



Llywodraeth Cymru
Welsh Government

Welsh Tax Acts etc. (Power to Modify) Bill (“the Bill”)

Policy intent for subordinate legislation to
be made under this Bill

December 2021

WELSH TAX ACTS ETC. (POWER TO MODIFY) BILL (“THE BILL”) POLICY INTENT FOR SUBORDINATE LEGISLATION

This document provides an indication of the current policy intention for the subordinate legislation that the Welsh Ministers are empowered or required to make under the provisions of the Welsh Tax Acts etc. (Power to Modify) Bill (“the Bill”). It has been published in order to assist the responsible Committee during the scrutiny of the Bill and should be read in conjunction with Chapter 5 of the Explanatory Memorandum and Explanatory Notes.

The Welsh Tax Acts etc. (Power to Modify) Bill (“the Bill”) provides the Welsh Ministers with a regulation making power (exercisable via either the draft or made affirmative procedure) to make changes to the Welsh Tax Acts where an external event occurs that impacts the devolved taxes and their associated revenues. The power may be used where the Welsh Ministers consider that it is necessary or appropriate to make changes in response to that event. The power may be used for the following purposes:

- to ensure that landfill disposals tax and land transaction tax are not imposed where to do so would be incompatible with any international obligations;
- to protect against tax avoidance in relation to landfill disposals tax and land transaction tax;
- to respond to changes to ‘predecessor’ UK taxes (that is, stamp duty land tax or landfill tax) which impacts or could impact the amount paid into the Welsh Consolidated Fund; and
- to respond to decisions of the courts/tribunals which affect or may affect the Welsh Tax Acts, or regulations made under them

This intervention is primarily needed to protect revenues available for essential Welsh public services. At present, for example, every time there is a UK budget cycle, the Welsh Government takes the risk that there may be a change which impacts on a devolved tax and has a direct budgetary impact on resources and which Welsh Ministers cannot react to in a timely manner. An intervention of this kind may also be appropriate where the Welsh Treasury and the Welsh Revenue Authority (WRA) need to promptly ‘close-down’ tax avoidance schemes or maintain compliance with international obligations.

The Bill also places a duty on the Welsh Ministers to publish a statement of their policy with respect to the exercise of the regulation making power to make regulations that have retrospective effect.

Section	Description	Policy intention
Section 1: Power to modify the Welsh Tax Acts		
Section 1(1a-d)	<p>The Welsh Ministers may, by regulations, modify the Welsh Tax Acts and regulations made under those Acts if they consider that the modifications are necessary or appropriate for or in connection with any of the following purposes:</p> <ul style="list-style-type: none"> a) ensuring that landfill disposals tax and land transaction tax are not imposed where to do so would be incompatible with any international obligations b) protecting against tax avoidance in relation to landfill disposals tax and land transaction tax; c) responding to a change to a predecessor tax which affects, or may affect, the amounts paid into the Welsh Consolidated Fund under section 118(1) of the Government of Wales Act 2006 (c. 32); d) responding to a decision of any court or tribunal which affects, or may affect, the operation of any of the Welsh Tax Acts or regulations made under those Acts. 	<p>This power enables the Welsh Ministers to respond by regulations to a number of external circumstances that impact on Welsh devolved taxes.</p> <p>The exercise of the regulation making power is subject to purpose tests which are intended to constrain the use of the power. The purpose tests target those areas where it is anticipated that external events may require a response by the Welsh Ministers to protect Welsh Government revenues and taxpayers. The intended effect is as follows:</p> <ul style="list-style-type: none"> - Purpose (a) – the Welsh Ministers may wish to make changes at short notice in order to ensure that the devolved taxes are not imposed where this would result in non-compliance with certain international obligations such as, for example, where a new trade deal or double taxation agreement is concluded with another country which has implications for the devolved taxes. - Purpose (b) – the Welsh Ministers may make legislative changes to protect against avoidance activity that can then be stopped with immediate effect. This includes cases where the Welsh Revenue Authority and/or the Welsh Government consider that increased clarity in the legislation will put beyond doubt the intended application of

		<p>the legislative provisions, and potentially benefit taxpayers by stopping the promotion of avoidance opportunities that do not actually exist. Such action has been taken by the UK government to protect tax regimes and taxpayers in the past and the Welsh Ministers wish to be able to take similar action.</p> <ul style="list-style-type: none">- Purpose (c) – the Welsh Ministers may make changes in response to changes made by the UK government to predecessor UK taxes which will affect the Welsh block grant adjustment and therefore the revenues available for essential public services.- Purpose (d) – the Welsh Ministers may make changes if a court or tribunal decision identified an issue that Welsh Ministers considered could benefit from legislative change (including decisions relating to the UK predecessor taxes, other taxes, or other laws that affect the devolved taxes), or to provide greater clarification of the law. <p>The Bill will permit the Welsh Ministers to make regulations using either the draft or made affirmative procedure. The Welsh Ministers will seek to use the draft affirmative procedure where possible, meaning the regulations can only come into effect once the Senedd has approved the making of them. The Welsh Ministers will use these regulations where there is less immediacy required and there is time for the Senedd to approve the</p>
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		<p>regulations before they are made.</p> <p>However, the Welsh Ministers may use the made affirmative procedure where they consider it necessary by reason of urgency (for example where the regulations will need to have effect immediately or shortly thereafter, and so before a draft affirmative set of regulations could be approved by the Senedd). This will ensure that changes may, where appropriate, come into force as soon as the regulations are made, whilst awaiting Senedd approval. That approval must be given within a maximum period of 60 Senedd calendar days, not including any period in which the Senedd is dissolved or is in recess for more than four days, to enable those regulations to remain in effect.</p>
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