



Our ref/Ein cyf: MA-(L)-LA-0157-15

William Graham AM
Chair
Enterprise and Business Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

23 November 2015

Dear William,

I am writing to you in relation to the Legislative Consent Memorandum on the non-domestic rating provisions in the Enterprise Bill (“the Bill”), which I laid on 1 October 2015.

During the course of the Bill’s progress through Parliament, the Department of Communities and Local Government (“DCLG”) identified that an amendment is required to the non-domestic rating data-sharing provisions in clause 22 of the Bill, to ensure the provision fully achieves the aims of the policy.

Currently under section 18(1) of the Commissioners for Revenue and Customs Act 2005 (the “CRCA”) a duty of confidentiality is placed on Valuation Office Agency (VOA) staff, as officers of Revenue and Customs. This duty of confidentiality means that VOA staff may not disclose identifying information in relation to a taxpayer, unless such disclosure is permitted in specific circumstances. Section 23(1) of the CRCA clarifies the interaction between the confidentiality requirement in section 18(1) and the Freedom of Information Act 2000 (the “FOIA”), and provides that information falling within section 18(1) is exempt from disclosure under the FOIA where such disclosure would either identify a person or enable a person’s identity to be deduced (“taxpayer information”). In effect section 23(1) of the CRCA imposes a statutory bar on the disclosure of such information.

The effect of the wording of clause 22 of the Bill as drafted on introduction would be that the statutory bar on disclosure would cease to apply to taxpayer information once it had passed from the VOA through the legal gateway. Consequently, the VOA requested that an amendment be made to the Bill which would extend the existing statutory bar so that it will continue to apply once taxpayer information has been shared under clause 22.

Without the certainty of a statutory bar the VOA considered that the risk of improper disclosure is such that it will not have the confidence to share all of the information that falls

within the scope of clause 22. As a result, much of the benefit of clause 22 would be lost and Local Authorities would still have to request the duplicate information directly from taxpayers.

Consequently, an amendment to clause 22 was tabled to the Bill by Baroness Neville-Rolfe on 19 November 2015 extending the existing statutory bar so that it will continue to apply once taxpayer information has been shared under clause 22. This amendment recognises that taxpayer information held by the VOA is obtained either under compulsion or provided by taxpayers under threat of compulsion. Information obtained in this manner is often subject to a statutory bar from disclosure under the FOIA as the owner of the information is unable to consider the implications of disclosure under the FOIA before providing the data. It is also consistent with the existing statutory bar that protects taxpayer information from disclosure while it is held by the VOA.

The purpose of this amendment is to facilitate the effective implementation of the policy objective and it neither extends the policy nor detracts from it. Moreover, the principle that taxpayer information held by the VOA should be protected from disclosure under the FOIA is already established, hence the statutory bar. The amendment merely seeks to extend the protection currently afforded to taxpayer information held by the VOA, to the wider group of recipients with whom data-sharing will be permitted as a result of clause 22. The proposed amendment does not therefore introduce any new principles and is consistent with existing policy. As a result, I will not be laying a revised Legislative Consent Memorandum as the amendment does not make substantive changes to the policy: it merely ensures that the policy can be given effect.

I understand Enterprise and Business Committee is currently considering the Legislative Consent Memorandum in relation to clause 22 of the Bill and I wanted to draw your attention as soon as possible to this amendment and its purpose and effect.

I am grateful for the Committee's assistance in this matter.

Yours sincerely

A handwritten signature in black ink, reading "Leighton Andrews". The signature is written in a cursive style. Below the signature is a horizontal line that ends in an arrowhead pointing to the right.

Leighton Andrews AC / AM
Y Gweinidog Gwasanaethau Cyhoeddus
Minister for Public Services