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Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref: MA/RE/0660/23(2)

Huw Irranca-Davies MS  
Chair of the Legislation, Justice and Constitution Committee  
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30 June 2023

Dear Huw,

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

I am writing in response to the recommendations set out in the Legislation, Justice and Constitution Committee's report on the Non-Domestic Rating Bill (the Bill) Legislative Consent Memorandum. The Committee requested a response to Recommendation 2 within ten working days. I would like to take the opportunity to respond to the other recommendations of the Committee at the same time.

***Recommendation 1: We consider that the clauses of the Bill and the Schedule to the Bill set out in the Memorandum fall within a purpose within the legislative competence of the Senedd, as described in Standing Order 29, and therefore require the consent of the Senedd.***

I welcome the Committee's confirmation that it agrees with the Welsh Government's analysis of the provisions in the Bill which require the consent of the Senedd.

***Recommendation 2: The Minister should clarify and provide further detail to the Senedd as to why the Welsh Government has reversed its position and is now content with the delegated powers in clause 13 and in paragraphs 49 and 50 of the Schedule to the Bill. The Minister should provide this clarity and detail within 10 working days of this report being published, or such information should be set out in the next supplementary legislative consent memorandum laid before the Senedd, whichever is earliest.***

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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.

I would first like to clarify that the Welsh Government has not reversed its position. At the time that the Memorandum was published, we were considering our position, as noted in the Memorandum.

This is a complex matter, where a devolved policy area and the functions of a reserved authority are intentionally connected, in order to enable something new and innovative. Only HMRC can deliver the *Digitalising Business Rates* (DBR) programme for Wales, as it relies on the sharing and linking of information on non-devolved taxes held by HMRC, as well as information about non-domestic rates (NDR). As a consequence, any secondary legislation made under the powers delegated on the Commissioners of HMRC would directly affect the functions conferred by the Bill on HMRC, alongside altering the requirements placed on payers of non-domestic rates. This means that any of the options to enable the DBR programme to be delivered in Wales must involve compromise, in one way or another.

On balance, taking account of these competing considerations and the context for the specific provisions, I have concluded that the delegated powers and duty to consult Welsh Ministers are appropriate to facilitate the administration of the DBR system, which needs to operate in a consistent manner across England and Wales. These powers are limited and do not need to be exercised to enable the legislative framework set out in the Bill to operate. They will only be used where a relevant administrative change is considered necessary to ensure the effective operation of the DBR programme by HMRC.

There is no anticipated need or desire to legislate differently under the delegated powers in relation to Wales and the potential for an alternative approach would constitute a risk to the effective and consistent operation of the system. This approach will enable the aims of the DBR programme to be delivered and intended benefits to be realised in Wales.

***Recommendation 3: The Minister should confirm whether the Welsh Government looked for options to use legislation introduced to the Senedd to seek to make the change to the scrutiny procedure for regulations made under paragraph 5(13A) in Schedule 7 to the Local Government Finance Act 1988.***

I can confirm that, in determining the optimal approach, the Welsh Government identified that there was not a suitable Senedd legislative vehicle to address this matter within the same timescale, nor could one be created without disproportionately detrimental impacts on our wider legislative programme.

***Recommendation 4: The Minister should set out in detail, using The Non-Domestic Rating (Multiplier) (Wales) Regulations 2022 and The Non-Domestic Rating (Multiplier) (Wales) Regulations 2023 as working examples, the practical challenges and negative impacts on Senedd scrutiny of the current procedure for making regulations under paragraph 5(13A) in Schedule 7 to the Local Government Finance Act 1988.***

I would first like to confirm that the Committee is correct that the Local Government and Elections (Wales) Act 2021 (“the 2021 Act”) did not introduce or change this procedure, it preserved the already established procedure, which aligns with that applicable in England. The practical challenges and timing constraints have been highlighted since the development and introduction (on 18 November 2019) of the 2021 Act. It is also the case that the UK

Government's comparable power will no longer be subject to such constraints, following the Bill. This is relevant because decisions taken by the UK Government on the setting of the multiplier in its Autumn Statements, and any related consequential funding, have implications for the Welsh Government's policy and budgeting considerations. If we are subject to constraints in the exercise of this power that the UK Government is not, in the context of these interdependencies and a tight timescale for making regulations, this could compromise its effective use. In recent years, UK Government Autumn Statements have fallen quite late in the budget cycle: this has the potential to compress the time available to the Welsh Government to take decisions on the use of consequential funding and make regulations.

The existing timing constraints link regulations and calculations on the multiplier to the Senedd's consideration of the local government finance report for the year. Regulations are not effective unless they are approved by the Senedd *before* it approves the local government finance report for the year, or before 1 March (whichever is earlier). However, the final calculation of the multiplier by Welsh Ministers is not valid unless it is made *after* the Senedd has approved the local government finance report or after 1 March. This dependency on the timing of the Senedd's consideration of the local government finance reports constitutes a "moving target", in respect of the setting of the multiplier.

If the Senedd is scheduled to consider the local government finance report very soon after the UK Government Autumn Statement and Welsh Government Draft Budget (either because the budgets are later or the report is earlier than is typical), this leaves very little time for regulations to be prepared and risks shortening the time for scrutiny. The potential for this outcome was highlighted in respect of the regulations which affected the setting of the multiplier for 2020-21. On this occasion, the local government finance report was originally scheduled for consideration by the Senedd on 19 December 2019. These regulations are, therefore, a better example of how the specific issue referred to in this recommendation could arise. In December 2019, the 2021 Act had already been introduced in the Senedd. It should be noted that a UK Government Spending Review on 25 November 2019 led to the timings for Senedd scrutiny of the local government finance report and multiplier regulations both ultimately being delayed.

Alternatively, if the Senedd is scheduled to consider the local government finance report much closer to the beginning of the financial year to which it relates, this may allow ample time for the preparation and scrutiny of regulations before that date. However, as the final multiplier cannot be calculated until after that date (or 1 March if earlier), this results in an unnecessary delay to the provision of clarity for billing authorities and ratepayers in Wales. The specific regulations referred to in this recommendation were subject to this impact, as the Senedd considered the relevant local government finance reports on 1 March 2022 and 28 February 2023.

The proposed changes will ensure the Senedd has a consistent opportunity for scrutiny, before any regulations are made, and reduce the risk of delayed billing. Local authorities and ratepayers in Wales will be provided with clarity as early as possible and will not be disadvantaged compared to those in England.

I thank the Committee for its detailed consideration of the Memorandum and hope that my responses to the recommendations provide the additional clarity sought.

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,

A handwritten signature in black ink that reads "Rebecca Evans." The signature is written in a cursive style with a period at the end.

**Rebecca Evans AS/MS**

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Minister for Finance and Local Government