



Huw Irranca-Davies MS  
Chair – Legislation, Justice and Constitution Committee  
Welsh Parliament  
Cardiff Bay  
Cardiff  
CF99 1SN

18 January 2024

Dear Huw,

### **Local Government Finance (Wales) Bill**

Thank you for your letter of 18 December 2023 outlining questions regarding the Local Government Finance (Wales) Bill, following my attendance at the committee's meeting on 11 December 2023.

### **Human rights**

I can confirm that the Welsh Government has considered all the relevant articles of the European Convention on Human Rights (ECHR). Where those rights are qualified, I am satisfied that any possible interference with them can be justified on the basis that the provisions are necessary and proportionate in pursuance of a legitimate aim. In the committee's meeting, I offered to provide further assessment about sections 6 and 12.

Section 6 sets out additional conditions to be met by a charity in relation to an unoccupied hereditament before full relief from non-domestic rates can apply. I am satisfied that the provisions in this section are proportionate and lawful, having specific regard to ECHR compatibility. The provisions have a reasonable foundation as they seek to reduce the opportunity to avoid liability for non-domestic rates where there is not a genuine intention of using the property for charitable purposes (a legitimate and proportionate aim).

Section 12 applies a number of paragraphs in Schedule 9 to the Local Government Finance Act 1988 to hereditaments in Wales, to impose duties on ratepayers and potential ratepayers to notify valuation officers of information that relates to their non-domestic rates liability in respect of a hereditament, and provides for the enforcement of the duties through civil and criminal penalties. As with section 6, I am satisfied that the provisions in this section are proportionate and lawful. This includes the provisions relating to offences and penalties. The offences and corresponding penalties are clearly defined in the legislation, ensuring compatibility with the ECHR. Where penalties are imposed, ratepayers will also be entitled to a fair and public hearing by an independent and impartial court. Consistent with the approach taken to all primary legislation, the government has published a suite of

documents alongside the Bill as required by Standing Orders. These include an [integrated impact assessment for the non-domestic rates provisions](#) and an [integrated impact for the council tax provisions which, amongst other things, consider the impact on people's human rights](#).

## **Comparison between powers provided by the Bill and those available to UK Ministers**

Substantial elements of the non-domestic rates and council tax systems have, in Wales, England and Scotland, been maintained using secondary legislation for many years. The Bill proposes some additional elements to be maintained using secondary legislation, most of which will be subject to the affirmative procedure. This will ensure we can configure the local tax systems in an agile and consistent manner, to meet the needs of Wales. A comparison of the secondary legislative powers being sought in the Bill with those in place in England and Scotland is included in **Annex A**.

In relation to non-domestic rates, the vast majority of powers to make secondary legislation provided by the Bill are the same as, or similar in their effect to, equivalent powers already in existence in England and/or Scotland. In cases where the powers provided in the Bill to Welsh Ministers go further than those in place in England, powers with a similar effect are generally available to Scottish Ministers. Whilst there are some administrative differences between the non-domestic rates system in Wales and Scotland, it is fundamentally the same tax being operated in a similar devolved context.

In relation to council tax, the powers will enable the Welsh Ministers to be more reactive and flexible in responding to socioeconomic change. It will align with the NDR system, inasmuch as regular revaluations will be placed on a statutory footing, reflecting the importance of a tax system reflecting current economic circumstances. Some powers conferred are largely technical and again will allow for the maintenance of the fundamentally robust structure of council tax to be more future proof and responsive. The difference in the mix of powers compared with England and Scotland is minimal, additionally giving Welsh Ministers the power to amend a revaluation year specified in primary legislation, a key policy aim of the Welsh Government for a fairer system. Comparatively, UK and Scottish Ministers can amend in an order when a revaluation occurs. Setting a revaluation cycle in primary legislation lays out an expectation that the revaluation will occur. This is not the case in England and Scotland. A comprehensive review of the whole range of discounts, disregards, exemptions and premiums framework is being undertaken in Wales. The Bill will provide Welsh Ministers with increased flexibility compared with the current highly restrictive legislation applying in this area. However, it remains the case that many aspects of the discounts, disregards and exemptions framework are already amendable in secondary legislation across Wales, England and Scotland.

## **Answers to specific questions**

I can respond to the questions set out in the Annex to your letter as follows:

### General

- **Question 1** - On reflection, do you consider that it would have been preferable for the Welsh Government to introduce the Bill earlier in order to incorporate the changes made in relation to Wales by the Non-Domestic Rating Act 2023 rather than relying on the UK Government and a UK Bill and the consequent LCM process?

Such an approach would not have been possible. We have introduced this Bill as soon as we could and it was essential to ensure that its development was not rushed. Our approach has ensured that the Bill is properly tailored to meet Wales' needs. The Bill is being used to deliver the vast majority of our non-domestic rates reforms which require primary legislation, where a difference in timing will not have negative consequences for Wales.

Having considered the options and approach to delivering our wider NDR reform agenda, I decided that it was optimal for certain provisions for Wales to be made within the Non-Domestic Rating Act 2023 ("the 2023 Act"). Provisions were made to ensure ratepayers in Wales were not placed at a disadvantage (for example, in relation to the provision of new reliefs) and in cases where new functions were conferred on UK Government bodies (HMRC and the Valuation Office Agency). These matters have been set out in detail in the Legislative Consent Memorandum and in response to Committees.

- **Question 2** - Do you have any concerns regarding accessibility of the law on non-domestic rates as a result of developing this Bill and simultaneously working with the UK Government on the 2023 Act?

I can confirm that I do not have any such concerns. This Bill was developed with full knowledge of what is now the Non-Domestic Rating Act 2023, so we know that both pieces of legislation work in conjunction with each other. The 2023 Act received Royal Assent prior to the introduction of our Bill.

The body of legislation relating to our non-domestic rates and council tax systems is over 30 years old and has been amended many times, so is very complex. The need for accessibility, particularly in relation to the application of the provisions, has informed the approach taken in the Bill. For example, provisions are restated in new sections where this is considered to improve the presentation of the law which will apply only to Wales.

- **Question 3** - In the Explanatory Memorandum you note that existing primary legislation on local government finance constrains the Government's ability to make timely adjustments for households, ratepayers and businesses. Could you explain which constraints you were referring to?

We have seen, especially while we been experiencing economic pressures during recent years, that the legislative frameworks for non-domestic rates and council tax are insufficiently flexible to respond to changes in circumstances for organisations and households. Pressures for organisations and households are changing constantly so we need a system which is flexible and responsive.

To give an example of current difficulties, there is currently no power in the Local Government Finance Act 1988 to amend the date of a non-domestic rates revaluation. We needed to use the Growth and Infrastructure Act 2013 to postpone the 2015 revaluation until 2017 and then the Non-Domestic Rating Lists Act 2021 to postpone the 2022 revaluation until 2023. However, the new power proposed in section 4 of this Bill would allow the revaluation date to be changed more efficiently for Wales.

The regulation-making powers will reduce the need for emergency non-legislative measures and will provide greater opportunities to deliver policy for Wales in a timely manner, without over-reliance on UK Government legislation. The answer to question 4(a) below provides further examples in relation to some of the existing constraints the Bill will address.

- **Question 4** – a) In the Explanatory Memorandum, when discussing whether substantive provisions could have been appropriately set out on the face of the Bill, you concluded that “while details might be optimised for the current circumstances – they are unlikely to stand the test of time”. What provisions are you referring to? b) Why wouldn’t a better approach be to propose primary legislation to deal with the current circumstances we are in and then bring forward another bill in the future when a need for further change has been identified?

a) There are many that fall into this category – including the provisions relating to both the non-domestic rates and council tax systems which enable us to provide support for organisations and households in accordance with changing circumstances and priorities. The Statement of Policy Intent provides full details around how we intend to use the provisions which brings to life the vast range of factors constantly evolving and impacting on both tax systems.

Taking non-domestic rates reliefs as an example, we cannot predict all changes that may be desirable in future. We have recently taken provisions in the UK Government’s Non-Domestic Rating Act 2023 for new reliefs, which could not have been delivered to the same timescale using this Bill. Many reliefs are already set out in secondary legislation and the scope for making timely changes to the overall landscape of support is, therefore, inconsistent.

In relation to the non-domestic rates multiplier, the existing single multiplier has limited the options available for the Welsh Government to consider in responding to the UK Government’s recent Autumn Statement. Some members have called for us to mirror the approach being taken in England, by freezing the multiplier for small businesses. As things currently stand, we could not even consider a similar approach which reflects the different tax-base and needs of Wales. While we already have the power to set the single multiplier for Wales at any level using secondary legislation, we cannot prescribe different multipliers for different parts of the tax-base.

In relation to avoidance of non-domestic rates, as another example, techniques continually evolve and we want to be able to respond in a timely manner when new issues are identified. This Bill provides a framework for addressing avoidance. The inclusion of a regulation making power is necessary as we cannot predict what new avoidance behaviours will come to light in future.

b) I do not think it would be reasonable, proportionate or desirable to bring a Bill forward every time we need to make a change to the law in this area. We already use secondary legislation to maintain many aspects of the local taxation system so this Bill will create more consistency, rather than making a radical departure from established practices in this area.

- **Question 5** - The Explanatory Memorandum refers to the Bill’s proposals giving scope for “greater scrutiny within Wales”. Could you explain why you think that is the case and why it would not be more appropriate to replace using a UK Bill with a Welsh Government Bill?

Crucially, the majority of subordinate legislation making powers will follow the Senedd’s affirmative procedure. It will, therefore, be subject to scrutiny involving committees and with the same threshold for success (i.e. majority support) as primary legislation. The proposals seek to increase the Senedd’s influence within a context of pressures on time for making

primary legislation and the urgency often associated with changes which are sometimes unforeseen.

The Bill seeks to establish arrangements in which the Senedd can realistically oversee the maintenance of these local tax systems in a timely and consistent manner. Local government finance is a very technical area of the law where much of the current system is governed by subordinate legislation. The system requires regular maintenance, in many cases requiring annual updates, where it would not be appropriate or practicable to make primary legislation.

- **Question 6** - You have stated that, since 2011, the Welsh Government has needed to utilise UK Government Bills on at least 13 occasions to deliver necessary changes to our non-domestic rates and council tax systems. a) Could you explain which changes you were referring to? b) What were the reasons for the Government not taking the opportunity to propose primary legislation in the Senedd on each of those occasions?

a) Details of the occasions since 2011 where UK Government Acts have been utilised to deliver changes to council tax and non-domestic rates in Wales are outlined in **Annex B**.

b) Changes have only been made where there are shared policy goals across England and Wales, and not doing so would risk disadvantaging ratepayers and taxpayers in Wales.

- **Question 7** - In written evidence to the Finance Committee during its work on the Welsh Tax Acts etc. (Power to Modify) Bill (before it became the 2022 Act), Sir Paul Silk commented that “it is the job of the legislature to ensure that appropriate checks are kept in place and that it does not surrender its legislative role”. Why do you consider that the Senedd is not at risk of doing just that in this area of Welsh taxation if this Bill is enacted in its current form?

Within the context of this Bill, I am aiming to develop arrangements which are fit for purpose within our devolved structures and are, therefore, appropriate for Wales. Further to my response to question 5 above, I believe the arrangements proposed in this Bill will enhance the Senedd’s role considerably, compared to where we are now. It remains the case that primary legislation would be needed to change fundamental aspects of the local tax systems, such as calculating the chargeable amount of non-domestic rates before reliefs and the basic amounts of council tax. While the Bill, in some cases, makes provision for secondary legislative powers, the subject matter of the provisions are not considered to be of greater or wider significance than those already capable of being changed through subordinate legislation, in respect of the council tax and non-domestic rates systems. Substantial aspects of both systems can currently be adjusted via subordinate legislation.

- **Question 8** - Why would it not be more appropriate for significant decisions around liability for local taxes to remain with the Senedd and be subject to detailed scrutiny?

As explained in my answer to question 4(b) above, I do not think it would be reasonable, proportionate or desirable to bring a Bill forward every time we need to make a change to the law in this area. We already use secondary legislation for many aspects, including key components which affect liability for local taxes. The arrangements proposed are not, therefore, considered to undermine the Senedd’s role in deciding whether and to what extent people should be subject to devolved taxes. This Bill will create more consistency, rather than making a radical departure from established practices in this area. Use of the

affirmative procedure for making any substantive changes through secondary legislation is proposed, which places the final decisions for changes with the Senedd.

### Non-Domestic Rates

- **Question 9** - In the Statement of Policy Intent for the powers to confer, vary or withdraw non-domestic rating reliefs, you note that the current powers of the Welsh Ministers are inconsistent with provisions being taken in UK Parliamentary Bills on multiple occasions to enable new reliefs in Wales. a) Why do you believe that the way to resolve this is more Henry VIII regulation-making powers for the Government? b) Why do you not consider primary legislation, scrutinised and passed by the Senedd, to be a better solution, which could be expedited where necessary?

The current system includes a number of areas which are governed by a mix of primary and secondary legislation, even in relation to the same aspects of the system. This is the case for reliefs. For example, changes to Small Business Rates Relief can largely be made via secondary legislation, whereas changes to Charitable Rates Relief would require primary legislation. There is no clear rationale for why some changes currently need to use primary legislation when the significance of those changes is limited compared with what can already be done through secondary legislation.

I think we are right to make the system more consistent with respect to the use of secondary legislation powers. This is a key area where consistency is needed to enable the system to be responsive to changing pressures. Relying more on primary legislation would move us even further away from what we are trying to achieve. It would be likely to prevent us from using limited legislative time to progress more transformative work, continue to constrain changes in this area, or result in the need to make even more use of UK Government Bills, depending on the context at any given point in time.

- **Question 10** - In relation to reliefs for occupied properties, section 5(2) of the Bill inserts a new power into paragraph 9A of Schedule 4ZA to the Local Government Finance Act 1988 for the Welsh Ministers to change the rules in paragraph 9 of the Schedule where more than one relief applies. We do not believe that the power makes reference to new Part 3A of the Schedule inserted by section 5(2). Are you content that the drafting of section 5(2) delivers its purpose? If not, do you believe that an amendment to the Bill is needed?

I am content that section 5(2) of the Bill works as intended. The power in paragraph 9A only needs to refer to Parts 2 and 3 of Schedule 4ZA.

- **Question 11** - The Statement of Policy Intent appears to justify the taking of powers to confer, vary and withdraw non-domestic rate exemptions on the basis of providing consistency between the Welsh Government's powers in this area and the new proposed powers for reliefs. a) Why do you consider this to be an appropriate basis for taking wide Henry VIII powers to specify tax exemptions? b) What potential exemptions have been identified that would justify the taking of this power?

a) There are a variety of existing ways in which a ratepayers' liability may be reduced to zero. These include the use of legislation or existing discretionary powers of local authorities to provide full relief. Exemptions are an alternative to the provision of a full relief, when it is considered that the chargeable amount of non-domestic rates for a property should be zero. The Welsh Ministers currently have a limited power to prescribe exemptions in regulations,

with very little practical effect. As all exemptions are currently set out in primary legislation (unlike reliefs), a Henry VIII power is the most appropriate way of addressing the policy intent to be able to make changes.

b) There are types of property for which an exemption from non-domestic rating on a long-term or permanent basis is considered more appropriate than a full relief. For example, when a valuation would prove difficult to carry out or when a valuation would provide no tangible benefits. This power is no more significant in its potential effect on non-domestic rates liability than other legislative and discretionary mechanisms which already exist. Whilst we have not currently identified any specific changes to exemptions, this may be the most appropriate way to address future priorities for the overall landscape of non-domestic rates support, in specific circumstances.

- **Question 12** - The Bill proposes a power to allow the Welsh Ministers to specify differential multipliers for different descriptions of properties. The Statement of Policy Intent however states that there are “no immediate plans to use this power”. How do you justify the taking of this power if you have no plans for it to be used?

Tiered multipliers exist elsewhere in the UK and these provisions would enable the Welsh Ministers to prescribe a different multiplier for a specific part of the tax-base – for example to incentivise investment or behavioural change or target support, in accordance with wider policy priorities. While we already have the power to set the single multiplier for Wales at any level using secondary legislation, we cannot prescribe different multipliers for different parts of the tax-base.

As with reliefs and exemptions, it is not possible to predict specific changes which may be desirable in future. For example, the existing single multiplier has limited the options available for the Welsh Government to consider in responding to the UK Government’s recent Autumn Statement. Some Senedd members have called for the Welsh Government to mirror the approach being taken in England, as the Scottish Government were able to do, by freezing the multiplier for small businesses. As things currently stand, we could not even consider a similar approach, tailored as appropriate to reflect the different tax-base and needs of Wales.

- **Question 13** - Part 3A of the Tax Collection and Management (Wales) Act 2016 sets out the general anti-avoidance rule for devolved taxes. Do you consider that a better approach would be to follow that example in this Bill and specify general principles in primary legislation for determining whether non-domestic rating arrangements are artificial?

No, I do not consider that this would be a better approach, due to fundamental differences in the context for the operation of the anti-avoidance provisions in the Tax Collection and Management (Wales) Act 2016 (“the 2016 Act”) and this Bill. The provisions of the 2016 Act are applied by a single specialist organisation (the Welsh Revenue Authority) responsible for administering a number of devolved taxes. This ensures clarity and consistency across the relevant tax-bases in relation to the application of the specified principles.

In contrast, the anti-avoidance provisions in the Bill apply only to non-domestic rates, providing an opportunity to be more specific about the arrangements which will be addressed by the provisions. The provisions in the Bill will be applied by 22 local authorities (in relation to the local rating lists) and the Welsh Government (in relation to the central rating lists) in their roles administering non-domestic rates. This could result in general

principles being applied inconsistently and artificial avoidance arrangements being treated differently by different billing authorities. The approach proposed in the Bill will, therefore, ensure clarity, consistency and fairness by prescribing the arrangements which all billing authorities must counteract.

- **Question 14** - Why do you consider it to be appropriate for the Welsh Ministers to make regulations potentially restricting avoidance activity that others may feel is appropriate, without the full scrutiny of the Senedd that would be afforded to such proposals if they were included in a bill laid before the Senedd?

Avoidance of non-domestic rates has been estimated to result in the loss of £10m to £20m annually in vital funding for local services. It is not fair to the vast majority of ratepayers who pay what is due and negatively impacts upon the funding available for local government to deliver services to communities across Wales. We have a long-standing commitment to implement a range of specific actions: these include the development of anti-avoidance provisions.

Our work to address avoidance has highlighted existing limitations in the legislative framework and the need for a more adaptive approach to respond to issues that arise in the future. A carefully considered policy rationale underpins the development of our anti-avoidance provisions. Techniques to avoid tax are constantly evolving in ways that are not possible to predict and non-domestic rates is no exception. The anti-avoidance provisions in this Bill, supplemented by an appropriately limited regulation-making power, are needed to address specific avoidance behaviours identified in a timely manner. Regulations will be required to specify the precise avoidance behaviours that the Bill provisions will be used to counteract from a future point in time.

Continuing to rely on primary legislation to address individual avoidance arrangements that are identified would likely result in considerable delays to the implementation of changes, leaving the public purse exposed to revenue risk for a longer period. Regulations will be scrutinised under the affirmative procedure.

- **Question 15** - What restrictions are there on the power to specify artificial arrangements proposed in section 13 of the Bill that would protect taxpayers who engage in lawful tax planning?

To ensure there is sufficient certainty about the avoidance behaviours which will be counteracted, regulations will describe the specific artificial avoidance arrangements to be covered by the provisions. The definition of “artificial” within the Bill provides for important restrictions and a safeguard in this regard. Regulations may only specify a type of arrangement which would not constitute a reasonable course of action in relation to non-domestic rates provisions, having regard to matters prescribed within the definition. It will not be possible for regulations to counteract avoidance behaviours in unspecified or general terms, nor to undo or penalise avoidance that has occurred before regulations come into force.

The regulations will also be able to provide for an additional safeguard for the person to be treated as liable, where appropriate for the type of arrangement specified. The safeguard will enable the billing authority or the Welsh Ministers (in relation to the local and central rating lists, respectively) to determine that an arrangement is not artificial in individual cases, having regard to all the circumstances. This element of discretion will enable consideration to be given to any circumstances relevant to the individual person and could lead to a



determination that the arrangement is not artificial in that case. If an arrangement of the type specified in regulations is identified, it will, until and unless it is determined otherwise, be an artificial arrangement which must be counteracted.

The limited regulation-making power is framed within an overall structure to the provisions which makes clear the process by which identified avoidance behaviours will be described and counteracted. Consultation on specific proposals will ensure that stakeholders can be expected to know that a specified behaviour has been identified and is likely to be prevented in future, before regulations are made. Non-domestic rates are a local tax on businesses and other organisations. Avoidance arrangements are unlikely to be exploited in isolation or in the absence of professional advisers, who make it their business to understand latest policy and legislative developments so they can advise their clients accordingly.

- **Question 16** - Why are you proposing maximum fine levels in the Bill for financial penalties around artificial tax avoidance while simultaneously proposing Henry VIII powers to increase those levels, and how would you respond to the suggestion that specifying maximum levels in this way could be seen as misleading?

It is important that we are able to provide for civil penalties, where appropriate, to ensure there is a genuine deterrent to continuing specified avoidance behaviours. Without this, the effectiveness of the avoidance provisions will be compromised. The power in question will ensure the maximum penalty can be maintained at an appropriate level in the longer-term. Such a power is not unusual. For example, there is already a similar power in paragraph 6AA(6) of Schedule 9 to the Local Government Finance Act 1988, in relation to the penalty that can be imposed for failure to provide required information. These powers enable the maximum penalty amount to be amended if, for example, changes in the economy mean that the current amount becomes inappropriate. There will be consultation on changes and clear communication to avoid anyone being misled.

- **Question 17** - What provisions would you anticipate making in regulations in relation to the collection and enforcement of penalties, and why are those provisions not specified on the face of the Bill?

The Bill provides that, where a ratepayer continues to engage in the identified artificial avoidance arrangement after the relevant date (the later of: the day the arrangement was made, the day the regulations come into force, or a day provided for in the regulations), the billing authority will issue a notice which will, in effect, require payment of the shortfall in liability since the relevant date. It is intended that the notice will include a deadline for payment and details of the penalty which may be incurred if it is not met. If the ratepayer does not cease the arrangement and fails to pay an amount due as a consequence of making the arrangement, the billing authority will then be able to impose a civil penalty (if the regulations specify that a penalty can be imposed).

Detailed consideration was given as to whether details relating to collection and enforcement would most appropriately be set out in the Bill. The existing arrangements for collection and enforcement of non-domestic rates liability are set out in long-established secondary legislation (the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 and the Non-Domestic Rating (Collection and Enforcement) (Central List) Regulations 1989). When avoidance is counteracted using the Bill provisions, the liable person will be subject to the existing collection and enforcement regulations on an ongoing basis. It is considered more appropriate to amend those regulations, as required in future, to make any necessary changes to the existing collection and enforcement framework. The detail of

these changes will need to be considered when we make regulations under the anti-avoidance provisions to specify the artificial arrangements to be counteracted.

### Council Tax

- **Question 18** - You refer to the power in section 17 being used to change the labelling of any band structure. Does this refer to existing powers in the Non-Domestic Rating Act 1992 which are restated by section 17 of this Bill?

Section 17 of the Bill interfaces with section 5 of the Local Government Finance Act 1992, rather than the Non-Domestic Rating Act 1992. Section 17(c) of the Bill does include a restatement of the existing section 5(4)(a) and (b) of the Local Government Finance Act 1992. Those provisions enable the Welsh Ministers to change the number of bands and the descriptions (labels) of those bands.

Section 17(c) of the Bill also provides new powers so that there is a clear basis for amending the references to “D” in the formulae provided in sections 36(1) and 47(1) of the Local Government Finance Act 1992. This is a technical amendment to provide clear authority for amending those formulae so that the system remains coherent and we are not restricted to using Band D as the main ‘reference’ or ‘mid-point’ in council tax calculations. The change in the band referred to in those formulae does not impact the amount paid for any mid-point band.

- **Question 19** - Could the powers in the Bill be used to remove the single person discount altogether, or to means test it?

Current legislation enables the Welsh Ministers to reduce or increase the percentage level for the single person discount, but not without impacting on the discount for a property with no resident or where all the residents are disregarded, which must be twice the amount. The Bill will break this restrictive link and provide Welsh Ministers with additional flexibility to add new categories of discounts, or to set conditions for discounts including new rates. Such changes would allow different rates of discounts to be set for different situations.

However, I have been clear there will be no changes to the existing council tax single person discount by this Welsh Government. The discount is retained on the face of the Bill so it cannot be removed, and I have confirmed that the discount for one-adult households will remain at 25%. The Bill would allow for the discount to be means-tested if that were a future policy preference.

- **Question 20** - The Statement of Policy Intent refers to the Bill enabling in-year changes to council tax reduction schemes. How would the power to make a national scheme address limitations on making in-year changes that the power to require local authorities to make their own schemes could not?

The current legislation requires local authorities to approve their schemes by 31 January each year for the following financial year. As a result, the Welsh Ministers can only make one statutory instrument to incorporate changes to the non-devolved benefits system and other updates for each financial year by mid-January.

Recent examples of where in-year changes have not been possible have included responding to the pandemic and to aid people from Ukraine and Afghanistan. In these instances, the Welsh Government relied on the discretionary powers of local authorities to implement these changes during the financial year in which such matters occurred, until the

next “annual legislation” could be made. There is no guarantee, either, that local authorities would use their discretion to do so.

While the Local Government Finance Act 1992 does not explicitly prevent “in-year changes” the practical effect of requiring an authority to make or amend a scheme annually is that in-year changes cannot be made. A national scheme would therefore allow the regulations to be changed more quickly (using secondary legislation) to deal with new or emergency matters.

### General Provision

- **Question 21** - Section 14 of the Bill restates provisions in the Local Government Finance Act 1988 about the powers of the Welsh Ministers to make orders and regulations. Are all of the powers subject to the same Senedd scrutiny procedure as they are currently?

Section 14 generally restates provisions of section 143 of the Local Government Finance Act 1988 insofar as they apply in respect of the powers of the Welsh Ministers. It also makes provision about new powers of the Welsh Ministers.

Regulations made under paragraph 1(2) of Schedule 4ZB to the Local Government Finance Act 1988 would be subject to the negative procedure if the Bill were enacted as drafted whereas the power is currently subject to the affirmative procedure. It is appropriate for the affirmative procedure to apply as the power enables a formula for calculating chargeable amounts to be substituted. This was an oversight at the time of introduction and we will seek an amendment at Stage 2 so that the affirmative procedure continues to apply.

Paragraph 6AA(6) of Schedule 9 to the Local Government Finance Act 1988 is a power to amend the amount of a penalty which is currently subject to the negative procedure. Given the nature of the power it ought to be subject to the affirmative procedure. Therefore, the new section 143A(5)(n) applies the affirmative procedure to regulations made under paragraph 6AA(6).

### King’s consent

- **Question 22** – We were told that His Majesty the King's consent would be sought in relation to non-domestic rates provisions concerning section 5, section 7, section 10, section 12 and section 13, and “in line with normal processes”, this consent would be sought at the end of Stage 2. Is it normal practice for preliminary discussions to take place with the office of His Majesty the King on such matters?

A process is in place for corresponding with the Royal Household and setting out the provisions considered to require consent.

### Coming into force

- **Question 23** - Should the Bill be passed and enacted, when do you envisage all provisions of the Bill and the accompanying subordinate legislation being fully in force?

Our current timetable envisages the Bill being presented for Royal Assent in August 2024 if it is passed by the Senedd. The majority of provisions will be commenced in the commonly

set timeframe of two months following Royal Assent, with general provisions being commenced the day after Royal Assent in accordance with normal practice.

Sections 6 (Unoccupied hereditaments: charitable rate relief), 10 and 11 (Calculation of non-domestic rating multipliers) will come into force on 1 April 2025. For administrative reasons, it is considered optimal for these sections to be commenced at the start of a new financial year.

Section 12 (Information to be provided to valuation officer) will be commenced by statutory instrument when the Welsh Government is satisfied that ratepayers can reasonably be expected to comply with the new duties. This is expected to occur during the next rating list, which will be compiled on 1 April 2026 if the Bill is enacted as proposed.

Sections 18 and 19 will be commenced on a day appointed by the Welsh Ministers in an order made by a statutory instrument. We are awaiting the outcome of the working groups established to carry out the detailed work to review the council tax discounts and disregards. The current policy intent is that regulations will be made for the financial year commencing 1 April 2026, subject to the outcomes of the review process.

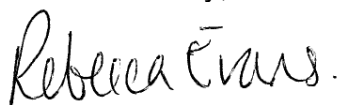
#### Future consolidation

- **Question 24** - The Explanatory Memorandum contains a significant Keeling Schedule. Has consideration been given to the potential consolidation of Welsh local tax legislation, or generally to making this area of law more accessible?

A comprehensive range of options for the approach to this Bill was considered. The consolidation of legislation in this area would be a resource intensive and time consuming undertaking, given the time the legislation has been in place and the many changes made to it for over the past 30 years. Accessibility of law has been a key consideration in the development of this Bill and, as such, provisions are restated in new sections where this is considered to improve the presentation of the law which will apply only to Wales.

I hope my responses to your questions will facilitate the committee's consideration of this Bill.

Yours sincerely,



**Rebecca Evans AS/MS**

Y Gweinidog Cyllid a Llywodraeth Leol  
Minister for Finance and Local Government

**Annex A**

<b>Section of Local Government Finance (Wales) Bill</b>	<b>Effect</b>	<b>Equivalent power in England</b>	<b>Equivalent power in Scotland</b>	<b>Summary</b>
4	Provides the Welsh Ministers with a power to change a non-domestic rates revaluation year or the interval between revaluation years by regulations.	No equivalent power.	Power for the Scottish Ministers to amend the definition of “year of revaluation” in section 37(3) of the Local Government (Scotland) Act 1975.	A power with the same effect exists in Scotland.
5	Provides the Welsh Ministers with powers to confer, vary or withdraw reliefs by regulations.	Powers in relation to some reliefs in Schedules 4ZA, 4ZB and 5A to the Local Government Finance Act 1988.	Broad powers for the Scottish Ministers to prescribe rules to determine the amount payable in section 153 of the Local Government etc. (Scotland) Act 1994 and to make provision about reliefs for new and improved properties in section 14 of the Non-Domestic Rates (Scotland) Act 2020.	Powers with a similar overall effect exist in Scotland. A wide range of more specific powers exist in England (and currently in Wales) which are not consistent across the landscape of reliefs.
9	Replaces the existing limited power with a new power for the Welsh Ministers to confer, vary or withdraw exemptions by regulations.	Limited power for the Secretary of State to provide exemptions in Schedule 5 to the Local Government Finance Act 1988.	Power for the Scottish Ministers to remove exemptions in section 8D of the Valuation and Rating (Scotland) Act 1956.	Similar powers enable exemptions to be provided in England and removed in Scotland. The power for in the Bill will enable the Welsh Ministers to do both.

<b>Section of Local Government Finance (Wales) Bill</b>	<b>Effect</b>	<b>Equivalent power in England</b>	<b>Equivalent power in Scotland</b>	<b>Summary</b>
10	Restates the existing powers of the Welsh Ministers in relation to multipliers and inserts a new power to set differential multipliers based on the rateable value, location or description of a hereditament on a local rating list or on the rateable value of a hereditament on the central rating list.	Powers for the Secretary of State to prescribe which multiplier (standard or small business) applies to different hereditaments and to set those multipliers in Schedules 4ZA and 7 to the Local Government Finance Act 1988.	Powers for the Scottish Ministers to set the annual multiplier in section 7B of the Local Government (Scotland) Act 1975 and prescribe further rules to determine the amount payable in section 153 of the Local Government etc. (Scotland) Act 1994.	Similarities with the effect of powers in England and Scotland.
13	Provides a power for the Welsh Ministers to make regulations specifying the type of arrangement which is to be treated as artificial and whether a specific arrangement will not be treated as artificial if a determination to that effect is made.	No equivalent power.	Power for the Scottish Ministers to make anti-avoidance regulations in section 37(1) of the Non-Domestic Rates (Scotland) Act 2020.	A similar power exists in Scotland. Unlike the Scottish Ministers, the Welsh Ministers can make regulations enabling a penalty to be imposed. However, in other ways, the anti-avoidance regime in Scotland is broader than the proposed approach in Wales as the Bill sets out a specific approach to countering avoidance behaviour.

<b>Section of Local Government Finance (Wales) Bill</b>	<b>Effect</b>	<b>Equivalent power in England</b>	<b>Equivalent power in Scotland</b>	<b>Summary</b>
17	Restates the powers for the Welsh Ministers to substitute proportions and valuation bands.	Powers in section 5(4) of the Local Government Finance Act 1992.	Powers in section 74 of the Local Government Finance Act 1992.	In line with England and Scotland.
17	Provides new powers for the Welsh Ministers to substitute the valuation band used in council tax calculations.	No equivalent power.	No equivalent power has been identified although no equivalent council tax calculation provisions have been identified either.	Unique power for the Welsh Ministers.
18	<p>This section restates provisions relating to the single person discount and the discount where all residents of a dwelling are disregarded.</p> <p>The remainder of the provisions provide the Welsh Ministers with powers to make regulations to set the levels and prescribe conditions or criteria that must exist for the single person or other discounts to apply and prescribe categories of resident that are disregarded for the purposes of discount. This will have the effect of placing all details relating to other discounts and the conditions and descriptions of a person who is disregarded for the</p>	Limited powers in sections 11 and 11A of the Local Government Finance Act 1992.	Limited powers in section 79 of the Local Government Finance Act 1992.	<p>The existence of the single person discount and discount where all residents of a dwelling are disregarded are maintained as in England and Scotland.</p> <p>In relation to the other amendments, neither Scotland nor England are currently proposing to adopt the same policy.</p>

Section of Local Government Finance (Wales) Bill	Effect	Equivalent power in England	Equivalent power in Scotland	Summary
	<p>purposes of a discount all in one place within regulations.</p> <p>Preserves the effect of section 12(1) of the 1992 Act for Welsh Ministers to prescribe by regulations classes of dwellings in relation to which a billing authority may by determination either disapply or reduce a discount.</p>			
19	<p>Duty on the Welsh Ministers to set a national Council Tax Reduction Scheme which allows the Welsh Ministers to make in-year changes if required.</p> <p>The duty will be exercised by the Welsh Ministers to set out a national reduction scheme with a duty on local authorities to administer the scheme at a local level. The Welsh Ministers will be able to introduce in-year changes to the scheme to react to emerging situations.</p>	Powers in section 13 of the Local Government Finance Act 1992.	Powers in section 80 of the Local Government Finance Act 1992.	Broadly in line with Scotland where there is a national council tax reduction scheme. In England there remains a power to make regulations about reduced amounts.
21	The Bill provides for a regular revaluation cycle for council tax in Wales with scheduled revaluations taking place every five years. However, there might be	Powers in section 22B of the Local Government Finance Act 1992 to specify the	Power to specify a revaluation date by way of the modifications effected by section 88(3)(a) of the Local	In England and Scotland respectively, UK Ministers and Scottish Ministers may use orders to schedule revaluations.



Section of Local Government Finance (Wales) Bill	Effect	Equivalent power in England	Equivalent power in Scotland	Summary
	circumstances in which it would be beneficial for the date of a scheduled revaluation to be changed – for example, in the event of a future pandemic or economic turbulence. The Bill therefore allows the revaluation year to be moved.	revaluation date. This power could also be used to amend a revaluation which had been scheduled.	Government Finance Act 1992.	
21	Current legislation specifies that a copy of the draft new valuation list has to be sent to billing authorities no later than seven months before the new list is finalised and comes into force (“compiled”). With more frequent revaluations, this deadline could become impracticable. This power would allow the Welsh Ministers to make this technical change to the draft list deadline as and when necessary.	No equivalent power.	Power to specify a revaluation date by way of the modifications effected by section 88(3)(b) of the Local Government Finance Act 1992.	In line with Scotland.
23	Enables consequential and transitional provision to be made.	In relation to non-domestic rates - powers in section 17 of the Non-Domestic Rating Act 2023.  In relation to council tax -	In relation to non-domestic rates - powers in section 43 of the Non-Domestic Rates (Scotland) Act 2020.  In relation to council tax - powers in section 114 of the	In line with England and Scotland.

<b>Section of Local Government Finance (Wales) Bill</b>	<b>Effect</b>	<b>Equivalent power in England</b>	<b>Equivalent power in Scotland</b>	<b>Summary</b>
		powers in section 114 of the Local Government Finance Act 1992.	Local Government Finance Act 1992.	
24	Enables provisions in the Bill to be commenced.	<p>In relation to non-domestic rates – powers in section 19 of the Non-Domestic Rating Act 2023.</p> <p>In relation to council tax – powers in section 119 of the Local Government Finance Act 1992.</p>	In relation to non-domestic rates and council tax – section 62 of the Local Government in Scotland Act 2003.	In line with England and Scotland.
Paragraph 12(2)(m) of the Schedule	Allows the Welsh Ministers to make regulations about the notices which can be issued under paragraphs 4M and 5ZC of Schedule 9 to the Local Government Finance Act 1988.	The same secondary legislative power is conferred on the Secretary of State, in relation to England, in paragraph 5F(A1) of Schedule 9 to the Local	Similar secondary legislative powers exist for Scottish Ministers in section 30(12) of the Non-Domestic Rates (Scotland) Act 2020.	Broadly in line with England and Scotland.

<b>Section of Local Government Finance (Wales) Bill</b>	<b>Effect</b>	<b>Equivalent power in England</b>	<b>Equivalent power in Scotland</b>	<b>Summary</b>
		Government Finance Act 1988.		
Paragraph 12(2)(n) of the Schedule	Allows the Welsh Ministers to make regulations to increase or decrease the amount of any penalty issued under paragraphs 5ZC or 5ZD of Schedule 9 to the Local Government Finance Act 1988.	The same secondary legislative powers is conferred on the Secretary of State, in relation to England, in paragraph 5FB of Schedule 9 to the Local Government Finance Act 1988.	Similar secondary legislative powers exist for Scottish Ministers in section 30(8) of the Non-Domestic Rates (Scotland) Act 2020.	Broadly in line with England and Scotland.

### Occasions since 2011 where UK Government legislation has been utilised to deliver changes to council tax and NDR in Wales

Title of legislation	Year	Purpose of legislation
The Localism Act	2011	<p>The general purpose of provisions was to enhance local government's freedom to act.</p> <p>Provisions amended the Business Rate Supplements Act 2009 to provide that all proposals for the imposition of a rates supplement would require approval by a ballot of all persons eligible to vote as opposed to the previous position where a ballot was only required if the supplement was to fund more than one third of the total cost of the project to which the supplement related.</p> <p>Provisions also amended section 47 of the Local Government Finance Act 1988 to replace the limited circumstances in which local authorities could provide discretionary non-domestic rates relief with a power to grant relief in any circumstances. This was subject to the condition that, except in the limited circumstances specified, the local authority may only grant relief if it would be reasonable to do so having regard to the interests of council tax payers in its area. The amendments also required a local authority to have regard to any relevant guidance issued by Welsh Ministers when deciding whether to grant relief under section 47.</p>
Local Government Finance Act	2012	<p>Provisions amending the Local Government Finance Act 1992 to enable the Welsh Ministers to establish Council Tax Reduction Schemes in Wales (following the UK Government decision to end Council Tax Benefit).</p> <p>Provisions to enable the Welsh Ministers, by regulations, to require authorities to publish prescribed information about council tax and non-domestic rating in a prescribed manner.</p> <p>Executive powers to enable the Welsh Ministers to make regulations which introduce powers to investigate and prosecute fraud and overpayment errors similar to those which could be utilised in relation to council tax benefit fraud.</p>
The Growth and Infrastructure Act	2013	<p>The planned 2015 non-domestic rates revaluation was moved to 2017 following an order made under powers inserted into the 1988 Act.</p>

Title of legislation	Year	Purpose of legislation
The Enterprise Act	2016	Provisions to remove a barrier to the efficient administration of non-domestic rates by enabling the sharing of certain HMRC / VOA data about properties and ratepayers with local authorities in Wales.
Telecommunications and Infrastructure (Relief from Non-Domestic Rates) Act	2018	<p>The provisions for Wales introduced a five-year relief scheme for fibre broadband.</p> <p>From an economic development perspective, the intention was to stimulate investment in fibre, but also encourage competition from smaller providers in a market that tends to be monopolised by one major player.</p>
The Rating (Property in Common Occupation) and Council Tax (Empty Dwellings) Act	2018	Provision for changes to the valuation of non-domestic properties in common occupation for rating purposes. For timing reasons, in the end, the Bill applied to England only.
Non-Domestic Rating (Nursery Grounds) Act	2018	<p>The provision sought to ensure that plant nurseries and grounds remained exempt from non-domestic rates. It followed a Court of Appeal decision which overturned the VOA's previous approach which was to provide an exemption from non-domestic rates liability for such properties.</p> <p>The purpose was to avoid disproportionate cost impacts on the farming and food production sectors in Wales.</p>
Non-Domestic Rating (Lists) Bill	2019	<p>The Bill's purpose was to set revaluation for 2021.</p> <p><b>Note:</b> the Bill fell due to UK Parliament being prorogued, but was re-introduced.</p>
Non-Domestic Rating (Public Lavatories) Bill	2019	<p>The purpose was to assign zero non-domestic rates liability to standalone public lavatories.</p> <p>The policy intention was to increase the availability of public lavatories in Wales (which aligned with Welsh Government's wider public health objectives).</p> <p><b>Note:</b> the Bill fell due to UK Parliament being prorogued, but was re-introduced.</p>
Non-Domestic Rating (Lists) Bill	2020	The Bill brought forward the non-domestic rates revaluation from 2022 to 2021 and adjusted the deadline for the submission of proposed non-domestic rating lists from September to December of the preceding revaluation year. It was superseded by the Non-Domestic Rating (Lists) Act 2021.
Non-Domestic Rating (Public Lavatories) Act	2021	The purpose was to assign zero non-domestic rates liability to standalone public lavatories.
Non-Domestic Rating (Lists) (No.2) Bill /	2021	Purpose of the Bill was to postpone the non-domestic rates revaluation date from 1 April 2022 to 1 April 2023 and to adjust the deadline for the submission of proposed non-domestic rating lists from 30 September to 31 December of the preceding revaluation year.

Title of legislation	Year	Purpose of legislation
Non-Domestic Rating (Lists) Act		
Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Act	2021	Non-domestic rates Covid-related material change of circumstances appeals withdrawn (this led to regulations developed for 1 April 2023 onwards).
The Non-Domestic Rating Act	2023	<p>Various changes including the ability to introduce new reliefs prior to the Bill, allowing more information to be shared with ratepayers, and the establishment of the <i>Digitalising Business Rates</i> programme.</p> <p>The Act received Royal Assent on 26 October 2023 with the new reliefs to take effect from 1 April 2024.</p>

