

Report on the Local Government Finance (Wales) Bill

March 2024



The Welsh Parliament is the democratically elected body that represents the interests of Wales and its people. Commonly known as the Senedd, it makes laws for Wales, agrees Welsh taxes and holds the Welsh Government to account.

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About the Committee

The Committee was established on 26 May 2021. Its remit can be found at www.senedd.wales/SeneddLJC

Current Committee membership:



Committee Chair:
Huw Irranca-Davies MS
Welsh Labour



Alun Davies MS
Welsh Labour



Samuel Kurtz MS
Welsh Conservatives



Adam Price MS
Plaid Cymru

The following Member was also a member of the Committee during the scrutiny of the Bill:



James Evans MS
Welsh Conservatives

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1. Introduction

1. On 20 November 2023, Rebecca Evans MS, Minister for Finance and Local Government (the Minister), introduced the Local Government Finance (Wales) Bill (the Bill)¹, and accompanying Explanatory Memorandum (the EM)².
2. The Minister issued a Written Statement on 20 November 2023.³
3. On 20 November 2023, the Minister also issued a Statement of Policy Intent for subordinate legislation to be made under the Bill.⁴
4. The Minister made an oral statement to the Senedd on 21 November 2023.⁵
5. The Senedd's Business Committee referred the Bill to the Local Government and Housing (LGH) Committee, and set a deadline of 15 March 2024 for reporting on its general principles.⁶

The purpose of the Bill

6. The long title of the Bill states that it is a Bill to:

“make provision about non-domestic rating and council tax”.

7. The EM states:

“The Bill, in summary, proposes in respect of the non-domestic rates system:

- increasing the frequency of revaluations to three-yearly, and a power for the Welsh Ministers to amend the revaluation year and interval between revaluation years through regulations;

¹ [Local Government Finance \(Wales\) Bill](#), as introduced

² Local Government Finance (Wales) Bill, [Explanatory Memorandum](#), November 2023

³ Welsh Government, [Written Statement: Local Government Finance \(Wales\) Bill](#), 20 November 2023

⁴ [Statement of Policy Intent](#), 20 November 2023

⁵ [Plenary](#), 21 November 2023

⁶ Business Committee, [Timetable for consideration: Local Government Finance \(Wales\) Bill](#), November 2023

- *conferring regulation-making powers on the Welsh Ministers to confer, vary or withdraw reliefs;*
- *strengthening the eligibility conditions for charitable relief for unoccupied hereditaments;*
- *expanding the definition of a new building for the purpose of the serving of completion notices by local authorities;*
- *removing a timing restriction on the awarding and varying of discretionary relief by local authorities;*
- *conferring regulation-making powers on the Welsh Ministers to confer, vary or withdraw exemptions;*
- *conferring a regulation-making power on the Welsh Ministers to set differential multipliers based on the description, rateable value or location of a hereditament on the local list, or the rateable value of a hereditament on the central list;*
- *placing a duty on ratepayers to provide certain types of information to the Valuation Office Agency, and making provision for the associated compliance regime; and*
- *making provision about counteracting advantages arising from artificial avoidance arrangements.*

And in respect of the council tax system the Bill proposes:

- *providing flexibility for the reference point for 100% in the banding structure to be changed to a different band or a different description of a band;*
- *conferring powers on the Welsh Ministers to make regulations in respect of discounts and persons to be disregarded;*
- *placing a duty on the Welsh Ministers to make a single national Council Tax Reduction Scheme through regulations and enabling the Welsh Ministers to issue guidance to local authorities about the way the scheme should be applied;*
- *establishing a five-yearly cycle of revaluations, and a power for the Welsh Ministers to amend the revaluation year and interval*

between revaluations, as well as to amend the date of draft list publication via order; and

- replacing the current requirement to publish information in newspapers with a requirement to publish a notice of the council tax charges on the local authority's website and put suitable alternative arrangements in place to ensure that such information is accessible to citizens who have difficulty accessing online facilities.”⁷

8. The EM also states:

“This Bill’s provisions will make a significant contribution towards reforming non-domestic rates and council tax in Wales, addressing many of the limitations of the current arrangements. Non-domestic rates and council tax generate over £1 billion and £2 billion, respectively, of the £10 billion spent each year to deliver vital public services in Wales. (...)

Overall, the changes we propose will make the framework for local taxes more:

- closely aligned with changes in market conditions;

- responsive to the evolving context for taxpayers, and the subsequent impacts for communities; and

- tailored to Wales’ needs by being established and maintained within devolved powers and structures.”⁸

The Committee’s remit

9. The remit of the Legislation, Justice and Constitution Committee is to carry out the functions of the responsible committee set out in Standing Orders 21 and 26C. The Committee may also consider any matter relating to legislation, devolution, the constitution, justice, and external affairs, within or relating to the competence of the Senedd or the Welsh Ministers, including the quality of legislation.

⁷ EM, paragraphs 1.2 and 1.3

⁸ EM, paragraphs 3.13 and 3.18

10. In our scrutiny of Bills introduced in the Senedd, our approach is to consider:

- matters relating to the competence of the Senedd, including compatibility with the European Convention on Human Rights (ECHR);
- the balance between the information that is included on the face of the Bill and that which is left to subordinate legislation;
- whether an appropriate legislative procedure has been chosen, in relation to the granting of powers to the Welsh Ministers, to make subordinate legislation;
- any other matter we consider relevant to the quality of legislation.

11. We took oral evidence from the Minister on 11 December 2023.⁹

12. Following our evidence session, we wrote to the Minister with further questions in relation to the Bill.¹⁰ The Minister responded on 18 January 2024.¹¹

Recommendation 1. The Minister should respond to the conclusions and recommendations we make in this report at least two working days before the Stage 1 general principles debate takes place.

⁹ [Legislation, Justice and Constitution Committee](#), 11 December 2023

¹⁰ [Letter to the Minister for Finance and Local Government](#), 18 December 2023

¹¹ [Letter from the Minister for Finance and Local Government](#), 18 January 2024

2. Legislative competence

The Welsh Government is satisfied that the Bill would be within the legislative competence of the Senedd.¹²

13. We considered the Bill under the reserved powers model of legislative competence, as set out in section 108A of the *Government of Wales Act 2006* (the 2006 Act).

14. The Minister states in the EM:

"In my view the provisions of the Local Government Finance (Wales) Bill, introduced by me on 20 November 2023, would be within the legislative competence of Senedd Cymru."¹³

15. The Llywydd, the Rt Hon. Elin Jones MS, in her statement on legislative competence, stated that:

"In my view, the provisions of the Local Government Finance (Wales) Bill, introduced on 20 November, would be within the legislative competence of the Senedd."¹⁴

16. When the Minister gave evidence to us on 11 December 2023 she confirmed that she was satisfied the Bill was within the Senedd's legislative competence.¹⁵

17. We asked the Minister what account had been taken of human rights when preparing the Bill. The Minister said:

"... obviously we've considered all of the relevant articles of the European convention on human rights. And where those rights are qualified, I'm satisfied that any possible interference with them can be justified on the basis that the provisions are necessary and proportionate in pursuance of what is a legitimate aim. Those particular areas in the Bill that are affected relate to the duty to provide information, which is

¹² EM, page 1 and paragraph 2.1

¹³ EM, page 1

¹⁴ [Presiding Officer's Statement on Legislative Competence](#), 20 November 2023

¹⁵ LJC Committee, 11 December 2023, RoP [10]

section 12, and then in relation to the unoccupied hereditaments charitable rate relief, section 6.”¹⁶

18. In her letter of 18 January 2024, the Minister provided additional detail.

19. In relation to section 6 the Minister told us she was “satisfied that the provisions in this section are proportionate and lawful, having specific regard to ECHR compatibility”. The Minister said that the provisions “have a reasonable foundation as they seek to reduce the opportunity to avoid liability for non-domestic rates where there is not a genuine intention of using the property for charitable purposes (a legitimate and proportionate aim)”.¹⁷

20. With regards to section 12, the Minister again said she was satisfied that the provisions in the section were proportionate and lawful, including the provisions relating to offences and penalties. The Minister told us:

“The offences and corresponding penalties are clearly defined in the legislation, ensuring compatibility with the ECHR. Where penalties are imposed, ratepayers will also be entitled to a fair and public hearing by an independent and impartial court.”¹⁸

21. The Minister also said that the Welsh Government has published a suite of documents alongside the Bill, including an integrated impact assessment for the non-domestic rates provisions¹⁹ and an integrated impact assessment for the council tax provisions²⁰ “which, amongst other things, consider the impact on people’s human rights”.²¹

22. We also asked the Minister if the Welsh Government considered that any of the provisions of the Bill require the consent of His Majesty the King or the Prince of Wales. The Minister said that some provisions will require such consent and her official confirmed that His Majesty the King’s consent would be sought in relation to sections 5, 7, 10, 12, and 13. The official added that, in line with the Welsh Government’s normal processes, they would seek this consent at the end of Stage 2.²²

¹⁶ LJC Committee, 11 December 2023, RoP [10]

¹⁷ Letter from the Minister for Finance and Local Government, 18 January 2024, page 1

¹⁸ Letter from the Minister for Finance and Local Government, 18 January 2024, page 1

¹⁹ Welsh Government, [Local Government Finance \(Wales\) Bill: non-domestic rates \(business rates\) reform integrated impact assessment](#), 16 November 2023

²⁰ Welsh Government, [Local Government Finance \(Wales\) Bill: Council Tax reform integrated impact assessment](#), 20 November 2023

²¹ Letter from the Minister for Finance and Local Government, 18 January 2024, pages 1 and 2

²² LJC Committee, 11 December 2023, RoP [81] to [84]. See also letter from the Minister for Finance and Local Government, 18 January 2024, response to question 22

Our view

23. We note the evidence in relation to matters of legislative competence from the Minister. We also note the Llywydd's statement that, in her view, the provisions of the Bill would be within the legislative competence of the Senedd.

3. General observations

Development of the Bill

25. In January 2017, the Welsh Government published a white paper²³ on its approach to reforms to local government in Wales, which included reference to an outline of initial steps for financial reform. The Welsh Government subsequently commenced a programme of research, which included consideration of local government finance, leading to the publication of ‘Reforming Local Government Finance in Wales: Summary of Findings’ in February 2021.²⁴

26. In 2022, the Welsh Government undertook a consultation on reforms to council tax in Wales, seeking views on policy areas including the Council Tax structure (rates and bands), council tax discounts, disregards, exemptions, premiums and reduction schemes. A summary of responses was published on 11 December 2022.²⁵

27. Also in 2022, the Welsh Government undertook a consultation on reforming non-domestic rates (NDR) in Wales. A summary of responses to that consultation was published on 9 February 2023.²⁶

28. The Minister launched the Welsh Government’s consultation on council tax reform on 14 November 2023.²⁷ Views were sought on policy areas including possible approaches to redesigning the council tax system and changes to council tax bands and rates. The consultation ended on 6 February 2024. At the time of publication of this report, the consultation website noted that the responses were under review by the Welsh Government.

29. When the Minister provided evidence to us on 11 December 2023 we asked her to elaborate on the purpose of the Bill and asked her to confirm why it is needed now. The Minister told us:

“... much of what we're intending to do in the space of local government finance reform, particularly so around the modernisation and work around making council tax fairer,

²³ Welsh Government, White Paper, [Reforming Local Government: Resilient and Renewed](#), 31 January 2017

²⁴ Welsh Government, [Reforming Local Government Finance in Wales: Summary of Findings](#), February 2021

²⁵ Welsh Government, [Consultation – summary of responses: A Fairer Council Tax](#), December 2022

²⁶ Welsh Government, [Consultation – summary of responses: Non-Domestic Rates](#), February 2023

²⁷ Welsh Government, [Consultation – A Fairer Council Tax: phase 2](#)

doesn't need legislation to underpin that—for example, the revaluation work, and so on. But what this Bill does is, in respect of non-domestic rates, it will increase how often the values of all properties are updated, to do that every three years, so that would be putting that on a statutory footing. That's something that businesses across Wales have been calling for us to do for some time.”²⁸

30. The Minister also said that the Bill:

“... provides more flexibility in the space of reliefs and exemptions. And again, that's a complex area, where, for some of these exemptions and reliefs, you would have to introduce primary legislation—for example, charitable rates relief. And in other areas, it's secondary—small business rates relief, for example. So, it's a kind of mixed picture that we're hoping to provide some clarity on there. It also enables changes to the calculation of payments for different categories of ratepayers. And it also improves information provided by ratepayers and aims to close some of the known loopholes that increase the ability for there to be avoidance, but then, also, to futureproof that as well.

And then, on the council tax side of things, it's about providing more flexibility for the organisation and labelling of bands; providing more flexibility to make changes to discounts; introducing updates to the values of all properties on a five-year cycle; and then, also, removing the need to publish details of council tax in newspapers. So, as you say, lots of the reform programme sits outside, but this is the kind of legislative framework for futureproofing.”²⁹

31. We also asked the Minister what consultation had been undertaken on the legislative proposals in the Bill and asked for her views on whether she considered it would have been better to have published a draft Bill to enable people to understand the powers that the Minister was seeking. The Minister said that she thought the Welsh Government has “consulted comprehensively” on the Bill, and

²⁸ LJC Committee, 11 December 2023, RoP [13]

²⁹ LJC Committee, 11 December 2023, RoP [18] and [19]

she referred to consultations on reforming non-domestic rates in Wales and on ‘A Fairer Council Tax’ carried out in 2022.³⁰

32. The Non-Domestic Rating Act 2023 (the 2023 Act) received Royal Assent on 26 October 2023. The 2023 Act makes a series of amendments to the *Local Government Finance Act 1988* (the 1988 Act) in relation to NDR liability, reliefs, completion notices for new buildings, shortening the frequency of revaluations from five years to three years and information duties on ratepayers in relation to HMRC and the Valuation Office Agency (VOA). The 2023 Act also confers powers on the Welsh Ministers to make regulations in several policy areas concerning NDR.

33. The Welsh Government laid legislative consent memoranda before the Senedd during the Non-Domestic Rating Bill’s passage through the UK Parliament, before it became the 2023 Act. The Senedd consented to the relevant provisions of the Non-Domestic Rating Bill, as recommended by the Welsh Government, in Plenary on 12 September 2023.

34. The Bill proposes to amend the 1988 Act (as amended by the 2023 Act) and replicate, or extend to Wales, some of the England-only amendments to the 1988 Act made by the 2023 Act.

35. We asked the Minister to outline in more detail the relationship the Welsh Government has had with the UK Government over the matters included in the Bill, and asked her to confirm the relationship between the Bill and the 2023 Act. The Minister told us:

“On this occasion, things have been better in relation to our discussions with the UK Government... (...) I think the level of sharing of information has been very good, so, in developing our own proposals, we have had good sight as to what the UK Government was proposing in its Act, and we’ve worked very carefully to ensure that those two Acts are complementary to one another. So, I think that the working relationship in this particular area of non-domestic rates and council tax has been better than in most others.”³¹

³⁰ LJC Committee, 11 December 2023, RoP [24] and [25]

³¹ LJC Committee, 11 December 2023, RoP [28]

36. An official accompanying the Minister added:

“I would absolutely endorse that. We've had a long-standing relationship with the UK Government in terms of policy development in this area, particularly around the Non-Domestic Rating Act 2023. In terms of what the UK Government was seeking to achieve in terms of reforming NDR in England and what we were seeking to achieve in Wales, there is a great deal of overlap, and much of what is in the NDR Act for England is reflected in the Act that we're taking forward in Wales. The provisions that we've taken in the NDR Act relate to time-constrained things where ratepayers in Wales would have been disadvantaged if we had not taken them in the UK Act, but it also kind of comes back to your question about the extent of consultation as well. It's probably worth noting that the consultations that the Minister referred to were themselves the end of quite a long process of interaction with stakeholders, and also development of policy across the UK, so it's not just actually about a relationship with the UK Government, but also the Scottish Government and Northern Ireland. We do collaborate much more in this area, I think, than perhaps in some others.”³²

37. When we wrote to the Minister following her appearance before the Committee we asked her whether, on reflection, she considered that it would have been preferable for the Welsh Government to introduce the Bill earlier in order to incorporate the changes made in relation to Wales by the 2023 Act rather than relying on the UK Government and a UK Bill and the consequent legislative consent process. The Minister told us that “[such] an approach would not have been possible” and that the Welsh Government had “introduced this Bill as soon as we could and it was essential to ensure that its development was not rushed”.³³ The Minister added:

“Our approach has ensured that the Bill is properly tailored to meet Wales' needs. The Bill is being used to deliver the vast majority of our non-domestic rates reforms which require

³² LJC Committee, 11 December 2023, RoP [29]

³³ Letter from the Minister for Finance and Local Government, 18 January 2024, response to question 1

primary legislation, where a difference in timing will not have negative consequences for Wales.”³⁴

38. We also asked her whether she had any concerns regarding the accessibility of the law on non-domestic rates as a result of developing this Bill and simultaneously working with the UK Government on the 2023 Act. The Minister told us that she did not have “any such concerns”, and that the Bill was developed “with full knowledge of what is now the Non-Domestic Rating Act 2023” meaning “both pieces of legislation work in conjunction with each other”.³⁵

39. Also on the theme of accessibility, we noted that the EM contains a significant Keeling Schedule and asked the Minister if consideration had been given to the potential consolidation of Welsh local tax legislation, or more generally to making this area of law more accessible. The Minister replied:

“A comprehensive range of options for the approach to this Bill was considered. The consolidation of legislation in this area would be a resource intensive and time consuming undertaking, given the time the legislation has been in place and the many changes made to it for over the past 30 years. Accessibility of law has been a key consideration in the development of this Bill and, as such, provisions are restated in new sections where this is considered to improve the presentation of the law which will apply only to Wales.”³⁶

The Minister’s approach to legislating, and the balance between the details on the face of the Bill and delegated powers

40. Table 5.1 of the EM summarises powers in the Bill delegated to the Welsh Ministers to make subordinate legislation. Table 5.2 of the EM summarises further powers conferred on the Welsh Ministers to issue guidance.

41. The information presented in the EM is supplemented by the Minister’s Statement of Policy Intent for subordinate legislation to be made under the Bill, which outlines how the Welsh Government currently intends to use the delegated powers contained in the Bill.

³⁴ Letter from the Minister for Finance and Local Government, 18 January 2024, response to question 1

³⁵ Letter from the Minister for Finance and Local Government, 18 January 2024, response to question 2

³⁶ Letter from the Minister for Finance and Local Government, 18 January 2024, response to question 24

42. We believe the Bill contains 40 delegated powers enabling the Welsh Ministers to make either regulations and orders or issue guidance. 37 are new and we believe three are restated powers (some with modifications).

43. Section 23 of the Bill provides that the Welsh Ministers may, by regulations, make incidental, supplementary, consequential, transitional or saving provisions in relation to the provisions contained in this Bill. Such regulations will be subject to either the made negative or the draft affirmative scrutiny procedure in the Senedd depending on whether the regulations amend primary legislation. Where they do, the draft affirmative procedure will apply.

44. In the EM, the Minister states:

“The Bill provides powers to make subordinate legislation in a number of areas. This is because the ability to make changes in a timely manner is needed to adjust the systems in response to changing priorities, circumstances and pressures. The proposed powers will reduce the need for emergency non-legislative measures, such as those used to target support in recent years in response to the Covid-19 pandemic. Importantly, they will reduce our reliance on provisions which have needed to be sought frequently in UK Government Bills to deliver changes for Wales within current primary legislation. Since 2011, we have needed to utilise UK Government Bills on at least 13 occasions to deliver necessary changes to our non-domestic rates and council tax systems.

In each instance of subordinate legislation making powers being proposed, the Welsh Government has considered whether substantive provisions could be appropriately set out on the face of the Bill. It was concluded that – while details might be optimised for the current circumstances – they are unlikely to stand the test of time and would result in the rigidity and unsuitable features which have emerged from the current legislation and which, amongst other things, our reform work is seeking to address. This will also represent a shift in the scrutiny of the relevant legislation from the UK Parliament to the Senedd. Such subordinate legislation powers will, in the majority of instances, be subject to the affirmative procedure, balancing the need for better tools to make more responsive

and adaptable legislation with the scope for greater scrutiny within Wales.”³⁷

45. When she appeared before us on 11 December 2023, the Minister referred to the statement made in the EM that, in recent years, the Welsh Government has asked the UK Government on 13 different occasions to legislate on its behalf. The Minister indicated that this formed the reasoning for why the Welsh Government was “keen to have these decisions made here in Wales”.³⁸ The Minister added:

“And then, it will also allow future governments to think creatively about different things. With the multiplier, for example, we only have the one multiplier at the moment. It might, in future, allow a government to consider providing a different multiplier for properties in particular locations to stimulate those areas, or, potentially, to do it for different categories of businesses to respond to particular issues in those categories. So, we don't have any plans in those spaces at the moment, but it does provide a future government with more flexibility. And we're seeing some of the challenge happening at the moment. The UK Government recently made announcements in respect of the multiplier that applies only to small businesses in England. We only have the one multiplier here in Wales, so it does mean that we have different choices available to us.”³⁹

46. We also asked for further explanation on how the Minister has arrived at the view that this Bill means the Senedd will have ‘more of a say’. The Minister responded:

“I suppose it's a question about what's reasonable and proportionate. Would it be reasonable and proportionate to bring in a piece of primary legislation to delay the revaluation date by one year? Now, there's an argument to be had there, I suppose, but, you know, when you think about all the legislative programme that the Welsh Government has, it would be difficult to consider that a priority alongside the genuinely transformative kind of work that we would want to do, and, you

³⁷ EM, paragraphs 3.16 and 3.17

³⁸ LJC Committee, 11 December 2023, RoP [21]

³⁹ LJC Committee, 11 December 2023, RoP [21]

know, there's a question for committees as to whether they feel that that would be the best use of their time as well.”⁴⁰

47. An official accompanying the Minister said that they had considered whether powers on the face of the Bill would be more appropriate and that, in addition to the examples where the Welsh Government has used UK legislation in the past to change primary legislation, there have also been occasions where it has opted not to use UK primary legislation to make changes.⁴¹

48. The official also told us that “the landscape in terms of powers for Ministers in Whitehall is similar to that which this Bill would offer”.⁴² The Minister agreed to provide us with the Welsh Government’s assessment which supports the conclusion that the secondary powers being sought in the Bill do not go significantly further than powers that are currently available to UK Ministers. In her letter to us on 18 January 2024, the Minister stated:

“In relation to non-domestic rates, the vast majority of powers to make secondary legislation provided by the Bill are the same as, or similar in their effect to, equivalent powers already in existence in England and/or Scotland. In cases where the powers provided in the Bill to Welsh Ministers go further than those in place in England, powers with a similar effect are generally available to Scottish Ministers. Whilst there are some administrative differences between the non-domestic rates system in Wales and Scotland, it is fundamentally the same tax being operated in a similar devolved context.

In relation to council tax, the powers will enable the Welsh Ministers to be more reactive and flexible in responding to socioeconomic change. It will align with the NDR system, inasmuch as regular revaluations will be placed on a statutory footing, reflecting the importance of a tax system reflecting current economic circumstances. Some powers conferred are largely technical and again will allow for the maintenance of the fundamentally robust structure of council tax to be more future proof and responsive. The difference in the mix of powers compared with England and Scotland is minimal, additionally giving Welsh Ministers the power to amend a revaluation year specified in primary legislation, a key policy aim of the Welsh

⁴⁰ LJC Committee, 11 December 2023, RoP [47]

⁴¹ LJC Committee, 11 December 2023, RoP [48]

⁴² LJC Committee, 11 December 2023, RoP [54]

Government for a fairer system. Comparatively, UK and Scottish Ministers can amend in an order when a revaluation occurs. Setting a revaluation cycle in primary legislation lays out an expectation that the revaluation will occur. This is not the case in England and Scotland. A comprehensive review of the whole range of discounts, disregards, exemptions and premiums framework is being undertaken in Wales. The Bill will provide Welsh Ministers with increased flexibility compared with the current highly restrictive legislation applying in this area. However, it remains the case that many aspects of the discounts, disregards and exemptions framework are already amendable in secondary legislation across Wales, England and Scotland.”⁴³

49. In relation to the statement in the EM that the Welsh Government has needed to utilise UK Government Bills on at least 13 occasions to deliver necessary changes to non-domestic rates and council tax systems in Wales, when we wrote to the Minister following our evidence session we asked her to clarify which changes she was referring to in the EM, and what were the reasons for the Welsh Government not taking the opportunity to propose primary legislation in the Senedd on each of those occasions. In Annex B to her 18 January 2024 letter to us, the Minister provided details of the occasions since 2011 where UK Government Acts have been utilised to deliver changes to council tax and non-domestic rates in Wales. The Minister also told us that changes have only been made “where there are shared policy goals across England and Wales, and not doing so would risk disadvantaging ratepayers and taxpayers in Wales”.⁴⁴

50. In terms of the Bill providing “the scope for greater scrutiny within Wales”, when the Minister gave evidence to us on 11 December 2023 she added to this statement and told us that the Bill would, in many ways, “give the Senedd more power over decisions that are taken here in Wales in respect of non-domestic rates and council tax”.⁴⁵ The Minister also told us that “the Bill expands on the opportunities that the Senedd has for scrutiny, as compared to the current system”.⁴⁶

⁴³ Letter from the Minister for Finance and Local Government, 18 January 2024, page 2

⁴⁴ Letter from the Minister for Finance and Local Government, 18 January 2024, response to question 6

⁴⁵ LJC Committee, 11 December 2023, RoP [21]

⁴⁶ LJC Committee, 11 December 2023, RoP [41]

51. We followed-up on this when we wrote to the Minister on 18 December 2023, following her attendance at our meeting on 11 December.

52. We noted the statement in the EM regarding the Bill’s proposals giving scope for “greater scrutiny within Wales”, and asked the Minister to explain why she thought that this was the case and why it would not be more appropriate to replace using a UK Bill with a Welsh Government Bill. The Minister replied:

“Crucially, the majority of subordinate legislation making powers will follow the Senedd’s affirmative procedure. It will, therefore, be subject to scrutiny involving committees and with the same threshold for success (i.e. majority support) as primary legislation. The proposals seek to increase the Senedd’s influence within a context of pressures on time for making primary legislation and the urgency often associated with changes which are sometimes unforeseen.”⁴⁷

53. The Minister added that the Bill “seeks to establish arrangements in which the Senedd can realistically oversee the maintenance of these local tax systems in a timely and consistent manner”, and said the system requires regular maintenance “where it would not be appropriate or practicable to make primary legislation”.⁴⁸

54. When we asked the Minister for her views on why the Senedd could not use expedited proceedings for necessary primary legislation, she told us:

“Well, we know that the council tax and NDR systems will need to be updated frequently and will need to respond to things frequently. Does it feel right, then, to be using a kind of more emergency procedure to deal with things that we could reasonably anticipate in any case? I suppose that’s a tension there. (...)”

So, I think we would have to disagree in terms of needing primary legislation at all times, especially because some of the things that we’re talking about, in terms of local government finance, are just almost routine, in some ways. So, the date of a revaluation, it might be set in legislation, but, for example, we had the pandemic—that meant that we wanted to delay a

⁴⁷ Letter from the Minister for Finance and Local Government, 18 January 2024, response to question 5

⁴⁸ Letter from the Minister for Finance and Local Government, 18 January 2024, response to question 5

revaluation. So, would it be proportionate to bring forward primary legislation and everything that involves to delay the date of a revaluation by one year in response to a set of circumstances? So, I'm keen to—. You know, committee will have a view on whether that's proportionate or not.”⁴⁹

55. In evidence to the Finance Committee during the passage of the Welsh Tax Acts etc. (Power to Modify) Bill (the WTA Bill), before it was enacted in 2022, Professor Emyr Lewis said⁵⁰ that the principle of the legislature having the power to decide whether and to what extent people should be taxed is a principle that can be seen as far back as the Bill of Rights in 1689. We asked the Minister for her views on this principle and whether she accepted that matters of taxation are different to other areas of consideration. We also asked whether she considers that she has perhaps deviated from the principle mentioned by Professor Lewis in taking so many delegated powers which relate to taxation. The Minister responded:

“No. I think that what we're proposing is consistent with what, as you say, is a very long-standing principle in relation to the role of the legislature. I don't see a contradiction there, especially as lots of what the Bill relates to are some of the practical things behind the system, such as dates of revaluations and cycles of revaluations and so on. Ultimately, of course, it's local authorities that actually set council tax, for example. So, I don't think that there is a disconnect between the role of the legislature and what we're proposing in this Bill.”⁵¹

56. Also in written evidence⁵² to the Finance Committee during its work on the WTA Bill, Sir Paul Silk commented that “it is the job of the legislature to ensure that appropriate checks are kept in place and that it does not surrender its legislative role”. We asked the Minister why she considered that the Senedd is not at risk of doing just that in this area of Welsh taxation if the Bill is enacted in its current form. The Minister replied that she was “aiming to develop arrangements

⁴⁹ LJC Committee, 11 December 2023, RoP [58] and [60]

⁵⁰ Finance Committee, [Welsh Tax Acts etc. \(Power to Modify\) Bill. WTA.01 Professor Emyr Lewis, Aberystwyth University](#)

⁵¹ LJC Committee, 11 December 2023, RoP [56]

⁵² Finance Committee, [Welsh Tax Acts etc. \(Power to Modify\) Bill. WTA.02 Paul Silk](#)

which are fit for purpose within our devolved structures and are, therefore, appropriate for Wales.”⁵³ The Minister added:

“... I believe the arrangements proposed in this Bill will enhance the Senedd’s role considerably, compared to where we are now. It remains the case that primary legislation would be needed to change fundamental aspects of the local tax systems, such as calculating the chargeable amount of non-domestic rates before reliefs and the basic amounts of council tax. While the Bill, in some cases, makes provision for secondary legislative powers, the subject matter of the provisions are not considered to be of greater or wider significance than those already capable of being changed through subordinate legislation, in respect of the council tax and non-domestic rates systems. Substantial aspects of both systems can currently be adjusted via subordinate legislation.”⁵⁴

57. We also asked the Minister to explain why a better approach to the one adopted in the Bill would not be to propose primary legislation to deal with the current circumstances we are in and then bring forward another bill in the future when a need for further change had been identified. The Minister said that the Welsh Government already uses secondary legislation “to maintain many aspects of the local taxation system so this Bill will create more consistency, rather than making a radical departure from established practices in this area”.⁵⁵

58. When we wrote to the Minister following the evidence session we asked for further clarity on why it would not be more appropriate for significant decisions around liability for local taxes to remain with the Senedd and be subject to detailed scrutiny. The Minister stated that she did not think it would be “reasonable, proportionate or desirable to bring a Bill forward every time we need to make a change to the law in this area”.⁵⁶ The Minister said:

“We already use secondary legislation for many aspects, including key components which affect liability for local taxes. The arrangements proposed are not, therefore, considered to

⁵³ Letter from the Minister for Finance and Local Government, 18 January 2024, response to question 7

⁵⁴ Letter from the Minister for Finance and Local Government, 18 January 2024, response to question 7

⁵⁵ Letter from the Minister for Finance and Local Government, 18 January 2024, response to question 4(b)

⁵⁶ Letter from the Minister for Finance and Local Government, 18 January 2024, response to question 8

undermine the Senedd's role in deciding whether and to what extent people should be subject to devolved taxes. This Bill will create more consistency, rather than making a radical departure from established practices in this area. Use of the affirmative procedure for making any substantive changes through secondary legislation is proposed, which places the final decisions for changes with the Senedd.”⁵⁷

59. When we wrote on 18 December 2023 we highlighted that, in the EM, the Minister states that existing primary legislation on local government finance constrains the Government's ability to make timely adjustments for households, ratepayers and businesses. We asked the Minister to explain the constraints referred to in the EM. The Minister responded:

“We have seen, especially while we been experiencing economic pressures during recent years, that the legislative frameworks for non-domestic rates and council tax are insufficiently flexible to respond to changes in circumstances for organisations and households. Pressures for organisations and households are changing constantly so we need a system which is flexible and responsive.

To give an example of current difficulties, there is currently no power in the Local Government Finance Act 1988 to amend the date of a non-domestic rates revaluation. We needed to use the Growth and Infrastructure Act 2013 to postpone the 2015 revaluation until 2017 and then the Non-Domestic Rating Lists Act 2021 to postpone the 2022 revaluation until 2023. However, the new power proposed in section 4 of this Bill would allow the revaluation date to be changed more efficiently for Wales.

The regulation-making powers will reduce the need for emergency non-legislative measures and will provide greater opportunities to deliver policy for Wales in a timely manner, without over-reliance on UK Government legislation. The answer to question 4(a) below provides further examples in

⁵⁷ Letter from the Minister for Finance and Local Government, 18 January 2024, response to question 8

relation to some of the existing constraints the Bill will address.”⁵⁸

60. We also noted that, in the EM, when discussing whether substantive provisions could have been appropriately set out on the face of the Bill, the Minister concluded that “while details might be optimised for the current circumstances – they are unlikely to stand the test of time”.⁵⁹ Again we asked the Minister to clarify this statement, and requested confirmation of which provisions in the Bill were meant to be captured by this view. The Minister told us “[t]here are many that fall into this category”. She added:

“Taking non-domestic rates reliefs as an example, we cannot predict all changes that may be desirable in future. We have recently taken provisions in the UK Government’s Non-Domestic Rating Act 2023 for new reliefs, which could not have been delivered to the same timescale using this Bill. Many reliefs are already set out in secondary legislation and the scope for making timely changes to the overall landscape of support is, therefore, inconsistent.

In relation to the non-domestic rates multiplier, the existing single multiplier has limited the options available for the Welsh Government to consider in responding to the UK Government’s recent Autumn Statement. Some members have called for us to mirror the approach being taken in England, by freezing the multiplier for small businesses. As things currently stand, we could not even consider a similar approach which reflects the different tax-base and needs of Wales. While we already have the power to set the single multiplier for Wales at any level using secondary legislation, we cannot prescribe different multipliers for different parts of the tax-base.

In relation to avoidance of non-domestic rates, as another example, techniques continually evolve and we want to be able to respond in a timely manner when new issues are identified. This Bill provides a framework for addressing avoidance. The inclusion of a regulation making power is necessary as we

⁵⁸ Letter from the Minister for Finance and Local Government, 18 January 2024, response to question 3

⁵⁹ EM, paragraph 3.17

cannot predict what new avoidance behaviours will come to light in future.”⁶⁰

61. The Minister told us that the Bill strikes the right balance between providing sufficient detail on the face of the Bill against providing the delegated powers to Welsh Ministers partly because “the local government finance field is one that is constantly evolving, and I think that we need to be agile in being able to respond to things” but also because it ensures “that, where decisions are important and need to be taken by the Senedd, we have the affirmative procedure”.⁶¹ In terms of the delegated powers which would be subject to the negative scrutiny procedure, the Minister said:

“I think they're things that I hope the committee would think were sensible: around the date by which copies of draft council tax valuation lists are sent to local authorities, amendments to secondary legislation that are consequential on the changes introduced by the Bill, and then the content of notices issued in relation to the duty on ratepayers to provide notifiable information to the Valuation Office Agency.”⁶²

62. In terms of why more detail is not on the face of the Bill, the Minister told us:

“I think that is partly because things change so often. The fact that the UK Government has legislated on our behalf 13 times in recent years shows how frequently things do change, and we do need to have the opportunity to be agile in response. I'll give you an example in relation to the council tax reduction scheme. We provide reliefs for a whole range of circumstances through that. Recently, we've introduced reliefs that recognised the role that hosts have played for people arriving from Ukraine. So, that was something that we couldn't have envisaged, when—well, never would have—the original legislation was put in place, but, even now, we couldn't really have envisaged that kind of situation. And then, other examples include ensuring people aren't worse off because of the payments through the contaminated blood scandal and so on. So, I think that that kind of need to be responsive is important. (...)

⁶⁰ Letter from the Minister for Finance and Local Government, 18 January 2024, response to question 4(a)

⁶¹ LJC Committee, 11 December 2023, RoP [33]

⁶² LJC Committee, 11 December 2023, RoP [33]

I think the flexibility is needed now, or the ability to respond, because things, as I say, happen all the time that we might need to respond to in order to either provide businesses with the support that they need, or households with the support that they might also need in respect of council tax. So, I think that putting everything on the face of the Bill would be probably too rigid in this kind of circumstance.”⁶³

63. An official accompanying the Minister added:

“... it's worth remembering that we're not dealing with a blank slate. The existing primary legislation itself contains a lot of secondary legislation-making powers, but it's a very complex landscape where what we have at the moment are things that are prescribed in primary legislation, allow some things to be changed in secondary legislation, and others not, and that's not necessarily in a very rational or coherent way. (...)

And the other aspect I think is that we are talking about legislation that requires a lot of technical detail that is only appropriately covered in secondary legislation. The council tax reduction scheme, for example, runs to almost 800 pages of regulations. So, that sort of thing is not appropriate to try to cover on the face of a Bill...”⁶⁴

64. The Minister also told us that much of what the Welsh Government was intending to do in the space of local government finance reform sits outside of legislation but that the Bill “is the kind of legislative framework for futureproofing”.⁶⁵

65. Section 24 of the Bill sets out how the provisions of this Bill come into force. Orders made under section 24 will be subject to no scrutiny procedure in the Senedd. Should the Bill be passed and enacted, we asked the Minister when did she envisage all provisions of the Bill and the accompanying subordinate legislation being fully in force. The Minister told us:

“Our current timetable envisages the Bill being presented for Royal Assent in August 2024 if it is passed by the Senedd. The majority of provisions will be commenced in the commonly set

⁶³ LJC Committee, 11 December 2023, RoP [35] and [37]

⁶⁴ LJC Committee, 11 December 2023, RoP [38] and [39]

⁶⁵ LJC Committee, 11 December 2023, RoP [13] and [19]

timeframe of two months following Royal Assent, with general provisions being commenced the day after Royal Assent in accordance with normal practice.

Sections 6 (Unoccupied hereditaments: charitable rate relief), 10 and 11 (Calculation of non-domestic rating multipliers) will come into force on 1 April 2025. For administrative reasons, it is considered optimal for these sections to be commenced at the start of a new financial year.

Section 12 (Information to be provided to valuation officer) will be commenced by statutory instrument when the Welsh Government is satisfied that ratepayers can reasonably be expected to comply with the new duties. This is expected to occur during the next rating list, which will be compiled on 1 April 2026 if the Bill is enacted as proposed.

Sections 18 and 19 will be commenced on a day appointed by the Welsh Ministers in an order made by a statutory instrument. We are awaiting the outcome of the working groups established to carry out the detailed work to review the council tax discounts and disregards. The current policy intent is that regulations will be made for the financial year commencing 1 April 2026, subject to the outcomes of the review process.”⁶⁶

Our view

66. We acknowledge the Minister’s evidence regarding the development of the Bill.

67. The Minister said the Welsh Government has “consulted comprehensively” on the Bill. Respectfully we do not believe this to be the case. While we acknowledge that the Minister has consulted on proposed reforms to council tax and non-domestic rates in Wales, this is not the same as consulting on a draft Bill. A consultation on a draft Bill would have given stakeholders and Members of the Senedd the opportunity to see how the Minister was planning on turning the reform proposals into legislative provision.

68. In our report on the Legislative Consent Memorandum on the Non-Domestic Rating Bill (now the 2023 Act), we expressed concern over the Welsh

⁶⁶ Letter from the Minister for Finance and Local Government, 18 January 2024, response to question 23

Government's approach in seeking provision for Wales in Westminster legislation in the devolved area of local taxes while simultaneously developing its own legislation in the same subject area (this Bill).⁶⁷ Our concerns on this matter have not changed.

69. We note that the Bill proposes to amend the 1988 Act (as amended by the 2023 Act) and replicate, or extend to Wales, some of the England-only amendments to the 1988 Act made by the 2023 Act.

70. We acknowledge and welcome the Minister's positive comments about the intergovernmental working in this area. However, it remains the case that by choosing in 2023 to pursue legislative provision for Wales in a UK Bill – therefore bypassing the Senedd's democratic role to make legislation – and making further provision in the same area less than a year later by way of a Bill introduced to the Senedd, the legislative landscape is made more complicated, not less.

71. The Minister said about the Bill and the 2023 Act that “both pieces of legislation work in conjunction with each other”. However, this does not mean the legislative package as a whole is accessible, not least for Members of the Senedd now charged with scrutinising the Bill.

Recommendation 2. The Minister should confirm whether she has had discussions with the Counsel General and the Welsh Government cabinet about the priority which should be attached to the consolidation of the law on local taxation.

72. In justifying the introduction to the Senedd of a framework Bill with such significant delegated powers, the Minister has placed substantial weight behind the argument that the powers will reduce the Welsh Government's “reliance on provisions which have needed to be sought frequently in UK Government Bills to deliver changes for Wales within current primary legislation”. We note that the Minister has said that, since 2011, the Welsh Government has needed to utilise UK Government Bills “on at least 13 occasions to deliver necessary changes to our non-domestic rates and council tax systems”.

73. We respectfully suggest that in respect of these 13 occasions a choice has been made each time. It appears to us that primary legislation could have been brought forward by the respective Welsh governments. We are unclear of what specific devolved competence barriers prevented the Welsh governments since

⁶⁷ Legislation, Justice and Constitution Committee, [Report on the Welsh Government's Legislative Consent Memorandum on the Non-Domestic Rating Bill](#), June 2023

2011 from proposing that the Senedd (and National Assembly for Wales as it was before 2020) pass its own legislation on local taxation.

74. As examples, our reports on the Welsh Government’s Legislative Consent Memorandum on the Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill⁶⁸ (the Rating CDDDC Bill) and the Welsh Government’s Legislative Consent Memorandum on the Non-Domestic Rating Bill⁶⁹ both expressed concerns with the fact that the Welsh Government had not brought forward its own legislation. With regards to the Rating CDDDC Bill, it was introduced to the UK Parliament as an England-only Bill and the Minister subsequently asked the UK Government to table amendments to the Bill so that its provisions were extended to Wales. The Non-Domestic Rating Bill was introduced to the UK Parliament with provision for Wales following the Minister seeking that provision.

75. As the Minister has placed such weight behind the Welsh Government’s “reliance” on Bills introduced to the UK Parliament to explain the approach taken in the Bill to seek extensive powers for the executive, we believe greater transparency and detail is needed as to why, on each of the stated occasions, the Senedd would not have been able to pass its own legislation. We sought information from the Minister on why successive Welsh governments had used UK Bills on each of those occasions, but the response was limited to noting the policy rationale for the changes.

Recommendation 3. The Minister should provide full details of why, on each of the occasions mentioned in the Explanatory Memorandum to the Bill and in her letter to the Committee on 18 January 2024 when UK Bills have been used, the Senedd would not have been able to pass its own legislation to deliver the necessary changes to the non-domestic rates and council tax systems in Wales.

76. As well as placing substantial weight behind the argument that the powers being sought in the Bill will reduce the Welsh Government’s reliance on UK Government Bills, the Minister has also robustly argued her view that the Bill is consistent with long-standing principles of legislating and that it enhances the Senedd’s role in decision-making. We respectfully but strongly disagree with the Minister’s views.

⁶⁸ Legislation, Justice and Constitution Committee, [Report on the Welsh Government’s Legislative Consent Memorandum on the Rating \(Coronavirus\) and Directors Disqualification \(Dissolved Companies\) Bill](#), November 2021

⁶⁹ Report on the Welsh Government’s Legislative Consent Memorandum on the Non-Domestic Rating Bill

77. We note the Minister’s views that the Bill will “represent a shift in the scrutiny of the relevant legislation from the UK Parliament to the Senedd” and that the subordinate legislation powers in the Bill will mean “balancing the need for better tools to make more responsive and adaptable legislation with the scope for greater scrutiny within Wales”. We do not agree.

78. The Welsh Government utilising a UK Bill to legislate or proposing through its own Bill to take regulation-making powers to be exercised by the Welsh Ministers have one major element in common: they deny the opportunity to elected Members of the Senedd to seek to actively improve (via the amending stage process only available to primary legislation) law that will apply in Wales. Furthermore, they both deny Members of the Senedd from having the time and opportunity to consult with stakeholders in Wales, when compared with what could be available to them during the Stage 1 process for a Bill introduced to the Senedd.

79. The LGH Committee wrote to us on 31 January 2024⁷⁰ to draw our attention to the evidence it had received from the Chartered Institute of Taxation (CIOT) in relation to the Bill. We note that the CIOT is concerned that “the extensive use of wide regulatory powers in this Bill undermines the essential work of the Senedd, and other interested parties, in scrutinising the government and its legislative proposals with the potential for unintended consequences and a lack of certainty and instability for businesses in Wales”.⁷¹ Such evidence highlights and reinforces our concerns.

80. The Minister told us that the proposals in the Bill “seek to increase the Senedd’s influence within a context of pressures on time for making primary legislation and the urgency often associated with changes which are sometimes unforeseen”. The Minister will be aware of views we have previously expressed that the Senedd will find time to scrutinise primary legislation; it is its responsibility as the legislature.

81. We would also suggest that the Minister’s remarks about Senedd Committees making the best use of their time misunderstand the legitimate role of the Senedd in scrutiny and its role in prioritising its own time in that scrutiny role.

⁷⁰ [Letter from the Local Government and Housing Committee](#), 31 January 2024

⁷¹ [Local Government and Housing Committee, Local Government Finance \(Wales\) Bill, LGF.02 Chartered Institute of Taxation](#)

Conclusion 1. The capacity of, and pressures on, the Welsh Government should not be confused or conflated with the Senedd’s capacity and duty to perform its legislative function.

82. We also feel it necessary to challenge the Minister’s view that the subordinate legislation made under the Bill via the draft affirmative procedure would be subject to scrutiny involving committees and “with the same threshold for success (i.e. majority support) as primary legislation”.

83. On the first point about scrutiny involving Senedd committees, this is a misleading interpretation of the influence a legislature can have on statutory instruments and of the Senedd’s scrutiny processes for subordinate legislation. The Minister will be aware that the role of the Legislation, Justice and Constitution Committee, in considering subordinate legislation laid before the Senedd, is limited and specific to the requirements of Standing Orders, including Standing Orders 21.2, 21.3 and 21.4; the latter standing order requiring the Committee to report within 20 days. The Minister will also be aware that, while Standing Order 27.8 enables other Senedd committees to consider draft affirmative instruments, they too must report within the same 20 day period, having first also notified the Welsh Government of their intention within seven days. While we acknowledge that it is for the Senedd to decide its own procedures, the Minister will know what scrutiny options and opportunities are presently available to Senedd committees and, as such, her comments that draft affirmative instruments would be subject to scrutiny involving Senedd committees do not acknowledge the timing limitations that exist, nor the fact that subordinate legislation is not amendable.

84. On the latter point, while the “threshold for success” is similar in the sense that both affirmative statutory instruments and the vast majority of Bills require a simple majority in support, the Minister is aware that the simple majority threshold which applies to primary legislation follows two amending stages, during which individual Members of the Senedd can seek to make changes and improvements to a Bill. Such scrutiny and influence is not available to Members in the case of subordinate legislation. The Minister will understand this point.

85. We also note the Minister’s statements that existing subordinate legislation powers are already used “to maintain many aspects of the local taxation system so this Bill will create more consistency, rather than making a radical departure from established practices in this area”. However, it would appear that the Minister means seeking ‘more consistency’ in the sense that the Bill seeks to grant more delegated legislative power to the Welsh Ministers. Again, this is not enhancing the role of the Senedd.

86. The Minister herself told us that the Bill “will provide Welsh Ministers with increased flexibility compared with the current highly restrictive legislation applying in this area”. We agree with her on the point that it is the Welsh Ministers who would be granted flexibility. As regards the Minister’s comments on the “current highly restrictive legislation”, the Minister has not acknowledged that it is UK Parliamentarians to date who have agreed on this so-called ‘restrictive’ legislative framework, which will have been proposed by the relevant government of the day.

87. We note a view expressed by an official accompanying the Minister that the UK Government would likely “find it much more straightforward to be able to do some of [these] things via secondary legislation-making powers as well”⁷². And yet, as per the Minister’s evidence, the UK Government has used a dozen or more Acts in the past 13 years. Furthermore, and while we are not suggesting that what the UK Government may propose should be followed as default, it has not gone as far as what the Bill is proposing in terms of taking power to fundamentally change the systems of NDR reliefs and council tax discounts. In our view, the Welsh Government should not bring forward a Bill to favour what is straightforward for government rather than to accommodate what is legislatively appropriate.

88. We also disagree with the Minister’s view that it will remain the case “that primary legislation would be needed to change fundamental aspects of the local tax systems”. In our view, a relief or discount can be as fundamental as the tax itself. For example, if overall levels of taxation are maintained when new reliefs or discounts are provided to certain taxpayers then, inevitably, other taxpayers will shoulder an additional tax burden. Under these proposals, it is these matters which would in future be dealt with by the Welsh Ministers in subordinate legislation, rather than through primary legislation.

89. The Minister also told us that she does not consider that the subject matter of the provisions in the Bill are of greater or wider significance than those already capable of being changed through subordinate legislation. We again respectfully disagree with this view.

90. In particular, we note that the proposals in sections 5 (reliefs), 9 (exemptions), 10 (concerning non-domestic rating differential multipliers), 13 (the specifying of artificial anti-avoidance arrangements) and 18 (council tax discounts) appear to go significantly further than current powers available to the Welsh Government, and are being proposed in the absence of a specific indication as to how these powers

⁷² LJC Committee, 11 December 2023, RoP [52]

are intended to be used. We discuss our concerns in relation to these powers in the next Chapter.

Conclusion 2. We disagree with the Minister’s statement that “the arrangements proposed in this Bill will enhance the Senedd’s role considerably”.

Conclusion 3. We are unclear how the Bill will, in the Minister’s view, “give the Senedd more power over decisions that are taken here in Wales in respect of non-domestic rates and council tax”.

Conclusion 4. We find the Minister’s comments that the Bill is a legislative framework for futureproofing to be at odds with her views that it is also consistent with long-standing principles in relation to the role of the legislature.

91. On the subject of futureproofing, the Minister put forward a case for the Welsh Ministers’ need for the ability to make changes in a timely manner in response to changing priorities, circumstances and pressures.

Conclusion 5. While we acknowledge that there may well be occasions in any given year where unforeseen and urgent circumstances may require legislative changes, this of itself is not a sufficient enough reason to justify the taking of substantial executive power when the Senedd has procedures in place to accommodate expedited scrutiny of primary legislation.

92. We consider that a key aspect in the Minister’s evidence appears to be using the justification of taking powers to amend the dates of statutory revaluation cycles for non-domestic rating and the proposed statutory revaluation cycles for council tax as justification for a lot of other provisions in the Bill. However, the proposals in the Bill on revaluation timings relate to an established policy set out in primary legislation (i.e. the established concept of a revaluation of commercial or domestic properties undertaken by the Valuation Office Agency) and, for NDR, an existing timescale. We do not believe that this should be conflated with the proposed powers in relation to, for example, NDR reliefs and exemptions or council tax discounts, which are very different and open-ended. We consider that these give the Welsh Government significant power to propose how much certain taxpayers and ratepayers will pay but with limited scrutiny.

Conclusion 6. We do not welcome the remarks by the Minister that the Bill will “allow future governments to think creatively about different things”, especially in light of the constraints on the Senedd itself to influence this ‘creative thinking’.

93. Specifically in respect of the provisions in the Bill relating to how multipliers may be legislated for in the future, we are concerned by the Minister’s comments

that she does not “have any plans in those spaces at the moment, but it does provide a future government with more flexibility”.

94. In her evidence to us, the Minister linked the approach taken in the Bill to the Welsh Government’s overall legislative programme. In our view, a government should not justify proposing a Bill with extensive delegated powers for Ministers because a future Welsh government may want to do something as yet unknown, because space for a fully formed Bill (or multiple Bills for discrete purposes) cannot be found in the Welsh Government’s current legislative programme. The onus is on the Minister to argue for and find that space in the programme, rather than to solve the problem by bringing forward a Bill that denies a future Senedd the ability to perform its legitimate legislative role.

95. As we said recently in our report on the Welsh Government’s Infrastructure (Wales) Bill⁷³, we do not consider it appropriate to use a Bill as a vehicle to avoid a future Bill where the use of primary legislation would be the constitutionally appropriate approach.

96. The Minister implied that a decision to include many delegated powers in this Bill rather than continuing with the current system which would require primary legislation to bring into effect certain changes was “a question about what’s reasonable and proportionate”. In response we would ask reasonable and proportionate for whom? We do not consider that the approach taken should be at the expense of long-established principles of when primary and secondary legislation should be used.

97. We also consider that the Minister’s comparison of the powers proposed in this Bill with the alternative of the Welsh Government seeking provisions in UK Parliament legislation as a false choice, because it disregards the Senedd’s fundamental role as the legislature which should have responsibility for devolved taxation.

98. The Bill has been introduced at the same time that the Senedd is considering the Welsh Government’s Bill – the Senedd Cymru (Members and Elections) Bill⁷⁴ (the SCME Bill) – which forms the basis of the legislative proposals to reform our legislature in Wales. The overall purpose of the SCME Bill is to increase the size and capacity of the Senedd to make it a more effective legislature. We do not believe the approach the Minister has adopted in the Bill

⁷³ Legislation, Justice and Constitution Committee, [Report on the Infrastructure \(Wales\) Bill](#), November 2023, paragraph 73

⁷⁴ [Senedd Cymru \(Members and Elections\) Bill](#), introduced to the Senedd on 18 September 2023

acknowledges or is in line with the ongoing work and efforts to enhance opportunities for better scrutiny by the Senedd.

Conclusion 7. We do not consider that the Bill represents an appropriate way for a government to legislate. Primary legislation that creates extensive regulation-making powers should not be proposed by a government to enable future governments ‘to think creatively’. This facilitates the avoidance of detailed scrutiny by Members of a democratically elected Senedd.

Conclusion 8. Through the Bill, the Minister is asking this Senedd to grant broad delegated powers to an unelected future government for unknown reasons and to do a wide range of things that are not necessarily understood today. The excessive granting of secondary legislative powers denies the Senedd its proper constitutional role.

Conclusion 9. We have repeatedly commented on the ‘futureproofing’ justification often put forward by the Welsh Ministers. Excessively futureproofing primary legislation takes away powers from future Seneddau and is not an acceptable practice.

Conclusion 10. We believe that the Bill is an example of the Welsh Government making inappropriate legislative choices, and this is particularly concerning in the context of Senedd reform.

99. As we indicate above, if the need arises, space should be found in the Welsh Government’s legislative programme for a Bill relating to local taxation to be considered by the Senedd. In our report on the Welsh Tax Acts etc. (Power to Modify) Bill⁷⁵, we discussed the use of an annual finance Bill to deal with matters of Welsh taxation and referenced the use of a special purpose Bill by the UK Government.⁷⁶ We also stated:

“The Minister told us the time is not right for a finance Bill. However, we are concerned that this view is being repeated frequently without any thought being given to when the time would be right for a finance Bill. In our view, a debate needs to be initiated about the democratic oversight of taxation powers and in particular, the continuing appropriateness of the Welsh Ministers having the power to make such significant decisions regarding taxation by regulations.”

⁷⁵ Legislation, Justice and Constitution Committee, [Report on the Welsh Tax Acts etc. \(Power to Modify\) Bill](#), April 2022

⁷⁶ Report on the Welsh Tax Acts etc. (Power to Modify) Bill, Chapter 3 and paragraphs 110 to 113

We therefore believe that the Welsh Government should reflect on how its objectives could be achieved using primary legislation, with a view to bringing forward a more coherent package of measures in order to place the democratic oversight of the making of tax law on a sounder footing.”⁷⁷

100. We believe that these sentiments apply equally to legislating in respect of local taxation and such issues should be added to the wider consideration of legislating for tax purposes, not least given the potential for a 96 member Senedd.

101. Finally, we have some concerns about the quality of information provided in the EM and the Statement of Policy Intent for subordinate legislation to be made under the Bill. In both the EM and the Statement of Policy Intent, delegated powers being taken in the Bill are broadly summarised on a section-by-section basis. An absolute number of delegated powers is not provided, nor is it always clear where a power has been restated (or restated with amendments).

102. Given that the Minister is seeking the Senedd’s approval to delegate significant power to the executive, we believe more clarity and transparency is needed about these powers. We made similar comments in our report on the Welsh Government’s Infrastructure (Wales) Bill.⁷⁸

103. We believe the Bill contains 40 delegated powers. In our view, this number is not made clear in the explanatory material provided by the Minister.

Conclusion 11. The Minister is asking the Senedd to delegate significant powers to be exercised by the executive and the Senedd should know the exact number, location and type contained in the Bill.

Recommendation 4. The Minister should provide to the Senedd a clear, full and detailed list of each and all delegated powers in the Bill, by reference to specific location, type, scrutiny procedure, and whether it is a restated power (with or without amendment).

104. Further detailed examination of specific provisions of the Bill, and delegated powers therein, follows in the next Chapter.

⁷⁷ Report on the Welsh Tax Acts etc. (Power to Modify) Bill, paragraphs 114 to 115

⁷⁸ Report on the Infrastructure (Wales) Bill, paragraphs 61 to 64, Conclusion 3, and Recommendation 4

4. Specific observations on particular Parts and sections of the Bill

105. The Bill comprises 25 sections and 1 Schedule. It is split into three Parts:

- Part 1 – Non-domestic rating
- Part 2 – Council tax
- Part 3 – General

Part 1 – Non-domestic rating

106. Part 1 of the Bill makes provision in relation to non-domestic rating. It amends the 1988 Act in relation to Wales.

Section 5 (Powers to confer, vary and withdraw reliefs)

107. Section 5 of the Bill amends Schedules 4ZA, 4ZB and 5A to the 1988 Act. These Schedules provide for the calculation of the chargeable amount of non-domestic rating for a chargeable day, in respect of a hereditament, and the application of both partial and full reliefs from non-domestic rating. Schedule 4ZA makes this provision in relation to occupied hereditaments on a local rating list, Schedule 4ZB makes this provision in relation to unoccupied hereditaments on a local rating list, and Schedule 5A makes this provision in relation to hereditaments on a central rating list.

108. Subsections (2) to (4) of section 5 insert new Parts 3A, 2A and 2A (Powers to confer, vary or withdraw reliefs: Wales) into Schedules 4ZA, 4ZB and 5A to the 1988 Act, respectively. Each of these new Parts contains equivalent powers for the Welsh Ministers to make regulations conferring, varying or withdrawing reliefs in respect of the hereditaments to which each Schedule applies. Such regulations will be subject to the draft affirmative scrutiny procedure in the Senedd.

109. We asked the Minister whether she anticipated that any of the proposed powers in this Bill - for example, in relation to reliefs and exemptions - would be used to amend existing powers of the Welsh Ministers in primary legislation. An official accompanying the Minister told us she did not think that the Welsh Government would be looking to extend the scope of the powers, “but there are some examples where you might find that, actually, powers of the Welsh Ministers are removed”. The official pointed, by way of example, to the power in new paragraph 8C of Schedule 4ZA, which could be used to amend reliefs. The official

said “if you took out those reliefs, then you would find that you've also removed the Welsh Ministers' powers in relation to those reliefs as well”.⁷⁹

110. Following her appearance before the Committee on 11 December 2023, we wrote to the Minister and asked some further questions in relation to section 5.⁸⁰

111. In the Statement of Policy Intent for the powers to confer, vary or withdraw non-domestic rating reliefs, the Minister states that the current powers of the Welsh Ministers are inconsistent with provisions being taken in Bills introduced to the UK Parliament on multiple occasions to enable new reliefs in Wales.

112. We asked the Minister why she believed that the way to resolve this inconsistency is more Henry VIII regulation-making powers for the Welsh Government. The Minister responded:

“The current system includes a number of areas which are governed by a mix of primary and secondary legislation, even in relation to the same aspects of the system. This is the case for reliefs. For example, changes to Small Business Rates Relief can largely be made via secondary legislation, whereas changes to Charitable Rates Relief would require primary legislation. There is no clear rationale for why some changes currently need to use primary legislation when the significance of those changes is limited compared with what can already be done through secondary legislation.

I think we are right to make the system more consistent with respect to the use of secondary legislation powers. This is a key area where consistency is needed to enable the system to be responsive to changing pressures.”⁸¹

113. We also asked the Minister why she does not consider that primary legislation – expedited where necessary, and scrutinised and passed by the Senedd – would be a better solution. The Minister told us:

“Relying more on primary legislation would move us even further away from what we are trying to achieve. It would be likely to prevent us from using limited legislative time to progress more transformative work, continue to constrain

⁷⁹ LJC Committee, 11 December 2023, RoP [79]

⁸⁰ Letter to the Minister for Finance and Local Government, 18 December 2023

⁸¹ Letter from the Minister for Finance and Local Government, 18 January 2024, response to question 9

changes in this area, or result in the need to make even more use of UK Government Bills, depending on the context at any given point in time.”⁸²

114. In relation to reliefs for occupied properties, section 5(2) of the Bill inserts a new power into paragraph 9A of Schedule 4ZA to the 1988 Act for the Welsh Ministers to change the rules in paragraph 9 of the Schedule where more than one relief applies. We asked the Minister if she was content that the drafting of section 5(2) delivers its purpose. The Minister told us that she is content that section 5(2) of the Bill works as intended, and that “the power in paragraph 9A only needs to refer to Parts 2 and 3 of Schedule 4ZA”.⁸³

Section 9 (Powers to confer, vary and withdraw exemption)

115. Section 9 of the Bill amends Schedule 5 to the 1988 Act, which provides for exemptions from non-domestic rating. New paragraph 20A (Powers to confer, vary and withdraw exemption: Wales) is inserted into Schedule 5, providing that the Welsh Ministers may, by regulations, confer new exemptions and vary or withdraw any existing exemptions in that Schedule. Such regulations will be subject to the draft affirmative scrutiny procedure in the Senedd.

116. The Statement of Policy Intent appears to justify the taking of powers to confer, vary and withdraw non-domestic rate exemptions on the basis of providing consistency between the Welsh Government’s powers in this area and the new proposed powers for reliefs. In our letter to the Minister on 18 December 2023 we asked her why she considered this to be an appropriate basis for taking wide Henry VIII powers to specify tax exemptions, and what potential exemptions have been identified that would justify the taking of this power. The Minister told us:

“a) There are a variety of existing ways in which a ratepayers’ liability may be reduced to zero. These include the use of legislation or existing discretionary powers of local authorities to provide full relief. Exemptions are an alternative to the provision of a full relief, when it is considered that the chargeable amount of non-domestic rates for a property should be zero. The Welsh Ministers currently have a limited power to prescribe exemptions in regulations, with very little practical effect. As all

⁸² Letter from the Minister for Finance and Local Government, 18 January 2024, response to question 9

⁸³ Letter from the Minister for Finance and Local Government, 18 January 2024, response to question 10

exemptions are currently set out in primary legislation (unlike reliefs), a Henry VIII power is the most appropriate way of addressing the policy intent to be able to make changes.

b) There are types of property for which an exemption from non-domestic rating on a long-term or permanent basis is considered more appropriate than a full relief. For example, when a valuation would prove difficult to carry out or when a valuation would provide no tangible benefits. This power is no more significant in its potential effect on non-domestic rates liability than other legislative and discretionary mechanisms which already exist. Whilst we have not currently identified any specific changes to exemptions, this may be the most appropriate way to address future priorities for the overall landscape of non-domestic rates support, in specific circumstances.”⁸⁴

Section 10 (Calculation of non-domestic rating multipliers)

117. Part 1 of Schedule 7 to the 1988 Act provides for the calculation of non-domestic rating multipliers in relation to Wales. Section 10 of the Bill inserts a new Part A2, which restates the provisions previously contained in Part 1 together with new provision for the Welsh Ministers to set differential multipliers by regulations. Such regulations will be subject to the draft affirmative scrutiny procedure in the Senedd.

118. The Bill proposes a power to allow the Welsh Ministers to specify differential multipliers for different descriptions of properties. The Statement of Policy Intent however states that there are “no immediate plans to use this power”. We asked the Minister to provide the justification for taking this power in the Bill if the Welsh Government has no plans for it to be used. The Minister told us that, while the Welsh Ministers already have the power to set the single multiplier for Wales at any level using secondary legislation, she cannot prescribe different multipliers for different parts of the tax-base. The Minister said that tiered multipliers exist elsewhere in the UK, and these provisions would enable the Welsh Ministers to prescribe a different multiplier for a specific part of the tax-base. The Minister also

⁸⁴ Letter from the Minister for Finance and Local Government, 18 January 2024, response to question 11

told us that, as with reliefs and exemptions, “it is not possible to predict specific changes which may be desirable in future”.⁸⁵

Section 13 (Artificial non-domestic rating avoidance arrangements)

119. Section 13 of the Bill inserts sections 63F to 63M (Anti-avoidance: Wales) into the 1988 Act. They make provision about counteracting advantages arising from artificial arrangements for the avoidance of non-domestic rates liability. For the purposes of sections 63F to 63M, an artificial non-domestic rating avoidance arrangement has the meaning given in sections 63F to 63H. As regards the key concept of “artificial”, section 63H of the 1988 Act provides that an arrangement is artificial if it is of a type specified by the Welsh Ministers in regulations. Such regulations will be subject to the draft affirmative scrutiny procedure in the Senedd.

120. When the Minister appeared before us on 11 December 2023 we asked her why, through the Bill, she wanted to take anti-avoidance powers in relation to non-domestic rate liability. The Minister told us there were two reasons:

“... the first being, obviously, to protect the vast majority of people who pay their non-domestic rates appropriately under the correct sum, and so on. (...) but then also to protect the important revenue that is raised through non-domestic rates to support local services as well.”⁸⁶

121. We also asked the Minister why she has chosen not to define artificial avoidance arrangements on the face of the Bill. We further asked would it be possible to place definitions on the face of the Bill on the basis of current understanding of the kinds of potential avoidance schemes, with a regulation-making power to accommodate future developments in avoidance behaviour. On the first matter, the Minister responded:

“So, that’s because techniques to avoid tax are constantly evolving in ways that aren’t possible to predict, and non-domestic rates are obviously no exception to that. So, it provides the appropriate level of flexibility, I think, to respond to specific avoidance schemes as and when they arise.”⁸⁷

⁸⁵ Letter from the Minister for Finance and Local Government, 18 January 2024, response to question 12

⁸⁶ LJC Committee, 11 December 2023, RoP [89]

⁸⁷ LJC Committee, 11 December 2023, RoP [91]

122. On the latter point, officials accompanying the Minister said:

“I think we have gone as far as we can on the face of the Bill in defining what might constitute artificial behaviours. It is all about striking a balance between defining things to such an extent that that then limits the utility of those provisions. I think one of the constant struggles with local government finance legislation is that the more that you define it, the more quickly it becomes out of date, and the anti-avoidance provisions, in particular, were an area where we went into great detail in terms of considering what was appropriate to put on the face of the Bill and what needed to be left to subsequent legislation. (...)

... we have here quite a clear framework, hopefully, in defining the individual elements of what constitutes an artificial avoidance arrangement, so what is left is just the precise element of ‘artificial’, but even the powers here are limited, so that the Minister can’t just choose anything to be artificial. It’s got to be within the scope of section 63H(2), so the regulation could only specify an arrangement as being artificial if it falls within what’s described in that subsection (2). So, the intention here is to be very fair to ratepayers, to make sure it will be absolutely clear what behaviour is caught. (...)

The provisions in this Bill actually go considerably further than equivalent provisions in other legislation, the most obvious comparison being the Scottish Parliament’s general anti-avoidance rules. So, I’d certainly want to convey that this is not something that was taken lightly. It is prescribed in as much detail as seemed appropriate.”⁸⁸

123. When we wrote to the Minister following her appearance before the Committee on 11 December 2023, we asked her a number of additional questions relating to section 13.

124. We noted that Part 3A of the *Tax Collection and Management (Wales) Act 2016* (the 2016 Act) sets out the general anti-avoidance rule for devolved taxes. We asked the Minister if she considered that a better approach would be to follow that example in this Bill and specify general principles in primary legislation for

⁸⁸ LJC Committee, 11 December 2023, RoP [93], [94] and [95]

determining whether non-domestic rating arrangements are artificial. The Minister said that she did not consider that that would be a better approach “due to fundamental differences” in the context for the operation of the anti-avoidance provisions in the 2016 Act and this Bill. The Minister told us:

“The provisions of the 2016 Act are applied by a single specialist organisation (the Welsh Revenue Authority) responsible for administering a number of devolved taxes. This ensures clarity and consistency across the relevant tax-bases in relation to the application of the specified principles.

In contrast, the anti-avoidance provisions in the Bill apply only to non-domestic rates, providing an opportunity to be more specific about the arrangements which will be addressed by the provisions. The provisions in the Bill will be applied by 22 local authorities (in relation to the local rating lists) and the Welsh Government (in relation to the central rating lists) in their roles administering non-domestic rates. This could result in general principles being applied inconsistently and artificial avoidance arrangements being treated differently by different billing authorities. The approach proposed in the Bill will, therefore, ensure clarity, consistency and fairness by prescribing the arrangements which all billing authorities must counteract.”⁸⁹

125. We also asked the Minister why did she consider it to be appropriate for the Welsh Ministers to make regulations potentially restricting avoidance activity that others may feel is appropriate, without the full scrutiny of the Senedd that would be afforded to such proposals if they were included in a Bill laid before the Senedd. The Minister told us that a “carefully considered policy rationale underpins the development of our anti-avoidance provisions”. She added:

“Techniques to avoid tax are constantly evolving in ways that are not possible to predict and non-domestic rates is no exception. The anti-avoidance provisions in this Bill, supplemented by an appropriately limited regulation-making power, are needed to address specific avoidance behaviours identified in a timely manner. Regulations will be required to

⁸⁹ Letter from the Minister for Finance and Local Government, 18 January 2024, response to question 13

specify the precise avoidance behaviours that the Bill provisions will be used to counteract from a future point in time.

Continuing to rely on primary legislation to address individual avoidance arrangements that are identified would likely result in considerable delays to the implementation of changes, leaving the public purse exposed to revenue risk for a longer period.”⁹⁰

126. In addition, we asked the Minister to clarify what restrictions there are on the power to specify artificial arrangements proposed in section 13 of the Bill that would protect taxpayers who engage in lawful tax planning. The Minister told us that the definition of ‘artificial’ within the Bill “provides for important restrictions and a safeguard”.⁹¹ She said:

“Regulations may only specify a type of arrangement which would not constitute a reasonable course of action in relation to non-domestic rates provisions, having regard to matters prescribed within the definition. It will not be possible for regulations to counteract avoidance behaviours in unspecified or general terms, nor to undo or penalise avoidance that has occurred before regulations come into force.

The regulations will also be able to provide for an additional safeguard for the person to be treated as liable, where appropriate for the type of arrangement specified. The safeguard will enable the billing authority or the Welsh Ministers (in relation to the local and central rating lists, respectively) to determine that an arrangement is not artificial in individual cases, having regard to all the circumstances. This element of discretion will enable consideration to be given to any circumstances relevant to the individual person and could lead to a determination that the arrangement is not artificial in that case. If an arrangement of the type specified in regulations is identified, it will, until and unless it is determined otherwise, be an artificial arrangement which must be counteracted.”⁹²

⁹⁰ Letter from the Minister for Finance and Local Government, 18 January 2024, response to question 14

⁹¹ Letter from the Minister for Finance and Local Government, 18 January 2024, response to question 15

⁹² Letter from the Minister for Finance and Local Government, 18 January 2024, response to question 15

127. The Minister also told us that the “limited” regulation-making power is framed within an overall structure which makes clear the process by which identified avoidance behaviours will be described and counteracted; that consultation on specific proposals before regulations are made “will ensure that stakeholders can be expected to know that a specified behaviour has been identified and is likely to be prevented in future”; and that avoidance arrangements are “unlikely to be exploited in isolation or in the absence of professional advisers, who make it their business to understand latest policy and legislative developments”.⁹³

128. In relation to financial penalties, we asked the Minister why she was proposing maximum fine levels in the Bill for financial penalties around artificial tax avoidance while simultaneously proposing Henry VIII powers to increase those levels. Furthermore, we asked how she would respond to the suggestion that specifying maximum levels in this way could be seen as misleading. The Minister told us that it was important to provide for civil penalties, where appropriate, to ensure there is a genuine deterrent to continuing specified avoidance behaviours, and that, without this, “the effectiveness of the avoidance provisions will be compromised”.⁹⁴ The Minister added:

“The power in question will ensure the maximum penalty can be maintained at an appropriate level in the longer-term. Such a power is not unusual. For example, there is already a similar power in paragraph 6AA(6) of Schedule 9 to the Local Government Finance Act 1988, in relation to the penalty that can be imposed for failure to provide required information. These powers enable the maximum penalty amount to be amended if, for example, changes in the economy mean that the current amount becomes inappropriate. There will be consultation on changes and clear communication to avoid anyone being misled.”⁹⁵

129. Finally in relation to section 13, we asked what provisions the Minister would anticipate making in regulations in relation to the collection and enforcement of penalties, and why those provisions are not specified on the face of the Bill. The Minister said that “detailed consideration was given as to whether details relating

⁹³ Letter from the Minister for Finance and Local Government, 18 January 2024, response to question 15

⁹⁴ Letter from the Minister for Finance and Local Government, 18 January 2024, response to question 16

⁹⁵ Letter from the Minister for Finance and Local Government, 18 January 2024, response to question 16

to collection and enforcement would most appropriately be set out in the Bill”.⁹⁶ She added:

“The existing arrangements for collection and enforcement of non-domestic rates liability are set out in long-established secondary legislation (the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 and the Non-Domestic Rating (Collection and Enforcement) (Central List) Regulations 1989). When avoidance is counteracted using the Bill provisions, the liable person will be subject to the existing collection and enforcement regulations on an ongoing basis. It is considered more appropriate to amend those regulations, as required in future, to make any necessary changes to the existing collection and enforcement framework. The detail of these changes will need to be considered when we make regulations under the anti-avoidance provisions to specify the artificial arrangements to be counteracted.”⁹⁷

Section 14 (Orders and regulations under the Local Government Finance Act 1988)

130. Section 14 of the Bill inserts new section 143A (Orders and regulations of the Welsh Ministers) into the 1988 Act. Section 143A restates section 143 of the 1988 Act, to set out how powers conferred on the Welsh Ministers to make secondary legislation under the 1988 Act are to be exercised and the applicable procedure to be followed. Powers conferred on any other persons to make secondary legislation which may apply to Wales will continue to be exercised in accordance with section 143 of the 1988 Act.⁹⁸

131. We asked the Minister whether all of the powers restated will be subject to the same Senedd scrutiny procedure as they are currently. The Minister confirmed that section 14 generally restates provisions of section 143 of the 1988 Act insofar as they apply in respect of the powers of the Welsh Ministers.⁹⁹ She went on to say:

“Regulations made under paragraph 1(2) of Schedule 4ZB to the Local Government Finance Act 1988 would be subject to

⁹⁶ Letter from the Minister for Finance and Local Government, 18 January 2024, response to question 17

⁹⁷ Letter from the Minister for Finance and Local Government, 18 January 2024, response to question 17

⁹⁸ EM, page 129

⁹⁹ Letter from the Minister for Finance and Local Government, 18 January 2024, response to question 21

the negative procedure if the Bill were enacted as drafted whereas the power is currently subject to the affirmative procedure. It is appropriate for the affirmative procedure to apply as the power enables a formula for calculating chargeable amounts to be substituted. This was an oversight at the time of introduction and we will seek an amendment at Stage 2 so that the affirmative procedure continues to apply.”¹⁰⁰

132. The Minister also told us:

“Paragraph 6AA(6) of Schedule 9 to the Local Government Finance Act 1988 is a power to amend the amount of a penalty which is currently subject to the negative procedure. Given the nature of the power it ought to be subject to the affirmative procedure. Therefore, the new section 143A(5)(n) applies the affirmative procedure to regulations made under paragraph 6AA(6).”¹⁰¹

Our view

133. We note the Minister’s evidence on Part 1 of the Bill.

134. We note that section 5 of the Bill would give significant new regulation-making powers to the Welsh Ministers to amend or withdraw existing reliefs and to confer new reliefs.

135. We acknowledge the Minister’s evidence to us on section 5 of the Bill.

136. As regards the Minister’s comments at paragraph 113, we have already discussed in broad terms our concerns about the use of subordinate legislation where primary legislation would be more appropriate. We have concerns that the Minister’s comments about why the regulation-making powers in section 5 are more appropriate than using primary legislation are constitutionally inappropriate. If a matter requires primary legislation in the Senedd, then primary legislation should be used. It is particularly unwelcome and disconcerting to hear the Minister suggest that, should the Senedd not agree to the powers in section 5, rather than use primary legislation in the Senedd she would make more use of primary legislation in the UK Parliament.

¹⁰⁰ Letter from the Minister for Finance and Local Government, 18 January 2024, response to question 21

¹⁰¹ Letter from the Minister for Finance and Local Government, 18 January 2024, response to question 21

137. We also note, in particular, the Minister’s comments that “There is no clear rationale for why some changes currently need to use primary legislation when the significance of those changes is limited compared with what can already be done through secondary legislation”.

138. If there is an inconsistency in approach in terms of the significance of decision-making delegated to governments when comparing reliefs, we are unconvinced that the answer to this inconsistency is for the Senedd as the legislature to hand all power on reliefs to the government as the executive. This would mean the Senedd in future having no further say other than a yes/no decision on regulations subject to the draft affirmative procedure.

139. We also note that there is no restriction or limitation on the face of the Bill which would prevent the Welsh Ministers from using powers in section 5 of the Bill to amend powers already delegated to the Welsh Ministers in existing primary legislation relating to specific NDR reliefs.

140. We acknowledge that an official accompanying the Minister said that she did not think that the Welsh Government would be looking to extend the scope of the powers. However, we note that the proposed powers in section 5 are so broad as to make any concerns regarding increasing the scope of existing powers in relation to specific existing reliefs largely redundant.

141. We consider circumstances in which proposed regulation-making powers for the Welsh Ministers in Bills that could be used to amend existing Ministerial powers to be an example of where powers being sought by the Welsh Government are inappropriate and go too far. Unfortunately, this is happening increasingly often now, and we raised comparable concerns in our reports on the WTA Bill¹⁰² and the Elections and Elected Bodies (Wales) Bill¹⁰³.

Conclusion 12. In line with long-standing parliamentary principles, we believe that significant changes to local taxation should be made by primary legislation once specific policy has been developed.

Recommendation 5. The Minister should table an amendment to the Bill to leave out section 5.

142. We note that section 9 of the Bill replaces a limited existing power for the Welsh Ministers to confer additional hereditaments that are exempt from non-

¹⁰² Report on the Welsh Tax Acts etc. (Power to Modify) Bill paragraphs 244 to 246

¹⁰³ Legislation, Justice and Constitution Committee, [Report on the Elections and Elected Bodies \(Wales\) Bill](#), January 2024, paragraphs 83 to 85

domestic rating with unqualified powers to amend or withdraw existing exemptions and to create new exemptions.

143. We acknowledge the Minister's evidence to us on section 9 of the Bill.

144. Much of the concerns we expressed in relation to section 5 of the Bill also apply to the approach adopted in section 9.

145. The Minister told us that she has not currently identified any specific changes which may be needed in respect of exemptions. We therefore are unconvinced by the Minister's rationale that taking powers in the Bill for unknown reasons is "the most appropriate way to address future priorities for the overall landscape of non-domestic rates support".

Conclusion 13. Section 9 is another example in the Bill where broad powers to make subordinate legislation are being taken with no evidence or policy aim in mind. We do not consider this to be appropriate or acceptable.

146. As we stated above when commenting on section 5 of the Bill, in line with long-standing parliamentary principles, we believe that significant changes to local taxation should be made by primary legislation.

Recommendation 6. The Minister should table an amendment to the Bill to leave out section 9.

147. Schedule 7 to the 1988 Act makes provision in connection with the setting of multipliers used to calculate non-domestic rating. We note that section 10 of the Bill would give the Welsh Ministers a new regulation-making power to provide for and specify differential multipliers in respect of descriptions of hereditaments. Section 11 makes supplemental amendments to the 1988 Act to reflect the changes made by section 10.

148. We acknowledge the Minister's evidence to us on section 10 of the Bill.

149. In particular we note that, in the Statement of Policy intent, the Minister confirms there are "no immediate plans to use this power".

150. The Minister told us that the existing single multiplier has limited the options available for the Welsh Government to consider in responding to the UK Government's Autumn Statement. We acknowledge the Minister's remarks that, while some Members of the Senedd have called for the Welsh Government to mirror the approach being taken in England by freezing the multiplier for small businesses, the Welsh Government could not consider a similar approach.

151. We are aware that, in England, there are two multipliers available to the UK Government. However, those two multipliers are set in primary legislation. Here, the Welsh Government is proposing to make any number of multipliers in subordinate legislation.

152. The Minister will understand that subordinate legislation scrutiny is limited and focused, within relatively short timeframes. As the Committee with responsibility for scrutinising all subordinate legislation laid before the Senedd we can say with confidence that, while we perform our functions as required by Standing Orders 21.2 and 21.3, any adverse implications for the economy and /or commercial property market, for example, could not be afforded the same consideration via the subordinate legislative process when compared with the attention such matters would receive if provisions were contained in a Bill introduced to the Senedd.

Conclusion 14. Given the example the Minister has cited as regards a multiplier for small businesses, we are unclear why the Bill is not being used to create such a multiplier.

Recommendation 7. The Minister should provide full and detailed reasoning as to why provision is not made on the face of the Bill for a multiplier for small businesses.

Recommendation 8. The Minister should table amendments to the Bill to leave out sections 10 and 11.

153. We note that section 13 of the Bill makes provision about counteracting advantages obtained from artificial non-domestic rating avoidance arrangements. Section 13 includes new regulation-making powers for the Welsh Ministers to define what is artificial, and to impose financial penalties.

154. We acknowledge the Minister's evidence to us on section 13 of the Bill.

155. In particular, we note the Minister's comments that techniques to avoid tax are constantly evolving in ways that are not possible to predict. We also note the comments of an official accompanying the Minister who said the Welsh Government has "gone as far as [it] can on the face of the Bill in defining what might constitute artificial behaviours".

156. When we asked the Minister whether a better approach for counteracting tax avoidance in relation to non-domestic rates could be to provide for a general anti-avoidance rule in line with the approach taken in Part 3A of the 2016 Act for other devolved taxes, she told us that the provisions of the 2016 Act are applied by

the Welsh Revenue Authority, as the “single specialist organisation” responsible for administering a number of devolved taxes. We note the Minister’s rationale that this ensures “clarity and consistency across the relevant tax-bases in relation to the application of the specified principles”.

157. However, we do not understand why billing authorities in Wales should not be regarded as specialist in their work concerning local taxes, not least because NDR has been operated by billing authorities for several decades. We also note the Minister’s reference to the WRA’s responsibility for “a number of” devolved taxes. We understand that the WRA is responsible for two such taxes – Land Transaction Tax and Landfill Disposals Tax.

158. We believe that a general avoidance framework, if needed, could be supported by appropriate statutory guidance to address concerns regarding consistency of approach.

159. We are therefore unconvinced by the Minister’s justification for not pursuing a general anti-avoidance rule approach in the context of NDR.

160. We also wish to comment on the likely difficulty in establishing whether the proposed conditions on the use of the power in the Bill to specify types of artificial avoidance arrangements are satisfied if/when future regulations are made. In particular, we note that new section 63H(2) of the 1988 Act, as inserted by section 13 of the Bill, provides that such regulations may only specify types of artificial arrangements if making such arrangements “would not be a reasonable course of action in relation to the provisions of enactments relating to non-domestic rating”. In making that assessment, section 63H(2) requires the Welsh Ministers to have regard to a series of considerations, which include, amongst others:

“... whether the substantive results of arrangements of that type are inconsistent with...any principles on which those provisions are based (whether express or implied), and...the policy objectives of those provisions”.

161. Commenting on these provisions in its written evidence to the LGH Committee the CIOT noted that “the purpose/policy intent of a relief is sometimes difficult to discern, especially in relation to long-established reliefs.”¹⁰⁴ We also note that, in discharging our obligations under Standing Orders when considering future regulations made under these proposed powers, it may be difficult for the Committee to express an opinion on whether avoidance arrangements are

¹⁰⁴ LGF 02 Chartered Institute of Taxation

“reasonable” or otherwise, a specific condition on the use of the power, and therefore whether such regulations would be *intra vires* (lawfully made).

162. We also wish to make clear that our concerns around the conditions governing the use of this power should not be seen as justification for the potential removal of those conditions. In our view, these concerns point to the conclusion that the proposed power itself is fundamentally flawed.

163. Aside from our concerns about the proposed approach to legislating in this area, we also remain unconvinced regarding the need for taking this power. NDR has been operational for approximately 35 years and we consider that the Minister should give further examples of specific instances in which anti-avoidance behaviour has been identified in that time and how it has been addressed.

164. We have previously expressed concern, in our report on the WTA Bill¹⁰⁵, over proposals to take secondary legislation powers to counteract (as yet) unidentified future tax avoidance behaviour. We believe that the Minister should do more to justify why it would not be preferable to bring forward specific proposals in primary legislation to address avoidance activity once it has been identified (indeed, as the Minister appears to have done in section 6 of this Bill in relation to the additional requirements proposed for claiming charitable rate relief for unoccupied properties).

Recommendation 9. The Minister should provide specific examples of anti-avoidance behaviour that would have been addressed by the use of the proposed power in section 13 in recent years had it been available to the Welsh Ministers earlier.

Recommendation 10. The Minister should explain how such anti-avoidance behaviour has previously been addressed by the Welsh or UK Governments given the long established nature of non-domestic rating.

Recommendation 11. In the absence of specific evidence demonstrating a need for the power, the Minister should table an amendment to the Bill to leave out section 13.

165. Section 14 inserts section 143A into the 1988 Act. We note that new section 143A makes provision about the powers of the Welsh Ministers to make orders and regulations under the Bill (if and when enacted).

¹⁰⁵ Report on the Welsh Tax Acts etc. (Power to Modify) Bill, paragraph 227

166. We acknowledge the Minister’s evidence to us on section 14 of the Bill, and welcome the approach the Minister has taken in this section.

167. In particular, we note the Minister’s evidence that there is an error in section 14 and the Minister plans to bring forward an amendment (should the Bill proceed to Stage 2 of the legislative process) so that regulations made under paragraph 1(2) of Schedule 4ZB of the 1988 Act continue to be subject to the draft affirmative procedure.

168. We also note and welcome the change made via section 14 which means that regulations made under paragraph 6AA(6) of Schedule 9 to the 1988 Act will now be subject to the draft affirmative procedure.

Part 2 – Council tax

169. Part 2 of the Bill makes provision in relation to council tax. It amends the *Local Government Finance Act 1992* (the 1992 Act) in relation to Wales.

Section 17 (Calculation of tax for different valuation bands)

170. Section 17 of the Bill amends section 5 of the 1992 Act by inserting new subsections (4B) and (4C). Section 5 of the 1992 Act makes provision for the amounts of council tax payable in relation to a dwelling to be set by reference to council tax bands, relative to proportions assigned to each band (in Wales) by subsection (1A). Sections 36 and 47 of the 1992 Act provide that the amount payable for each band is to be calculated by applying a formula including the relevant proportion for that band, as divided by “D”. Before the amendment, the meaning of the letter “D” in both formulae is fixed as the proportion for Band D. After the amendment, new subsection (4B) gives the Welsh Ministers a power to change the valuation band referred to in the meaning given to “D” by sections 36 and 47. New subsection (4B) also restates, for the Welsh Ministers, the existing powers under subsection (4) to substitute another proportion in relation to subsection (1A), and to other valuation bands in relation to subsection (3) (which contains the list of valuation bands for dwellings in Wales). New subsection (4C) repeats, for new subsection (4B), the equivalent clarification, in respect of subsection (4)(b), in subsection (4A). Orders will be subject to the draft affirmative scrutiny procedure in the Senedd.

171. We asked the Minister how she intended to use the powers in section 17; she told us:

“Band D was set as the mid reference point for the eight-band system back in 1991, so depending on the decisions that are

taken in respect of council tax in the future, it might be appropriate to have a different band letter-wise or number-wise, because it might be that the Welsh Government decides to have a larger number of bands. That's something that's a suggestion in our current consultation. So, really it's just about a practical response to allow a future band to be band 5 or band something else, which is coherent with whatever is decided in relation to the number of bands in future.”¹⁰⁶

172. In the EM¹⁰⁷, the Minister refers to the power in section 17 being used to change the labelling of any band structure. The Minister told us:

“Section 17(c) of the Bill does include a restatement of the existing section 5(4)(a) and (b) of the Local Government Finance Act 1992. Those provisions enable the Welsh Ministers to change the number of bands and the descriptions (labels) of those bands.

Section 17(c) of the Bill also provides new powers so that there is a clear basis for amending the references to “D” in the formulae provided in sections 36(1) and 47(1) of the Local Government Finance Act 1992. This is a technical amendment to provide clear authority for amending those formulae so that the system remains coherent and we are not restricted to using Band D as the main ‘reference’ or ‘mid-point’ in council tax calculations. The change in the band referred to in those formulae does not impact the amount paid for any mid-point band.”¹⁰⁸

Section 18 (Discounts)

173. Section 18 of the Bill makes a series of provisions in relation to council tax disregards and discounts, including the disapplication of provisions in the 1992 Act about the persons liable to pay council tax, for discounts to be applicable in certain circumstances and about persons disregarded for the purposes of determining whether a discount applies. In each case, section 18 includes provisions permitting the Welsh Ministers to make provision in these areas by regulations, which will be subject to the draft affirmative scrutiny procedure in the Senedd.

¹⁰⁶ LJC Committee, 11 December 2023, RoP [103]

¹⁰⁷ EM, page 38

¹⁰⁸ Letter from the Minister for Finance and Local Government, 18 January 2024, response to question 18

174. We asked the Minister if the powers in the Bill could be used to remove the single person discount altogether, or to means test it. The Minister said:

“Current legislation enables the Welsh Ministers to reduce or increase the percentage level for the single person discount, but not without impacting on the discount for a property with no resident or where all the residents are disregarded, which must be twice the amount. The Bill will break this restrictive link and provide Welsh Ministers with additional flexibility to add new categories of discounts, or to set conditions for discounts including new rates. Such changes would allow different rates of discounts to be set for different situations.

However, I have been clear there will be no changes to the existing council tax single person discount by this Welsh Government. The discount is retained on the face of the Bill so it cannot be removed, and I have confirmed that the discount for one-adult households will remain at 25%. The Bill would allow for the discount to be means-tested if that were a future policy preference.”¹⁰⁹

Section 19 (Reduced amounts)

175. Section 19(2) of the Bill amends section 13 of the 1992 Act by changing the Welsh Ministers’ power to make regulations which prescribe the conditions and circumstances in which a person is eligible for a council tax reduction into a duty to make such regulations. Section 19 also removes the Welsh Ministers’ power to make regulations under section 13A of the 1992 Act requiring that billing authorities make a council tax reduction scheme, and makes various consequential amendments – including the omission of Schedule 1B to the 1992 Act, which made further provision in relation to council tax reduction schemes pursuant to regulations under section 13A. Section 19(6) amends section 66(2) of the 1992 Act, which lists matters within that Act that cannot be questioned except by judicial review, by adding to this list matters contained in regulations made under section 13. Regulations are intended to be subject to the draft affirmative scrutiny procedure in the Senedd.

176. The Statement of Policy Intent refers to the Bill enabling in-year changes to council tax reduction schemes. We asked the Minister how would the power to make a national scheme address limitations on making in-year changes that the

¹⁰⁹ Letter from the Minister for Finance and Local Government, 18 January 2024, response to question 19

power to require local authorities to make their own schemes could not. The Minister told us that as the current legislation requires local authorities to approve their schemes by 31 January each year for the following financial year, the Welsh Ministers can only make one statutory instrument to incorporate changes to the non-devolved benefits system and other updates for each financial year by mid-January. The Minister went on to say:

“Recent examples of where in-year changes have not been possible have included responding to the pandemic and to aid people from Ukraine and Afghanistan. In these instances, the Welsh Government relied on the discretionary powers of local authorities to implement these changes during the financial year in which such matters occurred, until the next “annual legislation” could be made. There is no guarantee, either, that local authorities would use their discretion to do so.

While the Local Government Finance Act 1992 does not explicitly prevent “in-year changes” the practical effect of requiring an authority to make or amend a scheme annually is that in-year changes cannot be made. A national scheme would therefore allow the regulations to be changed more quickly (using secondary legislation) to deal with new or emergency matters.”¹¹⁰

Our view

177. We note the Minister’s evidence on Part 2 of the Bill.

178. We note that section 17 of the Bill restates existing powers of the Welsh Ministers to amend valuation bands of dwellings. We also note that it enables the Welsh Ministers to amend the valuation band used as an average in formulas applied under sections 36 and 47 of the 1992 Act used to calculate the amount of council tax that is payable.

179. We acknowledge the Minister’s evidence to us on section 17 of the Bill, and are content.

180. We note that section 18 of the Bill disapplies provisions in sections 6 and 9 of the 1992 Act about the persons who are exempt from being jointly and severally liable to pay council tax in respect of a chargeable dwelling, and replaces them

¹¹⁰ Letter from the Minister for Finance and Local Government, 18 January 2024, response to question 20

with a regulation-making power for the Welsh Ministers to prescribe which persons are to be exempt.

181. We acknowledge the Minister's evidence to us on section 18 of the Bill.

182. In our view, the approach the Minister has adopted in section 18 concerning council tax discounts is similarly broad in scope when compared with how the Minister is proposing to deal with NDR reliefs (as set out in section 5).

183. We are unconvinced by the Minister's evidence and the need to move this element of the council tax system entirely to subordinate legislative powers.

184. We repeat concerns we expressed on the way the Minister has approached provisions in Part 1 of the Bill relating to NDR reliefs and exemptions – we believe it is important that the legislature decides the extent to which citizens are taxed.

185. We also wish to draw attention to this proposal being contrary to the Minister's general comments in her letter to us on 18 January 2024 regarding the nature of the powers proposed in the Bill.

186. The Minister stated that, in relation to council tax, "the difference in the mix of powers compared with England and Scotland is minimal", before going on to note that the powers will provide the Welsh Ministers with "increased flexibility" and that the existing council tax framework is "highly restrictive". The Minister additionally noted (in Annex A of the letter) that, save for the existence of the single persons discount and discount where all residents of a dwelling are disregarded, "neither Scotland nor England are currently proposing to adopt the same policy".

187. We agree with the Minister that these proposals would provide the Welsh Government with increased flexibility. However, we are particularly concerned with the level of proposed delegated powers the Welsh Government is seeking in relation to this area, again in the absence of specific policy, given its potential impact on council taxpayers in Wales.

188. For example, we note that new section 11E of the 1992 Act, as inserted by section 18(5) of the Bill, would permit the Welsh Ministers to propose regulations which, amongst other things, would specify discounts of an amount decided by the Welsh Ministers when "such other criteria as may be prescribed by the Welsh Ministers are met" (section 11E(3)) and that those conditions may include (amongst other things) "the circumstances of, or other matters relating to, any person who is liable to the amount of council tax concerned".

189. We are unclear of what practical limitation on the use of these proposed powers such conditions could be said to offer.

190. We also draw attention to the Minister's confirmation that these powers could be used to implement means-testing for eligibility for the single person's discount "if that were a future policy preference".

191. Moreover, we again note that, in the context of a Welsh Government policy to maintain overall levels of taxation, such regulations could theoretically be used to fundamentally alter liability to council tax for significant sections of the tax base in Wales, again with potentially very limited scrutiny and with (currently) little indication as to how this Minister proposes to use those powers.

192. Indeed, we highlight the Minister's comments that "there will be no changes to the existing council tax single person discount **by this Welsh Government**" (emphasis added). We often comment on the importance of focusing on what a Bill will enable a government to do and not what the Minister proposing the Bill says they will do with a delegated power. This is an example of why we continuously and regularly must highlight the power itself and not current intention for its use. Once on the statute book, new primary legislation would be required to undo this extensive delegation of power from the legislature to the executive.

193. Similar to our views expressed above regarding sections 5, 9 and 10 of the Bill, we have concerns that wide powers are being sought in section 18 without settled policy aims in mind. Furthermore, we believe that such significant provisions relating to council tax disregards and discounts should be retained in primary legislation.

Recommendation 12. The Minister should table an amendment to the Bill to leave out section 18.

194. We note that section 19 of the Bill makes various amendments to sections 13, 13A, 32, 33 and 66 of, and omits Schedule 1B to, the 1992 Act.

195. While we acknowledge the Minister's evidence to us on section 19 of the Bill, and are mostly content, we believe there is one matter which requires further attention.

196. Section 13(1) of the 1992 Act contains a discretionary regulation-making power to provide for reduced amounts of council tax to be payable in prescribed circumstances. Section 19(2) of the Bill amends section 13(1) of the 1992 Act to require the Welsh Ministers to make such regulations. This forms part of a wider

series of amendments to the 1992 Act made by section 19 of the Bill which will enable the Welsh Ministers to make a national council tax reduction scheme in place of requiring each billing authority in Wales to set local reduction schemes.

197. In the table at section 5.1 of the EM¹¹¹, the Minister notes that the duty on the Welsh Ministers to set a national Council Tax Reduction Scheme will follow the draft affirmative procedure, explaining that regulations made under this power “require the appropriate level of scrutiny from the Senedd as the Council Tax Reduction Scheme makes a significant financial contribution to tackling poverty across Wales”. However, we believe that regulations made under this power would appear, as read with section 113 of the 1992 Act (orders and regulations), to follow the negative resolution procedure.

Recommendation 13. The Minister should clarify which scrutiny procedure will apply to regulations made under section 13(1) of the 1992 Act (as amended).

¹¹¹ EM, page 41