



Report on the Legislative Consent Memorandum on the Wales Bill

Background

1. On 1 May 2014, Jane Hutt AM, the Minister for Finance (“the Minister”), 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. On 6 May 2014 the Business Committee referred the LCM to the Constitutional and Legislative Affairs Committee and the Finance Committee, setting a deadline to report of 26 June 2014.
3. On 14 May 2014 the Minister gave evidence to the Finance Committee in relation to the LCM.
4. In addition to taking evidence from the Finance Minister the Committee is currently undertaking an inquiry to ‘Best Practice Budget Procedures’ and some of the evidence from this inquiry has informed the Committee’s consideration of the Bill.

The Bill

5. The Bill was introduced in the House of Commons on 20 March 2014 and completed its Committee stage on 6 May. The LCM considers the Bill as amended.
6. A detailed description of each of the provisions is provided in the LCM, together with the Welsh Government’s view on them.
7. 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. In summary the provisions in the Bill for which consent is sought are:

- Clause 6 – Taxation: introductory
- Clause 7 – Amendments relating to the Commissioners for Revenue and Customs
- Clause 14 – Welsh tax on transactions involving interests in land
- Clause 17 – Welsh tax on disposals to landfill
- Clause 21 – Budgetary procedures

8. Further information on the specific clauses which the Committee looked at to inform their considerations of the LCM is attached at Annex 1.

The Committees consideration of the Bill

9. The Committee’s view in relation to the LCM is detailed below in the ‘*Our view*’ section, however, there are a number of areas which the Committee believes should be addressed by the Bill, and these are detailed below.

Borrowing

10. The Committee believe that the Welsh Government should not be treated less favourably than Welsh Local Authorities in terms of borrowing. The same range of borrowing sources available to local authorities should be available to the Welsh Government including the ability to issue bonds, borrow from banks and borrow from the Public Works Loan Board. Paragraph 94 of the Command Paper says that UK Government can allow Welsh Government to borrow from banks or issues bonds. The Committee is pleased that the inference is positive in that they are willing to consider this further, however, Members question why this is not being done by amendments to the Bill. The Committee is of the view that the prudential borrowing principles for local authorities should also apply to the Welsh Government.

11. As drafted the Bill provides that the revised legislative competence of the Assembly relating to budgetary procedures would enable the scrutiny, but not the authorisation, of the exercise of borrowing powers by the Welsh Ministers. The Committee firmly believe that borrowing limits by the Welsh Government should be subject to authorisation by the Assembly and this should be provided for in the Bill. In relation to borrowing, the Committee firmly believes any further amendments to the Bill should look to the [report](#) produced by the Finance Committee in 2012.

12. The Committee believe that all underspends should be automatically carried forward into general Welsh Government reserves and the Bill should be amended to enable this.

Cash reserves

13. The Committee notes that paragraphs 79-82 of the Command Paper states that the Welsh Government can create a cash reserve for managing fluctuations in tax receipts. The Committee notes that Scotland was given an annual limit for building up their reserve in advance of the taxes being devolved. The Committee requests that clarification as to the limit on level of this cash reserve in Wales.

Our View

14. The Committee notes that the provisions referred to in the LCM are not currently within the legislative competence of the Assembly but seek to modify competence by extending it.

15. The provisions referred to in the LCM could not be made by the Assembly. The Committee consider that it is appropriate for the UK Parliament to legislate on this matter as described in the Welsh Government's Legislative Consent Memorandum. Therefore, the Committee has no objection to the LCM.

16. The Committee is pleased to note that the Bill implements a number of the recommendations of the Silk Commission's first report.

Annex 1

Summary of the Bill and its Policy Objectives

1. 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.

Legislative Competence

2. The Bill is in four parts:
 - 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 Westminster election). 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 gives 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

3. 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. The Welsh Government’s commentary on these sections is set out in the LCM.
In summary:-

- Clause 6 provides the structure within which the Welsh Government may legislate on tax.
- 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 HMRC where those functions relate to devolved taxes.
- Clause 14 (together with clause 15) would allow 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 Welsh government’s 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 disapplied in accordance with an order made by the Treasury.
- 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 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. where such an amendment 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.
- “Budgetary procedure” are defined as follows:

“Budgetary procedures” are procedures for a financial year relating to –

- (a) the authorisation of the amount of resources which maybe used or retained in that year by relevant persons or pursuant to a relevant enactment,
- (b) the authorisation of the amount which maybe paid out of the Welsh Consolidated fund in that year to relevant persons or for use pursuant to a relevant enactment, or
- (c)the scrutiny of the use of the amounts so authorised under paragraph (a) or (b) or of the exercise of borrowing powers by the Welsh Ministers.

The following are “relevant persons” –

- (a) the Welsh Ministers,
- (b) the First Minister,
- (c) the Counsel general,

- (d) the Assembly Commission,
- (e) the Wales Audit Office, and
- (f) the Public Service Ombudsman for Wales.

A “relevant enactment” is an enactment which provides for payment out of the Welsh consolidated Fund.

The reference to the use of resources is a reference to their expenditure, consumption or reduction in value”

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

4. In summary the Bill modifies Welsh Ministers’ functions 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 clarifying 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 provision set out in Part 2 of the Bill.
- Clause 23 enable 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

5. The provisions referred 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.