer transactions as a result of introducing LTT. For first-time buyers, tax will increase following the introduction of LTT rates for transactions above £180,000. Ordinarily this would be associated with a decrease in transactions for these transactions in this price band. However, with LTT now being

³ See OBR (December 2017) available at: <http://budgetresponsibility.org.uk/download/policy-measures-database/>

liable, this effectively ends the stamp duty land tax first-time buyer policy at these higher prices in Wales. The OBR's assessment of the stamp duty land tax relief is it has a very limited effect on increasing the number of first-time buyer transactions⁴. Following this assessment of the evidence, it is assumed that the tax increase on first-time buyers in Wales from £180,000 is unlikely to have much effect on the number of transactions.

- 6.26 As a far greater number of transactions will be subject to a tax decrease than a tax increase, overall, the introduction of LTT is likely to lead to an increase in residential transactions. As transactions are considered to have positive economic effects, an overall increase may improve economic welfare. The potential benefits from trade are normally experienced by both buyers and sellers, and therefore both would gain from an increase in the number of transactions. It is not possible to estimate what the size of these gains would be for each household. However, this is likely to result in a more efficient allocation of housing more generally across households, as transactions allow houses to be acquired by those who value them more. In addition, another potential secondary effect could be to increase consumer spending in Wales. Evidence suggests increasing house transactions can increase consumer spending through the ancillary spending required when moving house, which does not 'crowd-out' other forms of spending⁵. This in turn will have a positive effect on economic growth. However, given the relatively modest effect on transactions overall, these secondary effects are unlikely to be significant.

Forestalling

- 6.27 A further potential transaction behavioural effect is forestalling. This is when the timing of transactions is altered in order to reduce the tax liability. As the LTT rates have been announced ahead of 1 April 2018, this has provided the opportunity for transactions to either be delayed or brought forward, depending on which tax regime would provide the lowest tax liability.
- 6.28 Forestalling benefits those undertaking the transaction by reducing their tax liability. Therefore there are potential gains for those towards the lower end of the house price distribution if transactions were delayed until April 2018 and for those towards the higher end of the house price distribution if transactions were brought forward into stamp duty land tax ahead of April 2018. These changes in tax are the same as those described above more generally.
- 6.29 The forestalling effect is temporary and most likely in the immediate months before and after April 2018. Forestalling will have limited effects on economic welfare, as it results in the timing of transactions being altered, rather than whether the transaction occurs. There could be some disruption caused in the property market if the timing of large numbers of transactions were altered, but as the tax changes from stamp duty land tax to LTT are relatively modest overall, this is not expected to occur.
- 6.30 Forestalling will affect the tax revenues received by the Welsh Government and the UK Government. In aggregate it is expected that the UK Government will receive extra revenues as a result of the introduction of LTT and the Welsh Government less. However, under the terms of the Fiscal Framework agreed between the UK Government and the Welsh Government, the Welsh Government expects to be reimbursed for forestalling behaviour and the Welsh Government's revenue forecast therefore includes the UK Government's additional revenues.
- 6.31 Overall revenue generated from the residential rates, including the total behavioural effects in 2018-19 is £163m.

⁴ See OBR (November 2017) available at: <http://budgetresponsibility.org.uk/download/economic-and-fiscal-outlook-november-2017/>

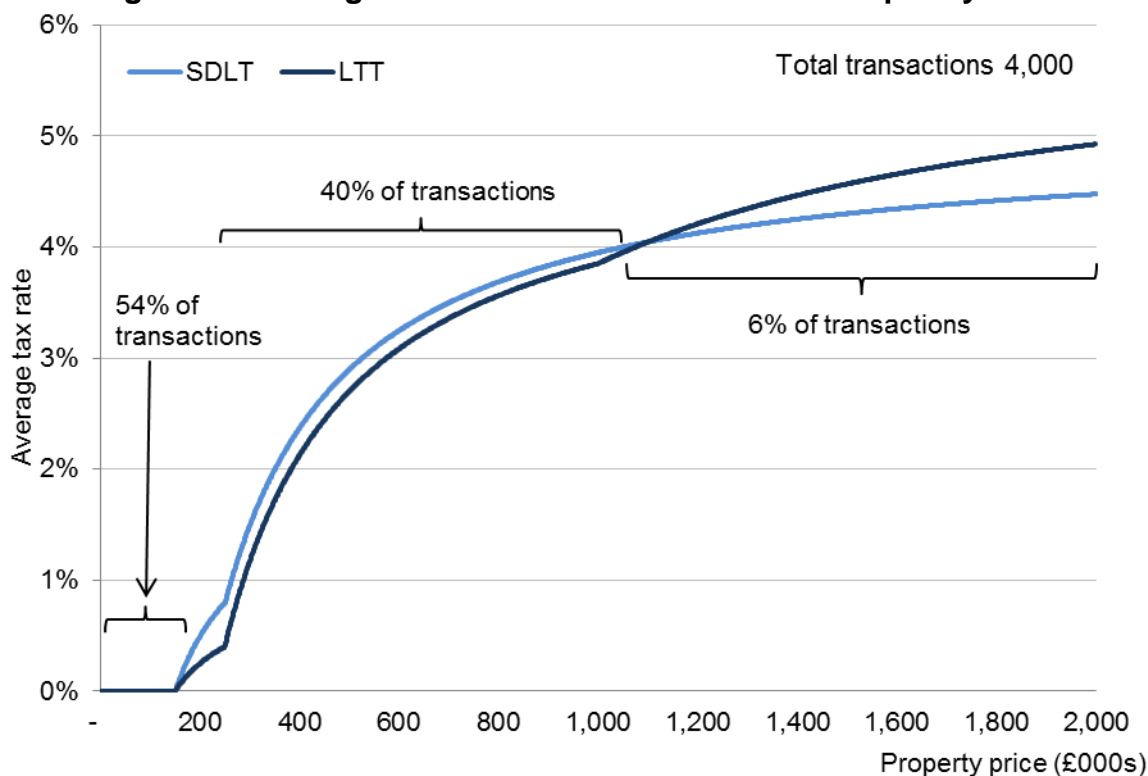
⁵ See *Housing Market Responses to Transaction Taxes: Evidence From Notches and Stimulus in the UK* by Michael Best and Henrik Kleven, forthcoming in *Review of Economic Studies*.

6.1 Further information on the forecast is available in Bangor Business School's scrutiny and assessment update report published alongside the final Budget 2018-19⁶.

Non-residential

6.2 The LTT non-residential rates are compared to the equivalent stamp duty land tax rates in the chart below. The chart shows the average tax rate as this allows the effect of the different tax rates and thresholds to be reflected.

Figure 3 – Average tax rates of non-residential stamp duty land tax and LTT



Source: Welsh Government estimates based on HMRC administrative datasets
 NB Distribution is based on non-residential transactions which are not relieved of tax.

6.3 In total, it is estimated that there will be just over 4,000 non-residential transactions in Wales in 2018-19 which are not relieved and are potentially subject to the main rates. However, not all of these will be affected by the introduction of LTT. With LTT, like stamp duty land tax, no tax is paid on non-residential freehold, assignment transfers or leasehold premium transactions under £150,000. It is estimated around half of all taxable non-residential transactions in Wales will be below the £150,000 threshold in 2018-19. Therefore these transactions will not be affected by the introduction of LTT rates.

6.4 As LTT starts with a lower tax rate (1%) relative to stamp duty land tax (2%), all transactions from £150,000 up to £1.1m will pay less tax – by up to £1,000. It is estimated around 40% of taxable transactions in Wales are in this price range and will pay less under LTT than with stamp duty land tax.

⁶ Final Budget 2018-19 available at; <http://gov.wales/funding/budget/final-budget-2018-19/?lang=en>

6.5 From £1.1m, LTT will be higher than stamp duty land tax. In 2018-19, it is estimated that less than 300 (or around 6%) of non-residential transactions in Wales will pay more tax compared to stamp duty land tax. The increase in tax will vary depending on the value of the transaction. A £2m transaction will have a tax liability of £89,450 under stamp duty land tax and £98,440 under LTT. A £5m transaction would see its tax liability rise from £239,500 under stamp duty land tax to £278,500 under LTT.

Behavioural and wider economic effects

- 6.6 As with changes to the residential tax rates, increases in tax rates from stamp duty land tax to LTT will reduce both prices and the number of non-residential transactions, or vice versa where tax rates decrease.
- 6.7 For transactions where there is a tax decrease from stamp duty land tax to LTT (between £150,000 and £1.1m) both the price and number of these transactions will increase. However, the estimated effects are likely to be small for both prices and transactions given the size of the tax change.
- 6.8 For transactions where there is an increase in tax (above £1.1m), the price and transactions effects work in the opposite direction, reducing prices and the frequency of transactions. However, there are far fewer transactions which will have an increase in tax compared to those which will see a decrease.
- 6.9 As with the residential rates, the introduction of LTT will slightly increase the overall number of non-residential transactions. As transactions are considered to have positive economic effects, this may also indirectly improve welfare. As this increase relates to businesses, it may also increase efficiency and productivity. The potential benefits from trade are normally experienced by both buyers and sellers, and therefore both would gain from an increase in the number of transactions. It is not possible to estimate what size these gains will be for businesses. However, this is likely to result in a more efficient use of business premises more generally.
- 6.10 It is assumed that smaller businesses may benefit more from the reduction in tax, as they are more likely to purchase buildings between £150,000 and £1.1m. The cost (and potentially the size) of a building is likely to loosely correspond to the size of the business overall, therefore some relatively large businesses may also benefit from the reduction in tax through the introduction of LTT.
- 6.11 The introduction of LTT will mean tax increases for non-residential properties purchased for over £1.1m. These purchases are considered to be less likely to involve smaller or medium sized businesses, so larger businesses are much more likely to be affected by the tax changes in this price range.
- 6.12 Secondary effects from these tax changes could possibly impact on smaller businesses through a reduction in large value transactions. This might result in reduced investment in business premises which could then be sub-let to smaller businesses, affecting the supply of new business premises. There is unlikely to be much effect on the current supply of businesses premises in the short to medium term, but there could be a longer run impact if fewer premises are brought into supply over time. However, the size of the possible secondary effects is estimated to be low as prices are also assumed to adjust from the increase in tax.
- 6.13 As with the residential rates, there is expected to be some forestalling as a result of announcing the rates and bands ahead of April 2018. This form of behavioural change is expected to be limited to 2018-19. Forestalling benefits those undertaking the transaction by reducing their tax liability. Therefore there are potential gains to those transacting between £150,000 and £1.1m if they are delayed until after the introduction of LTT and for those purchasing at prices over £1.1m if they are brought-forward into stamp duty land tax. Some administrative forestalling is also expected to take place where transactions are brought forward to use the family

impact on revenues is expected to be neutral in budgetary terms as it is expected the UK Government will reimburse the Welsh Government with the extra revenues it receives in 2017-18 as a result of forestalling under the terms of the Fiscal Framework.

Non-residential lease rent rates

- 6.14 In total, there are estimated to be around 2,000 non-residential transactions in Wales in 2018-19 which are not relieved and are potentially subject to the lease rent non-residential LTT rates. However, not all of these will be affected by the introduction of LTT. Broadly, like stamp duty land tax, no tax will be paid on transactions below £150,000. It is estimated in 2018-19 that just under 1,000 (or around half of) transactions will be below £150,000. These transactions will be unaffected by the introduction of LTT rates. Between £150,000 and £2m, the tax liability is the same for LTT and stamp duty land tax, so there will be no impact from the introduction of the LTT rates and bands for transactions within this price band⁷.
- 6.15 For transactions above £2m, LTT may be higher than stamp duty land tax by up to £30,000. It is estimated there will be fewer than 100 (or less than 5% of) transactions in Wales with an NPV of £2m or more in 2018-19 where more tax will be payable with the introduction of LTT. For these transactions, there is expected to be negative effects on transactions and prices, or the net present value in this instance. As the value is a combination of the annual rent and the length of the lease, a downward effect on prices could result in shorter very high value leases, a decrease to some high value annual rents or a combination of the two. However, as the increase in tax affects very few high value transactions and the increase in tax is modest, overall there is unlikely to be any significant effect on prices or transactions in this price band. All other behavioural effects and possible wider economic impacts as a result of LTT on non-residential lease rents are also considered to be negligible.
- 6.16 Overall revenue generated from the non-residential rates, including the total behavioural effects in 2018-19 is forecast to be £86m.
- 6.17 Further information on the forecast is available in Bangor Business School's scrutiny and assessment update report published alongside the final Budget 2018-19⁸.

The figures may not exactly reproduce HMRC aggregates. The use of HMRC statistical data in this work does not imply the endorsement of HMRC in relation to the interpretation or analysis of the information.

7. Post Implementation review

- 7.1 Section 77 of the LTT Act provides that the Welsh Ministers must make arrangements for an independent review of land transaction tax to be completed within 6 years of the day after the day of the LTT Act receiving Royal Assent. A review of LTT will encompass all of the subordinate legislation made under the LTTA Act.

⁷ There are targeted anti-avoidance rules that apply to some non-residential rental payments which may apply to non-residential lease rent transactions which may increase the tax. However, that is not a result of the introduction of these rates and bands. The impact of the targeted anti-avoidance rules is set out more fully in the Explanatory Memorandum that accompanies The Land Transaction Tax (Specified Amount of Relevant Rent) (Wales) Regulations 2018.

⁸ Final Budget 2018-19 available at; <http://gov.wales/funding/budget/final-budget-2018-19/?lang=en>

SL(5)170 – The Land Transaction Tax (Tax Bands and Tax Rates) (Wales) Regulations 2018

Background and Purpose

These Regulations specify the first tax bands and percentage tax rates for land transaction tax (“LTT”) which is introduced by the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017.

The tax bands and percentage tax rates in these Regulations have effect in relation to chargeable transactions with an effective date on or after 1 April 2018.

Separate tax bands and percentage tax rates apply to:

- Residential property transactions;
- Higher rates residential property transactions;
- Non-residential property transactions and
- Chargeable consideration which consists of rent.

Procedure

Affirmative

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

The points are identified for reporting under Standing Order 21.3 in respect of this instrument.

1. Following the setting of the tax bands and percentage tax rates in these Regulations, the Welsh Ministers have the power to change or introduce new bands and new rates for LTT with immediate effect (provisional affirmative procedure - Section 25 the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017).

[Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly]

2. The tax bands and percentage tax rates will apply to transactions liable to LTT. There will be some transactions which will have an effective date after the go-live dates that may remain liable to Stamp Duty Land Tax ‘SDLT’ in accordance with the Land Transaction Tax (Transitional Provisions) (Wales) Regulations 2018 and the Wales Act 2014.

[Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly]

3. Under the Schedule in these Regulations, Table 4, ‘NRL zero rate band’ is not defined. It is however, defined under Para 28, Schedule 6 to the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017. Whilst expressions used in subordinate legislation, have the meaning they bear in the parent Act (unless there appears to be contrary intention) a cross-reference to the



definition of 'NRL zero rate band' in the 2017 Act would be helpful from a clarity and accessibility perspective.

[Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly]

Implications arising from exiting the European Union

There are none.

Government Response

The Welsh Government notes the first two points made in the 'merits scrutiny' element of the report.

As for the third merits point, in our view the expression referred to in the report does not, as a matter of law, need to be defined in the instrument. Section 11 of the Interpretation Act 1978, which applies to subordinate legislation made in England and Wales, provides that "Where an Act confers power to make subordinate legislation, expressions used in that legislation have, unless the contrary intention appears, the meaning which they bear in an Act". Since the expression referred to in the report is defined in the parent Act, the Interpretation Act 1978 automatically carries the definition forward into the instrument. No further provision is therefore needed to secure this effect.

We also consider that the nature of this particular instrument is uniquely intertwined with the parent Act. As Members will note, these Regulations provide for one element of the formula (the rates and bands) which will be used to calculate the amount of tax chargeable, with the remaining elements of that formula contained in the parent Act. For this reason, we consider that this instrument will be read alongside the parent Act, and the absence of an additional definition of NRL does not therefore risk the clarity or accessibility of this instrument."

Legal Advisers

Constitutional and Legislative Affairs Committee

11 January 2018





Rt Hon Alun Cairns MP
Secretary of State for Wales
Ysgrifennydd Gwladol Cymru

T: 020 7270 0575
E: Correspondence@walesoffice.gsi.gov.uk

Elin Jones AM
Presiding Officer
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

16 January 2018

EUROPEAN UNION (WITHDRAWAL) BILL

Ahead of Commons Report stage for the European Union (Withdrawal) Bill today and tomorrow, I am writing to provide you with an update on amendments made to the Bill at Committee and to highlight amendments that the Government has tabled for Report stage consideration.

You will be aware of our continuing commitment to improve clause 11 of the Bill; whilst it has not been possible to bring forward an amendment at Commons Report, we have reaffirmed our commitment to amend this provision in the House of Lords and discussions continue between the UK Government and the devolved administrations to enable us to do so.

Committee stage amendments

As I noted in my letter of 10 December, amendments at Committee stage modified the scrutiny procedures for SIs made using powers in the Bill. The first of these amendments concerned the explanatory memoranda produced to accompany regulations made using powers under the Bill. It places requirements on UK Government Ministers to include information in those memoranda.

The second amendment modified Schedule 7 to require Ministers of the Crown to lay Statutory Instruments (which they are proposing to make under the negative procedure using the three principal powers in the Bill) before the Commons for consideration by a committee. You will also wish to note that the Government has tabled consequential amendments relating to these matters ahead of Report stage of the Bill.

These amendments do not place requirements on the Welsh Ministers and do not apply to the Assembly. Nonetheless I have asked my officials to discuss these provisions with yours to ascertain the Welsh Government's and the Assembly Commission's views on these and I understand that these conversations are

progressing well. I am interested in your views on whether these provisions should apply to Assembly scrutiny of Welsh Ministers' use of powers in the Bill. I attach a detailed list of questions that we have asked the Welsh Government at Annex A and would also welcome any views you may have.

Clause 10 amendments

We have listened to the arguments put forward by the Welsh Government and the Scottish Government on the powers in Clause 10 and have brought forward two amendments for Report stage.

The first amendment would change the requirement for the devolved administrations to seek the consent of the UK Government in exercising the deficiencies power to a consult requirement. This is in line with the amendment published by the Welsh and Scottish Governments. The second Government amendment would provide that, where a framework is not required in a given area, the devolved administrations should be able to use the powers in the Bill to correct deficiencies in direct retained EU law in that area.

We recognise the importance of working with the devolved administrations to ensure the Bill works for all parts of the UK and these amendments demonstrate our willingness to make improvements to it. We are also continuing discussions with the devolved administrations on how we can best manage the task of preparing the statute book for exit day. My colleagues and I continue to be grateful for the constructive engagement of the Welsh Government on these issues.

Clause 7 amendments

We have tabled amendments to Clause 7 to make absolutely clear the scope of the power in this clause given speculation on the ways it could be used. These amendments ensure the correcting power can still make all the changes required to deliver a functioning statute book.

We have tabled amendments which restrict the scope of the power to correct deficiencies in retained EU law by making the list of deficiencies in clause 7(2) exhaustive rather than illustrative. This means that the correcting power can be used only if deficiencies arise in the circumstances listed.

To ensure the scope of the power matches the range of deficiencies identified there are two further amendments:

- Firstly, a 'sweeper' provision to enable deficiencies similar to those listed to be treated in the same way as those listed.. For example, where 'Member States' public authorities' are referred to the 'sweeper' provision will mean that EEA-EFTA public authorities could also be included.
- Secondly, providing a power for UK Ministers to add to the deficiencies list through an SI requiring the approval of both Houses of Parliament.

These amendments do not place requirements on Welsh Ministers. However, they will apply to corrections made by Welsh Ministers using the powers conferred by Clause 10 and Schedule 2. I have asked my officials to discuss these provisions with yours.

This list of deficiencies applies across the UK. The UK Government believes it is important that there is consistency between jurisdictions in the UK, so any additional types of deficiencies would also apply to devolved ministers' powers. We would expect to consult with colleagues in the devolved administrations where we identify additional deficiencies before adding new types of deficiency as this would affect devolved ministers' powers.

The UK Government would consider closely any suggestions for additional categories of deficiencies from the devolved administrations. We would expect to accept any proposals the devolved administrations make to ensure devolved ministers are able to make the appropriate changes to prepare their laws for exit day.

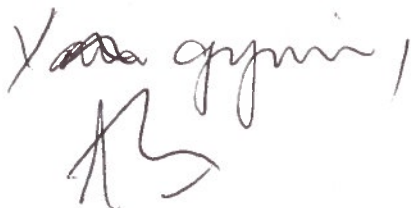
Rights of challenge based on the general principles of EU law

Throughout Committee Stage we listened carefully to the views of MPs across the House, including those who called for greater legal certainty as we leave the EU.

Therefore, we have brought forward amendments to clarify the position regarding rights of challenge under the general principles of EU law. These amendments will, in some cases, allow a legal challenge to be brought for up to three months after exit day on the basis of incompatibility with the general principles of EU law.

Any challenge must relate to a cause of action that occurred before exit day and may be made against either administrative action or domestic legislation other than Acts of Parliament. The effect of this amendment will allow courts, tribunals and other public authorities to disapply or quash the offending enactment or conduct.

I am writing in similar terms to the Presiding Officer and I am copying this letter to the Chair of the Assembly's External Affairs and Additional Legislation Committee, the Chair of the Assembly's Constitutional and Legislative Affairs Committee and to the Chair of the Welsh Affairs Committee in Parliament.



Rt Hon Alun Cairns MP
Secretary of State for Wales
Ysgrifennydd Gwladol Cymru

Annex A

The amendments described in the attached letter do not, largely, have any effects on the devolved administrations. If the devolved administrations would like similar provisions to be made for them in the Bill, this would be possible and the UK Government would expect to make these changes at committee stage in the House of Lords. We would therefore need your decisions in principle by Second Reading in the House of Lords to allow time to work up mutually acceptable drafting.

We expect the Bill to enter the House of Lords this week and Lords Second Reading is scheduled for 30 and 31 January, with committee stage likely to commence in mid-late February. This annex therefore sets out a list of questions that we believe need to be answered quickly in order to proceed with any amendments to bring the devolved administrations and devolved legislatures within the scope of the provisions. Officials in DExEU will be happy to further discuss any of these with your officials if that would be helpful to your decision making process.

Explanatory Material

- Would you like devolved authorities to be statutorily bound to produce explanatory material alongside SIs made under the relevant powers in schedule 2 of the Bill?

If so:

- Should this explanatory material relate to the changes being made by the SI?
- Should this explanatory material relate to the relevant equalities duties?
- Should this requirement only apply to SIs made under the powers in Schedule 2 parallel to those in clauses 7(1), 8 and 9?

Sifting

- Would you like devolved authorities to be required to submit negative SIs for a committee of the relevant legislature to consider the appropriateness of the negative procedure?

If so:

- Should this only apply to the SIs made under the powers in schedule 2 parallel to those in clauses 7(1), 8 and 9?
- Should the other provisions of relating to a sifting committee (e.g. timing, non-binding, remedies) parallel those applying in the UK House of Commons?

Joint procedure

- Currently the sifting procedure and the requirement to produce explanatory material do not apply to SIs made via the joint procedure - do you have any views on this approach?

Other outstanding technical matters

The “made affirmative” procedure

In the Bill as introduced we included a “made affirmative procedure” which could be used by UK ministers in certain urgent cases where there was not sufficient time to go through the normal draft affirmative procedure before the instrument needed to be in force (see paragraphs 4 and 13 of Schedule 7 to the Bill). This procedure would involve making an instrument which will cease to have effect one month after the instrument is made unless the instrument is debated and approved within one month of being made.

As this was an unusual legislative procedure we did not apply it to the powers conferred on any of the devolved administrations on introduction, but instead sought views from each administration on whether they thought the procedure would be useful and appropriate in the context of their legislature.

- Would you like the “made affirmative” procedure to be available for powers exercised by Scottish Ministers?

Defined terms and the Interpretation and Legislative Reform (Scotland) Act 2010:

In the Bill as introduced the only amendments we made to the defined terms in the Interpretation and Legislative Reform (Scotland) Act 2010 were to preserve the defined terms from the European Communities Act. However in the Interpretation Act 1978 we introduced several new defined terms related to withdrawal that the UK Government thought would be useful in relation to its future legislation - these include the following new terms added by para 11(e) of Schedule 8 of the EU (Withdrawal Bill):

- “retained EU law”
- “retained direct EU legislation”
- “retained EU obligation”
- “exit day”.

The Interpretation Act was also amended to alter the definition of “enactment” so that going forward its meaning would include retained direct EU legislation.

We did not include these in ILRA on introduction as we thought it was a matter for the Scottish Government as to whether these new definitions should be included and we wrote to offer to include any of these new definitions in ILRA if you thought it would be suitable to include them

- Would you like any of these new defined terms (or the new meaning of “enactment”) to be included in the amendments to ILRA?
- Are there any other issues relating to EU-exit and interpretation legislation that you think it would be useful to address in the European Union (Withdrawal) Bill?



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **EU (Withdrawal) Bill**

DATE **16 January 2018**

BY **Carwyn Jones, First Minister**

I am making this written statement as the House of Commons begins the Report stage of the EU (Withdrawal) Bill.

The Bill as it currently stands represents a fundamental assault on devolution. It would replace current constraints on the National Assembly's legislative competence, which will fall away as a consequence of the UK leaving the European Union, with a new set of constraints in devolved competences that would be controlled by the UK Government.

We have consistently said there is no prospect of the Welsh Government recommending consent to the EU Withdrawal Bill as it is currently drafted.

The Welsh Government agrees with the overall aim of the EU Withdrawal Bill which is to transfer EU law into domestic legislation from the date of our departure from the EU. We have sought to work constructively with the UK Government to amend the EU Withdrawal Bill to ensure that it will be a success.

It is a matter of considerable regret that the Government has not, despite the undertaking of the Secretary of State for Scotland, introduced any amendment to Clause 11 which, as it stands, is wholly unacceptable to us.

We published a series of amendments jointly with the Scottish Government, which, had they been accepted by the UK Government during the Bill's amending stages in the House of Commons, would have allowed us to recommend the National Assembly consents to the Bill.

We continue to discuss with the UK Government the ways in which the Bill might be amended as it continues its passage through the Houses of Parliament – particularly in respect of clause 11 – to make sure that it is both fit for purpose as the UK prepares to leave the European Union and respects devolution in Wales, Scotland and Northern Ireland.

This strategy, together with the legislative consent motion, which the National Assembly will vote on later this year, remains our preferred course of action for making the EU Withdrawal Bill fit for purpose and protecting Wales' devolution settlement.

However, over the course of the last eight months, the Welsh Government has been developing a Continuity Bill, which can be deployed if it becomes clear that it will not be possible to amend the EU Withdrawal Bill to ensure it properly reflects the devolution settlement.

Should discussions we are having with the UK Government not result in the necessary amendments to the EU Withdrawal Bill coming forward, it is my intention to submit our Continuity Bill to the Presiding Officer, before the end of this month, for her determination.

Agenda Item 4.3

Ysgrifennydd y Cabinet dros Ynni, Cynllunio a Materion Gwledig
Cabinet Secretary for Energy, Planning and Rural Affairs



Llywodraeth Cymru
Welsh Government

David Melding AM, CBE
Temporary Chair
Constitutional and Legislative Affairs Committee

SeneddCLA@assembly.wales

15 January 2018

Dear David

Thank you for your letter of 4 December regarding the Agricultural Wages (Wales) Order 2017. You requested clarification of the Welsh Government's response to technical reporting point 3, on the retrospective effect of the Order.

I should like to reassure you and your Committee that in considering the retrospective application of the Order all relevant interests were weighed and balanced.

The overall aim of the order is to set fair wages for agricultural workers and to support skills and careers within the sector, enabling employees to learn and progress. This operation of the order contributes to the development of a more prosperous, resilient and equal Wales.

The Order was developed in consideration of the Welsh Government's obligations under legislation relating to the Welsh language, equality and human rights and children's rights.

Consideration was given to a range of matters including the amounts involved, the views expressed by the Agricultural Advisory Panel throughout the process of making the Order, views expressed during the Panel's consultation on the Order, and the consequences of not making the order as soon as possible.

Regards
Lesley

Lesley Griffiths AC/AM

Ysgrifennydd y Cabinet dros Ynni, Cynllunio a Materion Gwledig
Cabinet Secretary for Energy, Planning and Rural Affairs

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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.

Pack Page 34

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.

**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE **Amendments to the UK's Trade Bill proposed by the Scottish and Welsh Governments.**

DATE **18 January 2018**

BY **Ken Skates AM, Cabinet Secretary for Economy and Transport**

The Welsh Government recognises the need for legislation that builds a future trade policy for the UK if we are to leave the EU. We agree that the provisions in the Trade Bill designed to maintain continuity in trading relationships, and ensure continued access to government procurement markets are necessary to provide clarity and certainty for businesses and consumers going forward.

In an approach analogous to the approach taken in the EU (Withdrawal) Bill, the Trade Bill places restrictions on the executive competence it gives to Scottish and Welsh Ministers, while placing no similar restrictions on the executive competence given to UK Ministers; and it gives UK Ministers concurrent powers in devolved areas which are exercisable without any requirement for Scottish or Welsh Ministers' consent. This is unacceptable. Moreover, in our view the Trade Remedies Authority, as an independent body, should have input from the devolved nations as well as the Secretary of State.

Hence the Scottish and Welsh Governments cannot recommend that our respective legislatures give their legislative consent to the Bill as it is currently drafted. In an effort to make the Bill acceptable in its approach to devolution, we have developed joint amendments with the Scottish Government, which we hope will be tabled in the House of Commons. These are attached along with the explanatory notes. As we stated in the Trade Bill Legislative Consent Memorandum that was laid on 7 December our view is that the question of whether legislative consent should be given should be considered in the light of the UK Government's response to these amendments.

1

Clause 1, page 1, line 15 at end insert—

- 5 “() No regulations may be made under subsection (1) by a Minister of the Crown, so far as they contain provision which would be within the devolved competence of the Scottish Ministers (within the meaning given in paragraph 7 of Schedule 1), unless the Scottish Ministers consent.
- 10 () No regulations may be made under subsection (1) by a Minister of the Crown, so far as they contain provision which would be within the devolved competence of the Welsh Ministers (within the meaning given in paragraph 8 of Schedule 1), unless the Welsh Ministers consent.”

2

15 Clause 2, page 2, line 40 at end insert—

- 20 “() No regulations may be made under subsection (1) by a Minister of the Crown, so far as they contain provision which would be within the devolved competence of the Scottish Ministers (within the meaning given in paragraph 7 of Schedule 1), unless the Scottish Ministers consent.
- 25 () No regulations may be made under subsection (1) by a Minister of the Crown, so far as they contain provision which would be within the devolved competence of the Welsh Ministers (within the meaning given in paragraph 8 of Schedule 1), unless the Welsh Ministers consent.”

3

Clause 2, page 3, line 3 at end insert—

- 30 “(10) No regulations may be made under subsection (8)(b) unless the Secretary of State has consulted with the Scottish Ministers and the Welsh Ministers.”

4

Schedule 1, page 7, line 24 at end insert—

- 35 “(4) This paragraph does not apply to regulations made under section 1(1) or 2(1) by the Scottish Ministers or the Welsh Ministers.”

5

Schedule 1, page 8, line 5, at end insert—

- 40 “(4) This paragraph does not apply to regulations made under section 1(1) or 2(1) by the Scottish Ministers or the Welsh Ministers.

Requirement for consultation in certain circumstances

- 5
- [] (1) No regulations may be made by the Scottish Ministers or the Welsh Ministers acting alone under section 1(1) or 2(1) so far as the regulations are to come into force before exit day unless the regulations are, to that extent, made after consulting with a Minister of the Crown.
- 10
- (2) No regulations may be made by the Scottish Ministers or the Welsh Ministers acting alone under section 2(1) so far as the regulations make provision about any quota arrangements or are incompatible with any such arrangements unless the regulations are, to that extent, made after consulting with a Minister of the Crown.
- (3) In sub-paragraph (2) “quota arrangements” has the same meaning as in paragraph 3.”

6

15 **Schedule 4, page 14, line 34, at end insert –**

- “(aa) a non-executive member appointed by the Secretary of State with the consent of the Scottish Ministers,
- (ab) a non-executive member appointed by the Secretary of State with the consent of the Welsh Ministers,”

20

Trade Bill Amendments Explanatory Notes

A. UK Government powers to implement the Agreement on Government Procurement and certain other international agreements: requirement for consent of Scottish or Welsh Ministers if making provision within devolved competence

As currently drafted, UK Ministers' powers to make regulations under clauses 1 and 2 of the Bill could be used to make provision in policy areas which are the responsibility of Scottish or Welsh Ministers. The Scottish Government and Welsh Government acknowledge that there may be circumstances justifying amendments to laws in devolved areas being made on a UK-wide basis, but they consider that this should only be possible with the consent of the devolved administrations

Proposed amendments 1 and 2 would mean that UK Ministers would be required to secure the consent of the Scottish Ministers or the Welsh Ministers, before making provision which would be within devolved competence. Devolved Ministers would then be accountable to their legislatures for any decision to consent to the UK Ministers legislating on such a basis.

B. UK Government power to decide the duration of the power to implement international trade agreements: requirement for consultation with Scottish and Welsh Ministers before exercising the power

The Bill allows the Secretary of State to decide how long the power to implement international agreements is to last. These decisions will determine how long devolved Ministers have to use their implementing powers, and for how long the Secretary of State can use the implementing power in devolved areas (as well as in non-devolved areas). The Scottish and Welsh Governments consequently believe that the views of the devolved administrations should have to be taken into account in decisions about the duration of the implementing powers.

Proposed amendment 3 would mean that the Secretary of State would be required to consult the Scottish Ministers and the Welsh Ministers before deciding whether and how to adjust the time period during which the implementing powers can be used.

C. Scottish Ministers' and Welsh Ministers' implementation powers: removal of restrictions

The Bill places a number of restrictions on devolved Ministers' use of the implementation powers in Part 1 of the Bill which are not placed on UK Ministers. We believe as a matter of principle that devolved Ministers should have the same powers as UK Ministers in respect of matters falling within devolved areas.

Proposed amendment 4 would remove the restrictions prohibiting the Scottish and Welsh Ministers' from (a) modifying directly applicable EU law which the Withdrawal Bill incorporates into UK law; and (b) from making provision that is inconsistent with certain kinds of modifications made to that body of law by the UK Parliament or the UK Government. This would bring Scottish and Welsh Ministers' powers into line with the powers being given to UK Ministers in devolved areas.

Proposed amendment 5 would remove the requirement for Scottish and Welsh Ministers to obtain the consent of a UK Minister before using the implementing power

to make regulations that would come into force before exit day, or that would involve quota arrangements. This amendment would require devolved Ministers to consult UK Ministers instead.

D. Trade Remedies Authority: requirement for Scottish and Welsh Ministers' consent to appointment of a non-executive member

The Bill establishes a new Trade Remedies Authority that will ultimately be tasked with investigating claims of dumping or subsidy in the UK, and imposing and enforcing trade remedy measures; in doing so, it will act in the interests of the UK as a whole. Scottish and Welsh Ministers believe that its credence and independence will be demonstrably enhanced by giving devolved administrations an appropriate role in relation to the Authority.

Proposed amendment 6 would require the Secretary of State to obtain Scottish Ministers' and Welsh Ministers' consent to the appointment of a non-executive member to the Board of the Authority.

Agenda Item 4.5

Draft statement

Interparliamentary Forum on Brexit

2nd meeting, 18 January 2018

“Today, we the Chairs, Conveners and representatives of Committees scrutinising Brexit-related issues in the Scottish Parliament, National Assembly for Wales, House of Commons and House of Lords, met at the House of Lords for the second meeting of the Interparliamentary Forum on Brexit, to discuss the process of the UK’s withdrawal from the European Union, and our collective scrutiny of that process. Officials from the Northern Ireland Assembly were in attendance as observers.

“The Interparliamentary Forum was established out of recognition that, notwithstanding our different political positions and perspectives on Brexit, as parliamentarians in our respective legislatures we face common challenges: seeking to ensure the best outcome for the people and communities we represent; holding the UK and devolved governments to account for their role in the process; scrutinising the effects of the European Union (Withdrawal) Bill and related legislation, including the legislative consent process; understanding the implications of Brexit for the future of the devolution settlements; and seeking to determine the nature of the UK’s future relationship with the EU.

“As the European Union (Withdrawal) Bill completes its House of Commons stages, today’s meeting provided a timely opportunity for us to share information on the work that each of our Committees and legislatures is undertaking. We have focused in particular on the implications of Clause 11 of the Bill for the devolution settlements, and discussions on potential future UK-wide frameworks, and we recognise the strong views of members of the Scottish Parliament and National Assembly for Wales on this issue. We met Chloe Smith MP, Minister for the Constitution, Cabinet Office, and have made clear to her our various perspectives on these important questions. We urge the Government to take all of these points of view into account as the House of Lords begins its scrutiny of the legislation in the coming weeks.

“The Forum will meet again in March 2018, when we will again review the progress of the Brexit negotiations and the parallel domestic legislation.”

Mick Antoniw AM, Chair, National Assembly for Wales Constitutional and Legislative Affairs Committee
Claire Baker MSP, Deputy Convenor, Scottish Parliament Culture, Tourism, Europe and External Relations Committee
Lord Blencathra, Chair, House of Lords Delegated Powers and Regulatory Reform Committee
Sir William Cash MP, Chair, House of Commons European Scrutiny Committee
Bruce Crawford MSP, Convener, Scottish Parliament Finance and Constitution Committee
Chris Davies MP, member, House of Commons Welsh Affairs Committee
Richard Graham MP, member, House of Commons Exiting the EU Committee
Lord Jay of Ewelme, member, House of Lords European Union Committee and Chair, House of Lords EU Home Affairs Sub-Committee
Bernard Jenkin MP, Chair, House of Commons Public Administration and Constitutional Affairs Committee
Joan McAlpine MSP, Convener, Scottish Parliament Culture, Tourism, Europe and External Relations Committee
Lord McFall of Alcluith, Senior Deputy Speaker, House of Lords
Stuart McMillan MSP, Deputy Convenor, Scottish Parliament Delegated Powers and Law Reform Committee
David Rees AM, Chair, National Assembly for Wales External Affairs and Additional Legislation Committee
Graham Simpson MSP, Convener, Scottish Parliament Delegated Powers and Law Reform Committee
Baroness Taylor of Bolton, Chair, House of Lords Constitution Committee
Adam Tomkins MSP, Deputy Convenor, Scottish Parliament Finance and Constitution Committee
Lord Trefgarne, Chair, House of Lords Secondary Legislation Scrutiny Committee

Agenda Item 6

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Agenda Item 7

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Agenda Item 9

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