

Rebecca Evans MS
Minister for Finance and Local Government

18 December 2023

Dear Rebecca,

Local Government Finance (Wales) Bill: Legislation, Justice and Constitution Committee meeting, 11 December 2023

Thank you for attending our meeting on 11 December to discuss the Local Government Finance (Wales) Bill. I said that I would write to you with questions which, due to timing constraints, we were unable to ask during the meeting. These questions are enclosed in the Annex.

You also agreed to provide us with more detail on the account you have taken of human rights in preparing the Bill, in particular in relation to sections 6 and 12 (see paragraph 10 of the transcript). In addition, you agreed to provide the assessment that leads you to the conclusion that the secondary powers you are seeking in this Bill do not go significantly further than powers that are currently available to UK Ministers (see paragraph 75 of the transcript).

I would be grateful to receive a response to our questions and the additional information by Thursday 18 January 2024.

Yours sincerely,



Huw Irranca-Davies
Chair



ANNEX

General

Question 1 - On reflection, do you consider that it would it 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?

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?

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?

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?

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?

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?

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?

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?

Non-Domestic Rates

Question 9 - In the Statement of Policy Intent for the powers to confer, vary or withdraw nondomestic 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?

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?

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?

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?

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?

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?

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?

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?

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?

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?

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

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?

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?

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?

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?

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?