

Welsh Government's position on the draft Wales Bill

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1) Introduction

1. The draft Wales Bill was published by the UK Government on 18 December (available at: <https://www.gov.uk/government/publications/draft-wales-bill>). The purpose of much of the Bill is to enable implementation of the financial reforms agreed by the UK Government in response to the Silk Commission's first report (published at <https://www.gov.uk/government/publications/empowerment-and-responsibility-devolving-financial-powers-to-wales>).
2. The Welsh Government has welcomed the publication. While there are aspects of the draft Bill that could be strengthened, it is nevertheless an important step forward in implementing the financial reform process.
3. Pre legislative scrutiny of the draft Wales Bill is being undertaken by the Welsh Affairs Committee. The First Minister and I provided oral evidence to the Committee on 20 January.
4. This paper summarises the Welsh Government's policy position on the main 'Silk' components of the draft Bill. A summary of the Welsh Government's initial view on each clause is provided at annex 1.
5. I continue to have constructive meetings at a Ministerial level to finalise negotiating points and, more generally, to oversee the Bill's progress. Discussions with the UK Government - to press on aspects of the Bill or to clarify issues - are ongoing. Many of the technical and legal details are still under consideration, so the Welsh Government's position may be subject to the ongoing discussions between our lawyers and those of the UK Government.
6. This paper does not comment on the clauses of the draft Wales Bill that cover non-'Silk' issues:
 - clauses 1-5: which address constitutional issues such as the timing of the National Assembly elections and qualification for membership of the Assembly;
 - clause 20: which addresses the borrowing limits for local housing authorities;
 - clause 21: which addresses the work of the Law Commission.

2) 'Silk 1' issues not addressed by the draft Wales Bill

7. UK primary legislation is not required for all of the Silk Part 1 recommendations. In particular, I am advised that because non-domestic rates are already partly

devolved to Wales, the UK Government can accomplish full devolution without further legislation.

8. Similarly, the powers that the Welsh Government has inherited from the WDA will enable early access to borrowing, once the UK Government has given its agreement and made the necessary administrative changes.

3) 'Silk 1' issues addressed by the draft Wales Bill

Income tax

9. The Bill provides for the partial devolution of income tax, if agreed by the people of Wales in a referendum, and outlines the arrangements for a referendum. However, the form of income tax devolution is not what was recommended by the Silk Commission, which would have enabled us to vary rates independently. Instead we are being offered the 'lockstep' approach, which means that we would have to adjust all rates by the same amount, at the same time.
10. The First Minister and I have made the Welsh Government's position on this matter absolutely clear; the Silk recommendations should be applied in full. That means Wales should have the power to vary income tax rates independently, provided that is supported by a referendum, and provided the issue of fair funding has been resolved for the long term.
11. I am continuing to press the UK Government to reconsider this.

Land and property transaction tax, and landfill tax

12. The Bill provides for ending the collection and management of UK stamp duty land tax and landfill tax in Wales, and enabling the Assembly to introduce its own land and property transaction tax, and landfill tax. The Welsh Government fully supports this. My initial discussions with businesses in the construction, housing and property sectors have underlined the case for reforming stamp duty land tax.
13. The provisions in the Wales Bill relating to these two areas of taxation largely replicate the Scotland Act. However, one aspect of the draft Bill that is new, and that the Welsh Government is querying, is the process for handling land or property transactions that straddle the Wales-England border (something that does not arise in Scotland where, because of the separate legal jurisdictions, land and property transactions are either in Scotland or in England). That matter is currently being considered further by the Welsh Government and UK Government legal teams.

New taxes

14. The Bill provides for the creation of new devolved taxes on a case by case basis, subject to the agreement of the UK Government. While the Welsh Government has no immediate plans to develop new taxes, this is a potentially useful new policy lever for the future.

Borrowing for capital investment

15. The Bill provides for borrowing powers for capital investment of up to £500 million in total. This is a good start but I believe there is a case for setting a higher level and I making that case to the UK Government.

Borrowing for budget management purposes

16. The Bill provides for borrowing powers of up to £500 million to manage short term budgetary fluctuations arising from tax devolution. We are considering whether this is adequate.

Direct long haul air passenger duty

17. In its response to Silk 1, the UK Government said that it did not accept the Commission's recommendation to devolve direct long haul air passenger duty, and therefore it does not appear in the draft Bill. Nevertheless, I am continuing to press for devolution of this tax as I believe it would provide a useful economic policy lever.

4) Next stages

18. In responding to Silk Part 1, the UK Government indicated that it was aiming to legislate during this Parliament, as has been called for by the Welsh Government.
19. The publication of the draft Wales Bill before Christmas, and the announcement by the Welsh Affairs Committee that it intends to report in "late March", means that there should be sufficient time for the Act to be passed before the end of March 2015. However, this is very much in the UK Government's hands, and it will need to maintain progress if that target is to be achieved.
20. In taking forward this agenda, I will be seeking to work collaboratively with all Parties in the Assembly. I believe the consensus that we showed in favour of the Silk Part 1 recommendations was an important element in persuading the UK Government that it was time for change.
21. I will keep the Finance Committee informed of key developments as this work continues.

Jane Hutt AM
Minister for Finance

February 2014

Annex 1: Welsh Government's initial assessment of the draft Wales Bill

Clause title	Effect of the clause	Welsh Government's initial position
PART 2		
6. Taxation: introductory	This provides the structure within which the Welsh Government may legislate on tax, inserting a new Part 4A Chapter 1 into GOWA 2006.	Support. No policy issues arise directly from this clause.
7. Amendments relating to the Commissioners for Revenue and Customs	<p>This amends the Commissioners for Revenue and Customs Act (CRCA) 2005 and the Customs and Excise Management Act 1979, to enable Her Majesty's Revenue and Customs (HMRC) to:</p> <ul style="list-style-type: none"> • disclose information to Welsh Ministers regarding devolved taxes; • to make such information confidential and subject to onward disclosure controls; and • to ensure that such devolved taxes are neither a function nor an "assigned matter" of HMRC, but remain a matter for Welsh Ministers, while leaving scope for HMRC to administer these taxes on behalf of Welsh Ministers if desired. 	Agree that there will need to be new arrangements put in place to facilitate the Welsh and UK Governments sharing information with regard to the devolved taxes.
8. Welsh rate of income tax	<p>This deals with the Welsh rate of income tax, inserting a new Part 4A Chapter 2 into GOWA 2006, consisting of:</p> <ul style="list-style-type: none"> • 116C Power to set Welsh rate for Welsh taxpayers; • 116D Welsh taxpayers; • 116E Close connection with Wales or another part of the UK; • 116F Days spent in Wales or another part of the UK; • 116G Supplemental powers to modify enactments; • 116H Reimbursement of expenses; • 116I Report by the Comptroller and Auditor General. 	<p>Agree that income tax should be devolved to Wales, subject to a referendum (see clauses 10-12) and to resolution of the fair funding issue, as recommended by the Silk Commission.</p> <p>However, the WG disagrees with the proposed lock step approach, and instead advises that it should be able to vary each rate of income tax individually, as was recommended by the Silk Commission.</p>

Annex 1: Welsh Government's initial assessment of the draft Wales Bill

Clause title	Effect of the clause	Welsh Government's initial position
9. Income tax for Welsh taxpayers	This amends the Income Tax Act 2007 and the Provisional Collection of Taxes Act 1968 relating to income tax for Welsh taxpayers.	We understand that this mirrors the arrangements for Scotland and are on that basis content.
10. Referendum about commencement of income tax provisions 11. Proposal for referendum by Assembly 12. Commencement of the income tax provisions if majority in favour	Clauses 10 and 11 allow a referendum to be held in Wales about whether the income tax provisions in clauses 8 and 9 should come into force. Clause 12 sets out the procedure for the income tax provisions to come into force if a majority of voters in a referendum vote in favour.	Agree that a referendum should be held to enable the people of Wales to decide whether income tax varying powers should be devolved to Wales. We are unclear why the existing requirement in GOWA, for the Secretary of State to lay a draft Order within 120 days of an Assembly resolution, should now be extended to 180 days.
13. Welsh tax on transactions involving interests in land 14. Disapplication of UK stamp duty land tax	Clauses 13 and 14 together provide the mechanism for bringing to an end the collection and management of stamp duty land tax in Wales and allowing the Assembly to bring in its own land transaction tax.	Agree that Stamp Duty Land Tax should be devolved to Wales, enabling the Welsh Government to develop its own transaction tax.
15. Welsh tax on disposals to landfill 16. Disapplication of UK landfill tax	Clauses 15 and 16 together provide the mechanism for bringing to an end the collection and management of landfill tax in Wales and allowing the Assembly to bring in its own tax on disposals of waste to landfill.	Agree that Landfill Tax should be devolved to Wales, enabling the Welsh Government to develop its own tax.
17. Borrowing by the Welsh Ministers	This amends sections 121 and 122 of GOWA 2006 to revise the circumstances under which the Welsh Ministers may borrow and to set out the main controls and limits on such borrowing.	Agree that the Welsh Government should be able to borrow for cash management purposes following the devolution of taxes, and for capital investment. The Bill sets a borrowing ceiling of £500m for capital investment, which is a good start, however the Welsh Government believes this ceiling should be raised.
18. Repeal of existing borrowing powers	This repeals the paragraphs in Schedule 3 to the Welsh Development Agency Act 1975 that relate to borrowing and guarantees.	Agree that the existing powers should be repealed following introduction of the new borrowing powers.

Annex 1: Welsh Government's initial assessment of the draft Wales Bill

Clause title	Effect of the clause	Welsh Government's initial position
19. Reports on the implementation and operation of this Part	This sets out the requirements for the Secretary of State and Welsh Ministers to report on the implementation and operation of the new finance powers.	Agree that the Welsh Government and Secretary of State for Wales should report on implementation of Part 2 of the Bill.
PART 4		
22. Orders	This specifies that an Order made under this Act would be exercisable by statutory instrument.	Support.
23. Interpretation	This is the interpretation clause for the draft Bill.	Support.
24. Power to make supplementary, consequential, etc provision	This empowers HM Treasury, by order, to make such supplementary, incidental, consequential, transitional, transitory or saving provision as appears appropriate in connection with bringing into force the provisions in Part 2 (Finance).	Support.
25. Commencement	This sets out how the sections of the Bill are to be commenced.	Treasury powers to commence should be subject to a requirement to consult the Welsh Ministers.
26. Extent and short title	This sets out the territorial extent and short title of the Bill.	Support.
Schedules		
1. Referendum about commencement of income tax provisions	Schedule 1 sets out a framework for the conduct of a referendum about bringing the income tax provisions into force.	Agree with the arrangements for the referendum, subject to further explanation of reasons for paragraph 4(3) limit on Assembly power to set a date for the referendum.
2. Welsh tax on land transactions: consequential amendments	This contains further amendments relating to the disapplication of stamp duty land tax in Wales, and provides for the supply of information to HMRC about land transactions in Wales.	Agree, subject to explanation of the process for apportioning transactions "on a just and reasonable basis" between Wales and England.