

National Assembly for Wales
Bill Summary

Draft Wales Bill

January 2014

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



Research
Service

The National Assembly for Wales is the democratically elected body that represents the interests of Wales and its people, makes laws for Wales and holds the Welsh Government to account.

The Research Service provides expert and impartial research and information to support Assembly Members and committees in fulfilling the scrutiny, legislative and representative functions of the National Assembly for Wales.

Research Service briefings are compiled for the benefit of Assembly Members and their support staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public. We welcome comments on our briefings; please post or email to the addresses below.

An electronic version of this paper can be found on the National Assembly website at: www.assemblywales.org/research

Further hard copies of this paper can be obtained from:

Research Service
National Assembly for Wales
Cardiff Bay
CF99 1NA

Email: Research.Service@wales.gov.uk

Twitter: [@NAWRResearch](https://twitter.com/NAWRResearch)

Blog: assemblyinbrief.wordpress.com

© National Assembly for Wales Commission Copyright 2013

The text of this document may be reproduced free of charge in any format or medium providing that it is reproduced accurately and not used in a misleading or derogatory context. The material must be acknowledged as copyright of the National Assembly for Wales Commission and the title of the document specified.

Enquiry no: 13/3344

Paper number: 14/003

National Assembly for Wales
Bill Summary

Draft Wales Bill

January 2014

Alys Thomas

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



Research
Service

Contents

1. Introduction	1
2. Background	2
2.1. Silk 1	2
2.2. Proposals concerning electoral arrangements	5
2.2.1. Green Paper on future electoral arrangements for the Assembly.....	6
2.3. Other proposals	7
2.3.1. Welsh Government	7
2.3.2. Local housing authorities: limits on housing revenue account debt ..	8
2.3.3. The Law Commission.....	8
2.3.4. First Minister: removal of power to designate after dissolution of Assembly	9
3. The draft Bill.....	9
4. Pre-legislative Scrutiny.....	16

The Draft Wales Bill

1. Introduction

The *[draft Wales Bill](#)* (“the draft Bill”) was laid in Parliament by the UK Government on 18 December 2013. Draft Bills in Westminster are published by the sponsoring department (in this case the Wales Office) and may on occasion be subject to pre-legislative scrutiny by a House of Commons Select Committee or a Joint Committee of both the House of Commons and House of Lords. The House of Commons Select Committee on Welsh Affairs is undertaking pre-legislative scrutiny of the draft Bill.

The Secretary of State for Wales issued a written statement on the draft Bill. He said:

Specifically, it will enable the Assembly to legislate about devolved taxes – a Welsh tax on transactions involving interests in land (replacing stamp duty land tax in Wales) and a Welsh tax on disposals to landfill (replacing landfill tax in Wales); it establishes a mechanism by which the Assembly can trigger a referendum in Wales on the question of whether a part of income tax in Wales should be devolved; and, subject to a vote in favour in a referendum, the Bill will enable the Assembly to set a Welsh rate of income tax, in the same way as the Scottish rate of income tax in Scotland.[...]

[...] The Draft Bill also grants the Welsh Government new powers to borrow for capital expenditure and extends the circumstances in which it can borrow in the short term to manage its budget. These powers will enable the Welsh Government to borrow to invest in renewing Wales’s infrastructure and support growth in the Welsh economy.

In addition, as I announced to the House in March, the Draft Wales Bill sets out how we intend to implement important changes to elections to the National Assembly for Wales. The Draft Bill extends Assembly terms permanently from four to five years, making it less likely that Assembly elections will coincide with Westminster parliamentary elections in future; it will remove the prohibition on candidates in Assembly elections standing in a constituency and on a regional list; and it will prohibit “double jobbing”, by preventing MPs from also being Assembly Members.²

The draft Bill also contains provisions to make minor changes to the Welsh devolution settlement that have been agreed with the Welsh Government. These include changing the name of the Welsh Assembly Government to the “Welsh Government”; providing for HM Treasury to set an aggregate borrowing limit for Local Housing Authorities in Wales and for the Welsh Ministers to set limits for each Local Housing Authority; and enabling the Law Commission to provide advice and information to Welsh Ministers on devolved matters.

¹ [Draft Wales Bill, CM 8773, December 2013 \[accessed 18 December 2013\]](#)

² [GOV.uk, Wales Office, Written Statement by the Secretary of State for Wales, Rt. Hon. David Jones MP, 18 December 2013 \[accessed 18 December 2013\]](#)

The First Minister also issued a statement in which he said that “the Welsh Government will be studying the content of the draft Bill over the coming weeks and will be providing evidence during the Pre-legislative Scrutiny stage.”³

2. Background

2.1. *Silk 1*

On 19 July 2011 the then Secretary of State for Wales, the Rt. Hon. Cheryl Gillan MP announced that an independent Commission would be established to look at the financial accountability of the Welsh Government and National Assembly for Wales.⁴

The announcement of the Commission’s chair and membership was made on 11 October 2011.⁵ It is chaired by Paul Silk formerly Clerk to the National Assembly for Wales (2001 to 2007) and a former Clerk in the House of Commons. He is joined on the Commission by four members nominated by each of the political parties in the National Assembly for Wales, and by two independent members.

The terms of reference of the Commission are:

An independent Commission will be established to review the present financial and constitutional arrangements in Wales. It will carry out its work in two parts:

Part I: financial accountability

To review the case for the devolution of fiscal powers to the National Assembly for Wales and to recommend a package of powers that would improve the financial accountability of the Assembly, which are consistent with the United Kingdom’s fiscal objectives and are likely to have a wide degree of support.

Part II: powers of the National Assembly for Wales

To review the powers of the National Assembly for Wales in the light of experience and to recommend modifications to the present constitutional arrangements that would enable the United Kingdom Parliament and the National Assembly for Wales to better serve the people of Wales.

³ Written Cabinet Statement by the Rt.Hon.Carwyn Jones AM, First Minister, *Publication by the UK Government of the draft Wales Bill*, 18 December 2013 [accessed 18 December 2013]

⁴ [Wales Office, *Next Steps for Commission on Devolution in Wales outlined*, Press Release, 19 July 2011 \[accessed 8 November 2011\]](#)

⁵ [Wales Office, *Commission on Devolution in Wales takes shape*, Press Release, 11 October 2011 \[accessed 8 November 2011\]](#)

In undertaking Part I, the Commission should:

- provide independent advice on the case for improving the financial accountability of the National Assembly for Wales consistent with the fiscal and constitutional framework of the United Kingdom;
- consult widely on a package of fiscal powers which would improve the financial accountability of the National Assembly for Wales;
- make recommendations on whether a package of fiscal powers could be devolved to the National Assembly for Wales which are likely to have a wide degree of support; and
- consider and make recommendations on how best to resolve the legal and practical implementation issues from devolving a package of fiscal powers, including consistency within the United Kingdom.

Part I will be completed before work on Part II begins.

In undertaking Part II, the Commission should:

- examine the powers of the National Assembly for Wales, and in particular:
- the boundary between what is devolved and non-devolved;
- whether modifications to the boundary should be made at this stage; and
- any cross-border implications of such modifications;
- consult widely on any proposed modifications to the current boundary;
- make recommendations on any modifications to the settlement likely to have a wide degree of support; and
- consider and make recommendations on how best to resolve the legal and practical implementation issues from those modifications.

The Silk Commission did **not consider**, in part I, the Holtham Commission's proposals for funding reform in Wales, including Welsh Ministers' existing borrowing powers, which were dealt with through a **separate bilateral process** between the United Kingdom Government and the Welsh Government.

The Silk Commission published its report on Part 1 of its remit, *Empowerment and Responsibility: Financial Powers to Strengthen Wales* in November 2012.⁶ On 5 November 2013 the Prime Minister and Deputy Prime Minister visited the Senedd to announce that UK Government had agreed to key recommendations for devolution from the Silk Commission.

⁶ [Silk Commission, *Empowerment and Responsibility: Financial Powers to Strengthen Wales*, November 2012 \[accessed 18 December 2013\]](#)

On the 18 November the UK Government published *Empowerment and responsibility: devolving financial powers to Wales*, which fleshed out the earlier announcement.

The key points are:

- **Income tax:** subject to a referendum in Wales, the Assembly and Welsh Government would be granted the power to vary the basic, higher and additional rates of income tax up or down in tandem. This would mean that 10 percentage points of each UK tax rate would no longer be due to the UK Government but to the Welsh Government.
- **Stamp duty land tax (SDLT)** and landfill tax to be devolved to the Assembly, with a corresponding deduction to the block grant.
- The UK Government will work with the Welsh Government to fully devolve **non-domestic (business) rates**. While Welsh Ministers already set these rates in Wales, under current arrangements the revenue generated does not directly affect the level of funding available to the Welsh Government.
- The UK Government has accepted in principle Welsh Government **capital borrowing powers** for infrastructure investment, subject to the availability of an appropriate independent stream of revenue to support borrowing costs.
- The UK Government will therefore provide the Welsh Government with early access to **limited capital borrowing powers** in advance of the implementation of tax powers to carry out improvements on the M4.
- The power for the Assembly to legislate, with the agreement of the UK Government, to introduce **new taxes and associated tax credits**.⁷

The Welsh Government published a position paper on the UK Government's response on the 4 December 2013.⁸ It is generally welcoming of the UK Government's response, although it identifies the need for further discussion with the UK Government on some issues. However, it expressed disappointment on two issues:

- The Welsh Government supported the Silk Commission's recommendation on income tax to devolve **separate rate varying powers**. It believes that the more limited income tax varying powers offered by the UK Government (a single Welsh rate of income tax) will not provide the same level of flexibility to any future Welsh Government.

⁷ [GOV.uk, *Empowerment and responsibility: devolving financial powers to Wales*, UK Government Response, December 2013 \[accessed 18 December 2013\]](#)

⁸ [Welsh Government, *Position Paper on the UK Government's response to Silk Part 1*, December 2013 \[accessed 18 December 2013\]](#)

- The Welsh Government saw the UK Government's refusal to devolve **Air Passenger Duty** as a missed opportunity that would have provided a useful tool to help improve the Welsh economy.

2.2. *Proposals concerning electoral arrangements*

The 2013 Queen's Speech stated that 'draft legislation will be published concerning the electoral arrangements for the National Assembly for Wales'.⁹ The accompanying document stated that the draft Bill would include provisions relating to:

- moving the Assembly **from four to five year fixed terms** to reduce the likelihood of Assembly elections coinciding with parliamentary elections;
- **overturning the ban on dual candidacy** to allow candidates in Assembly elections to stand in both constituency seats and on a regional list; and
- **preventing 'double-jobbing'**, by prohibiting Assembly Members from also being MPs.

The announcement of a forthcoming *draft Wales Bill* follows a written statement issued on 12 March 2013 by the Secretary of State for Wales, the Rt. Hon David Jones MP. The statement indicated that the Secretary of State was in favour of taking forward proposals that related to the length of Assembly terms, dual candidacy and multiple mandates:

First, **we will move the Assembly from four to five-year fixed terms**. The term of the current Assembly is, exceptionally, five years, but the Assembly is set to revert to four-year terms after the next Assembly elections in 2016. A permanent move to five-year terms would make a co-incidence between parliamentary and Assembly elections in 2020 (and every twenty years thereafter) less likely.

Second, **we will end the prohibition on candidates at Assembly elections standing in both a constituency and a region at the same time**. The Government believes that, in principle, candidates should not be barred from standing in a constituency and a region, and the current prohibition impacts disproportionately on smaller parties.

Third, **we will prohibit Assembly Members from simultaneously sitting as Members of the House of Commons**. The Government does not believe that one person can adequately serve two sets of constituents. **This prohibition would not apply to members of the House of Lords** [*Research Service emphasis*].¹⁰

⁹ GOV.UK, [Oral statement to Parliament: The Queen's Speech 2013](#), 8 May 2013 [accessed 8 May 2013]

¹⁰ [HC Deb 12 March 2013 c8WS](#)

In relation to multiple mandates, the Secretary of State was also reported as saying that if an AM or an MP won an election to the other institution they would be able to serve in both for ‘probably’ up to one year, adding that:

If it were a relatively short period we would expect [there] would be a transitional period allowed so one person could leave one institution and go to the other ... We certainly don’t want to stop anyone moving from one institution to the other but we don’t think it’s right that somebody should be elected with a view to sitting continuously in both bodies.¹¹

Further information about, and reactions to, the Secretary of State’s March 2013 announcement is available in the [Research Service Paper: Proposed changes to the Assembly’s electoral arrangements](#).

2.2.1. Green Paper on future electoral arrangements for the Assembly

The need for a Bill in this area was first identified in response to plans to reduce the number of Welsh MPs from 40 to 30 by the time of the next UK General Election and the fixing of parliamentary terms in the House of Commons to five years. On 21 May 2012, the then Secretary of State for Wales, the Rt. Hon Cheryl Gillan MP, launched a 12 week [Green Paper consultation on future electoral arrangements for the Assembly](#). According to the accompanying press notice, the Green Paper:

sets out the Government’s options and proposals for changes to the make-up of the Assembly, including the number of Assembly constituencies, the length of Assembly terms, whether candidates can stand at the same election in an Assembly constituency and a region and whether Assembly Members should be able to sit simultaneously in the Westminster Parliament.¹²

The Green Paper in particular requested views on proposals relating to: changing Assembly constituencies; the length of Assembly terms; dual candidacy; and multiple mandates.

Due to the postponement of the planned review and reduction of parliamentary constituencies, however, the Secretary of State confirmed that the UK Government would not proceed with proposed changes to Assembly constituencies:

As a result of the Electoral Registration and Administration Act 2013, the four UK Boundary Commissions will now report in 2018 on their recommendations for new parliamentary constituencies. The boundaries of parliamentary and Assembly constituencies will remain the same until then, and there is no longer an immediate need to re-establish the link between the two sets of constituencies. **The Government does not therefore intend to proceed with the changes to Assembly constituencies proposed in the Green Paper [RS emphasis].**¹³

¹¹ Wales Online, [Ban lifted on AMs standing for both constituency and regional seat](#), 12 March 2013 accessed 9 May 2013]

¹² Wales Office, [A Green Paper on future electoral arrangement for the National Assembly for Wales](#), May 2012, page 8 [accessed 9 May 2013]

¹³ [HC Deb 12 March 2013 c8WS](#)

Assembly elections are not within the scope of the Assembly's legislative powers under Schedule 7 to the *Government of Wales Act 2006*.¹⁴

The First Minister stated in a plenary debate on the Green Paper in the Assembly on 12 June 2012 that:

I do not want to be wholly negative about the Green Paper. I welcome, for example, the consultation on whether the Assembly should have five-year terms. It is a widely held view in the Chamber that clashes with UK general elections are to be avoided.¹⁵

The Green Paper was also debated in Grand Committee in the House of Lords on 18 June 2012¹⁶ and in Westminster Hall in the House of Commons on 3 July 2012.¹⁷

The Wales Office's consultation on the Green Paper closed on 13 August 2012. A total of 68 responses were received and a summary was published by the Wales Office in November 2012.¹⁸ Responses were received to the consultation from, amongst others, the Welsh Government, all four Assembly party groups, a separate submission from the Welsh Conservatives, three MPs¹⁹ representing Welsh constituencies and 11 Assembly Members.²⁰

2.3. Other proposals

2.3.1. Welsh Government

The term "Welsh Government" has been used by the Welsh Government itself since the 2011 Assembly election. However, the *Government of Wales Act 2006* still uses the term the "Welsh Assembly Government" to refer collectively to the Welsh Ministers, Deputy Welsh Ministers and the Counsel General. Proposals in draft Bill will change this to align the statutory name with the unofficial name, "Welsh Government". The Bill does not change other statutory names that have a specific meaning in the 2006 Act, such as "Welsh Ministers".

¹⁴ *Government of Wales Act 2006* (Chapter 32) [accessed 9 May 2013]

¹⁵ National Assembly for Wales, *RoP: Plenary*, 12 June 2012 [accessed 9 May 2013]

¹⁶ [HL Deb 18 June 2012 cGC125](#)

¹⁷ [HC Deb 3 July 2012 c187WH](#)

¹⁸ Wales Office, *A Green Paper on future electoral arrangements for the National Assembly for Wales: A summary of responses*, November 2012 [accessed 9 May 2013]

¹⁹ Guto Bebb, Madeline Moon and Peter Hain

²⁰ Christine Chapman, David Rees, Janice Gregory, Julie James, Julie Morgan, Ken Skates, Leighton Andrews, Lesley Griffiths, Mark Isherwood, Mike Hedges, Jeff Cuthbert

2.3.2. Local housing authorities: limits on housing revenue account debt

The *Housing (Wales) Bill* currently at Stage 1 in the Assembly makes provision for the abolition of the Housing Revenue Account Subsidy system and the introduction of *new self-financing arrangements* for local housing authorities. The Explanatory Memorandum to the Bill states:

The intention is to abolish the primary legislation that sets the framework for the system in Wales by repealing the relevant provisions and making appropriate transitional arrangements. In order to exit from the system, new powers will be provided for the Welsh Ministers to make determinations to:

- (i) Set a settlement value and the procedures to be followed to enable each local housing authority to exit from the Housing Revenue Account Subsidy system.
- (ii) To amend the settlement value in the event of an error or a change in a matter that was taken into account in the settlement value.

As part of the exit agreement, HM Treasury require a housing-related borrowing limit to be set for local housing authorities. HM Treasury propose bringing forward the relevant provisions within **an appropriate UK Bill** [*Research Service emphasis*]. However, the legislative mechanism and timescales for setting borrowing limits for local housing authorities are currently under discussion.

This clause in the draft Bill enables the Treasury to set a cap on the maximum level of housing debt that may be held, in aggregate, by Welsh local housing authorities (“LHAs”) and requires the Welsh Ministers to determine how much housing debt may be held by each LHA within that cap. This creates a similar system in Wales to that which applies in England by virtue of sections 171 – 173 of the *Localism Act 2011*.

2.3.3. The Law Commission

In 2012 the Constitutional and Legislative Affairs Committee of the Assembly conducted an inquiry into a separate Welsh jurisdiction. The Committee heard evidence about the work of the Law Commission and most witnesses were broadly in favour of some body to review Welsh law. The Committee recommended that:

a body should be entrusted with reviewing and assisting with the consolidation of Welsh law. Such a body could form part of the existing Law Commission for England and Wales or be a newly established body.²¹

The Explanatory Notes to the draft Bill argue that the powers of the Law Commission in relation to advice to the Welsh Government are currently unclear. At present law reform matters relating to the law of England and Wales are only referred by UK government departments, albeit the Welsh Government can request these departments to refer a matter on behalf of the Welsh Government.

²¹ [National Assembly for Wales, Constitutional and Legislative Affairs Committee, *Inquiry into a Separate Welsh Jurisdiction*, December 2012 \[accessed 18 December 2013\]](#)

Clause 21 inserts new provisions into the *Law Commissions Act 1965* ("the 1965 Act") in order to impose a new duty on the Law Commission to provide advice and information to the Welsh Ministers directly. This makes it clear that the Welsh Ministers will be able to refer law reform matters to the Law Commission themselves. However, the draft Bill will not place the Welsh Ministers on the same footing as UK Government Ministers or Scottish Ministers, vis a vis the Law Commission or the Scottish Law Commission, respectively. For instance, the Law Commission will not be under a duty to provide the Welsh Ministers with a comprehensive programme of consolidation and revision of statute law in devolved areas.

2.3.4. First Minister: removal of power to designate after dissolution of Assembly

This proposal is a technical one that inserts additional wording into the *Government of Wales Act 2006* to clarify that the First Minister retains his or her post in the event of dissolution of the Assembly, ie before an election. Currently, section 46 of the 2006 Act provides that the Presiding Officer can appoint someone to exercise the First Minister's functions if he/she dies, becomes unable to act or ceases to be an Assembly Member. It was not intended that this power could be exercised by the Presiding Officer where the First Minister had ceased to be an Assembly Member only by reason of the dissolution of the Assembly. Clause 5 of the draft Bill rectifies this technical anomaly.

3. The draft Bill

The Bill has 26 clauses and two schedules and is divided into 4 parts.

Part 1: the Assembly and Ministers

Clause 1: Frequency of Assembly ordinary general elections

The Assembly passed a resolution on 16 March 2011 which called for its elections to be delayed by one year to avoid a clash with the Westminster elections. This was implemented by section 5 of the *Fixed-term Parliaments Act 2011* which moved the date of the next Assembly elections from 7 May 2015 to 5 May 2016. Under the law as it stands, the Assembly will revert to four year terms after that date, which would mean there could still be potential clashes with Westminster elections.

Clause 1 therefore amends section 3(1) of the *Government of Wales Act 2006* to **provide for ordinary general elections to the Assembly to take place every five years**, rather than every four years as at present. The next Assembly elections after 2016 would be in 2021, thus avoiding a clash with the 2020 Westminster election. It also repeals section 5 of the *Fixed-term Parliaments Act 2011*, which will no longer be needed.

Clause 2: Removal of restriction on standing for election for both constituency and electoral region.

Clause 2 amends section 7 of the Government of Wales 2006 to **remove the restriction on standing as both a constituency and a regional candidate in an Assembly election**. However, a person cannot stand as a candidate in a constituency outside of the region in which they are standing. It also provides that a candidate on a regional party list cannot stand in a constituency as a candidate for another party.

The clause also makes provision for individual candidates standing on a regional list: they cannot stand either as party candidates in a constituency in the region or as a candidate for a constituency outside that region. It also makes provision for how regional seats are to be allocated following the removal of the prohibition. A regional vacancy occurring between general elections cannot be filled by a candidate on a party list submitted at the previous general election if the candidate was returned at that election or has since been returned in an Assembly constituency by-election.

Clause 3: MPs to be disqualified for membership of Assembly

Clause 3 inserts a new subsection (za) into section 16(1) of the *Government of Wales Act 2006* to provide that **members of the House of Commons are disqualified from being members of the Assembly**.

A new section 17A(1) in the *Government of Wales Act 2006* provides that when an MP is elected to the Assembly, they have eight days' grace in which to resign their seat in the House of Commons before becoming disqualified from becoming an AM.

A sitting Assembly Member can however be elected as an MP and retain both offices until the next Assembly general election, if that election is to be held within six months.

On the other hand, a sitting MP who is elected to the Assembly cannot retain both seats until the next UK general election, even if that is to be held within six months; he or she must decide, within the eight-day period referred to above, which seat to retain.

Clause 4: Welsh Government

Clause 4 **enables the use of the term “Welsh Government” in formal, legal documents**. It also gives effect to the renaming wherever it occurs in the *Government of Wales Act 2006* or other legislation, instruments or documents made before clause 4 of the Bill comes into force.

Clause 5: First Minister: removal of power to designate after dissolution of Assembly

Clause 5 inserts additional wording into section 46(5)(c) of the *Government of Wales Act 2006* to **clarify that the First Minister retains his or her post in the event of dissolution of the Assembly** ie before an election. Currently, section 46 of the 2006 Act provides that the Presiding Officer can appoint someone to exercise the First Minister's functions if he/she dies, becomes unable to act or ceases to be an Assembly Member. It was not intended that this power could be exercised by the Presiding Officer where the First Minister had ceased to be an Assembly Member only by reason of the dissolution of the Assembly. Clause 5 of the draft Bill rectifies this technical anomaly.

Part 2 Finance

Part 2 of the Draft Bill **enables the Assembly to legislate about devolved taxation**. The devolved taxes specified in this Part are a **Welsh tax on transactions involving interests in land** (replacing stamp duty land tax in Wales) and a **Welsh tax on disposals to landfill** (replacing landfill tax in Wales). New devolved taxes may be added by an Order in Council.

Subject to a vote in favour in a **referendum**, the Assembly may also set a Welsh rate for the purpose of calculating the rates of **income tax** to be paid by Welsh taxpayers.

Clause 6: Taxation: Introduction

This clause provides **the structure within which the Assembly may legislate on tax** by inserting a new Part 4A in the *Government of Wales Act 2006*. Essentially, it gives the Assembly the power to legislate in relation to "devolved taxes", as defined in the new Part 4A.

Clause 7: Amendments relating to the Commissioners for Revenue and Customs

Clause 7 amends the *Commissioners for Revenue and Customs Act 2005* ("CRCA 2005") and the *Customs and Excise Management Act 1979* **to enable Her Majesty's Revenue and Customs ("HMRC") to disclose information to Welsh Ministers** regarding devolved taxes; to make such information confidential and subject to onward disclosure controls; and to ensure that HMRC do not have statutory powers or duties in relation to devolved taxes, which will be a matter for the Welsh Ministers, while leaving scope for HMRC to administer these taxes on behalf of Welsh Ministers if desired.

Clause 8: Welsh rate of income tax

Clause 8 deals with the Welsh rate of income tax. Subsection (1) inserts Chapter 2 into the new Part 4A of Government of Wales Act 2006; the Chapter consists of sections 116C to 116 I. Subsection (2) provides that the sections inserted by subsection (1) will come into force in accordance with clause 12; i.e. there would first need to be a referendum vote in favour of the Assembly being able to set a Welsh rate of income tax, and then, HM Treasury would have the power to appoint the first tax year for which the new provisions would have effect.

The power itself for the Assembly to set, by resolution, a Welsh rate of income tax, for Welsh taxpayers, is conferred by new section 116C of the 2006 Act. This new section also provides that each Welsh rate resolution will apply for only one tax year, and that it must be a single rate of either a whole number or a half number (see sub-sections (3)-(6)).

The provision that the Welsh rate resolution must specify a single rate does not mean that the Assembly must set a flat rate of income tax for all Welsh taxpayers. Instead, it means that the Assembly is able to vary each of the basic rate, the higher rate and the additional rate of income tax **by the same number of percentage points** (this is dealt with in clause 9(2)-(5)). To calculate what a Welsh taxpayer would pay as the basic rate of income tax in any year, one would:

- Take the basic rate set by the UK Parliament for that year
- Deduct 10 percentage points
- Add the Welsh rate.

So, if the Welsh rate was 9 per cent, the Welsh taxpayer would pay 1 per cent less than an English taxpayer. The same would apply to the higher and additional rates.

It can be seen from this that the new power to set an income tax rate would not enable the Assembly to seek to redistribute wealth via the tax system.

An important element of the new system is who will be a “Welsh taxpayer”. This is defined in new section 116D, inserted by clause 8. The definition attempts to avoid individuals being subject to more than one regime of taxation for the same income and the same period, but the UK Government recognises that more work is needed to ensure that a person cannot be both a “Welsh taxpayer” under this Bill, and a “Scottish taxpayer” under the *Scotland Act 1998*, for the same period.

Clause 9: Income tax for Welsh taxpayers Clause 9 amends the *Income Tax Act 2007* (“ITA 2007”) and the *Provisional Collection of Taxes Act 1968* (“PCTA 1968”) relating to income tax for Welsh taxpayers. It amends sections 6(2A) and 6(2B) of ITA 2007. The effect is to ensure that Welsh taxpayers pay a rate of tax calculated by reference to the Welsh rate set under section 116C on their non-savings income,

rather than the rates determined by Parliament for that year. See above for the effect of these provisions on the calculation of the applicable rate.

Clause 9 also deals with savings income and dividend income, which will remain the same for Welsh taxpayers as for English ones..

Clause 10: Referendum about commencement of income tax provisions and Clause 11 Proposal for referendum by Assembly

Clauses 10 and 11 **allow a referendum to be held in Wales about whether the income tax provisions, set out in clauses 8 and 9, should come into force.**

Clause 10 requires a **draft Order in Council** causing a referendum to be held to be **approved by both Houses of Parliament** and by an **Assembly resolution**, passed by not less than a **two-thirds majority of AMs** (i.e. at least 40 AMs voting in favour). If the Assembly passes a resolution calling for a referendum (again by at least a two-thirds majority), clause 11 requires that a draft Order in Council be laid, or the Secretary of State must explain the failure to do so. **The income tax provisions would be brought into force by HM Treasury order**, made under clause 12, if the majority of voters in a referendum vote in favour.

Clause 12: Commencement of the income tax provisions if majority in favour

Clause 12 sets out the **procedure for the income tax provisions to come into force if a majority of voters in a referendum vote in favour**. It gives the power to make such an order to HM Treasury. The order could specify a day on which the income tax provisions (in clauses 8 and 9) come into force, appoint a tax year as the first year for which a Welsh rate resolution may be made, or appoint a tax year or financial year for which provisions have effect. Different provision may be made for different parts of the amendments made by clauses 8 and 9.

Clause 13 Welsh tax on transactions involving interests in land and Clause 14 Disapplication of UK stamp duty land tax

Clause 13 and 14 together provide **the mechanism for bringing to an end** the collection and management of **stamp duty land tax (SDLT)** in Wales and allowing the Assembly to bring in its own **tax on the acquisition of interests in land in Wales**.

Clause 13 introduces a new Chapter 3 into Part 4A of *Government of Wales Act 2006*, defining the scope of this devolved tax (the acquisitions to which it will apply, land to which it will not apply and persons who will not be liable to pay it).. Clause 14 disapplies SDLT from land transactions in Wales, from a date to be appointed by HM Treasury. This ensures that no land transactions will be subject to double taxation. Schedule 2 contains further amendments relating to the disapplication of SDLT to Wales and provides for the supply of information about land transactions in Wales to HMRC.

Clause 15: Welsh tax on disposals to landfill and Clause 16: Disapplication of UK landfill tax

Currently landfill tax is charged on the disposal of waste to landfill in England and Wales. Clauses 15 and 16 together provide the **mechanism for bringing to an end the collection and management of landfill tax** in Wales and allowing the **Assembly to bring in its own tax on disposals of waste to landfill**.

Clause 15 introduces new Chapter 4 into Part 4A of *Government of Wales Act 2006*, which sets out the scope of the Welsh Government's power to introduce a tax on disposals to landfill made in Wales. Clause 16 disapplies landfill tax from disposals in Wales from the landfill tax charge from a date to be appointed by HM Treasury, so as to avoid double taxation.

Clause 17: Borrowing by the Welsh Ministers

This clause amends sections 121 and 122 of the *Government of Wales Act 2006*, and inserts a new section 122A, to revise the circumstances under which the **Welsh Ministers may borrow** and to set out the main controls and limits on such borrowing.

The clause enables the Welsh Ministers to borrow –for the following purposes:

- to manage in-year volatility of receipts, where actual income for a period differs from the forecast receipts for that period;
- to provide a working balance to the Welsh Consolidated Fund (WCF) in order to manage cash-flow;
- to deal with differences between the full-year forecast and outturn receipts for devolved taxes, i.e. to manage shortfalls across financial years as well as in-year (subject to HM Treasury rules); and
- to fund capital expenditure (subject to HM Treasury approval and rules on capital expenditure).
- The new power to borrow to fund capital expenditure is not limited to borrowing from the Secretary of State, However, the Welsh Ministers are not allowed to mortgage property as security for loans. Nor does the new power enable the Welsh Ministers to borrow money by way of issuing loan stock, such as bonds or gilts. For non-capital purposes, the Welsh Ministers can borrow only from the Secretary of State. At present, the Welsh Ministers can borrow from other persons in order to carry out their functions under *the Welsh Development Agency Act 1975* (essentially functions of facilitating economic regeneration and development), but only from the Secretary of State for other purposes.

- The draft Bill also maintains the current statutory limit of £500 million on the aggregate amount that the Welsh Ministers can borrow for non-capital purposes, but allows a further £500 million to be borrowed for capital expenditure. In both cases, the maximum figure can be changed in future by Secretary of State order, subject to Treasury consent and House of Commons approval.

Clause 18: Repeal of existing borrowing powers

This clause repeals the Welsh Ministers' power to borrow under Schedule 3 to the *Welsh Development Agency Act 1975*, as well as the Treasury's power to guarantee such borrowing.

Clause 19: Reports on the implementation and operation of this Part

This clause sets out the requirements for the Secretary of State and Welsh Ministers to report on the implementation and operation of the new finance powers.

Part 3: Miscellaneous

Clause 20: Local housing authorities: limits on housing revenue account debt

Clause 20 amends Part 6 of the *Local Government and Housing Act 1989* (the "1989 Act"). This enables the **Treasury to set a cap on the maximum level of housing debt** that may be held, in aggregate, by Welsh local housing authorities ("LHAs") and requires the **Welsh Ministers to determine how much housing debt** may be held by each LHA within that cap.

Clause 21: The work of the Law Commission so far as relating to Wales

Clause 21 inserts new provisions into the *Law Commissions Act 1965* ("the 1965 Act") in order to impose a **new duty on the Law Commission to provide advice and information to the Welsh Ministers directly**. This makes it clear that the Welsh Ministers will be able to refer law reform matters to the Law Commission themselves. However, the draft Bill will not place the Welsh Ministers on the same footing as UK Government Ministers or Scottish Ministers, vis a vis the Law Commission or the Scottish Law Commission, respectively. For instance, the Law Commission will not be under a duty to provide the Welsh Ministers with a comprehensive programme of consolidation and revision of statute law in devolved areas.

Part 4: General

Clause 22: Orders

Clause 22 specifies that any order made under the draft Bill would be made by statutory instrument.

Clause 23: Interpretation

Clause 23 is the interpretation clause for the draft Bill.

Clause 24: Power to make supplementary, consequential, etc provision

Clause 24 empowers HM Treasury, by order, to make supplementary, incidental or consequential provision as appears appropriate in connection with bringing into force the provisions in Part 2 (finance) These provisions give the Assembly no role, not even where HM Treasury is amending a Measure or Act of the Assembly. The orders are to be approved by the House of Commons only.

Clause 25: Commencement

Clause 25 sets out how the sections of the Bill are to be commenced.

Clause 26: Extent and short title

Clause 26 sets out the territorial extent and short title of the Bill.

4. Pre-legislative Scrutiny

The [House of Commons Select Committee on Welsh Affairs](#) (“Welsh Affairs Committee”) is conducting pre-legislative scrutiny of the Bill. Its deadline for submissions was 16 January 2014.

Interested parties were invited to consider:

- Are the Government’s proposals, as set out in the draft Bill, in respect of both financial devolution and the National Assembly’s electoral arrangements sound? If not, how could the draft Bill be improved?
- Do the provisions of the draft Wales Bill deliver the policy intentions of the UK Government? Could the wording of the draft Bill be improved or changed?

The Welsh Affairs Committee particularly welcomed suggestions of specific amendments or modifications to clauses in the Bill.

The Welsh Affairs Committee began taking oral evidence on **Tuesday 14 January 2014**. The Committee intends to report in late March 2014.