

## Agenda – Finance Committee

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Meeting Venue:

Committee Room 1 – Senedd

Meeting date: 27 November 2019

Meeting time: 09.30

For further information contact:

**Bethan Davies**

Committee Clerk

0300 200 6372

[SeneddFinance@assembly.wales](mailto:SeneddFinance@assembly.wales)

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### **1 Introductions, apologies, substitutions and declarations of interest**

(09:30)

### **2 Paper(s) to note**

(09:30)

(Pages 1 – 10)

- Minutes from the meeting held on 17 October 2019
- Minutes from the meeting held on 23 October 2019
- Minutes from the meeting held on 7 November 2019
- Minutes from the meeting held on 13 November 2019

#### **2.1 Letter from Suzy Davies AM in response to Finance Committee's report on scrutiny of Assembly Commission draft budget 2020–21**

(Pages 11 – 22)

#### **2.2 Letter from the Auditor General for Wales to Chair of Public Accounts Committee: New Zealand budgetary process**

(Pages 23 – 25)

#### **2.3 Letter from Minister for Finance to Llywydd: Non-Domestic Rating (Multiplier) (Wales) Order 2019**

(Pages 26 – 37)

#### **2.4 Letter from Minister for Health and Social Services to Chair of Health, Social Care and Sport Committee: National Health Service (Indemnities) (Wales) Bill**

(Pages 38 – 41)



**3 Motion under Standing Order 17.42 to resolve to exclude the public from the remainder of the meeting**

(09:30)

**4 Technical briefing: Welsh tax forecasts**

(09:30–10:30)

(Pages 42 – 44)

Andrew Jeffreys, Director, Welsh Treasury

Julian Revell, Head of Fiscal Analysis, Welsh Treasury

Paper 1 – Background paper

**Break 10:30–10:40**

**5 Private briefing: Future Generations Commissioner for Wales monitoring of the Welsh Government budget – key findings to date**

(10.40–11.40)

(Pages 45 – 47)

Cathy Madge, Lead Change Maker, Office of the Future Generations Commissioner for Wales

Eurgain Powell, Change Maker, Office of the Future Generations Commissioner for Wales

Paper 2 – Briefing paper

**6 Scrutiny of the Wales Audit Office and the Auditor General for Wales's Annual Report and Accounts 2018–19 and Estimate 2020–21: Consideration of draft report**

(11.40–12.00)

(Pages 48 – 62)

Paper 3 – Cover paper

Paper 4 – Correspondence with the Auditor General for Wales and Chair of the Wales Audit Office

Paper 5 – Draft report

## Concise Minutes – Finance Committee

Meeting Venue:

Committee Room 3 – Senedd

Meeting date: Thursday, 17 October  
2019

Meeting time: 09.32 – 10.49

This meeting can be viewed

on [Senedd TV](#) at:

<http://senedd.tv/en/5774>

### Attendance

| Category          | Names   |
|-------------------|---|
| Assembly Members: | Llyr Gruffydd AM (Chair)<br>Rhun ap Iorwerth AM<br>Alun Davies AM<br>Mike Hedges AM<br>Nick Ramsay AM<br>Mark Reckless AM<br>Russell George AM<br>Mohammad Asghar (Oscar) AM<br>Hefin David AM<br>Vikki Howells AM<br>Joyce Watson AM |
| Witnesses:        | Ifan Glyn, Federation of Master Builders<br>Catherine Griffith-Williams, SEC Group<br>Rudi Klein, SEC Group<br>Kyle Spiller, Chartered Institute of Building Wales  |



|                  |                               |
|------------------|-------------------------------|
| Committee Staff: | Leanne Hatcher (Second Clerk) |
|                  | Lara Date (Second Clerk)      |
|                  | Owen Holzinger (Researcher)   |
|                  | Sam Mason (Legal Adviser)     |

## **1 Introductions, apologies, substitutions and declarations of interest**

1.1 Apologies were received from Rhianon Passmore and Bethan Sayed.

## **2 Evidence session: Retention payments in the construction sector**

2.1 The Committees jointly received evidence from Professor Rudi Klein, Barrister, Head of Specialist Engineering Contractors' (SEC) Group; Catherine Griffith-Williams, National Executive Officer for Wales, SEC Group; Kyle Spiller MCIOB, Director of SAM Drylining Ltd (representing Chartered Institute of Building Wales); and Ifan Glyn, Senior Hub Director/Wales Director, Federation Of Master Builders on retention payments in the construction sector.

## **3 Motion under Standing Order 17.42 to resolve to exclude the public from item 4 of the meeting**

3.1 The motion was approved.

## **4 Consideration of evidence: Retention payments in the construction sector**

4.1 The Committees jointly considered the evidence received on retention payments in the construction sector.

# Concise Minutes – Finance Committee

Meeting Venue:

Committee Room 1 – Senedd

Meeting date: Wednesday, 23 October  
2019

Meeting time: 09.33 – 11.35

This meeting can be viewed

on [Senedd TV](#) at:

<http://senedd.tv/en/5775>

## Attendance

| Category          | Names  |
|-------------------|--|
| Assembly Members: | Llyr Gruffydd AM (Chair)<br>Rhun ap Iorwerth AM<br>Alun Davies AM<br>Mike Hedges AM<br>Rhianon Passmore AM<br>Nick Ramsay AM<br>Mark Reckless AM   |
| Witnesses:        | Nick Bennett, Public Services Ombudsman for Wales<br>Tim Edds, Welsh Government<br>David Meaden, Public Services Ombudsman for Wales Office<br>Vaughan Gething AM, Minister for Health and Social Services<br>Katrin Shaw, Public Services Ombudsman for Wales<br>Alex Slade, Welsh Government |
| Committee Staff:  | Bethan Davies (Clerk)<br>Leanne Hatcher (Second Clerk)   |



|  |   |
|--|---|
|  | Georgina Owen (Second Clerk)<br>Samantha Williams (Deputy Clerk)<br>Joanne McCarthy (Researcher)<br>Owen Holzinger (Researcher)<br>Christian Tipples (Researcher)<br>Matthew Richards (Legal Adviser) |
|--|---|

## **1 Introductions, apologies, substitutions and declarations of interest**

1.1 Alun Davies declared an interest.

## **2 Paper(s) to note**

2.1 The papers were noted.

## **3 Public Services Ombudsman for Wales Estimates 2020–21: Evidence session**

3.1 The Committee received evidence from Nick Bennett, Public Services Ombudsman for Wales; Katrin Shaw, Chief Legal Adviser and Director of Investigations; and David Meaden, Financial Accountant.

## **4 Motion under Standing Order 17.42 to resolve to exclude the public from part of the meeting (items 5, 7 and 8)**

4.1 The motion was approved.

## **5 Public Services Ombudsman for Wales Estimates 2020–21: Consideration of evidence**

5.1 The Committee considered the evidence received.

## **6 National Health Service (Indemnities) (Wales) Bill: Evidence session**

6.1 The Committee received evidence from Vaughan Gething AM, Minister for Health and Social Services; Alex Slade, Deputy Director Primary Care Division, Welsh Government; and Tim Edds, Lawyer, General Medical Services, Welsh Government.

## **7 National Health Service (Indemnities) (Wales) Bill: Consideration of evidence**

7.1 The Committee considered the evidence received.

## **8 Consideration of draft report on proposals to amend the Public Audit (Wales) Act 2013**

8.1 The Committee considered the draft report and agreed to consider a revised report in due course.

# Concise Minutes – Finance Committee

Meeting Venue:

Committee Room 5 – Tŷ Hywel

Meeting date: Thursday, 7 November  
2019

Meeting time: 09.01 – 11.14

This meeting can be viewed

on [Senedd TV](#) at:

<http://senedd.tv/en/5776>

## Attendance

| Category          | Names   |
|-------------------|---|
| Assembly Members: | Llyr Gruffydd AM (Chair)<br>Rhun ap Iorwerth AM<br>Alun Davies AM<br>Mike Hedges AM<br>Rhianon Passmore AM<br>Nick Ramsay AM<br>Mark Reckless AM  |
| Witnesses:        | Adrian Crompton, Auditor General for Wales, Wales Audit Office, Auditor General for Wales, Wales Audit Office<br>Isobel Everett, Wales Audit Office<br>Steve O'Donoghue, Wales Audit Office<br>Kevin Thomas, Wales Audit Office |
| Committee Staff:  | Bethan Davies (Clerk)<br>Leanne Hatcher (Second Clerk)<br>Georgina Owen (Second Clerk)<br>Samantha Williams (Deputy Clerk)  |





|  |   |
|--|---|
|  | Owen Holzinger (Researcher)<br>Christian Tipples (Researcher) |
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## **1 Introductions, apologies, substitutions and declarations of interest**

1.1 The Chair welcomed Members to the meeting.

## **2 Paper(s) to note**

2.1 The paper was noted.

### **2.1 Letter from the Minister for Finance and Trefnydd to the Chair of the Finance Committee – Report on Outturn 2018–19**

## **3 Annual Scrutiny of the Wales Audit Office and the Auditor General for Wales: Evidence session**

3.1 The Committee received evidence from Adrian Crompton, Auditor General for Wales; Isobel Everett, Chair of the Wales Audit Office; Steve O’Donoghue, Director of Finance and HR, Wales Audit Office; and Kevin Thomas, Director of Corporate Resources, Wales Audit Office as part of its annual scrutiny of the Wales Audit Office and Auditor General for Wales.

## **4 Motion under Standing Order 17.42 to resolve to exclude the public from the remainder of the meeting, the whole of the next meeting on 13 November 2019 and the start of the meeting on 21 November 2019**

4.1 The motion was approved.

## **5 Annual Scrutiny of the Wales Audit Office and the Auditor General for Wales: Consideration of evidence**

5.1 The Committee considered the evidence received and agreed to consult the Auditor General for Wales and the Chair of the Wales Audit Office, in accordance with Standing Order 20.22.

## **6 Financial implications of the National Health Service (Indemnities) (Wales) Bill: Consideration of draft report**

6.1 The Committee agreed the draft report.

# Concise Minutes – Finance Committee

Meeting Venue:

Committee Room 1 – Senedd

Meeting date: Wednesday, 13 November  
2019

Meeting time: 09.31 – 10.51

This meeting can be viewed

on [Senedd TV](#) at:

<http://senedd.tv/en/5777>

## Private

### Attendance

| Category          | Names   |
|-------------------|---|
| Assembly Members: | Llyr Gruffydd AM (Chair)<br>Rhun ap Iorwerth AM<br>Alun Davies AM<br>Mike Hedges AM<br>Nick Ramsay AM<br>Mark Reckless AM   |
| Witnesses:        | Laura Fox, Welsh Government<br>Andrew Hewitt, Welsh Government<br>Gareth McMahon, Welsh Government  |
| Committee Staff:  | Bethan Davies (Clerk)<br>Leanne Hatcher (Second Clerk)<br>Georgina Owen (Second Clerk)<br>Samantha Williams (Deputy Clerk)<br>Owen Holzinger (Researcher)<br>Christian Tipples (Researcher) |



## **1 Introductions, apologies, substitutions and declarations of interest**

1.1 The Chair welcomed Members and witnesses to the meeting.

1.2 Apologies were received from Rhianon Passmore.

## **2 Technical briefing: Making changes to Welsh tax legislation**

2.1 The Committee received a technical briefing from Gareth McMahon, Government Lawyer; Andrew Hewitt, Welsh Treasury; and Laura Fox, Welsh Treasury on proposed changes to Welsh tax legislation.

## **3 Public Services Ombudsman for Wales Estimates 2020–21: Consideration of draft report**

3.1 The Committee agreed the content of the draft report.

## **4 Welsh Government Draft Budget 2020–21: Approach to scrutiny**

4.1 The Committee considered the revised approach to scrutiny for the Welsh Government draft budget 2020–21 and agreed the way forward.

## **5 Approach to scrutiny for forthcoming legislation**

5.1 The Committee considered the paper on the approach to scrutiny for forthcoming legislation.

## **6 Annual scrutiny of the Wales Audit Office and the Auditor General for Wales: Consideration of draft report**

6.1 The Committee considered the draft report and agreed to consider a revised draft on 27 November 2019.

**Cynulliad Cenedlaethol Cymru**  
Comisiwn y Cynulliad

**National Assembly for Wales**  
Assembly Commission

Llyr Gruffydd AM  
Chair of Finance Committee  
National Assembly for Wales  
Tŷ Hywel  
Cardiff Bay  
CF99 1NA

5 November 2019

Dear Llyr

I'd like to draw the Committee's attention to a change to the Commission's budget following the recent publication of the Annual Survey for Hours and Earnings (ASHE) index. This index is used to calculate increases to Members' salaries. **Annex 1** provides further information on this change in the Remuneration Board's Determination budget line.

Thank you also for your Committee's **Report on the Scrutiny of the Assembly Commission Draft Budget 2020-2021**, published on 17 October 2019. The Commission's response to the Finance Committee's recommendations is detailed in **Annex 2**.

We note and welcome the Committee's comments. However I am concerned that the Committee feels there could be more transparency around staff numbers. I thought, therefore, that it might be helpful if we provided the Committee with a summary of how the Commission's position has developed over the last two years. This is set out in **Annex 3**.

I have also included, as requested, a note on the Commission's planning for Brexit. This can be found in **Annex 4**.

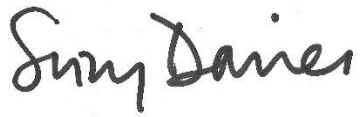
I would like to thank the Committee for its scrutiny and I look forward to the debate on the Commission's budget motion next week.

The Commission's approach is always to try to operate with openness,



transparency and clarity, if there is any further information your Committee would like to have, please do not hesitate to let me know.

Yours sincerely

A handwritten signature in black ink that reads "Suzy Davies". The signature is written in a cursive, flowing style.

Suzy Davies AM  
cc Manon Antoniazzi, Nia Morgan

Croesewir gohebiaeth yn Gymraeg neu Saesneg / We welcome correspondence in Welsh or English



## Annex 1

### Change to the Remuneration Board's Determination Budget

The Assembly Commission's draft 2020-21 budget included an amount of £15.813 million to fund the requirements of the Remuneration Board's Determination.

Assembly Members' salaries are adjusted each year, as set out in the Determination. Salaries for Members are linked directly to changes in the Annual Survey for Hours and Earnings (ASHE) index. The 2019-20 determination also linked AMSS salaries to the ASHE index.

The Commission's draft budget (page 27) noted that an estimate of the change in the index, of 2.0%, was included in the draft figures. On 29 October 2019, the latest ASHE index was published and the increase in the index is 4.4%. This additional amount (around £360,000) is significant and has therefore been incorporated into the final budget document to be laid on 6 November 2019. In previous years the estimate has not varied significantly from the published index and changes to the draft budget have not been necessary.

Table 9 (page 35) has been amended within the final budget document. The new table now shows the following amounts in 2020-21 and future years:

*Table 1: Analysis of 'Members' salaries and related costs'*

|   | 2019-20<br>£'000 | 2020-21<br>£'000   | 2020-21<br>£'000 | 2021-22<br>£'000 | 2022-23<br>£'000 |
|---|------------------|--------------------|------------------|------------------|------------------|
|   |                  | <b>Pre IFRS 16</b> | <b>IFRS 16</b>   |                  |                  |
| Assembly Members' Support Staff Salaries and on-costs | £8,568           | £8,797             | £8,797           | £9,184           | £9,588           |
| Allowances and Office Costs                           | £1,809           | £1,831             | £1,831           | £1,864           | £1,899           |
| Vacancy / Churn Provision                             | (£500)           | (£1,000)           | (£1,000)         | (£1,000)         | (£500)           |
| <b>Total</b>  | <b>£16,197</b>   | <b>£16,172</b>     | <b>£16,172</b>   | <b>£16,881</b>   | <b>£18,120</b>   |

These new totals also feed into the budget summary tables (tables 1, 2 and 3) on pages 30, 31 and 32. These tables have also been updated. In summary, the total budget requirement for 2020-21 has increased from £61.052 million to £61.411 million and the net cash requirement for 2020-21 is now £56.075 million.



## **Annex 2**

### **Finance Committee Recommendations**

#### Recommendation 1.

The Committee recommends further details are provided on the legislation software project in June 2020 when more specifics, including costs, of the project are known and the contract has been awarded.

Accepted. Once more details are known on the legislation software project, the Commission will write to the Finance Committee with further information.

#### Recommendation 2.

The Committee recommends that the Assembly Commission provides details to the Committee, around June 2020, of the long term project planning being undertaken.

Accepted. The Assembly Commission will provide more detail to the Committee on its long term project planning alongside its budget proposals for 2021-22, by 1 October 2020.

#### Recommendation 3.

The Committee recommends that an annual financial report on the long term benefits, including ongoing savings, of the Voluntary Exit Scheme is provided to the Committee identifying how the scheme has met the stated aims, specifically “Delivering long-term savings where possible and/or avoiding additional costs in meeting skill shortages”.

A report on the benefits of the VES and how it has met its stated aims will be provided to the Committee by September 2020.

#### Recommendation 4.

As the Assembly Commission considers the Standards Commissioner’s staffing support should be outside the Assembly Commission’s establishment cap, the Committee recommends that work needs to be undertaken to ensure that this draft Budget and future draft Budgets identify resources for the Standards Commissioner.

Accepted. The Assembly Commission will amend its 2020-21 Draft Budget to identify resources for the Standards Commissioner. This information will be included within the narrative on page nine and within table four in the Final Budget to be laid on 6 November 2019 and within future budgets.





We will continue to respond to the resource requirements of the Standards Commissioner in accordance with statutory requirements.

#### **Recommendation 5.**

**The Committee recommends that where the Commission is requesting the Assembly to authorise policies, then there needs to be more transparent detail provided to Members at the time regarding the financial costs and future accountability arrangements around these policies, this should include the mechanism for calculating staffing increases and the justification for this.**

Accepted. There is and there will continue to be governance around our provision of resources, including to the Standards Commissioner.

There are on-going conversations between the Commission, the Standards Committee and the Standards Commissioner around future resourcing and governance arrangements. However as noted above, we are required by law to provide the Standards Commissioner with the resources he requires to discharge his functions.

#### **Recommendation 6.**

**The Committee recommends that the Commission prioritises funding for awareness raising of voting at 16 and works proactively with the Electoral Commission, the Welsh Government and local authorities to ensure a comprehensive awareness raising campaign.**

Accepted. The Commission has prioritised £150,000 for awareness raising of lowering the voting to 16 within the 2020-21 budget (within the £500,000 pre-election costs) and we will continue to work proactively with the organisations listed above.



## Annex 3

### Transparency in decision making around staff numbers

To address the Committee's regret that "there is not more transparency in decision making around staff numbers (page 19)", the following note outlines the Commission's developing thinking about its establishment.

In October 2017, the Finance Committee recommended that the number of full-time equivalent posts (FTE) in the Assembly should remain static for the financial year 2018-19. In fact, the average FTE number for 2018-19 was 442.79, as opposed to 451.19 in 2017-18. However, maintaining a static FTE count for a fixed period is not a practical measure for any organisation, as the number of FTEs can change on a daily basis due to leavers, secondments, maternity leave and job shares, for example. Having looked hard at how to respond positively to the principle behind the Finance Committee's recommendation, we concluded that the best approach would be to focus on maintaining a fixed number of establishment posts, benchmarking against a starting point in 2017 of 491. We would also give an undertaking to work within this cap for as long as possible and only seek to vary it with the permission of the Assembly Commission.

For 18 months we have been successful in maintaining the number of established posts at or below this cap, whilst responding to a significant growth in demand for Commission services. We have been able to do this by introducing greater discipline around the allocation of posts, looking to re-prioritise vacated posts to meet new demands, increasing the scrutiny of individual services resource plans and actively looking to combine roles where possible, so two posts becoming one. The Commission's Executive Board has taken on the responsibility for making all decisions on requests for resources and the Commission has been regularly informed of the outcome of these decisions.

In addition, we have kept the Committee informed of developing pressures on our establishment total as new needs have emerged, most notably those arising from Brexit. We have been challenged by both the Finance and Public Accounts Committees about our resourcing plans for Brexit, whilst also being urged to consider staff wellbeing and the increasing incidence of absence from work due to stress.

Clearly, in the 2019-20 Budget we did state an ambition to manage our:

*"staffing resources robustly to meet the needs of the Assembly, within its fixed establishment of 491 posts, until the next election."*



However, during the Finance Committee scrutiny session of the budget on 3 October 2018 we gave notice that this might need to change:

*“we are at the moment staying within that establishment post count of 491”*

and we repeated this in our response to the Committee’s report on the 2019-20 budget, stating that we would work:

*“for as long as possible, within the overall establishment cap of 491 posts”*

This change in our ambition to manage within a fixed establishment cap was singularly driven by the need to ensure that we could continue to support Members and the Assembly in addressing the increasing workload brought about by Brexit preparations. In this we were not alone in recognising the need for resources, with the Welsh Government and Scottish and UK Parliaments all identifying similar resource needs. In the course of the following months it became increasingly evident through our forward planning processes, that the measures we had introduced to manage demand within available resources would only go so far and that if we were to avoid compromising our goal of providing outstanding parliamentary support, we would need to consider other options.

We therefore introduced a Voluntary Exit Scheme to release capacity in the organisation to repurpose posts, restructure services to focus on priority demands and enhance our agility to respond to these challenges.

The Chief Executive wrote to the Committee on 20 November 2018 informing it of the Commission’s agreement to run a VES. In the letter we stated that:

*“The VES will help to ensure that the Commission can continue to provide the necessary skills, expertise and capacity to support the Assembly through the particular challenges brought by Brexit and Constitutional Change, whilst continuing to work, for as long as possible, within the overall establishment cap of 491 posts.”*

The VES succeeded in releasing 24 posts, however by early 2019 it was evident that even this would not be sufficient to address the immediate and increasing resource needs of the Commission, driven by Brexit.

In its 1 April 2019 meeting, the Commission was asked to agree to allow a modest and controlled increase to the establishment, beyond 491 and that that an increase of up to 10 posts could be funded from the existing staffing budget – due



to levels of churn. The immediate need was for 6 posts, required to provide additional clerking support driven by the volume of Brexit legislation and translation capacity including specialist legislation translation expertise. The result of the Commission agreeing to this was to take the number of established posts from 491 to 497, but recognising that the establishment may need to increase to 501.

On 3 May 2019, the Chief Executive wrote to the Finance Committee, informing it of the Commission's decision to agree an increase in the number of established posts from 491 to 497 – for the 6 posts mentioned above.

The 2020-21 draft budget further explains the pressures faced by the Commission and notes the increase in the establishment cap to 501. However, the number of posts utilised remains at 497, as communicated to the Committee in May 2019, and currently we are meeting demand within this number as a result of our detailed planning and by continuing to operate the discipline and prioritisation controls mentioned above. Should any requirement to increase beyond 497 become necessary then we would seek the Commission's agreement in the same way as we did for the increase from 491 to 497.

The two Standards Commissioner posts are outside of this cap as it is not within the power of the Commission to control or limit this resource. We note the Committee's separate recommendation about this issue and look forward to further dialogue on the matter.



## **Annex 4**

### **Brexit Preparedness**

#### **Risk Landscape**

To date, the main impact of Brexit on the Assembly has related to its work as a legislature.

The longstanding uncertainty around the timing of the UK's withdrawal from the EU and the terms of any departure has created challenges in planning how we resource the work that the Assembly, as a legislature, needs to deliver.

Regular detailed scenario planning has helped us identify pressures and issues that could arise from each of the scenarios we are likely to face at the end of October 2019 i.e. that a Withdrawal Agreement is reached before the end of October; there is an extension to Article 50; or the UK exiting the EU without a deal.

Under each scenario there will be an increase in the volume of business at fairly short notice. It is likely that this increased business would be for a longer period of time under a no deal scenario. While an extension to the Article 50 negotiating period would allow more time for planning and for legislation to be passed, it is likely there would still be an intense period of activity towards the end of any extension period. That said, the bulk of subordinate legislation scrutiny was done during an intensely busy time for the Constitutional and Legislative Affairs Committee and for Legal Services prior to the previous March 2019 deadline.

Regardless of which Brexit scenario plays out, we have been planning for work post-Brexit. The Assembly will have a key role to play in the scrutiny of new UK-wide common policy frameworks and international agreements, including trade agreements, in the coming months. Consideration is being given to further rebalancing staff resources, and assessing the skills and expertise needed to support effective scrutiny of new UK-wide post-Brexit arrangements.

Brexit is also likely to have an impact on the Commission's corporate services, and again, the extent and timing of these impacts will depend on the terms of the UK's withdrawal from the EU.

We will look to minimise the financial impacts on the Commission and mitigate against the need for additional funding requests, by continuing to focus on building skills and capacity in areas as demand arises.



As mentioned in the scrutiny session, there could be scenarios that could be expensive and we have undertaken analysis of the impact of a no-deal Brexit on our large service and supply contracts, including issues relating to procurement, for example catering, IT hardware and facilities maintenance. While we do not anticipate problems in supply, costs are likely to increase. Assessment of the impact of a no-deal Brexit on the Assembly Commission's budget for both the current year and for 2020-21 is that additional cost to the budget is unlikely to be more than £50,000 - £100,000. Other potential impacts relate to workloads and ensuring we rebalance staffing resource and expertise to be able to respond to post-Brexit scrutiny arrangements and to continue to meet Members' expectations.

## **Risk Management**

The Assembly Audit and Risk Assurance Committee has been kept apprised of the controls and actions in place to assess the implications of various Brexit outcomes on business and on corporate services and to mitigate any risks.

The following controls and actions in place:

- Regular scenario planning involving officials from across the Commission assessing what different Brexit scenarios might mean for Assembly business and the resources that support it.
- Regular assurance exercises examining the Commission's preparedness across corporate services, particularly in the event of a no-deal. This included reviewing our plans for potential recalls of the Assembly during recess and learning lessons from the recall during the summer recess; an assessment of the potential impact on the Commission's large service and supply contracts; how the Assembly might deal with any civil unrest and protests; the implications of changes to freedom of movement after Brexit for our current employees and vetting procedures; and impact of a no-deal Brexit on the Assembly Commission's budget.
- A central point for co-ordinating the Assembly's Brexit work, with senior official oversight, enabling us to share information and identify issues or problems that may arise. Officials meet weekly to share information, and to plan and identify emerging priorities or activities that need to be taken forward.



- Preparatory work on the Assembly's role in scrutinising Brexit beyond exit day and the mechanics and structures needed around these, such as changes to Standing Orders or committee remits.
- Ongoing use of the Brexit Academic Framework to add capacity and expertise via external resource, enabling us to respond quickly to events or complex matters.
- Training sessions for Members, AMSS and Commission staff to ensure awareness of key Brexit developments and to increase expertise.
- The deployment of additional resources to support Brexit related Assembly business to increase resilience.
- Regular dialogue between the Llywydd and committee chairs through the Chairs Forum about workload, resources and forward planning.
- Regular liaison with the other UK parliaments through Member-led channels such as the Interparliamentary Forum on Brexit, and between officials at all levels.
- Formal and informal discussions with Welsh Government officials.
- A communications strategy to highlight work and activity across the Assembly to both internal and external audiences.
- Preparations for any civil unrest/protest and regular conversations with South Wales Police who are preparing for Brexit as part of their national strategy.

The approach we have taken means we have been able to identify and plan for issues that need addressing as early as possible. Resourcing needs are kept under constant review so that we are able to continue to meet Members' expectations.

Assembly Commission  
22 October 2019



Nick Ramsay AM  
Chair  
Public Accounts Committee  
National Assembly for Wales  
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[www.audit.wales](http://www.audit.wales) / [www.archwilio.cymru](http://www.archwilio.cymru)

**Reference:** AC/164/caf  
**Date issued:** 24 October 2019

Dear Nick

### Public Sector reporting – the position in New Zealand

During the Committee's consideration of evidence taken so far in its inquiry on the Welsh Government's 2018-19 annual report and accounts, I offered to provide members with some information about the approach taken by the New Zealand Government to its external reporting. Given our obvious parallels with Scotland, I also touch on recent developments there in respect of financial reporting.

The principle of open and transparent reporting on the plans and activities of the government is very well established in New Zealand, which 30 years ago became the first country in the world to move from cash to accruals-based accounting for its public sector operations, under its ground-breaking [Public Finance Act 1989](#).

The UK Government, together with the devolved administrations, commenced down the same route ten years later under the [Government Resources and Accounts Act 2000](#), but it is fair to say that current public sector reporting practice in New Zealand remains ahead of both the UK and other developed nations around the world.

As just one example of this: the New Zealand Government produced its first set of whole of government accounts back in 1991; the UK Government has done so every year since 2011; the Scottish Government committed in 2016 to do so (in anticipation of taking on its new fiscal and borrowing powers) and reconfirmed that intention to the Scottish Parliament's Public Audit and Post-Legislative Scrutiny Committee in November 2018.

The New Zealand Government also publishes [monthly accounts](#), providing close to real-time information for its Parliament and the public on its in-year spending.

The New Zealand Government's closest equivalents to the Welsh Government's annual report and accounts are the [Annual Report](#) of the Treasury and the [Financial Statements of the Government of New Zealand](#). Their latest reports, for the year ended 30 June 2019, were published in early October. The Annual Report of the Treasury in particular sets out a wide range of information for the



reader, presented in a clear and engaging style, and contains extensive information on targets, performance and outcomes.

Other departments of the New Zealand Government produce their own annual reports, such as for the [Ministry of Social Development](#) and the [Ministry for Education](#). Taken with the annual accounts, these departmental reports together provide a comprehensive picture of progress, delivery and achievements

Most recently, the New Zealand Government has pioneered the development of well-being budgeting, and in May 2019 it placed this at the heart of its public finance planning in the world's first [Wellbeing Budget](#). Wales is, of course, at the forefront of thinking in this area given the ground-breaking *Well-being of Future Generations (Wales) Act 2015*. Whereas our approach in Wales has been legislative, in New Zealand greater reliance is being placed on budgetary decisions and accountability to drive change. The New Zealand wellbeing budget document provides a clear explanation of the annual spending devoted to each of the government's stated priorities and the indicators to be used to assess progress against them. Importantly, it also includes a Fiscal Strategy, setting out medium-term taxation, borrowing and spending projections within the context of the government's long-term fiscal objectives.

In May this year the Scottish Government published the second edition of its own five-year medium term financial strategy: [Scotland's Fiscal Outlook](#). That annual strategy stems from a 2017 recommendation by the Scottish Parliament's Budget Process Review Group. As yet, there is no equivalent publication covering the Welsh public finances. Though this is one example where Scotland are ahead of us, they too have a way to go in terms of comprehensive financial transparency. The most recent critique of the Scottish Government's Consolidated Accounts, from the Auditor General for Scotland, draws attention to this:

*The Scottish Government needs to improve the quality of financial reporting to better support Parliament. In May 2019, the Scottish Government published its second medium-term financial strategy, but it does not reflect all the basic components of a medium-term financial plan. It does not include indicative spending plans or priorities, or links to outcomes... In addition, the government has still not fulfilled its commitment to publish a consolidated account covering the whole devolved public sector in Scotland. This would fill an important gap and improve strategic public financial management, support Parliamentary scrutiny and enable better decision-making<sup>1</sup>.*

This neatly summarises some of the key steps we need to take in Wales if we are to demonstrate best practice in terms of financial budgeting and reporting. And these, in turn, reflect many of the recommendations made by the National

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<sup>1</sup> [The 2018/19 audit of the Scottish Government Consolidated Accounts](#)

Assembly's Finance Committee in the previous Assembly in its two reports on *Best Practice Budget Process*<sup>2</sup>. The Committee's reports focused on steps to strengthen financial arrangements in the light of the transfer of fiscal responsibilities to the Assembly. It made recommendations, for instance, in respect of the need to align budgets with indicators and delivery measures, the desirability of a Whole of Government of Wales Account and the importance of publishing forward looking public finance plans and forecasts. These are just as relevant today as they were then.

I hope that this material is of assistance to the Committee in its ongoing inquiry.

Yours sincerely



**ADRIAN CROMPTON**  
**Auditor General for Wales**

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<sup>2</sup> [Finance Committee - Completed Reports - Fourth Assembly](#)

# Agenda Item 2.3

Y Prif Iddor Cyllid | Finance Committee  
FIN(5)-30-19 PTN3

**Rebecca Evans AC/AM**  
**Y Gweinidog Cyllid a'r Trefnydd**  
**Minister for Finance and Trefnydd**

Ein cyf/Our ref



Llywodraeth Cymru  
Welsh Government

Elin Jones, AM  
Llywydd  
National Assembly for Wales  
Cardiff Bay - CF99 1NA

14 November 2019

Dear Elin,

## **THE NON-DOMESTIC RATING (MULTIPLIER) (WALES) ORDER 2019**

I have today made the Non-Domestic Rating (Multiplier) (Wales) Order 2019, under paragraph 5(3) of Schedule 7 to the Local Government Finance Act 1988, which comes into force on 1 April 2020, subject to the Assembly's agreement. I attach a copy of the statutory instrument and the accompanying Explanatory Memorandum, which I intend to lay once the statutory instrument has been registered.

In accordance with the procedure set out in paragraph 5(15) of Schedule 7 to the Local Government Finance Act 1988, this instrument must be approved by the National Assembly for Wales before the Assembly approves the Local Government Finance Report for the financial year beginning 1 April 2020, or before 1 March in the preceding financial year, whichever is earlier, in order for it to be effective. In these circumstances I understand Standing Order 21.4A is relevant and the Business Committee may establish and publish a timetable for the responsible committee or committees to report. It may be helpful to know that I intend to hold the plenary debate for this item of subordinate legislation on 10 December.

I am copying this letter to Mick Antoniw AM, Chair of the Constitutional and Legislative Affairs Committee, Llyr Gruffydd AM, Chair of the Finance Committee and Sian Wilkins, Head of Chamber and Committee Services.

Yours sincerely,

**Rebecca Evans AC/AM**  
**Y Gweinidog Cyllid a'r Trefnydd**  
**Minister for Finance and Trefnydd**

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[Gohebiaeth.Rebecca.Evans@llyw.cymru](mailto:Gohebiaeth.Rebecca.Evans@llyw.cymru)

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.

*Order laid before the National Assembly for Wales under paragraph 5(15) of Schedule 7 to the Local Government Finance Act 1988, for approval by resolution of the National Assembly for Wales before the approval by the Assembly of the local government finance report for the financial year beginning on 1 April 2020.*

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W E L S H S T A T U T O R Y  
I N S T R U M E N T S

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**2019 No. (W.)**

**RATING AND VALUATION,  
WALES**

**The Non-Domestic Rating  
(Multiplier) (Wales) Order 2019**

**EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order is made under paragraph 5(3) of Schedule 7 to the Local Government Finance Act 1988 (“the Act”).

In relation to Wales, the non-domestic rating multiplier is calculated in each financial year when new lists are not being compiled in accordance with paragraph 3B of Schedule 7 to the Act. 2020 is a year when new lists are not being compiled.

The formula in paragraph 3B of Schedule 7 to the Act includes an item B which is the retail prices index for September of the financial year preceding the year concerned, unless the Welsh Ministers exercise their power under paragraph 5(3) of Schedule 7 to the Act to specify, by Order, a different amount for item B. If the Welsh Ministers exercise that power in relation to a financial year, the different amount so specified must be lower than the retail prices index for September of the preceding financial year. The retail prices index for September of the preceding financial year is 291.0.

This Order specifies that for the financial year beginning on 1 April 2020 the amount for item B is 289.0.

In accordance with paragraph 5(15) of Schedule 7 to the Act, the Order will only come into force if it is approved by a resolution of the National Assembly for

Wales (“the Assembly”) before the Assembly approves the local government finance report for the financial year beginning on 1 April 2020.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to this Order. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with this Order. A copy can be obtained from the Local Government Taxation Policy Branch, the Local Government Strategic Finance Division, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

*Order laid before the National Assembly for Wales under paragraph 5(15) of Schedule 7 to the Local Government Finance Act 1988, for approval by resolution of the National Assembly for Wales before the approval by the Assembly of the local government finance report for the financial year beginning on 1 April 2020.*

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W E L S H S T A T U T O R Y  
I N S T R U M E N T S

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**2019 No. (W.)**

**RATING AND VALUATION,  
WALES**

**The Non-Domestic Rating  
(Multiplier) (Wales) Order 2019**

*Made* 14 November 2019

*Laid before the National Assembly for Wales*  
19 November 2019

*Approved by the National Assembly for Wales*  
\*\*\*

*Coming into force in accordance with article*  
1(2)

The Welsh Ministers make the following Order in exercise of the power conferred on the Treasury by paragraph 5(3) of Schedule 7 to the Local Government Finance Act 1988(1) and now vested in them so far as that power is exercisable in relation to Wales(2).

**Title, commencement and application**

1.—(1) The title of this Order is the Non-Domestic Rating (Multiplier) (Wales) Order 2019.

(2) This Order comes into force on the day after the day on which it is approved by a resolution of the

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(1) 1988 c. 41.

(2) The power under paragraph 5(3) of Schedule 7 to the Local Government Finance Act 1988, so far as exercisable in relation to Wales, was transferred to the National Assembly for Wales by virtue of article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). By virtue of paragraphs 30 and 32 of Schedule 11 to the Government of Wales Act 2006 (c. 32), the power is now vested in the Welsh Ministers.

National Assembly for Wales, provided that the approval of the Order is given before the approval by the Assembly of the local government finance report for the financial year beginning on 1 April 2020.

(3) This Order applies in relation to Wales.

**Non-domestic rating multiplier**

2. For the purpose of paragraph 3B of Schedule 7 to the Local Government Finance Act 1988, for the financial year beginning on 1 April 2020, B is specified as 289.0.

*Rebecca Evans*

Minister for Finance and Trefnydd, one of the Welsh Ministers

14 November 2019

**Explanatory Memorandum to the Non-Domestic Rating (Multiplier) (Wales)  
Order 2019**

This Explanatory Memorandum has been prepared by Local Government Strategic Finance Division and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

**Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Non-Domestic Rating (Multiplier) (Wales) Order 2019.

**Rebecca Evans AM  
Minister for Finance and Trefnydd  
14 November 2019**



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## **PART 1: EXPLANATORY MEMORANDUM**

### **1. Description**

This Order sets the increase in the non-domestic rating (NDR) multiplier for Wales for the financial year 2020-21. It reflects the use of the Consumer Prices Index (CPI) rather than the Retail Prices Index (RPI) to calculate the multiplier.

Under the Local Government Finance Act 1988 (the 1988 Act), the annual increase in the multiplier should be calculated using the RPI figure for the September preceding the financial year to which the multiplier applies. For 2020-21 the RPI figure would have been 291.0.

The multiplier is applied to the rateable value (RV) of each non-domestic property to calculate its non-domestic rates bill. The Order applies the CPI figure in place of the RPI figure. This results in a smaller increase in the 2020-21 rates bills to be paid by businesses and other non-domestic property owners than would be the case if the RPI figure were used.

The formula used for calculating the NDR multiplier in a non-revaluation year is:

$(A \times B) / C$ .

A is the multiplier for the preceding financial year

B is the RPI for September of the preceding financial year

C is the RPI for September of the financial year two years before.

Welsh Ministers may substitute a figure for B which is less than the RPI figure. As CPI is used as the measure for increasing the multiplier, B is calculated based on CPI.

The substituted figure for B is calculated by taking the percentage change in CPI from September of the preceding financial year and September of the financial year two years before and multiplying by RPI for September of the financial year two years before. For 2020-21, B has been calculated as 289.0.

### **2. Matters of Special Interest to the Constitutional and Legislative Affairs Committee**

Under the 1988 Act, an order which enables the multiplier to be increased at below the level of RPI must be approved by the Assembly through an affirmative resolution procedure (paragraph 5(15) of Schedule 7 to the 1988 Act). Under the procedure, after the Order is made, it must be laid before the Assembly for approval.

The relevant provision specifically provides that the order must be approved by the Assembly before the vote on the Local Government Finance Reports (the final local government settlement and final police settlement) taking place. The

debate on the local government settlement for 2020-21 is expected to take place in February 2020.

### **3. Legislative background**

Under the 1988 Act, for financial years in which new rating lists do not apply (ie. all years which are not revaluation years), the default position for determining the non-domestic rating multiplier for Wales is to apply the formula set out in paragraph 3B to Schedule 7 to the 1988 Act. An element in that formula is the RPI for September of the financial year preceding the year concerned. The financial year beginning 1 April 2020 is not a revaluation year and therefore there will not be a new rating list.

Under paragraph 5(3) of Schedule 7 to the 1988 Act, the Welsh Ministers have the power to increase a multiplier at below the level of inflation as measured by RPI. It is this power which the Welsh Ministers propose to exercise in making this Order.

As the Welsh Government is diverging from the normal practice of increasing the multiplier by RPI, Ministers are required, under paragraph 5(15) of Schedule 7 to the 1988 Act, after making the Order to limit the increase at below RPI, to lay it before the Assembly for approval.

The Order is subject to a made/provisional affirmative procedure and must be approved by the Assembly for it to be effective. It is also a requirement of the 1988 Act that any such Order is approved before the local government finance reports (for unitary authorities and police and crime commissioners) are approved by the Assembly. This requirement for prior agreement of the multiplier arises because it plays a vital part in calculating the total funding available in the annual settlements.

The debate on the Local Government Finance Report for unitary authorities for 2020-21 is expected to be scheduled for debate in early 2020. The debate to approve the Order is scheduled to take place on 10 December 2019.

### **4. Purpose and Intended Effect of the Legislation**

The Order will have the effect of increasing the NDR multiplier by CPI rather than RPI for the financial year 2020-21. By applying CPI for 2020-21, the multiplier will be set at 0.535.

This will mean that non-domestic property owners and occupiers in Wales will receive lower rates bills for 2020-21 than they would have if RPI was used.

Primary legislation does not currently provide the Welsh Ministers with powers to permanently change the rate of inflation used to calculate the multiplier from RPI to CPI. Therefore, the Order will apply for 2020-21 only.

This follows on from 2019-20 where the change was achieved through subordinate legislation, the Non-Domestic Rating (Multiplier) (Wales) (No. 2) Order 2018.

All owners or occupiers of non-domestic properties who pay rates will benefit from the change. Even properties which receive significant amounts of rates relief will benefit as the residual amounts will be calculated using a lower multiplier.

All the non-domestic rates collected in Wales are pooled centrally and distributed to unitary authorities and to police and crime commissioners as part of the annual local government settlements. The total amount to be distributed in this way is known as the Distributable Amount. It is calculated by applying the multiplier to the estimated national total of rateable value, taking account of any surplus or deficit carried forward from previous years.

The Distributable Amount is a key component of the annual local government revenue settlements and the 1988 Act requires that it is approved by the Assembly as part of the annual local government finance reports. The multiplier therefore needs to be determined before the annual settlements can be finalised.

There is a clear purpose to the policy behind the legislation. It is aimed at supporting economic growth and reducing the tax liability for businesses and other non-domestic ratepayers in Wales, ensuring they are not at a disadvantage compared to other parts of the United Kingdom.

Using CPI rather than RPI to increase the multiplier in Wales will reduce the income into the non-domestic rates pool in 2020-21. The reduction will be fully funded by the Welsh Government and will be reflected in the calculations for the local government settlements so that there is no financial impact on local authorities.

CPI has been used to calculate the multiplier in Wales since 2018-19 and the Welsh Ministers have determined that CPI should be used to calculate the multiplier for future years. The use of CPI since 2018-19 has been achieved through annual orders. To make the change on a permanent basis requires primary legislation to amend the Local Government Finance Act 1988. It is intended that provisions are included in the Local Government and Elections (Wales) Bill to achieve this. It is expected that the amendment will have effect in time for the 2021-22 financial year.

## **5. Consultation**

No consultation has been undertaken on the policy behind this Order. The policy position has not changed since this was agreed for the 2018-19 financial year. The proposals benefit all ratepayers in Wales and there is no impact on the resources available to local authorities.

## **PART 2: REGULATORY IMPACT ASSESSMENT**

### **Options**

#### ***Option 1 – Use RPI to increase the multiplier***

This option would increase the multiplier for 2020-21 by RPI at September 2019 (2.40%), resulting in a multiplier of 0.539.

#### ***Option 2 – Increase the multiplier by the equivalent of CPI***

This option would increase the multiplier for 2020-21 by CPI at September 2019 (1.78%), resulting in a multiplier of 0.535.

### **Costs and benefits**

#### ***Option 1 – Use RPI to increase the multiplier***

The following illustrates the effect of using RPI to increase the multiplier on the non-domestic rates bill of a property.

For example, if a property has a rateable value (RV) as assessed by the Valuation Office Agency of £15,000, the rates bill for 2019-20 (before any reliefs) would have been:

$$\text{RV } \pounds 15,000 \times 0.526 = \pounds 7,890$$

Applying RPI would result in an annual rates bill for 2020-21 of:

$$\text{RV } \pounds 15,000 \times 0.539 = \pounds 8,085$$

The increase in the annual charge would therefore be £195.

#### ***Option 2 – Increase the multiplier by the equivalent of CPI***

This option would result in a lower increase in rates bills for all non-domestic properties than under RPI. Using the example from Option 1.

The rates bill for 2019-20 was:

$$\text{RV } \pounds 15,000 \times 0.526 = \pounds 7,890$$

An increase using CPI for 2020-21 would give a bill of:

$$\text{RV } \pounds 15,000 \times 0.535 = \pounds 8,025$$

The increase in rates for the property would therefore be £135, £60 less than if RPI were used.

The total saving to non-domestic ratepayers across Wales is estimated at around £10m. This would be a recurrent saving as the multiplier cannot be increased at a level above RPI in future years.

### **Option selection**

The cost of limiting the increase in the multiplier (Option 2) would be borne by the Welsh Government. There would be no financial impact on local authorities. The approach also means that ratepayers in Wales would not be at a disadvantage compared to other parts of the UK.

Option 2 is therefore the preferred option.

### **Analysis of other effects and impacts**

#### **Promoting Economic Opportunity for All (Tackling Poverty)**

Limiting the increase in the multiplier provides support for all ratepayers which could help to prevent hardship.

#### **UNCRC**

No particular impact on the rights of children has been identified.

#### **Welsh language**

No effect on the opportunities to use the Welsh language or the equal treatment of the language has been identified.

#### **Equalities**

No specific impacts, positive or negative, on persons who share a protected characteristic (as determined by the Equality Act 2010) have been identified.

#### **Well-being of Future Generations (Wales) Act 2015**

Limiting the increase in the multiplier will assist all ratepayers and, as such, will help to contribute to the achievement of the wellbeing goals of a prosperous and a more equal Wales.

#### **Impact on voluntary sector**

Limiting the increase in the multiplier will benefit all ratepayers including those operating in the voluntary, charitable and not-for-profit sectors.

#### **Competition Assessment**

A competition filter test has been applied to the Order. As the change benefits all ratepayers, no effect on competition within Wales is indicated. Limiting the multiplier means that ratepayers in Wales are not placed at a disadvantage compared to other parts of the UK.

#### **Post implementation review**

The Welsh Government will monitor the impact of the change on the non-domestic rates pool.

# Agenda Item 2.4

Y Bwrdd Gyhoeddus a Finance Committee  
FIN(5)-30-19 PTN4

Vaughan Gething AC/AM

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol  
Minister for Health and Social Services



Llywodraeth Cymru  
Welsh Government

Dr Dai Lloyd  
Chair  
Health, Social Care and Sport Committee

31 October 2019

Dear Dai,

## National Health Service (Indemnities) (Wales) Bill

Thank you for inviting me to give evidence to the Committee on 23 October concerning the above Bill. During the session, I undertook to provide clarification on the matter of the £100m of liabilities referred to in the Bill's Explanatory Memorandum and Regulatory Impact Assessment. There are also some matters which I consider need further clarification for the Committee. For ease of reference I have structured this letter under respective headings.

### Indemnity cover

During my responses to the Committee, on occasions I used the terms "indemnity insurance" or "insurance" or "indemnity premiums". For clarity, I was referring to the provision of indemnity, which is not an insurance product.

Both the Future Liabilities Scheme (FLS) for clinical negligence claims arising after 1 April 2019 and the proposed Existing Liabilities Scheme (ELS) for clinical negligence claims arising before April 2019 are discretionary "occurrence based" indemnity cover.

"Occurrence based" indemnity cover contrasts with "claims made" cover which is the nature of an insurance policy. Under "claims made" cover, if a GP did something negligent and then retired the next day, the GP will need to have "run-off" arrangements in place to cover any claims that are made after payment of policy premiums has stopped. These "run-off" arrangements are sometimes built into the policy, but in other cases require additional payments to be made. However, with "occurrence based cover", as long as the GP has paid the MDO subscription at the time the incident occurred that later gave rise to a claim, the GP will be covered in perpetuity. This means that even if the GP did something negligent but retired the next day and stopped subscriptions, even if the complaint and legal claim is made against the GP three years later, the GP will be covered.

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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.

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.

Under the ELS and FLS schemes, indemnity for clinical negligence is discretionary which mirrors the ELS and FLS arrangements in England and the medical defence organisation (MDO) indemnity arrangements. Under discretionary indemnity, Welsh Ministers will have the discretion to settle a claim for clinical negligence. Exercising discretion would only be made in unique circumstances.

### **Limitation periods for bringing clinical negligence claims**

Limitation periods for bringing claims are set out in the Limitation Act 1980. In essence, the period for clinical negligence claims is three years from the incident date or from the date of knowledge if that is later (as it often is). Children have until their 21<sup>st</sup> birthday and persons without capacity are not subject to a limitation period at all.

### **The scope of the ELS and FLS**

The ELS and FLS scheme will cover the activities of all contractors who provide primary medical services which will include clinical liabilities arising from the activities of GP practice staff and other medical professionals such as salaried GPs, locum GPs, practice pharmacists, practice nurses. The scheme will not cover private work, complaints, involvement in coroners' cases, GMC hearings and other matters. The scheme will not cover primary care dentistry, community care dentistry community pharmacy, and optometry.

### **ELS Liabilities to be transferred to Welsh Government**

The Welsh Government is bound by non-disclosure agreements with all three MDOs due to the sensitive nature of the information and discussions. Therefore, only limited information can be provided to the Committee.

The Welsh Government has commissioned external financial advisors to undertake financial due diligence in relation to the three MDOs covering actuarial advice in relation to potential clinical negligence liabilities incurred before 1 April 2019. The financial due diligence has included actuarial advice in relation to potential clinical negligence liabilities incurred before 1 April 2019. The actual value of the liabilities may fluctuate according to claims incidence patterns, claims notifications and the value of settled claims. These liabilities will only be taken on by the Welsh Government if an appropriate transfer of assets can be agreed with the participating MDO. The £100m estimate of liabilities is not the expected cost to the Welsh Government because it does not take account of any asset transfers from MDOs. The Welsh Government is confident that the estimate of liabilities provided by the external advisors is robust.

In the event of liabilities being greater than the estimate, Welsh Government will bear the risk of claims values being greater than those anticipated through due diligence work. Equally, the Welsh Government will benefit from any claims being settled at a lower value since liabilities may fluctuate according to claims incidence patterns, claims notifications and value of settled claims. In addition, there is some level of protection within the contracts being negotiated in the event of the liabilities value turning out to be significantly higher than anticipated in the form of some sharing of financial risk with participating MDOs.

The anticipated net financial exposure of Welsh Government in relation to each participating MDO cannot be disclosed because this would breach the non-disclosure agreements between MDOs and Welsh Government. The anticipated net financial exposure to Welsh Government is expected to be within the parameters set out when it was decided to commit to ELS, in return for which the ELS arrangements would strengthen the stability of indemnity provision which will provide assurance for patients in relation to pre-April 2019 clinical



negligence claims for redress. The ELS arrangements will also ensure that GPs in Wales are not treated at a disadvantage relative to GPs in England where ELS arrangements are being introduced. This will help to ensure that there is no negative impact on GP recruitment and retention and cross border activity.

### **The effect of the proposed Bill on medical defence organisations**

The Bill has no effect on the MDOs. It provides the enabling power for the drafting of Regulations that will create the ELS.

### **The Market**

It would be helpful to clarify my reply to Angela Burns AM final questions regarding the MDOs business and my reference to a “failing market”. My reference to the market failing was made in the context of MDOs being able to offer an affordable product. My response reflected that Government intervened in the MDO indemnity market given the increasing cost of GP professional indemnity and, in particular, the impact of the decision taken by the UK Government to change the Personal Injury Discount Rate (PIDR) 2.5% to minus 0.75% in February 2017 which would have resulted in the cost of indemnity cover for GPs increasing substantially, perhaps by 20% -25%, which would have been untenable for GPs. The decision to introduce the Future Liability Scheme (FLS) in April 2019 helped to address the concerns of GPs about the affordability of professional indemnity costs and has helped to deliver a sustainable, long term solution to address the increasing costs of professional indemnity.

My reference to the market failing in terms of an affordable product was made in this context. The Scottish Government has not introduced a state backed scheme for GP professional indemnity. I note the subsequent evidence given by MDDUS. I am happy to note that MDDUS is a very well respected, well managed, medical defence organisation which is underpinned by prudent financial management.

### **Conclusion**

I consider that the ELS arrangements will strengthen the resilience of general medical services and will provide assurance for patients in relation to pre April 2019 clinical negligence claims for redress. The ELS arrangements, which will be aligned with ELS arrangements in England, will also help to ensure there is no negative impact on cross border activity in terms of GP recruitment, which could be the case if Wales ELS arrangements are not introduced, and if arrangements in Wales differ from those in England.

I am providing a copy this letter to the Chair of the Finance Committee.

Yours sincerely,



**Vaughan Gething AC/AM**

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol  
Minister for Health and Social Services

# Agenda Item 4

By virtue of paragraph(s) vi of Standing Order 17.42

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# Agenda Item 6

By virtue of paragraph(s) vi of Standing Order 17.42

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