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Y Gweinidog Cyllid a Llywodraeth Leol
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Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: MA/RE/0660/23

Huw Irranca-Davies MS
Chair of the Legislation, Justice and Constitution Committee
Welsh Parliament

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01 June 2023

Dear Huw,

The Welsh Government's Legislative Consent Memorandum on the Non-Domestic Rating Bill

I am writing in response to your letter of 18 May to fully inform the Legislation, Justice and Constitution Committee's consideration of the Memorandum on the Non-Domestic Rating Bill (the Bill), prior to reporting to the Senedd.

Question 1: At various places in the Memorandum (including paragraphs 4, 6, 7 and 63) you state that the Welsh Government has sought and requested provisions for Wales in the Bill. Can you confirm when collaborative discussions began with the UK Government and when provisions for Wales in the Bill were formally sought.

Discussions with the UK Government in relation to the Bill began in March 2022 and provisions for Wales (with the exception of those relating to the Digitalisation of Business Rates – see response to question 2a) were sought on 20 June 2022. At that stage, discussions were taking place in confidence and it was unclear if and when the Bill would be finalised and introduced.

Question 2: At paragraphs 45 to 47 of the Memorandum you note the delegation of powers in relation to clause 13 and Part 4 of the Schedule. You state that "There was insufficient time prior to the introduction of the Bill to reach firm agreement on the appropriate delegation of powers to Welsh Ministers". You also state that the Welsh Government continues to engage with the UK Government and "further discussions around these specific powers [are] anticipated throughout the passage of the Bill".

- a) Given the commentary we have highlighted in question 1 – that there appears to have been collaborative working on the Bill – please would you provide further clarity as to how and why there was "insufficient time prior to the introduction of the Bill to reach firm agreement on the appropriate delegation of powers to Welsh Ministers".***

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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.

When the engagement described in response to Question 1 took place, provisions relating to the Digitalisation of Business Rates (DBR) Programme were not part of the Bill content being developed. These provisions were developed during February and March 2023, shortly before introduction of the Bill. On 14 February, I wrote to the relevant Bill Ministers to request details of the provisions being developed and that consideration be given to extending them to Wales. Following a positive response and consideration of the detailed proposals, I formally sought provisions on 17 March and requested further discussion in relation to the relevant delegated powers. I recognised that it might not be possible to conclude those discussions prior to planned introduction of the Bill and a further exchange of letters with the Bill Ministers followed.

b) We note that the Bill is likely to complete its passage through the House of Commons by the end of May, after which it will proceed to consideration by the House of Lords. Should your discussions with the UK Government result in amendments being made to the Bill during Lords' consideration which provide new delegated powers to the Welsh Ministers, please would you confirm that you will lay the required supplementary legislative consent memorandum (containing full details of all relevant changes made to the Bill) in a timely fashion to allow Senedd Committees sufficient time to undertake their scrutiny.

I can confirm that our discussions with the UK Government on this matter concluded during the Bill's passage through the House of Commons. No amendments to the Bill are required as a result of those discussions. It is the Welsh Government's intention to support the Bill provisions extended to Wales in their entirety.

The powers delegated to the Commissioners of HMRC are limited. They do not need to be exercised to enable the legislative framework set out in the Bill to operate, and will only be used where a relevant administrative change to ensure the effective operation of the DBR programme by HMRC is considered necessary. Whilst any secondary legislation made under the delegated powers would alter the requirements placed on NDR ratepayers in Wales, it would also directly affect the functions conferred by the Bill on HMRC.

The Bill requires that the Commissioners of HMRC must consult the Welsh Ministers before making secondary legislation under the delegated powers and to the extent that it makes provision in relation to Wales. This approach will enable the aims of the DBR programme to be delivered and intended benefits realised in Wales. Only HMRC can deliver DBR for Wales, as the programme relies on the sharing and linking with information held by HMRC in relation to non-devolved taxes, as well as NDR.

I will lay a supplementary LCM to clarify the Welsh Government's position on this matter and address any amendments that are made to the Bill, in a timely manner.

Question 3: At paragraph 39 of the Memorandum you note that several provisions in clause 15 of the Bill apply in relation to Wales. In particular, you state that subsection 3(d) "alters the procedure for making regulations from made affirmative to draft affirmative". This regulation-making power, and the made affirmative scrutiny procedure attached to it, was delegated to the Welsh Ministers via the Local Government and Elections (Wales) Act 2021. No detailed explanation is given as to why

you are using a UK Bill to change (by downgrading) a scrutiny procedure for a delegated power which the Senedd itself only approved two years ago. Please would you provide a thorough explanation as to why the changes introduced by clauses 15(3)(d) and 15(4) are being made.

The relevant regulation-making power allows Welsh Ministers to substitute the effect of the Consumer Prices Index on the setting of the non-domestic rating multiplier. This power has been exercised annually in recent years, to freeze the multiplier, as part of the package of support provided to ratepayers during the pandemic and subsequent economic pressures. As the related policy and funding decisions form part of the Welsh Government's Draft Budget, published in December each year, the timing constraints imposed by the existing procedures on the exercise of this power, including the interaction with the Senedd's consideration of the local government finance report, have proved themselves to present a practical challenge. In some years this has impacted negatively on the time available for Senedd scrutiny of the legislation, when the local government finance reports have been considered relatively soon after publication of the Draft Budget.

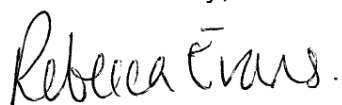
Clause 15(3)(d) removes the existing deadline (before the earlier of 1 March or the Senedd's approval of the local government finance report) for approval of the regulations by the Senedd and ensures that a draft of the regulations is scrutinised by the Senedd before it is made. I do not, therefore, consider that the change of procedure from made affirmative to draft affirmative amounts to a downgrading of scrutiny. If anything, in combination with the removal of unnecessary timing constraints, it will help to ensure that the Senedd has appropriate time for scrutiny of the regulations.

Clause 15(4) removes the existing restriction on when the multiplier can be calculated and confirmed for billing authorities. This will ensure that billing authorities and ratepayers in Wales can be provided with clarity as early as possible and are not disadvantaged compared to those in England due to procedural constraints which do not enhance (and may in some circumstances constrain) scrutiny.

Taken together, these changes will: ensure the Senedd has a consistent opportunity for scrutiny before regulations are made; and reduce the risk of delayed non-domestic rates billing, to the benefit of local authorities and ratepayers in Wales.

I am copying this letter to the Counsel General and Minister for the Constitution, and to the Local Government and Housing Committee, the Economy, Trade and Rural Affairs Committee, and the Finance Committee.

Yours sincerely,



Rebecca Evans AS/MS

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