

Rebecca Evans AS/MS
Y Gweinidog Cyllid a Llywodraeth Leol
Minister for Finance and Local Government



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA/RE/1163/22

Peredur Owen Griffiths, MS
Chair
Finance Committee
Senedd Cymru
Cardiff Bay
CF99 1SN

11 May 2022

WELSH TAX ACTS etc. (POWER TO MODIFY) BILL

Dear Peredur

Thank you once again for your consideration of the Welsh Tax Acts etc. (Power to Modify) Bill during Stage 1. I am pleased that the general principles of the Bill have been agreed, and I thank your Committee for their recommendations in this regard.

During the General Principles debate on 26 April, I confirmed I would provide a detailed response to your Committee's Stage 1 report and its 11 recommendations. I have set out below my response to the recommendations, including details of where I agree there is a need to put forward amendments to the Bill. I have already tabled one Government amendment and will table further amendments before the closure of the tabling period.

I hope that the attached information helps to inform your further scrutiny as the Bill progresses through Stage 2. I look forward to continuing to work with Committee members on the details of the legislation in the future.

I am copying this letter to the Chair of the Legislation, Justice and Constitution Committee.

Rebecca Evans AS/MS
Y Gweinidog Cyllid a Llywodraeth Leol
Minister for Finance and Local Government

CC: Chair of the LJC Committee

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

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

Correspondence.Rebecca.Evans@gov.wales
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.

Annex A

Welsh Tax Acts etc. (Power to Modify) Bill – Stage 1

Finance Committee Recommendations

Recommendation 1. The Committee recommends that the Senedd, taking into account the recommendations in this report, agrees the general principles of the Welsh Tax Acts etc. (Power to Modify) Bill. Peter Fox MS does not support this recommendation.

I am grateful for all the input from the Finance and Legislation, Justice and Constitution Committees who have contributed to the robust scrutiny of the Bill, and am pleased that overall they have been able to recommend to the Senedd that the general principles are agreed.

Recommendation 2. The Committee recommends that, prior to the debate on the general principles of the Bill, the Welsh Government provides examples of the specific circumstances in which it envisages the regulation-making power in section 1(1) being used to amend each part of the Tax Collection and Management (Wales) Act 2016 (other than Part 2), the Land Transaction Tax and Anti-Avoidance of Devolved Taxes (Wales) Act 2017 and the Landfill Disposals Tax (Wales) Act 2017.

I have provided examples to the Committee in my response dated 22 April 2022 of how each Part of the three Welsh Tax Acts may need to be amended using the regulation making power in this Bill in relation to each of the four purpose tests.

Recommendation 3. The Committee recommends that the Welsh Government reviews the wording of section 1(1), to ensure that the limitations placed on Welsh Ministers that any modifications are ‘necessary or appropriate’ is meaningful, and that examples are provided to illustrate how this condition limits the delegated power in practice.

I have attached a copy of my response to the Chair of the LJC Committee which I provided in advance of the Stage 1 debate (Recommendation 3). This sets out circumstances in which the Minister would be prevented from using the power proposed in section 1 of the Bill as a result of the “appropriate” test.

Recommendation 4. The Committee recommends that the Welsh Government commits to including details of any consultation, or sets out detailed reasoning for not doing so, in the Explanatory Memorandum accompanying any future regulations made under section 1(1) of the Bill.

I accept this recommendation. I will ensure any Explanatory Memorandum accompanying future regulations made under section 1(1) of the Bill sets out the detail of any consultation, or the detailed reasoning for not doing so.

Recommendation 5. The Committee recommends that the Bill be amended so that the effect of section 2(1)(c), in respect of regulations made for the purpose set out in section 1(1)(c), is limited to no earlier than the effective date of the change to the UK predecessor tax.

Recommendation 6. The Committee recommends that the Bill be amended:

- so that the effect of section 2(1)(c), in respect of regulations made for any of the purposes set out in section 1(1)(b) and (d), is limited to no earlier than the date of an announcement;
- to specify that the date of that announcement is the date Welsh Ministers lays a written statement before the Senedd;
- to require Welsh Ministers to bring forward an oral statement at the first plenary session after an announcement is made.

I accept in principle Recommendations 5 and 6 and have already tabled a Government amendment to restrict the ability to legislate retrospectively back only as far as the date of a Welsh Government announcement in cases where a change may impact negatively (tax becomes payable or an increased amount of tax becomes payable) on taxpayers.

Recommendation 7. The Committee recommends that the Bill be amended to require the policy statement on the use of the power to make regulations with retrospective effect in section 3 to be laid before and approved by the Senedd, including any subsequent changes. The motion to approve the policy statement (and any subsequent changes) should not be moved until a responsible committee has reported.

The Statement is a *policy* statement on how the Welsh Ministers will use the power to make retrospective legislation that is proposed by the Bill, and the Bill itself sets the limitations on the use of that power. The Statement is intended to inform the public and the Senedd how the power to make regulations with retrospective effect will be used. The Welsh Government will however gather views on the changes from relevant stakeholders before the publication of an amended Statement, which will obviously, and primarily, include this Committee. I therefore do not see a statutory role for the Senedd in approving and amending this statement.

My officials will continue working with external stakeholders to ensure that the Statement is clear and meets the intention to provide clarity on when and how the Welsh Ministers will use the power with retrospective effect. I will also share the Statement with the Committee before it is published so as to gather your views as well.

In addition, I hope that the amendment I have now tabled to restrict the ability to legislate retrospectively back only as far as the date of a Welsh Government announcement in cases where a change creates or increases a tax liability provides appropriate reassurance to the Committee.

Recommendation 8. The Committee recommends that the Minister considers amending the Bill to include a minimum time period for scrutiny by the Senedd of regulations made under section 1(1).

I accept this recommendation. I will bring forward an amendment at Stage 2 to introduce a minimum period of 28 days within the maximum period of 60 days referred to in section 4(5) of the Bill, to ensure the made affirmative procedure regulations made under this Bill cannot be voted on before that 28-day period has passed.

Recommendation 9. The Committee recommends that the Bill be amended to place a duty on the Welsh Government to undertake a review of the operation and effect of the Act:

- two years after receiving Royal Assent, and
- on every fifth anniversary of receiving Royal Assent, with the findings of those reviews to be laid before the Senedd

Recommendation 10. The Committee recommends that the Bill be amended to stipulate that the statutory review of the operation of the Act by the Welsh Government includes an assessment of the following:

- the nature and effectiveness of any regulations made under section 1(1) of the Act ;
- the Act's impact on taxpayers and devolved Welsh taxes;
- the continuing appropriateness of the regulation-making powers conferred on Welsh Ministers by the Act and the Welsh Tax Acts; and
- alternative legislative mechanisms for making changes to the Welsh Tax Acts and regulations made under them

I am pleased to accept in principle Recommendations 9 and 10 requiring the Welsh Ministers to carry out a review of the operation and effect of the Act.

I consider that the most appropriate timing for such a review to report will be at the start of the next Senedd term. This will help to inform the decisions of the next Senedd as to the most appropriate next steps. I do not consider a rolling review is necessary as I also intend to bring forward a sunset clause provision for this Bill, which will prevent any further regulations being made under the Bill, 5 years after Royal Assent. If Committees wish to undertake their own review of the Bill at any point before that, it is, of course, open to them.

I do not anticipate that the scope of this review would include the consideration of alternative legislative mechanisms for making changes to the Welsh Tax Acts – this will be taken forward separately. The aim of the review is to consider the effectiveness of this Bill.

Recommendation 11. The Committee recommends that the Welsh Government commits to providing full and robust Regulatory Impact assessments for any future regulations made under the power proposed in the bill.

I accept this recommendation. I will ensure that full and robust Regulatory Impact Assessments are provided for future regulations made using the power in this Bill.