

Paratowyd y ddogfen hon gan gyfreithwyr Cynulliad Cenedlaethol Cymru er mwyn rhoi gwybodaeth a chyngor i Aelodau'r Cynulliad a'u cynorthwyywyr ynghylch materion dan ystyriaeth gan y Cynulliad a'i bwyllgorau ac nid at unrhyw ddiben arall. Gwnaed pob ymdrech i sicrhau bod y wybodaeth a'r cyngor a gynhwysir ynddi yn gywir, ond ni dderbynnir cyfrifoldeb am unrhyw ddibyniaeth a roddir arnynt gan drydydd partïon.

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Constitutional and Legislative Affairs Committee

LEGISLATIVE CONSENT MEMORANDUM –WALES BILL

Legal Advice Note

Background

1. On 1 May 2014 Jane Hutt AM, the Minister for Finance, laid a Legislative Consent Memorandum (“LCM”) concerning the Wales Bill (“the Bill”) pursuant to Standing Order 29.2. A written statement required under Standing Order 30 was also laid on 1 May setting out modifications to Welsh Ministers’ functions which are outside the Assembly’s legislative competence and consequently not dealt with by the LCM.

2. The LCM was considered on the 6 May 2014 by the Business Committee, who agreed to refer it to the Constitutional and Legislative Affairs and Finance Committees. The Committees must report to the Assembly by 26 June 2014 to allow the Legislative Consent Motion to be debated in Plenary on 1 July 2014.

The Bill

3. The Bill was introduced in the House of Commons on 20 March 2014 and completed its Committee stage on 6 May. The Bill, as amended, can be accessed via –

<http://www.publications.parliament.uk/pa/bills/cbill/2013-2014/0205/14205>

The LCM considers the Bill as amended.

Summary of the Bill and its Policy Objectives

4. The Bill is sponsored by the Wales Office. The expressed policy objectives for the Bill are to make the National Assembly (“the Assembly”) and the Welsh Government more accountable to the people of Wales for raising the money they spend, and to improve the system of elections to the Assembly.

5. The Bill is in four parts and two Schedules:

Part 1, clauses 1 to 5, makes changes relating to the frequency of elections to the National Assembly for Wales. Ordinary general elections to the Assembly will take place every five years (avoiding a clash with the 2020 and subsequent Westminster elections). The ban on dual candidacy is removed and amendments made to the provisions relating to the practice of simultaneously being a Member of the Assembly and of Parliament. The Welsh Assembly Government is renamed the Welsh Government and GOWA is amended to clarify that the First Minister retains office during a period of dissolution.

Part 2, clauses 6 to 22, establishes new tax and borrowing arrangements. It devolves responsibility for tax on land transactions and disposals to landfill, revises Welsh Ministers’ borrowing powers, and creates the possibility, subject to approval in a referendum, of a 10 pence reduction in income tax across each rate band, coupled with the power for the Assembly by resolution to impose a Welsh rate of income tax in compensation. It also creates the possibility of new devolved taxes, and provides competence to legislate on budgetary procedures.

Part 3, clauses 23 and 24, covers two miscellaneous issues:

limits on housing revenue account debts, and the relationship between the Law Commission and Welsh devolved institutions.

Part 4, clauses 25 to 29, sets out commencement, extent, and other matters.

Schedule 1 provides detail on the tax referendum, while Schedule 2 covers amendments consequential to the devolution of tax on land transactions.

Provisions in the Bill for which consent is sought

6. The provisions in the Bill modifying the Assembly's legislative competence and for which consent is sought are in clauses 6, 7, 14, 17 and 21. There are no provisions that come within the Assembly's existing competence. The Welsh Government's commentary on these sections is set out in the LCM. The way in which they add to the Assembly's competence can be summarised as follows –

- Clause 6 provides the structure within which the Assembly may legislate on tax matters.
- Clause 7 introduces amendments to Parts 2 and 3 of Schedule 7 to GOWA which enable the Assembly, with the consent of the Treasury, to remove or modify the functions of HM Revenue and Customs (“HMRC”) where those functions relate to devolved taxes.
- Clause 14 (together with clause 15) would allow the Welsh Government and the Assembly to introduce a Welsh tax on transactions involving interests in land. This would be linked to the disapplication of stamp duty land tax in Wales. Members will wish to note that the introduction of a Welsh tax is dependent on the disapplication of the stamp duty land tax which will be from “the effective date” i.e. a date provided for in an order made by the Treasury.
- Clause 17 insert into GOWA provisions which set out the scope of the new power to introduce a tax on disposals to landfill made in Wales. As with stamp duty land tax, the current UK landfill tax will be disappplied in accordance with an order made by the Treasury not by Welsh Ministers.
- Clause 21 amends Schedule 7 to GOWA by conferring on the Assembly competence to legislate for its own budgetary procedures. This includes the ability to amend certain currently ‘protected provisions’ of GOWA i.e. sections 120(2), and 125 to 128. It will also permit an amendment to section 119 in relation to estimated payments for a financial year into the Welsh Consolidated Fund or to the Welsh Ministers, the First Minister or the Counsel General. Amendment of section 159 or Part 5 of Schedule 7 is permissible where it is incidental to, or consequential on, a provision of an Act of the Assembly relating to budgetary procedures or devolved taxes. and the Secretary of State consents to the provision.

Clause 21 would enable the Assembly to legislate in relation to procedures for scrutinising and setting the annual budget of Welsh Ministers and other “relevant persons”. It would allow for a more holistic process which would authorise expenditure, taxation rates (e.g. in relation to new devolved taxes) and borrowing.

Modification of Welsh Ministers’ functions

7. The Written Statement laid by the Minister for Finance sets out the ways in which the Bill modifies the Welsh Ministers’ functions. They may be summarised as follows:–

- clause 8 confers a power to set, by resolution, a Welsh rate of income tax for Welsh tax payers. Strictly this is not a modification of a Ministerial function as it is for the Assembly, by resolution, to set a Welsh rate of income tax. However, the Bill requires that Assembly Standing Orders provide that only the First Minister or a Welsh Minister may move a motion for a Welsh rate resolution. Members may wish to note that whilst the draft Bill preserves the ‘lockstep’, the references to Welsh basic, higher and additional rates of income tax clarify that the Assembly is able to vary each rate of income tax but such variation must be by the same percentage point. The consultation draft made reference only to a Welsh rate of income tax which could have been interpreted as one flat rate of income tax for all Welsh taxpayers.
- Clause 12 provides a mechanism through which the Assembly can trigger a referendum on whether there should be Welsh rate of income tax. This procedure is similar to that which applied to the bringing into force of Part 4 of GOWA.
- Clause 16 requires the supply of information to HMRC about land transactions in Wales as this information will no longer be available to HMRC from land transaction returns.
- Clause 19 amends GOWA to revise the circumstances under which the Welsh Ministers may borrow and to set out the main controls and limits on such borrowing which will be permitted to manage in-year volatility of receipts, provide a working balance, deal with differences between full year forecasts and outturn receipts for devolved taxes and to fund capital expenditure.

- Clause 20 repeals the current borrowing provision set out in the Welsh Development Agency Act 1975.
- Clause 22 sets out the requirements for the Secretary of State and Welsh Ministers to report on the implementation and operation of the new financial provisions set out in Part 2 of the Bill.
- Clause 23 enables the Treasury to set a cap on the maximum level of housing debt that may be held, in aggregate, by Welsh local housing authorities and requires the Welsh Ministers to determine how much housing debt may be held by each housing authority under that cap. This establishes a system similar to that operating in England.
- Clause 24 imposes a duty on the Law Commission to provide advice and information to the Welsh Ministers directly and enables the Welsh Ministers themselves to refer law reform matters to the Commission .
- Schedule 1 sets out the framework for the conduct of a referendum about bringing the income tax provisions into force.

Rationale for using the Bill

8. The provisions referred to in the LCM are not currently within the legislative competence of the Assembly but modify that competence by extending it for the future. The provisions implement a number of the recommendations made by the Silk Commission in its first report which were accepted in their entirety by the Welsh Government. The provisions referred to in the Written Statement are complementary to the enhanced legislative competence in relation to the devolved taxes and borrowing being conferred on the Assembly and Welsh Ministers respectively or are required for the other provisions to work effectively.

Matters of particular relevance to the Constitutional and Legislative Affairs Committee

9. Clause 3 of the Bill provides for MPs to be disqualified from being also Assembly Members. Whilst of general interest in the context of the Committee's inquiry into disqualification provisions, the clause contains useful precedents for disqualification to take effect only after an election. The disqualification is only effective eight days after the Assembly election, which provides an opportunity for a sitting MP to 'resign' from Parliament.

Members who wish to resign their seats must be appointed to one of two paid offices of the Crown, retained from antiquity for this purpose only. These are the Crown Steward and Bailiff of the Chiltern Hundreds and the Crown Steward and Bailiff of the Manor of Northstead. The Committee may wish to consider whether this is an approach that it would wish to recommend in other cases.

10. Clause 24 of the Bill introduces provisions for the Law Commission to provide advice and assistance to the Welsh Ministers. It does not, however, include reference to “a comprehensive programme of consolidation and revision of statute law in devolved areas” as the Committee sought in its submission to the Secretary of State.

11. The Bill at clause 6 contains a power to add new devolved taxes by Order in Council, which has to be approved by resolution of the Assembly. However, the commencement of the provisions relating to devolved taxes depends on orders made by the Treasury in relation to which neither the Assembly nor Welsh Ministers have a part to play. Similarly, if there is an affirmative vote in a referendum, the income tax provisions are to be commenced by the Treasury, not by the Welsh Ministers; this contrasts with the last referendum.

12. This LCM and accompanying statement have highlighted a gap in the Assembly’s existing Standing Orders. Standing Order 29 requires an LCM in relation to matters within the Assembly’s legislative competence, or that modify that competence. Standing Order 30 requires a statement when a Westminster Bill proposes to modify functions of the Welsh Ministers and the Counsel General. Neither Standing Order covers modifications to the functions of the Assembly other than to its legislative competence. The result is that the power contained in clause 8 for the Assembly, by resolution, to set the Welsh rate for the purpose of calculating the rates of income tax, does not come within either Standing Order, despite being a very significant addition to the Assembly’s powers.

Conclusion

13. The provisions referred to in the LCM and the Written Statement could not be made by made by an Assembly Act and it is therefore appropriate for the matters to be addressed by the Bill and LCM.

Legal Services

12 May 2014