

The Welsh Government's Legislative Consent Memorandum on the Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill

November 2021



1. Background

The UK Government's Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill

1. The Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill¹ (the Bill) was introduced in the House of Commons on 12 May 2021. It is sponsored by the Ministry of Housing, Communities and Local Government.

2. The long title to the Bill states that it is:

"A Bill to make provision about matters attributable to coronavirus that may not be taken account of in making certain determinations for the purposes of non-domestic rating; and to make provision in connection with the disqualification of directors of companies that are dissolved without becoming insolvent."

3. The Bill completed its passage through the House of Commons on 9 September 2021 and is currently at committee stage in the House of Lords.

The Welsh Government's Legislative Consent Memorandum

4. Standing Orders 29.1 and 29.2 provide that a legislative consent memorandum is required when a relevant UK Bill modifies or falls within the Senedd's legislative competence.

5. Standing Order 29.2(i) stipulates that a legislative consent memorandum should be laid "normally no later than 2 weeks after introduction". Standing Order 29.2(iii) requires that a member of the Welsh Government lay a memorandum in relation to any UK Bill, that by virtue of amendments agreed to or tabled by a UK Minister in either house makes (or would make) relevant provisions for the first time or beyond the limits of any consent previously given by the Senedd, "normally no later than two weeks after the amendments are tabled or agreed to".

6. On 21 September 2021 Rebecca Evans MS, the Minister for Finance and Local Government (the Minister), laid before the Senedd a Legislative Consent Memorandum (the Memorandum) in respect of the Bill.²

¹ Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill, as introduced (HC Bill 011)

² Welsh Government, Legislative Consent Memorandum, Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill, September 2021

7. The Business Committee agreed that the Legislation, Justice and Constitution Committee and the Economy, Trade and Rural Affairs Committee should report on the Memorandum by 18 November 2021.³

Provisions in the Bill for which the Senedd's consent is required

8. Paragraphs 11 to 14 of the Memorandum set out the Welsh Government's assessment of which provisions in the Bill require the consent of the Senedd, namely those in clause 1 (with the exception of sub-clause 1(9)).

9. The Memorandum states:

*"This memorandum only concerns provisions in clause 1 of the Bill relating to the treatment of non-domestic rates appeals on grounds of a material change of circumstances citing Covid-19 related matters. The provisions in the Bill relating to the disqualification of directors concern non-devolved matters."*⁴

10. Clause 1 of the Bill (as introduced) makes provision as to what matters attributable to coronavirus may be taken into account when deciding:

- i. whether a hereditament (a unit of property for business rate liability assessment purposes) ought to appear in the rating lists; and
- ii. rateable values on the 2017 rating lists (for calculating the amount of business rate liability).⁵

11. In making the determinations referred to in paragraph 10, clause 1(4) of the Bill provides that, subject to specified exceptions, no account is to be taken of any matter that is directly or indirectly attributable to coronavirus.

³ Business Committee, [Timetable for consideration: Legislative Consent Memorandum on the Rating \(Coronavirus\) and Directors Disqualifications \(Dissolved Companies\) Bill](#), September 2021

⁴ Welsh Government, Memorandum, paragraph 11

⁵ The process for challenging non-domestic rates on the grounds of a material change of circumstances in Wales is governed by the Non-Domestic Rating (Alteration of Lists and Appeals) (Wales) Regulations 2005 (SI 2005/758 (W.63))

The Welsh Government's reasons for making provision for Wales in the Bill

12. Paragraphs 15 to 17 of the Memorandum set out the reasons for including provision for Wales in the Bill.

13. The Memorandum states:

"These changes can only be made by way of primary legislation. The possibility of making these changes through a future Welsh Government Bill has been discounted as no suitable legislative vehicle is planned within the time-scales necessary for these provisions. Using a later Welsh Government Bill would result in uncertainty for businesses and other ratepayers in Wales in the interim. (...)

A Welsh Government Bill would need to be laid, debated, passed and commenced for the changes to be effective retrospectively. (...) Consenting to the provisions in the Bill would enable the matter to be resolved promptly..."⁶

14. Paragraph 17 of the Memorandum goes on to state:

"The Bill would ensure that the treatment of appeals in Wales aligns with that in England and that Welsh ratepayers would be treated in a consistent manner."⁷

15. The Minister's view, as set out in the Memorandum, is that "it is appropriate to deal with these provisions in this UK Bill to mitigate the financial risks and for reasons of timing, as well as ensuring consistency within the NDR system and preserving the intended purpose of MCC as grounds for appeal."⁸

16. The Memorandum concludes:

"The interconnected nature of the Welsh and English systems and the role of the [Valuation Office Agency] in handling appeals also support the provisions being taken forward at the same time and in the same legislative instrument."⁹

⁶ Welsh Government, Memorandum, paragraph 15 and 16

⁷ Welsh Government, Memorandum, paragraph 17

⁸ Welsh Government, Memorandum, paragraph 20

⁹ Welsh Government, Memorandum, paragraph 20

2. Committee consideration

17. We considered the Memorandum at our meeting on 18 October 2021.¹⁰ We were not in a position to take oral evidence from the Minister given the timetable for scrutiny. However, we wrote to the Minister on 19 October to seek clarification on a two specific points, which are discussed below.¹¹ The Minister responded on 2 November 2021.¹²

Our view

The Memorandum

18. Paragraph 2 of the Memorandum states:

"The Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill (the Bill) was introduced in the House of Commons on 12 May 2021. The Bill can be found at: <https://bills.parliament.uk/bills/2861>".

19. Despite not being laid until after the Bill completed its passage through the first house in the UK Parliament, at no place in the Memorandum is there reference to the Bill having been amended, and neither is there any detail on any amendments being sought to the Bill by the Minister.

20. As such, the Memorandum implies that it relates to the version of the Bill on introduction.

21. However, clause 1 in that version of the Bill does not apply to Wales. In the explanatory notes accompanying the Bill, the UK Government confirmed "Business rates policy is fully devolved. Clause 1 extends to England and Wales and applies to England only."¹³ Accordingly, the UK Government also confirmed that a Legislative Consent Motion was not being sought from the Senedd.¹⁴

22. As part of our consideration of the Memorandum we noted that, on 7 July 2021, the Minister published a written statement which confirmed the Welsh Government's intention to

¹⁰ [Legislation, Justice and Constitution Committee, 18 October 2021](#)

¹¹ [Letter to the Minister for Finance and Local Government, 19 October 2021](#)

¹² [Letter from the Minister for Finance and Local Government, 2 November 2021](#)

¹³ Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill, [Explanatory Notes](#) (Bill 11-EN), paragraph 37

¹⁴ Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill, [Explanatory Notes](#) (Bill 11-EN), Annex A

legislate “by seeking to include provisions for Wales in the UK Government’s Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill”.¹⁵

23. We became aware that the UK Government subsequently amended the Bill at Report Stage in the House of Commons on 9 September to extend the application of clause 1 of the Bill to Wales. In the explanatory notes accompanying the Bill as introduced into the House of Lords¹⁶ on 10 September, the UK Government states:

“Since the Bill’s Introduction, the Scottish and Welsh Governments have announced their intention to make corresponding provision in respect of Covid-related business rates appeals. The Government, at the request of the Welsh Government, tabled amendments to the Bill at Commons Report stage to extend application of Clause 1 to non-domestic rating lists compiled for the purposes of business rates in Wales (as well as lists for England).”¹⁷

24. In our letter to the Minister we asked why none of these matters detailed above are referred to in the Memorandum.

25. The Minister’s opening remarks in her response to our letter are unconvincing. The Minister said:

“The background to the Bill was not included within the Memorandum, which focuses on the relevant provisions of the Bill for which consent is required.”¹⁸

26. First, it is unclear why the Minister considers that her action of requesting that a UK Bill be amended to apply in Wales should be classed as ‘background’ information. Secondly, we are also unsure as to why the Minister believed such information was less important to Senedd Members than the several paragraphs of information regarding the UK Government’s policy objectives for the Bill that are included in the Memorandum. In our view, and in the interests of openness and transparency of government decision-making, it is an important issue to be drawn to the attention of the Senedd as part of its consideration on the matter of consent.

¹⁵ Welsh Government, [Written Statement: Coronavirus: Non-Domestic Rating Appeals and Discretionary Funding Support](#), 7 July 2021

¹⁶ [Rating \(Coronavirus\) and Directors Disqualification \(Dissolved Companies\) Bill](#), as introduced to the House of Lords (HL Bill 50)

¹⁷ Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill, [Explanatory Notes](#) (HL Bill 50-EN), paragraph 7

¹⁸ Letter from the Minister for Finance and Local Government, 2 November 2021

27. In her letter the Minister also told us that the Bill was introduced to the UK Parliament “without prior discussion with the Welsh Government as to whether provisions for Wales should be included”.¹⁹ This statement, relevant to the overall picture of intergovernmental working, should have been included in the Memorandum so that it could be scrutinised. It raises an important point. Given the UK Government acknowledges that the matter is fully devolved, it is unclear whether the Minister is suggesting that the UK Government should consult the Welsh Government as a matter of routine to see whether the Welsh Government wants legislative provisions in a UK Bill. Such a position would be unsatisfactory.

28. With regards to the Minister seeking the expansion of the application of the Bill to Wales, the Minister said:

“Following the [Senedd] election, an approach to the Bill was formulated and I wrote to the then Secretary of State for Housing, Communities and Local Government on 27 July asking for relevant provisions for Wales to be included within the Bill. I received a response on 3 September from the then Minister for Regional Growth and Local Government confirming that relevant provisions for Wales would be tabled as an amendment at Report Stage in the House of Commons on 9 September.”²⁰

29. This explanation from the Minister confirms the information that we were able to ascertain from reviewing the proceedings on the Bill in the UK Parliament.

Conclusion 1. It is unsatisfactory that the information we had to request from the Minister was not included in the Memorandum as laid before the Senedd. In such circumstances where the timescales prevent effective scrutiny by Senedd Committees, the Senedd would be asked to consider and vote on a relevant consent motion without being in full receipt of the facts. Such circumstances are unacceptable.

Recommendation 1. The Minister should, in advance of the relevant consent motion debate, provide full details to all Senedd Members of how, when and why the Minister requested that the England-only Bill that was introduced to the UK Parliament was amended so that its application was extended to Wales. Such details should include an explanation of the delay between notifying Senedd Members on 7 July of her intention to seek amendments to the Bill and not then formally writing to the UK Government until 27 July.

¹⁹ Letter from the Minister for Finance and Local Government, 2 November 2021

²⁰ Letter from the Minister for Finance and Local Government, 2 November 2021

30. The Minister’s written statement in July also made reference to forthcoming regulations. In the statement the Minister said:

“We also intend to introduce regulations in Wales which will have a similar effect to the provisions to be included in the UK Bill, and those regulations would apply until such time as the UK Bill becomes law”.²¹

31. The UK Ministers made The Valuation for Rating (Coronavirus) (England) Regulations 2021 (the England Regulations) on 24 March of this year, and clause 1(9) of the Bill will revoke the England Regulations if and when the Bill is enacted.

32. Given that we were not aware of the Welsh Ministers having made the regulations for Wales, we asked the Minister to provide clarity on the matter.

33. On 1 November, after our letter was issued and before the Minister’s response was received, the Welsh Government laid The Valuation for Rating (Wales) (Coronavirus) Regulations 2021 (the Wales Regulations) before the Senedd.

34. In her letter to us on 2 November, the Minister told us:

“With regards to the making of relevant Regulations, yesterday afternoon I laid the Valuation for Rating (Wales) (Coronavirus) Regulations 2021. These Regulations came into force at 6pm yesterday evening and have the effect, going forward, of preventing Material Change of Circumstances appeals which seek to rely on Covid-19 related matters. The Welsh Government considered it necessary to consult on these Regulations, with a consultation on draft Regulations taking place between 16 August and 27 September: a summary of responses was published on 21 October.”²²

35. While we acknowledge that the Welsh Government considered it necessary to consult on a draft version of the Wales Regulations, we again are unclear as to why the Memorandum contains no detail of this fact.

36. In the Explanatory Memorandum accompanying the Wales Regulations, and with regard to the timings for those Regulations coming into force, the Minister refers to a necessity “given the immediate risk to public finances”.

²¹ Welsh Government, Written Statement: Coronavirus: Non-Domestic Rating Appeals and Discretionary Funding Support, 7 July 2021

²² Letter from the Minister for Finance and Local Government, 2 November 2021

37. Notwithstanding the Minister’s comments regarding the decision to undertake a consultation, we are concerned that such urgent regulations have been made in Wales over seven months after similar provision was made in England by the English Regulations.

Recommendation 2. The Minister should, in advance of the relevant consent motion debate, provide full details to Senedd Members of the reasons for this delay and any associated adverse impact on Welsh public finances.

38. The Minister’s letter also confirms that “timing constraints [means] it has not been possible to include a clause in the Bill revoking the [Wales] Regulations” and that the Minister will lay further regulations to revoke the Wales Regulations to align with the timing of Royal Assent.²³ We note this position.

Provisions in the Bill for which consent is required

39. Turning to the provisions in the Bill for which consent is required, we note the Welsh Government’s assessment of which provisions require Senedd consent, namely clause 1 of the Bill.

40. For the purposes of our consideration, we considered the Memorandum against the version of the Bill as introduced into the House of Lords, and we agree with the Welsh Government’s assessment.

41. In our view, the provisions in clause 1 of the Bill, with the exception of clause 1(9) (as referenced above in paragraph 31), relate to Wales and the consent of the Senedd should be sought because the provisions fall within the competence of the Senedd.

42. We note that clause 1 of the Bill does not contain any new powers for the Welsh Ministers to make subordinate legislation.

43. We acknowledge that clause 1 prescribes assumptions for the purposes of determining rateable value for non-domestic properties. We note that, while the Welsh Ministers have powers to make such provision by way of regulations²⁴, such regulatory provision cannot be retrospective. In order to meet the policy objective which includes retrospective application, primary legislation is required.

²³ Letter from the Minister for Finance and Local Government, 2 November 2021

²⁴ Paragraph 2(8) of Schedule 6 to the *Local Government Finance Act 1988* contains power now vested in the Welsh Ministers by virtue of section 162 and paragraph 30 of Schedule 11 to the *Government of Wales Act 2006*.

The Welsh Government's reasons for making provisions for Wales in the Bill

44. We note the Minister's reasons for making provision for Wales in the Bill, as referenced above in paragraphs 12 to 16 and paragraph 43.

Conclusion 2. We are particularly concerned with the reasoning set out in paragraph 17 of the Memorandum, that the Bill "would ensure that the treatment of appeals in Wales aligns with that in England". In our view, this reasoning implies that the position for England is the norm and the default position, whereas the guiding principle should be a solution that meets the needs of those in Wales affected by the legislation.

Conclusion 3. Further, while we acknowledge the Minister's view that, by making provision for Wales in the Bill, "Welsh ratepayers would be treated in a consistent manner", it is unclear whether the Minister would, and should, make exactly the same provision for Welsh ratepayers through a Welsh Bill given that such provisions have not been tested with these stakeholders.