



## ***Wales Bill 2013-14***

### **Bill 186 of 2013-14**

**RESEARCH PAPER 14/19** 27 March 2014

The *Wales Bill* had its first reading in the House of Commons on 20 March 2014; it is due to have its second reading on 31 March 2014. The Bill devolves some tax-raising powers to the National Assembly for Wales. Stamp duty and landfill tax are devolved, while a power is created to reduce income tax by 10 pence in the pound and put a Welsh rate of income tax in its place. The Bill allows these powers over income tax to be devolved only if they are approved in a referendum, the calling of which is subject to parliamentary approval and a two-thirds majority in the Assembly.

The Bill also changes the term of the Assembly to five years, allows candidates to stand in constituencies and regions at the same time, and removes the possibility of sitting both in the Assembly and in the House of Commons. There are some other smaller changes, one of which, adjusting the relationship between Welsh ministers and the Law Commission, could be seen as partial preparation for moves towards a separate legal jurisdiction.

The Bill extends to the whole of the UK, subject to any restricted application in the statutes that it amends.

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## Research Paper 14/19

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## Summary

The *Wales Bill 2013-14* had its first reading in the House of Commons on 20 March 2014; it is due to have its second reading on 31 March 2014.

The Bill is the latest in a series of adjustments to devolution in Wales. It does not recast the governance structures or the style of legislating, in contrast with the *Government of Wales Acts* of 1998 and 2006, but it does introduce important new powers, expanding the competence of the Assembly into financial matters, as well as modifying some features of the Assembly.

The Bill comes after a period of discussion by independent commissions: the Holtham Commission, which looked at funding, tax and borrowing, and the Silk Commission, which, in its first report, published in November 2012, also examined the financial powers of the National Assembly for Wales. The Bill follows through the Government's acceptance of the bulk of the recommendations in the Silk Commission's first report, which it announced in its response to the report, published in November 2013.

Tax policy, except council tax, is currently outside the legislative competence of the National Assembly for Wales. The Bill changes that competence to include certain taxation matters, which are thereby devolved. Stamp duty land tax and landfill tax are devolved. The possibility is created of devolving or introducing new taxes. The potential is also created to devolve some powers over income tax if Wales voted in favour of this in a referendum. The Bill does not call a referendum itself: this would be done subject to approval by both Houses of Parliament and a two-thirds majority in the Assembly. The Bill would also give the Assembly greater borrowing powers, including for capital expenditure.

The financial measures introduced by the *Wales Bill* are broadly similar to those introduced for Scotland in the *Scotland Act 2012*. The *Scotland Act 2012* did not require a referendum on devolution of income tax powers as Scotland voted in favour of tax varying powers for the Scottish Parliament in the 1997 referendum. Previous referendums in Wales have been characterised by low turnout, marginal results and/or controversy over the funding of campaign groups.

The Bill makes changes in some other areas, most notably in respect of the Assembly itself:

- it changes the term of the Assembly to five years,
- allows candidates to stand in constituencies and regions at the same time, and
- removes the possibility of sitting both in the Assembly and in the House of Commons

The Bill also makes provision on local housing authorities. This is connected to the abolition of Housing Revenue Account Subsidy (HRAS), including a requirement on Welsh ministers to introduce a borrowing cap on individual local authorities.

Finally, the Bill adjusts the relationship between Welsh ministers and the Law Commission, providing for a protocol between the Law Commission and the Welsh Government in respect of the Commission's work relating to Welsh devolved matters. This could be seen as partial preparation for moves towards a separate legal jurisdiction.

## 1 Introduction

### 1.1 The development of devolution in Wales

The devolution arrangements for Wales have been adjusted a number of times. After a referendum in 1997 Wales gained devolved governance under the *Government of Wales Act 1998*. This was part of the general policy that also created devolution in Scotland and, subject to local variation, the renewal of devolution in Northern Ireland.

The level of devolution in Wales was comparatively limited, being effectively the powers previously exercised by the Secretary of State for Wales. These were transferred to the Welsh Ministers, who delegated the exercise of them to the Assembly.

New arrangements were established under the *Government of Wales Act 2006*, which also provided for further changes thereafter. This Act was inspired by the report of the Richard Commission, convened by the Welsh Assembly Government to review the arrangements, and it followed much of the detail of that report.<sup>1</sup> Under the 2006 Act, Wales gained the power to make secondary legislation on a relatively compact set of matters. This could be expanded either by UK primary legislation devolving to Wales the functions that it created for England or the UK, or by means of special orders that put new matters under the remit of the Assembly. Also, there was an option to move to having primary law-making powers over a larger set of matters. While the Richard Commission had recommended this as a planned move in 2011, the Act made it subject to approval in a referendum. In practice, the change was approved in a referendum in 2011, and came into force after that year's Assembly election.

In part, the relatively slight devolution that was offered initially reflected the lack of preceding institutional structures in Wales, as well as the relative caution shown in public support for the new Assembly. Over time, new powers have been added, at first in response to pressure from the political class (the first set of powers under the 2006 Act), and then in response to a referendum result. Nevertheless the arrangements have remained subject to criticism, with some noting that Welsh political debate has focused to a striking extent on constitutional and structural issues throughout the devolution period.

There has been a strand of discontent within the Welsh political class over the relatively limited scope of devolution there. Some have linked low popular engagement with the Assembly, seen most obviously in the turnout for elections, to the degree of devolved power. Even after the move to primary law-making under the 2006 Act, the first statutes passed by the Assembly have been referred to the Supreme Court to decide if they are within competence. A pressure for change coming from a different direction is the desire of the present Government to encourage greater financial accountability among devolved administrations. This saw a change in Scotland under the *Scotland Act 2012* to a significant amount of fiscal devolution, partly in order to oblige the Scottish Parliament to raise a portion of the money it spends.

In 2008 the Welsh Assembly Government set up a commission to look at the Barnett formula, tax powers, and borrowing, which published its final report in July 2010. The Independent Commission on Funding and Finance for Wales, chaired by Gerald Holtham, recommended replacing the Barnett formula with a needs-based formula, giving the Assembly the power to vary income tax by three pence in the pound, devolution of some other taxes, and increased borrowing powers. The Holtham Commission is discussed in [Standard Note 6288](#).

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<sup>1</sup> The Commission on the Powers and Electoral Arrangements of the National Assembly for Wales, chaired by Lord Richard. For more on the 2006 Act, see RP 05/90, [The Government of Wales Bill 2005](#).

Around the same time, in 2008-09, the Scottish devolution arrangements were being reviewed by the Commission on Scottish Devolution (the Calman Commission). This also recommended changes to fiscal powers, as well as a range of other adjustments to devolution across a range of subject areas.

After the 2010 election the new UK Government announced that it would establish a commission to look more broadly at the arrangements in Wales, along the lines of the Calman Commission in Scotland. This would be deferred until after the move to primary powers in May 2011. In October 2011 the Government moved to fulfil this commitment, establishing the Commission on Devolution in Wales, chaired by Paul Silk.

The remit of the Silk Commission was split into two parts. For the first part it was required to look at financial powers:

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.<sup>2</sup>

It did not consider the Holtham Commission's recommendations on funding reform and existing borrowing powers: these were taken forward by the two Governments.

The second part of its remit was:

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<sup>3</sup>

In Scotland the Calman report led to the *Scotland Act 2012*, which included, along with various adjustments to devolved powers, significant changes to the tax and funding arrangements for Scotland. The rate of income tax would be reduced by 10 pence in the pound, the Scottish Parliament would have the power to impose a Scottish rate of income tax to make up as much or little additional revenue as it saw fit; some other taxes would be devolved, with the power to create new taxes subject to parliamentary approval; and borrowing powers were increased. This is discussed at length in the following Library briefings, and is a touchstone for the debate about devolving fiscal powers:

Standard Note 5984, [Devolution of tax powers to the Scottish Parliament](#), 2 February 2012

Standard Note 6302, [Scotland Bill: amendments in the House of Lords](#), 27 April 2012

Research Paper 11/49, [Scotland Bill: committee stage report](#), 14 June 2011

Research Paper 11/06, [Scotland Bill](#), 18 January 2011

The Silk Commission's [first report](#), published in November 2012, covered fiscal powers.<sup>4</sup> The UK Government published its [response](#) to this report in November 2013, accepting most of Silk's recommendations, and these have fed into the present Bill. However, the Silk

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<sup>2</sup> *Empowerment and Responsibility: financial powers to strengthen Wales*, Commission on Devolution in Wales, November 2012, Executive Summary, p3

<sup>3</sup> *Empowerment and Responsibility: legislative powers to strengthen Wales*, Commission on Devolution in Wales, March 2014, Executive Summary, p4

<sup>4</sup> *Empowerment and Responsibility: financial powers to strengthen Wales*, Commission on Devolution in Wales, November 2012

Commission's [second report](#), published in March 2014, covering legislative powers, is not reflected in this Bill.<sup>5</sup> The Government indicated that it would consider the proposals in the second report further before moving towards any implementation.<sup>6</sup> In doing so, it gave a rationale for the introduction of the present Bill at this time:

I do not consider the Wales Bill to be a suitable vehicle to implement the recommendations made in today's report [Silk 2]. I believe it is important that the Bill remains focused on delivering the devolution of tax and borrowing powers which the Government announced in November. The Government intend that these powers will be devolved to the Assembly and the Welsh Government well before the next Assembly elections in May 2016, subject to the successful parliamentary passage of the Bill. Adding additional measures to the Bill in relation to Assembly powers would inevitably delay the Bill's progress and jeopardise this timetable.<sup>7</sup>

The Government published a [draft Wales Bill](#) in December 2013,<sup>8</sup> on which the Welsh Affairs Committee [reported](#) in February 2014.<sup>9</sup>

Recurring themes throughout the process of adjusting devolution in Wales have been the desires to increase effectiveness, to increase accountability and to clarify responsibilities through a coherent set of identifiable powers. These were cited by the Richard Commission in favour of the 2006 Act with its initial measure-making powers, by those campaigning for the move to primary powers under that Act, and by the Silk Commission in favour of its recommendations across its two reports. The financial powers which are the subject of this Bill speak mainly to the aim of accountability.

## 1.2 The Bill

The [Wales Bill 2013-14](#), Bill 186, is in four parts:

**Part 1**, clauses 1 to 5, makes changes to the National Assembly for Wales and the Welsh Assembly Government.

**Part 2**, clauses 6 to 22, establishes new tax and borrowing arrangements. It devolves stamp duty and landfill tax, creates borrowing powers, and creates the possibility of a Scottish-style 10 pence reduction in income tax, coupled with the power to impose a Welsh rate of income tax in compensation, subject to approval in a referendum. It also creates the possibility of new devolved taxes.

**Part 3**, clauses 23 and 24, covers two miscellaneous issues: limits on housing revenue account debts, and the relationship between the Law Commission and Welsh institutions.

**Part 4**, clauses 25 to 29, sets out commencement, extent, and other end matter.

**Schedule 1** gives detail on the tax referendum, while **Schedule 2** covers amendments consequential to the devolution of stamp duty.

As noted above, the Government wishes to put the new powers in place ahead of the next Assembly elections in 2016. This includes not only the tax and borrowing provisions, but also those relating to the Assembly itself, not least since clause 2 affects the candidacy rules for

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<sup>5</sup> *Empowerment and Responsibility: legislative powers to strengthen Wales*, Commission on Devolution in Wales, March 2014

<sup>6</sup> HC Deb 3 March 2014, cc42-4WS

<sup>7</sup> HC Deb 3 March 2014, cc42-4WS

<sup>8</sup> Cm 8773

<sup>9</sup> *Pre-legislative scrutiny of the draft Wales Bill*, HC 962 2013-14, 28 February 2014

Assembly elections by allowing candidates to stand both in constituencies and in electoral regions.

Accompanying the Bill were its [explanatory notes](#) and [impact assessment](#), a [paper](#) setting out how the Government intends to implement the financial measures,<sup>10</sup> and a [response](#) to the Welsh Affairs Committee's report on the draft Bill.<sup>11</sup>

## 2 Part 1: National Assembly for Wales and Welsh Government

Part 1 of the Bill makes changes to the National Assembly, lengthening the term to five years in order to avoid clashes with UK general elections, removing the bar on candidates standing in constituencies and electoral regions, preventing dual membership of the Assembly and the House of Commons, and renaming the executive as the Welsh Government.

### 2.1 Electoral arrangements for the National Assembly for Wales

#### **Background**

*Green Paper on future electoral arrangements for the NAW*

On 21 May 2012, the Secretary of State for Wales published a Green Paper on future electoral arrangements for the National Assembly for Wales.<sup>12</sup> The consultation sought views on the effects of changes to the Westminster constituencies on the National Assembly for Wales following the UK Parliamentary boundary review (see below); the extension of the length of term for the Assembly from four to five years; the prohibition on candidates standing for election in a constituency and a region at Assembly elections; and whether MPs should be disqualified from being members of the Assembly.

#### *Responses to the Green Paper*

The summary of the responses to the Green Paper noted that 'there was general support among respondents that the current size of the Assembly should be maintained' and that 'a significant majority of respondents agreed that, if the link between parliamentary and Assembly constituencies is reinstated, the number of Assembly regional seats could be increased or decreased to take account of any change in the number of Assembly constituencies'.<sup>13</sup>

A small majority of respondents, including all four political parties in the Assembly, favoured moving to five-year fixed terms. The main reason they gave for this was that five year fixed terms would avoid a regular coincidence (every 20 years) with elections to the Westminster Parliament.<sup>14</sup> However, there would still be a possibility of an Assembly election coinciding with a UK general election in the event that an early one was called under the terms of the *Fixed-term Parliaments Act 2011* or, equally, an extraordinary general election for the NAW was called under the terms of the *Government of Wales Act 2006*.

A small majority of respondents disagreed with the Government's proposal to end the prohibition on candidates standing for both a constituency and regional seat at the same time.

A large majority of respondents agreed that AMs should be prevented from sitting in the Westminster Parliament.

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<sup>10</sup> *Wales Bill: financial empowerment and accountability*, March 2014, Cm 8838

<sup>11</sup> *Government response to the Welsh Affairs Committee Fourth Report of session 2013-14: pre-legislative scrutiny of the draft Wales Bill*, Dep 2014-0453, 20 March 2014

<sup>12</sup> A Green Paper on the future electoral arrangements for the National Assembly for Wales, [Cm 8357](#)

<sup>13</sup> [Summary of responses to the Green Paper on future electoral arrangements for the NAW](#)

<sup>14</sup> *ibid*, p6

Some respondents to the Green Paper also argued for a change to the Single Transferable Vote system for NAW elections, but the Government responded that it believed that the current system used, the Additional Member System, was working well and it had no plans to change it.<sup>15</sup>

#### *Welsh Government response to the Green Paper*

The Welsh Government published its response to the Green Paper on 27 July 2012 and it raised concerns over the authority of Westminster over the Assembly. The response stated that the Green Paper raised important issues of constitutional and democratic principle and that it was for the National Assembly to determine its own electoral arrangements:

...no change to the Assembly's current electoral arrangements should be made without the Assembly's consent. This is the fundamental constitutional principle in issue. It is a necessary consequence of a constitution based upon the principle of devolution.

In the case of the recent Scotland Act conferring new powers on the Scottish Parliament, the legislative process was only taken through to its conclusion once the Scottish Parliament had formally given its consent to the proposals. The same principle ought equally to apply to proposed changes to a devolved legislature's electoral arrangements, and this principle was affirmed, on an all-Party basis, in the Assembly following a debate on 12 June 2012.<sup>16</sup>

#### *Westminster reaction to the Green Paper*

A number of debates have taken place since 2012. A Westminster Hall debate was held on 3 July 2012.<sup>17</sup> The House of Lords debated the Green Paper in Grand Committee on 18 June 2012.<sup>18</sup> Geraint Davies MP led an adjournment debate on the future electoral arrangements for the National Assembly for Wales on 6 February 2013.<sup>19</sup>

For further information about these debates see Library Standard Note 6641, [Electoral arrangements in Wales](#).

The Government announced in a Written Statement on 12 March 2013 that it would take forward three of the four proposals on which it had consulted in the Green Paper:

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

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<sup>15</sup> *ibid*, p10

<sup>16</sup> [Welsh Government response to the Green Paper on future electoral arrangements for the NAW](#), 27 July 2012

<sup>17</sup> [HC Deb 3 July 2012 c187WH](#)

<sup>18</sup> [HL Deb 18 June 2012 GCc125](#)

<sup>19</sup> [HC Deb 6 February 2013 c393](#)

one person can adequately serve two sets of constituents. This prohibition would not apply to members of the House of Lords.<sup>20</sup>

### ***The draft Wales Bill and Welsh Affairs Committee report***

The draft *Wales Bill* was published on 18 December 2013.<sup>21</sup> The draft Bill made provision for ordinary general elections to the Assembly to take place every five years, instead of every four years; removed the prohibition on standing as both a constituency and a regional candidate in an Assembly election and provided that members of the House of Commons are disqualified from being members of the Assembly (with some limited exceptions).

The Welsh Affairs Committee started to take [oral evidence](#) on the draft Bill on 14 January 2014 and published its report on 28 February 2014.<sup>22</sup> The Committee recommended that the National Assembly for Wales should be given powers to determine the length of its electoral term and reached a consensus that ‘double jobbing’ of MPs and AMs was not ideal. The Committee did not reach a conclusion about the merits of removing the prohibition on candidates standing as both a constituency and a regional candidate in an Assembly election.<sup>23</sup>

## **2.2 The Bill**

### ***Frequency of Assembly elections (clause 1)***

**Clause 1** makes provision for general elections to the National Assembly for Wales to take place every five years instead of every four as at present.

Subsection (1) of the clause amends section 3(1) of the *Government of Wales Act 2006* to effect this change and subsection (2) repeals section 5 of the *Fixed-term Parliaments Act 2011* which is no longer required (this had already delayed the next NAW election for one year to avoid a clash with the 2015 general election).

The next Assembly elections will therefore take place in 2016 and 2021, avoiding a clash with the planned 2020 UK Parliamentary general election.

In its response to the Green Paper the Welsh Government had supported a permanent change to five-year terms for the Assembly but the Welsh Affairs Committee recommended that the provision should not be included in the Bill because in the Committee’s view “the term length of the NAW was a matter to be decided by the Assembly itself rather than at Westminster”:

We recommend that clause 1 of the draft Bill, relating to the frequency of Assembly ordinary general elections, be removed from the Bill and replaced with provisions that give the National Assembly the powers to determine the length of its own electoral term.<sup>24</sup>

The Government, when responding to the Committee’s report, had stated that it had already made clear in its response to the second report of the Silk Commission that “any recommendations requiring primary legislation to be implemented would need to be taken

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<sup>20</sup> [HC Deb 12 March 2013 c8WS](#)

<sup>21</sup> [Draft Wales Bill](#), Cm 8773, December 2013

<sup>22</sup> [Pre-legislative scrutiny of the draft Wales Bill](#), Welsh Affairs Committee report, HC 962, February 2014

<sup>23</sup> [Pre-legislative scrutiny of the draft Wales Bill](#), Welsh Affairs Committee report, HC 962, February 2014, p45

<sup>24</sup> [Pre-legislative scrutiny of the draft Wales Bill](#), Welsh Affairs Committee report, HC 962, February 2014, para 139

forward by the next Government in the next Parliament” and that therefore it did not intend to devolve powers in relation to Assembly terms in the Bill.<sup>25</sup>

### **Dual candidacy (clause 2)**

**Clause 2** removes the prohibition on candidates standing for election to the NAW as both a constituency member and a regional member.

Subsection (2) of Clause 2 amends section 7 of the *Government of Wales Act 2006* which made provision for the prohibition. The prohibition is lifted but if a candidate wishes to stand for both a constituency and a region the constituency must be within that region; a candidate on a regional list cannot stand in a constituency as a candidate for another party and an individual candidate standing on a regional list can stand neither as a party candidate in a constituency in the region nor as a candidate for a constituency outside that region.

Subsection (3) of Clause 2 makes consequential provision for the allocation of regional seats after the removal of the prohibition, and subsection (4) provides that a regional vacancy occurring between general elections cannot be filled by a candidate on a party list at the previous election if the candidate was returned at that election or a subsequent by-election.<sup>26</sup>

In evidence to the Welsh Affairs Committee during the pre-legislative scrutiny of the draft Bill the First Minister for Wales argued against lifting the prohibition:

We do not support the removal of the ban on dual candidacy. We take the view that the public did not understand the system where somebody could stand in a constituency and then reappear elected from a list. That situation has not changed.<sup>27</sup>

The Secretary of State for Wales argued that the ban on dual candidacy was “unique to Wales under this particular system”:

I think that it was a straightforward, nakedly partisan introduction by the Labour party and I am very proud of the fact that we are overturning it.<sup>28</sup>

One implication of dual candidacy is that a person could stand in a constituency and be defeated, yet the constituents find that that person has been elected in any case from the regional list that covers their area. This was put forward in support of the change under the 2006 Act. At the same time, dual candidacy allows smaller parties to place favoured and/or stronger candidates in constituencies and also high on their lists, increasing their chances of being elected. This explains the claim of partisanship.

The Welsh Affairs Committee did not come to a conclusion about the merits of the proposal to remove the restriction on standing as both a constituency and a regional candidate in an Assembly election but noted:

However, as a point of principle, we consider it unadvisable for electoral systems to be changed frequently. Successive changes to electoral systems risk being perceived as partisan by the public.<sup>29</sup>

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<sup>25</sup> Government response to the Welsh Affairs Committee Fourth Report of Session 2013-14: Pre-legislative Scrutiny of the Draft Wales Bill, [Dep 2014-0453](#), 20 March 2014

<sup>26</sup> [Wales Bill Explanatory Notes](#), para 15

<sup>27</sup> [Pre-legislative scrutiny of the draft Wales Bill](#), Welsh Affairs Committee report, HC 962, February 2014, para 155

<sup>28</sup> [Pre-legislative scrutiny of the draft Wales Bill](#), Welsh Affairs Committee report, HC 962, February 2014, para 156

The Government agreed with the Committee that repeated changes to the electoral system should be avoided but argued in its response to the Committee's report that the removal of the prohibition on dual candidacy would restore the situation to its pre-2006 position:

The removal of the ban on dual candidacy...has the support of three of the four political parties in the Assembly. We would argue that the change simply removes an unfair and partisan prohibition which should never have been put in place in the first place.<sup>30</sup>

### ***Disqualification of MPs from membership of the Assembly (clause 3)***

Subsection (1) of **Clause 3** inserts a new paragraph into section 16(1) of the *Government of Wales Act 2006* to disqualify members of the House of Commons from being members of the National Assembly for Wales. Subsection (2) amends the *Government of Wales Act 2006* by making provision for some limited exceptions to this disqualification:

- When an MP is elected to the NAW they will have 8 days grace in which to resign their seat in the House of Commons (this gives them time to apply to be appointed to the office of Steward or Bailiff of the Chiltern Hundreds or of the Manor of Northstead) before being disqualified from becoming an AM;
- There is no period of 8 days grace for an AM who is elected to the House of Commons as they will automatically be disqualified from membership of the NAW;
- A person who is elected to the NAW and the House of Commons on the same day, or who is a candidate for election to the House of Commons, but is elected as an AM in the interim and then subsequently elected to the House of Commons (this might arise in the case of an extraordinary election or a by-election), will also have 8 days grace before they are disqualified as an AM (again this allows an AM time to disqualify themselves from membership of the House of Commons);
- If an AM is elected as an MP within the period of 372 days before a NAW general election they will not be disqualified from membership of the Assembly for this period. This allows a limited period of 'double jobbing' so that a by-election is avoided when a scheduled Assembly election is to take place in the next year.

The Welsh Affairs Committee acknowledged in its report that the practice of 'double jobbing' has been the source of some criticism and noted that there was a general consensus amongst witnesses that the practice was not ideal:

147. Although there was a general consensus that double jobbing was not ideal, many witnesses suggested it was unnecessary to legislate to ban it. Professor Wyn Jones, Professor Scully, Andrew Davies AM, Leader of the Opposition in the Assembly, and Leanne Wood AM, Leader of Plaid Cymru, all suggested that this issue was one that could be adequately decided by the electorate (through the ballot-box) or political parties (through selection).

148. Some witnesses were not clear why the ban did not extend to other offices or positions, such as councillors or members of the House of Lords.

[...]

<sup>29</sup> [Pre-legislative scrutiny of the draft Wales Bill](#), Welsh Affairs Committee report, HC 962, February 2014, para 157

<sup>30</sup> Government response to the Welsh Affairs Committee Fourth Report of Session 2013-14: Pre-legislative Scrutiny of the Draft Wales Bill, [Dep 2014-0453](#), 20 March 2014

149. The Welsh Government described the proposal as “unnecessary”. In oral evidence the First Minister of Wales explained his opposition:

We see no need for change, but if there is to be change, it has to be consistent, and that would mean ending double jobbing, as you put it, not just AMs and MPs, but as AMs and other elected positions as well...

[...]

150. In evidence, the Secretary of State for Wales argued that both roles deserved full-time attention:

It is quite clear that the job of an Assembly Member is a significant one and has become more significant as a consequence of the devolution of primary powers after the 2011 referendum. We take the view that Assembly Members should concentrate on being Assembly Members, and Members of Parliament should concentrate on being Members of Parliament.<sup>31</sup>

The draft Bill had originally made provision for a six month limited period of ‘double jobbing’ if an AM was returned as an MP six months before an Assembly election; the Committee recommended that the exemption should be extended from six to twelve months and this was accepted by the Government in its response to the Committee’s report and changed in the Bill.<sup>32</sup>

### ***National Assembly for Wales constituencies***

The *Government of Wales Act 1998* made provision for the National Assembly for Wales to have the same constituencies as those for the House of Commons and section 2 of the *Government of Wales Act 2006* subsequently also provided that the constituencies for the National Assembly for Wales should be the same as the Parliamentary constituencies for Wales (and the number of Assembly regional seats is tied to the number of Assembly constituency seats). Any change to the Parliamentary constituencies for Wales would therefore have fed through to the Assembly seats, unless the *Government of Wales Act 2006* was modified. This was done by the *Parliamentary Voting System and Constituencies Act 2011* which de-coupled the constituencies for the National Assembly for Wales from those for Westminster. The Act had changed the Rules for Redistribution to allow for a reduction in the size of the House of Commons to 600 MPs. The new electoral quota and the Rule requiring the constituency size to be within 5% of the quota meant that Wales would lose seats in the 2013 boundary review.

In March 2011 the Boundary Commission for Wales announced that Wales would have 30 constituencies, 10 fewer than at present. By de-coupling the Assembly and Parliamentary constituencies the number of seats in the National Assembly for Wales would be unaffected by any changes made by the Parliamentary boundary review. Any substantial reduction in the number of Assembly Members had been considered likely to have an impact on the effectiveness of the Assembly, for instance by reducing the pool for membership of committees, Ministers and Deputy Ministers, and an effective opposition.

However, the 2013 boundary review was halted before the Boundary Commission for Wales submitted its final recommendations. On 6 August 2012 the Deputy Prime Minister, Nick Clegg, announced that plans to reform the House Lords were to be dropped and that when Parliament voted on boundary changes he would instruct his party to oppose them. An amendment to the *Electoral Registration and Administration Act 2013* subsequently

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<sup>31</sup> Ibid, paras 147 - 150

<sup>32</sup> Government response to the Welsh Affairs Committee Fourth Report of Session 2013-14: Pre-legislative Scrutiny of the Draft Wales Bill, [Dep 2014-0453](#), 20 March 2014

postponed the boundary review until 2018. The number of seats in Wales will therefore remain at 40 for the 2015 general election.

Earlier in 2012 the Green Paper on future electoral arrangements for the National Assembly for Wales had sought views on the effects of changes to the Westminster Parliamentary constituencies on the National Assembly for Wales. The summary of the responses to the Green Paper noted that ‘there was general support among respondents that the current size of the Assembly should be maintained’ and that ‘a significant majority of respondents agreed that, if the link between parliamentary and Assembly constituencies is reinstated, the number of Assembly regional seats could be increased or decreased to take account of any change in the number of Assembly constituencies’.<sup>33</sup>

On 12 March 2013 the Government announced that the proposal relating to the link between the Parliamentary constituencies and constituencies for elections to the NAW would not be taken forward. There is no immediate need to re-establish the link following the *Electoral Registration and Administration Act 2013* which has moved the date of the next Parliamentary Boundary review until 2018. The boundaries of Parliamentary and Assembly constituencies will remain the same until the next review is implemented.

### **Welsh Government (clauses 4 and 5)**

**Clause 4** renames the Welsh Assembly Government as the Welsh Government, or Llywodraeth Cymru.

**Clause 5** is a technical change to the 2006 Act, which clarifies that the First Minister remains in post in the event of dissolution of the Assembly. The Presiding Officer has the power to appoint someone to the post of First Minister if the incumbent dies, becomes unable to act, or ceases to be a Member of the Assembly. There was no intention that this should cover the cessation of membership at dissolution, so clause 5 removes that possibility.

## **3 Part 2: Finance**

Tax policy, except council tax, is currently outside the legislative competence of the National Assembly for Wales (“the Assembly”). The *Wales Bill* aims to improve the financial accountability of the Assembly by devolving greater powers over taxation to it. The Bill devolves stamp duty land tax and landfill tax, and would allow for the devolution of some powers over income tax to the Assembly if Wales voted in favour of this in a referendum. The Bill would also give the Assembly greater borrowing powers, including for capital expenditure. The UK Government has published a Command Paper, *Wales Bill: Financial Empowerment and Accountability* (Cm 8838) to provide further explanation of the Government’s proposals, including non-statutory areas such as the adjustment of the Welsh block grant.

The measures introduced by the *Wales Bill* are broadly similar to those introduced for Scotland in the *Scotland Act 2012*. The *Scotland Act 2012* did not require a referendum on devolution of income tax powers as Scotland voted in favour of tax varying powers for the Scottish Parliament in the 1997 referendum.

The financial arrangements for the devolved government of Wales have received considerable scrutiny in the last few years. The Independent Commission on Funding and Finance for Wales, chaired by Gerald Holtham (“the [Holtham Commission](#)”) published two reports in 2009 and 2010. The Commission on Devolution in Wales, chaired by Paul Silk

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<sup>33</sup> [Summary of responses to the Green Paper on future electoral arrangements for the NAW](#)

(“the Silk Commission”), published a report in November 2012 on the Assembly’s financial powers.<sup>34</sup> The UK Government published its [response](#) to this report in November 2013, accepting most of Silk’s recommendations. The Government published the [draft Wales Bill](#) in December 2013. The Welsh Affairs Committee undertook pre-legislative scrutiny of the draft Bill and published a [report](#) in February 2014.

### 3.1 Background

#### *The current arrangements*

The Assembly has wide discretion over public spending. It is largely free to allocate funding to public services as it wishes. Its powers over taxation are, however, very limited. The Assembly is largely funded by a block grant from the Treasury. Changes in the block grant are determined by the Barnett formula. In 2013/14, the Welsh Government’s budget was around £15 billion.<sup>35</sup>

There have been a number of criticisms of these funding arrangements. These relate mainly to fairness and accountability. The Holtham Commission said:

The themes of the report are fairness and accountability, the two areas where we believe existing arrangements for financing Wales require improvement.<sup>36</sup>

The Silk Commission also found that the current funding arrangements for Wales do not provide adequate accountability:

But the present system also has shortcomings. Most significant to our remit is the shortcoming that, because the budget comes largely in a grant from the UK Parliament, the Welsh Government and National Assembly for Wales are not accountable to the Welsh electorate for how revenue is raised in the same way that they are for how it is spent. This is unlike local authorities in the United Kingdom or devolved governments overseas. We believe changes to the existing system could deliver greater responsibility and empowerment to the Welsh Government.<sup>37</sup>

Strengthening the financial accountability of the Assembly and the Welsh Government is one of the central aims of the Wales Bill.<sup>38</sup>

#### *Fair funding*

In its pre-legislative scrutiny of the draft Wales Bill, the Welsh Affairs Committee noted a “widespread view that it [the Barnett formula] underfunds Wales”.<sup>39</sup> Gerald Holtham told the Committee:

Work we did back in 2010 suggested, that, if Wales were a region of England and you simply applied in Wales the needs-based formulae used in England to distribute health spending and local government revenue support around England, you would come to

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<sup>34</sup> The Silk Commission published a separate report in March 2014 on the wider powers of the Assembly.

<sup>35</sup> Wales Office, [Annual Report and Accounts 2012-13](#), HC 25, 1 July 2013, p27. £15 billion is the Welsh Government’s DEL (Departmental Expenditure Limit) in 2013/14.

<sup>36</sup> Independent Commission on Funding and Finance for Wales, [Final Report: Fairness and Accountability: a new funding settlement for Wales, Summary](#), July 2010, p1

<sup>37</sup> Commission on Devolution in Wales, [Empowerment and Responsibility: Financial Powers to Strengthen Wales](#), November 2012, p5

<sup>38</sup> [Wales Bill: Financial Empowerment and Accountability](#), Cm 8838, March 2014 para 10

<sup>39</sup> Welsh Affairs Committee, [Pre-legislative scrutiny of the draft Wales Bill](#), 28 February 2014, HC 962 2013-14, para 66

the conclusion that Wales is slightly underfunded by 2% or 3% relative to what it would get if it were an English region.<sup>40</sup>

He also said that the level of public spending per head in Wales would continue to converge on that in England, unless there were reform of the Barnett formula. This is because, under certain assumptions, the Barnett formula leads to the same cash increase in public spending per head in Wales as in England. As Wales has a higher level of spending per head than England, equal cash increases will lead to convergence over time.

The table below shows that public spending per head in Wales is below that in Scotland and Northern Ireland and only marginally higher than in London. This is despite the fact that Wales is the poorest area of the UK measured by gross value added per head, based on 2012 data.<sup>41</sup> The public spending figures include all spending which can be allocated to Wales, not only that under the control of the Assembly. They therefore include social security spending by the Department for Work and Pensions, for example.

**Public spending per head by country and region, 2012/13 (a)**

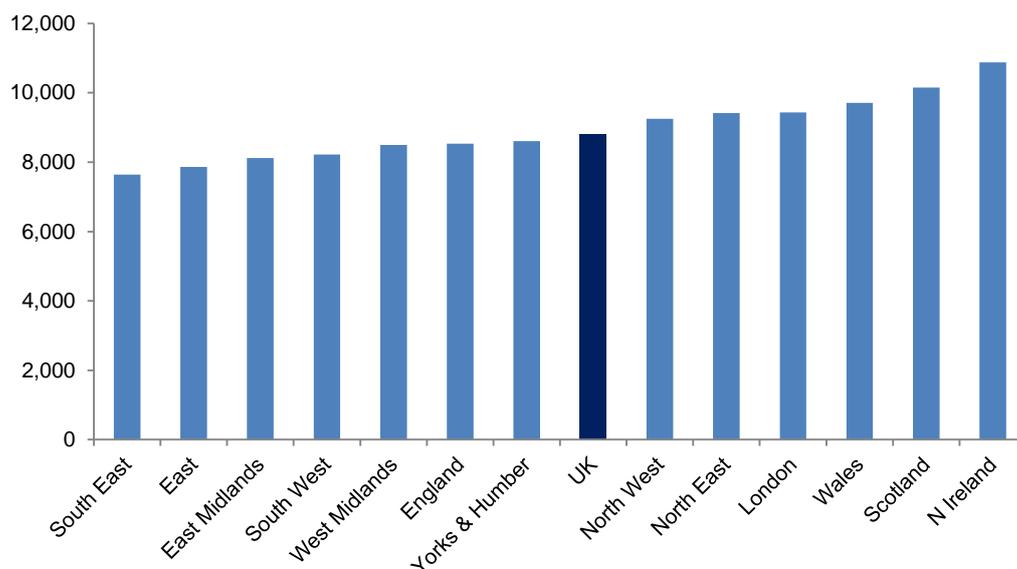
	£ per head	Index: UK identifiable expenditure = 100
North East	9,419	107
North West	9,252	105
Yorkshire and the Humber	8,610	98
East Midlands	8,118	92
West Midlands	8,498	97
East	7,865	89
London	9,435	107
South East	7,638	87
South West	8,219	94
England	8,529	97
Scotland	10,152	116
Wales	9,709	110
Northern Ireland	10,876	124
UK identifiable expenditure	8,788	100

Source: HM Treasury, Country and Regional Analysis, November 2013, Table A.2

Note: (a) identifiable public spending on services

<sup>40</sup> [HC 962 2013-14](#) para 67

<sup>41</sup> Office for National Statistics, [Regional Gross Value Added \(Income Approach\) December 2013](#), 11 December 2013

**Chart: Public spending per head by country and region, 2012/13**

The First Minister of Wales, the Rt Hon Carwyn Jones AM, told the Welsh Affairs Committee that he could not support the proposals to devolve income tax unless the question of fair funding were resolved first. He told the Committee that unless underfunding was addressed, devolution of income tax would lock in the underfunding. Furthermore, he argued that if there were some devolution of income tax, attempts to raise fair funding in the future would be met with the response that Wales should raise more tax revenue itself.<sup>42</sup>

The Welsh Affairs Committee noted that fair funding was outside the scope of their pre-legislative scrutiny of the draft Bill. Nevertheless, it said:

we have sympathy with the argument that the issue should be resolved before income tax powers are devolved so that Wales is not unfairly disadvantaged by the proposals in the draft Bill. We believe that the issue of fair funding should be examined and do not see the need to postpone this until after the 2015 General Election.<sup>43</sup>

In response, the Government pointed to its joint statement with the Welsh Government in October 2012. This made a commitment to review, before each spending round, the likelihood of convergence in public spending per head. If this were found to be likely, the two Governments would seek to agree a fair and affordable solution.<sup>44</sup>

### 3.2 Introductory (clauses 6-7)

**Part 2** of the Bill would enable the Welsh Assembly to legislate about devolved taxation: initially, taxes replacing both stamp duty land tax and landfill tax in Wales. It would allow the Assembly to set a Welsh rate of income tax, subject to a vote in a referendum in favour of the Assembly taking on this power. In addition it would allow for further taxes to be designated as devolved taxes through secondary legislation. As noted by the Welsh Affairs Committee in

<sup>42</sup> [HC 962 2013-14](#) para 68

<sup>43</sup> [HC 962 2013-14](#) para 72

<sup>44</sup> Details of the agreement are in HM Government and Welsh Government, *Funding reform: joint statement of progress*, October 2012

their report on the draft Bill, “a similar set of powers was devolved to Scotland under the *Scotland Act 2012*.”<sup>45</sup>

The *Scotland Act 2012* foresees the devolution of three tax powers to the Scottish Government, as summarised by HM Revenue & Customs:

The Scotland Act 2012 gives the Scottish Parliament the power to set a Scottish rate of income tax to be administered by HM Revenue & Customs (HMRC) for Scottish taxpayers. It is expected to apply from April 2016. The Act also fully devolves the power to raise taxes on land transactions and on waste disposal to landfill – it is expected that this will take effect in April 2015, at which point the existing Stamp Duty Land Tax and Landfill Tax will not apply in Scotland. The Act also provides powers for new taxes to be created in Scotland and for additional taxes to be devolved.<sup>46</sup>

Further details on the financial provisions of the Act are set out in a paper by the Scottish Parliament Information Service (SPICe).<sup>47</sup>

In 2012 the Scottish Government completed a consultation exercise on a Scotland-only successor to stamp duty land tax, and legislation to establish the new Land and Buildings Transaction Tax was passed by the Scottish Parliament in July 2013.<sup>48</sup> On landfill tax, the Scottish Government consulted in late 2012 / early 2013, and legislation to establish a Scotland-only Landfill Tax completed its passage in the Parliament in January this year. Finally, the Scottish Government has introduced legislation to underpin the administrative arrangements necessary for the collection of these taxes – details on the Tax Management Bill, which is before the Parliament at present, are on the Parliament site.

At present the Assembly’s legislative competence is established by Schedule 7 of the *Government of Wales Act (GOWA) 2006*. Although the Act allows for the Assembly to pass legislation in relation to “economic regeneration and development” and the “promotion of business and competitiveness”, “fiscal, economic and monetary policy” is specifically excluded.<sup>49</sup>

**Clause 6** would provide the structure within which the Welsh Government could legislate on devolved taxes, by inserting a new Part 4A into *GOWA 2006*. As noted, devolved taxes are to consist of a Welsh rate of income tax, a Welsh tax on land transactions, and a Welsh tax on disposals to landfill – though the clause also provides for additional taxes to be designated as devolved taxes by secondary legislation.<sup>50</sup> The Command Paper explains that this power could be used for two purposes:

- Enabling the Welsh Government to introduce specific new taxes in Wales, with the agreement of each House of Parliament and the Assembly; or

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<sup>45</sup> HC 962 2013-14 para 15

<sup>46</sup> HMRC, *Devolved tax in Scotland*, retrieved 24/3/2014 The background to these provisions is set out in a Library note, *Devolution of tax powers to the Scottish Parliament, SN 5984*, 2 February 2012.

<sup>47</sup> SB 14-11 *Scotland Act 2012: Financial Provisions*, 4 February 2014

<sup>48</sup> Details are collated on the [Government’s site](#).

<sup>49</sup> Under Heading 4 in Part 1 of Schedule 7 to *GOWA 2006*. The Assembly is empowered to legislate in relation to “local government finance” under Heading 12.

<sup>50</sup> **Clause 6** would insert a new section 116C into *GOWA 2006* to this effect. An Order of this type would be subject to Parliamentary approval by both Houses of Parliament and the Assembly (Wales Office, *Wales Bill Impact Assessment*, 17 March 2013 p8).

- Allowing the UK Government to devolve further existing or new UK taxes, again with the agreement of each House of Parliament and the Assembly.<sup>51</sup>

The paper underlines that any proposals by the Welsh Government for new devolved taxes would be assessed, by the UK Government, against a range of criteria, similar to those that the Government set out alongside the Scotland Bill. It adds, “if at the end of this process the UK Government decides not to grant powers to the Assembly to create a new devolved tax, it will explain its reasoning.”<sup>52</sup> In its impact assessment of the Bill, the Government notes that an alternative to this approach would be to require further primary legislation, but that “there is a clear case where the Government may, in the future, wish to use this power”:

This relates to the aggregates levy, which the Government intends to devolve subject to the satisfactory resolution of the current case in the European courts. The Government would not wish to be required to use parliamentary time on primary legislation to achieve this. The same circumstances may well apply to other minor taxes in the future. Nevertheless the Government is committed to adequate parliamentary scrutiny of such a decision and the affirmative resolution procedure is felt to be the most appropriate option.<sup>53</sup>

HM Revenue & Customs were established in 2005 through the merger of the Inland Revenue and HM Customs & Excise, under the *Commissioners for Revenue & Customs Act (CRCA) 2005*. Section 18 of the Act sets out HMRC’s statutory duty of confidentiality, and the circumstances under which it may make a lawful disclosure of information. **Clause 7** amends this to allow HMRC to disclose relevant information to Welsh Ministers in connection with devolved taxes, and to ensure HMRC may administer these taxes on their behalf if desired.

### 3.3 Welsh rate of income tax (clauses 8-10)

**Clauses 8 & 9** provide for the establishment of a Welsh rate of income tax. The Welsh Affairs Committee highlighted the partial devolution of income tax on non-savings income as “the most significant provision in the draft Bill.”<sup>54</sup> As the Committee noted, the model that is proposed is “very similar to the Scottish model set out in section 26 of the *Scotland Act 2012*”; in particular, “10p in the pound will be devolved and the three [rates of income tax could] ... only be moved in tandem in so-called ‘lockstep’ rather than individually ... if the Welsh Government wanted to increase the basic rate by 1p then the other two rates would also have to be increased by 1p leading to a tax structure of 21p for the basic rate, 41p for the higher rate and 46p for the additional rate.”<sup>55</sup> The Silk Commission estimated that the devolved 10p Welsh rate of income tax would raise around £2 billion a year.<sup>56</sup>

**Clause 10** provides for a number of amendments to the definition of a Scottish taxpayer made in the *Scotland Act 1998*: first, to ensure that individuals could not be classified as both

<sup>51</sup> [Cm 8838](#), March 2014 para 71

<sup>52</sup> [Cm 8838](#), March 2014 para 71. For details of this in relation to the Scotland Bill, see Library [Research Paper 11/06](#), 18 January 2011, pp27-8.

<sup>53</sup> [Wales Bill Impact Assessment](#), 17 March 2014 p8. In August 2013 the European Commission opened a formal investigation into whether certain exemptions, exclusions and tax reliefs for the levy were compatible with the State Aid rules ([HC Deb 13 September 2013 c65WS](#)). The Silk Commission had proposed that the levy, as with other taxes based on land, should be devolved. In its response to Silk, the Government stated that, given this potential legal challenge to the structure of the tax, it would “continue to keep the devolution of aggregates levy under review” ([Empowerment and responsibility: devolving financial powers to Wales](#), November 2013 p12).

<sup>54</sup> [HC 962 2013-14](#), para 22

<sup>55</sup> *op. cit.* para 26

<sup>56</sup> *op. cit.* para 24

a Welsh and a Scottish taxpayer in the same year; second, to improve clarity, and ensure the two definitions are aligned.<sup>57</sup> The clause is an addition to the draft Bill.

### ***Use of the lockstep model***

Both the Holtham and Silk Commissions had argued that the Welsh Government should have the power to set different rates for each band, and this was one of the very few recommendations in the Silk Commission's first report which the Government rejected.<sup>58</sup> (The Commission had also argued that setting the rates of air passenger duty should be devolved, something that the Government has rejected.<sup>59</sup>) The following paragraphs examine this question in some detail.

The lockstep model set out in the *Scotland Act 2012* followed the recommendations of the Calman Commission, which completed its final report in June 2009. The Commission took the view that the Scottish Parliament should not take on responsibility to determine the structure of the income tax system, which, in their view "includes the difference between the rates applying to each band. In our view therefore the same reduction in UK income tax should be applied in relation to each band and the Scottish Parliament should be able to apply one single "Scottish" rate of income tax to each of them." The Commission gave some details as to why, in its view, this power should not be devolved:

Although in some jurisdictions sub-national authorities have scope to alter tax allowances and reliefs, little of the evidence we received suggested doing so. It would create two problems. First the efficiency of the tax system would be seriously reduced, creating problems of compliance and administrative cost for employers and the tax collection authorities.

Secondly, it would not in our view be consistent with the social Union as income tax is, as well as a revenue-raising device, also an instrument of redistribution. A progressive tax system redistributes proportionately more resources away from higher earners and such decisions have effects that are redistributive across different parts of the UK as well as between different individuals. Such decisions, and therefore the structure of the tax system, are properly taken at the UK level.<sup>60</sup>

By contrast, the Holtham Commission argued that allowing the Welsh Government to vary tax rates individually, within certain parameters, would give it the power to boost Welsh tax revenues without undermining the UK tax base:

6.36 An alternative option to the Calman Commission's proposal would be to give Welsh Ministers powers to vary income tax rates separately. In such circumstances, they might raise taxes but another response might be to cut the higher rate in order to attract high earning individuals into Wales. While it is not possible to estimate the impact of such a policy precisely, the financial incentive for those with very high incomes to acquire a Welsh residence could be substantial ...

6.37 Viewed in narrow terms, such a policy might be unattractive to the UK Government since, by creating a "tax haven" for high earners within the UK, it has the potential to undermine the UK tax base. However, the UK has a general as well as a

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<sup>57</sup> Bill 186-EN para 113

<sup>58</sup> As underlined by the Secretary of State, David Jones, when he presented the Government's response to Silk to the House (HC Deb 18 November 2013 cc983-4). See also, Alan Trench, "Implementing Silk in Wales: an update", *Devolution Matters blog*, 20 November 2013

<sup>59</sup> HMG, *Empowerment and responsibility: devolving financial powers to Wales*, November 2013 p12 (This had been recommendation R6 in Silk.)

<sup>60</sup> Commission on Scottish Devolution, *Final Report*, June 2009 paras 3.175, 3.104

budgetary interest in raising the relative GVA performance of Wales. The UK Government should therefore be ready to accept some modest use of lower taxes if that is what the Assembly Government wished to try.

6.38 A policy of lowering income tax rates could have offsetting benefits for the UK as a whole. If reductions in marginal income tax rates on high earners succeeded in promoting economic growth by incentivising work and encouraging entrepreneurship (we make no judgment about the likely effectiveness of such policies), the resulting decline in relative need would reduce any needs-based block grant allocated to Wales, producing a gain to the UK exchequer. It would therefore seem reasonable for the tax regime in Wales to contain adequate flexibility to enable the Assembly Government to vary the higher rates of income tax, provided this can be done in a way that is compatible with the constraints imposed by the economic union.<sup>61</sup>

The Commission acknowledged that there would be “very understandable reluctance to give Welsh Ministers the power to set tax policy in a way that caused significant harm to the UK tax base.” It proposed that a limit be set on the extent to which rates could vary from the UK rate should be constrained:

We believe that an acceptable compromise would be to enable Welsh Ministers to set the basic and higher rates separately, but that the extent to which rates could vary from the UK rate should be constrained. We propose that income tax rates in Wales should be allowed to vary by no more than three pence relative to the UK. If that proposal is not accepted, a second best fallback would be to devolve powers to vary the basic rate only. We believe that any proposal which constrains the devolved administration to move rates in a way that impacts at the margin on both basic and higher rate taxpayers is not appropriate for Wales.<sup>62</sup>

Similarly the Silk Commission argued that the Welsh Government “should be able to vary the basic, higher and additional rates of tax independently.”<sup>63</sup> In its discussion of the case for devolving income tax, the Commission noted that “sub-national governments typically have a fairly high degree of autonomy over personal income taxation, though this is usually restricted to setting the rates”:

The international evidence<sup>64</sup> shows that, along with property taxation, income taxation is the most common form of taxation that is devolved. Sub-national governments typically have a fairly high degree of autonomy over personal income taxation, though this is usually restricted to setting the rates. Internationally, evidence shows that the setting of the structure<sup>65</sup> of income tax is usually deemed to be a function of the central government. This evidence also shows that there are various ways that income tax could be devolved.

It went on to argue that there were “strong reasons in principle to devolve income tax to the Welsh Government”:

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<sup>61</sup> Independent Commission on Funding and Finance for Wales, *Final report: Fairness and accountability: a new funding settlement for Wales*, July 2010 p68

<sup>62</sup> *op.cit.* p68

<sup>63</sup> Commission on Devolution in Wales, *Empowerment and Responsibility: Financial Powers to Strengthen Wales*, November 2012 p11

<sup>64</sup> Blöchliger, H. and O. Petzold (2009), ‘Taxes or Grants: What revenue Source for Sub-Central Governments?’, OECD Economics Department Working Papers, No. 706, OECD Publishing

<sup>65</sup> This includes the level of the tax free personal allowance and the income thresholds that the tax rates are then applied to.

We believe that if the power to control aspects of income tax were transferred to the Welsh Government this would significantly enhance its ability to make decisions and its financial accountability. Income tax raises the most of all UK-wide taxes in Wales. Changes in income tax in Wales could, therefore, have a large influence on the size of the budget for the Welsh Government. The devolution of income tax would also enable the Welsh political parties to offer voters, at the time of elections, a choice between levels of taxation and corresponding levels of public expenditure. This would entail a real increase in empowerment ...

Income tax is a relatively visible tax as the amount paid is clearly displayed on payslips, for example. Income tax is also paid by most people at some stage in their life and is broadly well understood by taxpayers. Since the tax is paid on the income of those that reside in Wales, the higher the total income of the residents of Wales, the higher the revenue from income tax. A clear link to the performance of the Welsh economy and the size of the budget for the Welsh Government would be established.<sup>66</sup>

The Commission anticipated that initially a Welsh rate of income tax should be introduced by cutting all three rates by 10p in the pound, as “we do not see a compelling case for a greater transfer of risk in Wales than Scotland.” However in the longer term the Welsh Government’s share of income tax revenues could increase with political consensus. The Commission also argued that the Scottish ‘lockstep’ model was unappealing: first, because of the evidence that marginal income tax rates had on work incentives and tax receipts:

5.5.51 There is established research evidence that highlights the influence that income tax rates can have on individuals. The tax rate for low earners is very important since it affects the decisions that individuals make in entering work and the incentives they have to earn more income from working.<sup>67</sup>

5.5.52 There is also research evidence<sup>68</sup> that shows that the responsiveness of taxable income, and hence tax receipts, to tax rates may be higher at the top end of the earnings distribution. The response from higher earners to changes in tax rates is certainly very different from the response of lower earners. This higher responsiveness is not because higher earners’ employment decisions or hours of work are particularly responsive, but because they can find other ways to minimise the amount of tax that they pay. This can be by changing the form of remuneration, contributing more to a pension, converting income into capital gains or taking measures to avoid tax.

5.5.53 Further evidence is available from the Mirrlees review<sup>69</sup> which noted that “tax rates at the very top of the distribution are particularly important to get right because of the very large amount of revenue being extracted from a very small number of people”.<sup>70</sup>

The Commission also opposed the lockstep model on the grounds that the border between England and Wales was much more ‘porous’ than the Scottish border. The Welsh Assembly

<sup>66</sup> Commission on Devolution in Wales, *Empowerment and Responsibility: Financial Powers to Strengthen Wales*, November 2012 p93, p92

<sup>67</sup> Meghir, C. and Phillips, D. (2011) *Labour Supply and Taxes Prepared for the Report of a Commission on Reforming the Tax System for the 21st Century*, Chaired by Sir James Mirrlees. Oxford University Press.

<sup>68</sup> Saez, E., Slemrod, J. B. and Giertz, S.H. (2009) ‘*The elasticity of taxable income with respect to marginal tax rates: a critical review*’, NBER Working Papers 15012, National Bureau of Economic Research Inc

<sup>69</sup> IFS (2011) *Tax by Design* pp 95. [The review was commissioned by the Institute for Fiscal Studies, chaired by Professor Sir James Mirrlees; it published its initial findings on potential reforms to the UK tax system in 2010, followed by a final report the next year. Full details are [on the IFS site](#).]

<sup>70</sup> Commission on Devolution in Wales, *Empowerment and Responsibility: Financial Powers to Strengthen Wales*, November 2012 p100

would be far more reluctant to use this power, given that there would be a much greater behavioural response to a rate change where all three rates had to change at once:

Only 3.7 per cent of the population in Scotland and 0.5 per cent of the population in England live within 25 miles of the England/Scotland border. The figures for Wales are startlingly different: 48 per cent of the population of Wales and around 10 per cent per cent of the population of England live within 25 miles of the England/Wales border. Moreover, people do not just live near the Wales/England border, but large numbers commute daily across it.<sup>71</sup>

Finally the Commission argued that the power to vary tax rates this way would not pose a substantial risk to the progressivity of the UK system:

5.5.62 Some have argued that the Scottish 'lockstep' mechanism preserves the progressivity of the UK income tax system.<sup>72</sup> We understand the argument that the main responsibility for determining the progressivity of the tax system should rest with central government, as international evidence suggests. But our analysis shows that even with the Scottish 'lockstep' system, progressivity would be affected and that under our proposals progressivity is unlikely to be affected markedly more than under the Scottish 'lockstep' system. This point is illustrated in Table 5.1.

5.5.63 Table 5.1 shows how the ratio between the basic rate of 20p and the higher rate of 40p is altered as changes are made under the 'lockstep' and under a system where rates can be varied separately. With the rates set as they are at present (40p and 20p) the ratio is 0.5 (20/40). If under the 'lockstep' approach both rates were reduced by 2p then the ratio would be 0.47 (18/38). Conversely, if both rates were increased by 2p then the ratio would be 0.52 (22/42). Table 5.1 shows that under the 'lockstep' proposal the progressivity of the income tax system would change if the Welsh Government set the Welsh rate at anything other than restoring the previous UK rates of 20p and 40p.

5.5.64 The power to vary income tax rates independently could also change the progressivity of the income tax system. If, for example, the Welsh Government were to reduce the basic rate by 2p and increase the higher rate by 3p then the ratio would fall to 0.42 (18/43). Table 5.1 shows that, even under the extreme scenarios where the differences between the basic and higher rate would be as wide as 30 pence in the pound and as narrow as 10 pence in the pound, the progressivity of the tax system would be broadly similar to the 'lockstep' approach.<sup>73</sup>

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<sup>71</sup> *op.cit.* p103

<sup>72</sup> A progressive tax system is one where the tax rate increases as the taxable base increases. For income tax, as the income of an individual increases then, in a progressive tax system, so does the rate of tax applied to that income. In the UK there are three rates of income tax that are applied as income reaches certain thresholds. Those tax rates increase at the higher income thresholds.

<sup>73</sup> *op.cit.* pp103-4

**Table 5.1 Income tax progressivity**

Scottish “Lockstep” Approach				Power to vary rates independently		
Basic rate	Higher rate	Ratio		Basic rate	Higher rate	Ratio
10	30	0.33				
15	35	0.43		15	45	0.33
:	:	:		:	:	:
18	38	0.47		18	43	0.42
19	39	0.49		19	42	0.45
<b>20</b>	<b>40</b>	<b>0.50</b>		<b>20</b>	<b>40</b>	<b>0.50</b>
21	41	0.51		21	38	0.55
22	42	0.52		22	37	0.59
:	:	:		:	:	:
25	45	0.56		25	35	0.71
30	50	0.60				

In their report on the draft Bill the Welsh Affairs Committee noted that “many of our witnesses concluded that the lockstep was a constraint on the Welsh Government’s ability to use the new powers”:

Gerald Holtham described the income tax powers with the lockstep as “virtually unusable”. He explained: “the form of income tax devolution set out in the Bill is most unlikely ever to be used ... The Welsh border is too open for it to be safe to raise higher tax rates; revenue would be more likely to fall over time than rise. A cut in all tax rates would, however, be prohibitively expensive in the short to medium term, particularly so in current conditions of budget reductions.” A diverse range of witnesses including business groups, constitutional experts, the Welsh Government and the opposition party leaders in the National Assembly (Andrew RT Davies AM, Kirsty Williams AM and Leanne Wood AM) agreed that the lockstep made the proposed income tax powers less likely to be used.<sup>74</sup>

When the Exchequer Secretary, David Gauke, gave evidence to the Committee he was asked about the Silk Commission’s analysis that suggested that the power to vary rates individually was unlikely to affect progressivity more than the lockstep:

The Exchequer Secretary to the Treasury acknowledged this point but argued the case that the ‘lockstep’, while not perfect, was simpler than a system that would preserve progressivity in a more precise way. He said that adjusting the ‘lockstep’ system to resolve this divergence would “result in a great deal of complexity, with rates running into several decimal points” and therefore the lockstep should remain as set out in the draft Bill.<sup>75</sup>

The Secretary of State for Wales also argued that allowing variation of rates might see tax competition between the constituent parts of the UK:

“We have made it clear since the publication of our response to the Silk Commission that income tax devolution should not benefit one part of the UK at the expense of

<sup>74</sup> HC 962 2013-14, para 31

<sup>75</sup> *op.cit.* para 39

another, as could happen if bands were varied independently. Critics of the lockstep are taking a narrow view ... We do not want a system that could promote a damaging race to the bottom, with different parts of the UK undercutting each other at the expense of the UK tax revenues overall. Variation by band would do that, and that is why we are not implementing it.”<sup>76</sup>

The Committee noted members had “a diverse range of views about the merits of the ‘lockstep’”, though “most witnesses” had preferred to remove it, and “we accept there is diminished value in devolving a power that will not be used.” It went on to recommend that “whichever model of income tax is devolved, it is important that the Government provides full information about the potential benefits and costs of devolving this power”, and it should publish a “much more detailed impact assessment of the effects of income tax devolution.”<sup>77</sup>

### ***Impact of devolving income tax powers***

The Government’s impact assessment, published alongside the Bill,<sup>78</sup> reiterated the Government’s position on the lockstep:

The Government is firm in its view that the income tax structure is a key mechanism to redistribute wealth across the whole of the UK, which is why the “progressivity” of this system is properly determined at the UK level. The inclusion of the lock-step is also consistent with the principle that fiscal devolution should not benefit one part of the UK to the detriment of another - this could occur if the Welsh Government is able to set a substantially lower rate for higher/additional taxpayers without needing to change the basic rate (attracting higher earners across the border, benefitting Wales to the detriment of the UK as a whole).<sup>79</sup>

It went on to discuss the potential costs of implementing a Welsh rate of income tax, for the Welsh Government, as well as for business:

The cost of updating HMRC’s IT systems and operational processes to support the changes to income tax powers brought about by the Scotland Act 2012 have been estimated to be in the region of £40-45m, with annual running costs of around £4.2m. Lessons learned in the work currently being carried out by HMRC may help to minimise implementation costs in Wales, especially as the proposed Welsh rate would operate on the same basis as the Scottish equivalent ... The greater economic activity on the border between Wales and England (than between Scotland and England) could give rise to proportionally more enquiries from Welsh taxpayers and therefore offset some of these savings ... Updated implementation costs for the Scottish rate of income tax are due to be published in April and it may be possible to produce an estimate specifically for the implementation of the Welsh rate during the passage of the Bill through Parliament using these figures.

Direct costs and benefits to business ... The provisions in the Bill operate on the same basis as the Scottish rate of income tax, which is expected to be introduced in April 2016 – employers and payroll providers will need to amend their systems following the

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<sup>76</sup> *op.cit.* para 44

<sup>77</sup> *op.cit.* para 45-6, para 48

<sup>78</sup> [HC Deb 20 March 2014 c64WS](#); HMG, *Government response to the Welsh Affairs Committee Fourth Report of Session 2013-14: Pre-Legislative Scrutiny of the Draft Wales Bill*, March 2013 p1

<sup>79</sup> [Wales Bill Impact Assessment](#), 17 March 2013 p10. In its response to the Committee’s report, the Government underlined that, in its view, this document met the Committee’s request for “a much more detailed impact assessment of the effects of income tax devolution” (see, [HC Deb 20 March 2014 c64WS](#); HMG, *Government response to the Welsh Affairs Committee Fourth Report of Session 2013-14: Pre-Legislative Scrutiny of the Draft Wales Bill*, March 2013 p1).

introduction of the Scottish rate. The precise impact on systems will therefore depend on the extent to which they have previously been updated to deal with the Scottish rate of income tax. The fact that the two rates are designed to operate in the same way should help to reduce costs to business.<sup>80</sup>

In April 2013 the Government published its first annual report on the implementation of the financial powers laid out in the *Scotland Act 2012*. In its discussion of the Scottish rate of income tax, the Government noted the difficulties in making accurate estimates of the administrative costs of this reform:

In the first phase of the project, which began on Royal Assent and will continue during 2013, HMRC is examining UK income tax systems including PAYE, Self Assessment and Pensions, in order to establish the impact of the Scottish rate of income tax. This includes an examination of HMRC customer information and the key forms and guidance currently used to communicate with taxpayers, as well as the finance and accounting processes that would be required to account for the Scottish rate of income tax.

The cost for the project has been estimated at £40m-45m for implementation, including around £10m in IT costs. After implementation, the annual running costs are estimated to be £4.2m each year ...

During 2013-14, the project will design new processes which will ensure that HMRC can accurately and efficiently collect the Scottish rate of income tax. The project will develop an approach to identifying Scottish taxpayers, based on an examination of current HMRC data on taxpayers' places of residence and potential additional sources of information. Work will also begin on the design of appropriate compliance processes to provide assurance that people are correctly identified as Scottish taxpayers and are paying tax at the correct rate, and on developing a communication strategy to ensure that individuals and employers affected by the implementation of the Scottish rate receive the information they need and understand their obligations. HMRC expect to make potential Scottish taxpayers aware during 2015-16.

As these processes are designed, estimates of the cost of the implementation project will be refined and revised as necessary. Work planned in 2013-14 will lead to a more accurate estimate of the cost of identifying Scottish taxpayers – the major element of non-IT costs for the Scottish rate project. Where there are options for the way in which implementation is designed, these will be taken through the project and programme governance, involving Scottish Government representatives. Detailed work to implement the IT systems changes required for the Scottish rate of income tax will begin in 2014 and take around two years: more accurate estimates of the cost of system changes will not be available until that work has been agreed.<sup>81</sup>

In its Command Paper the Government underlines that the additional costs with implementing and maintaining a Welsh rate of income tax would be borne by the Welsh Government, though "costs that would have fallen to HMRC in any case, relating to income tax in Wales generally, would not be passed on."<sup>82</sup> The impact of interest payments on late or overpaid tax would fall on the UK Government, while penalties for late payments would accrue to HMRC:

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<sup>80</sup> *op.cit.* p10

<sup>81</sup> *First Annual Report on the Implementation and Operation of Part 3 (Financial Provisions) of the Scotland Act 2012*, SG/2013/45, April 2013 SG/2013/45 pp9-11

<sup>82</sup> Cm 8838 March 2014 para 41

HMRC is required to pay interest on tax overpayments and charge interest on late payments. As the Welsh Government would be able to draw down forecast receipts, the impact of late or overpaid tax would be managed by the UK Exchequer rather than the Welsh Government ... HMRC also administers a number of penalties that act as deterrents and safeguards for the UK tax system. These include, for example, penalties for late payment (in addition to the interest charged on this), late filing and incorrect returns, and are intended to encourage taxpayers to meet their obligations as regards making tax returns or paying their tax liabilities. The revenues accrued from these penalties are therefore associated with the administration of the tax system by HMRC and would not be allocated to the Welsh Government.<sup>83</sup>

### **Operational issues**

The Command paper gives detail of the process by which the Assembly would set the Welsh rate to allow sufficient time for HMRC to issue tax codes for employers and, where there was a delay, provision for the tax authorities to issue revised codes, at a later stage, during the relevant tax year:

The new Welsh rate would need to be set every year by the Assembly, with a resolution passed in such time as to allow the taxes to be collected at the start of each tax year. In order to minimise the cost to HMRC and to employers of the necessary administrative and compliance measures, the rate for a particular tax year would need to be formally communicated to the UK Government by the end of November in the preceding calendar year.

If there were a delay in announcing the rate, the Welsh Government would need to agree an assumption to enable HMRC to issue PAYE codes to employers and employees taking account of the Welsh rate. This timetable would also allow taxpayer compliance burdens to be minimised. The rate would then need to be passed by the appropriate procedure in the Assembly by 5 April at the latest, to provide the statutory basis for the collection of tax receipts from the start of the tax year. (It is possible for a resolution to be passed setting a different rate from that previously announced, although this would lead to increased costs.) Once this date has passed the resolution would not be able to be cancelled or amended.<sup>84</sup>

The Explanatory Notes to the Bill comment that, “similar problems may arise if the UK Government were not to make a decision in relation to the main rates of income tax, or to any relevant allowances, until shortly before the start of the tax year.”<sup>85</sup>

As with the Scottish rate of income tax,<sup>86</sup> the Welsh rate is to apply to all UK resident taxpayers whose *closest connection* is with Wales. This is a three-part test.<sup>87</sup> First, someone would meet this test if, resident in the UK for tax purposes, their sole place of residence was Wales. Second, someone with more than one place of residence, would meet the test if their main place of residence was in Wales for more time over the year than anywhere else in the

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<sup>83</sup> *op.cit.* para 44-5

<sup>84</sup> Cm 8838, March 2014 para 39. This provision is to be made under **clause 8** by the insertion of new section 116(4) to *GOWA 2006*.

<sup>85</sup> Bill 186-EN para 87. This occurred when the Labour Government decided in May 2008 to increase the personal tax allowance for the 2008-09 year to mitigate the impact on taxpayers of the abolition of the 10p starting rate. Provision was made by s2(3) & 4(3) of the *Finance Act 2008*, so that tax codes could be amended from September that year. For details see, [Library standard note SN4685, 6 March 2013](#) (pp 25-6).

<sup>86</sup> See, HMRC, *Clarifying the Scope of the Scottish Rate of Income Tax: Technical Note*, May 2012

<sup>87</sup> **Clause 8** would insert new section 116E to *GOWA 2006*, to establish this test.

UK.<sup>88</sup> Third, all Assembly Members, Members representing a Welsh constituency or representing Wales in the European Parliament, are to be classified as Welsh taxpayers.

### 3.4 Referendum on income tax provisions

The Welsh rate of income tax can be introduced only if approved in a referendum, and:

- the statutory instrument introducing that referendum is approved by both Houses of Parliament and the Welsh Assembly
- the resolution approving the SI is passed in the Welsh Assembly by a two-thirds majority
- a majority of voters in a referendum vote in favour

In April 2010 the House of Lords Constitution Committee published a report *Referendums in the United Kingdom*. This made some general observations on the appropriate use of referendums for constitutional questions, recommending that such polls be reserved for fundamental constitutional issues.<sup>89</sup> The report did not define what these issues were.

The devolution referendum in Scotland in 1997 included a second question on income tax, and the subsequent *Scotland Act 1998* included the power to vary income tax by up to 3 pence in the pound, though this was never used. The *Scotland Act 2012* amended this legislation to reduce income tax by 10 pence in the pound and to allow the Scottish parliament to set a Scottish rate of income tax on top, without recourse to a referendum.

The Silk Commission recommended the use of a referendum in its first report, arguing that the taxation proposals represented a fundamental constitutional shift in powers from London to Cardiff.<sup>90</sup> It recommended the adoption of the 2006 model:

The model in the Government of Wales Act 2006 worked well with the referendum on legislative powers. This would mean that the referendum would only be triggered by Welsh Government support, a two-thirds majority vote in the National Assembly for Wales, UK Government agreement and the agreement of both Houses of Parliament. This, of course, means that either Government could apply a brake to the devolution of income tax, but even assuming that they do not do so, it would be unlikely that a referendum could be held before 2017 at the earliest.<sup>91</sup>

In evidence to the Welsh Affairs Committee in relation to the draft Wales Bill Professor Richard Wyn Jones suggested that the question of income tax raising powers in Wales was not an appropriate use for a referendum, citing the *Scotland Act 2012* procedure as an alternative.<sup>92</sup> This view was supported by Graham Allen, Chair of the Political and Constitutional Reform Committee.<sup>93</sup> He argued that there was a danger of a low turnout, which would raise questions of legitimacy. The Welsh Affairs Committee report agreed that a referendum should be held, since “tax devolution is an important constitutional change and one that requires a principle to be established by the electorate before commencement” (para 64).

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<sup>88</sup> **Clause 8** would insert new section 116G to this effect. The approach taken to counting days of residence would be set out by new section 116H.

<sup>89</sup> *Referendums in the United Kingdom* Lords Constitution Committee HL Paper 99 2009-10 Para

<sup>90</sup> Commission on Devolution in Wales Part 1 report chapter 8, para 8.2.9 November 2012

<sup>91</sup> [Commission on Devolution in Wales Part 1 report chapter 8, para 8.2.12](#) November 2012

<sup>92</sup> *Pre-legislative scrutiny of the draft Wales Bill*, HC 962 2013-14, oral evidence 14 January 2014

<sup>93</sup> *Pre-legislative scrutiny of the draft Wales Bill*, HC 962 2013-14, oral evidence 21 January 2014, Q289ff

The Committee also considered the focus of the question to be asked, concluding:

65. We recognise that there were differences of opinion on whether there should be a narrowly focused question on the current proposals or a more general question which would allow wider tax raising powers to be granted in future without a further referendum. We conclude that either approach would be reasonable provided that, if the wider question was posed, the Welsh public was aware that the consequences of a "yes" vote would be that further powers over income tax could be transferred in the future.

Previous referendums in Wales have been characterised by low turnout, marginal results and/or controversy over the funding of campaign groups. Research Paper 12/43, [UK Election Statistics: 1918-2012](#), sets out the text of the question and the result for each referendum since 1979 in part 7.

### **UK referendums: how they work**

Funding and campaigning for referendums held under UK legislation are regulated by the *Political Parties Elections and Referendums Act 2000 (PPERA)*. Library Standard Note 5142, [Regulation of Referendums](#), discusses these general provisions. Some more detailed aspects are set out in the specific legislation giving the power to hold the referendum.

The Electoral Commission may designate lead or umbrella organisations campaigning for each side in a referendum. These benefit from maximum grants of £600,000 each for infrastructure costs, combined with a free referendum address to every household and referendum campaign broadcasts.<sup>94</sup> Designated organisations have a maximum spending limit of £5 million.

The Commission may decide not to designate, where it does not consider that an organisation exists which represents the body of opinion on one side. However, it cannot designate one side only, so the effect of non-designation for one side is that neither outcome enjoys publicly funded campaigning. For instance, the Commission was unable to designate for the referendum on further devolution in Wales, held on 3 March 2011, since the only applicant for the "No" campaign did not meet a statutory test of adequately representing those campaigning for a "No" vote.<sup>95</sup> The main "No" campaign group had decided against applying for designation, reportedly in order to save public expenditure (the designated organisations would have received a maximum of £70,000 each), but the result was to deny extra expenditure limits to the 'Yes' campaign, which had already raised close to the £100,000 limit for a non-designated non-party organisation.<sup>96</sup> Further detail is given in *Wales Says Yes: Devolution and the 2011 Welsh Referendum*.<sup>97</sup> The Electoral Commission report on the 2011 referendum concluded that the failure to designate raised some fundamental issues about the framework in PERA for the designation of lead campaign groups.<sup>98</sup>

The referendum in Wales on devolution which took place in September 1997 was decided on a very narrow majority. 50.3% of voters voted "Yes" to an Assembly while 49.7% were opposed. Turnout was 50.1%. The No campaign on this occasion was concerned about

<sup>94</sup> [Referendum on the parliamentary voting system in the UK](#) 17 February 2011 *Electoral Commission*

<sup>95</sup> [No lead campaigners for National Assembly referendum](#) 25 January 2011 *Electoral Commission*

<sup>96</sup> [Lack of official campaigns for referendum 'sad day'](#) 20 January 2011 *BBC News*; see also written evidence from No Campaign Ltd to Scottish Affairs Select Committee inquiry [The Referendum on Separation for Scotland](#) HC 1608 2010-2012, para 4.14

<sup>97</sup> Richard Wyn Jones and Roger Scully University of Wales Press 2012

<sup>98</sup> [Report on the Referendum on the law-making powers of the National Assembly for Wales](#) Electoral Commission June 2011 Para 4.51

raising sufficient funds to mount a successful campaign which would reach the intended voters. The majority in the March 2011 poll was decisive, 63.5% voting in favour and 36.5% against. However, turnout across Wales was 35.6%, and, as mentioned above, no campaign groups were designated for public funding.

***Provisions in this Bill (clauses 11-13; Schedule 1)***

The wording of the referendum clauses are identical to those in the draft Bill. The Welsh Select Committee did not express any concerns on the text in this respect.

**Clause 11** requires approval in a referendum before the income tax provisions may come into force. The referendum would be caused by an Order in Council, the statutory instrument containing which would have to be passed by both Houses of Parliament and by a two-thirds majority of all members of the National Assembly for Wales. More detail about the referendum is set out in Schedule 1.

Under **clause 12** the Assembly may pass a resolution, again on a two-thirds majority, calling for a referendum Order to be made. In this case, the First Minister gives notice of the vote to the Secretary of State, who has 180 days either to lay the SI containing the Order, or explain the reasons for refusing to do so.

These provisions are similar to those used for the referendum in Wales in 2011 on enhanced powers for the Assembly, as recommended by the Silk Commission. Sections 103 and 104 of the *Government of Wales Act 2006* allowed for an Order in Council calling a referendum to bring into force the provisions in Part 4 of that Act, which gave the Assembly primary law-making powers over a greater number of matters than before. This was also subject to a two-thirds majority in the Assembly and approval by both Houses of Parliament. Standard Note 5685, [Referendum for Wales: extending the scope of Assembly powers](#), provides further background.

**Schedule 1** is based on Schedule 6 of the *Government of Wales Act 2006* and requires the Order to contain detailed provisions on the conduct of the referendum.

The franchise is to be based on that used for Assembly and local government elections in Wales. This includes EU citizens resident in Wales, but excludes overseas voters.

The Order would set out the question to be used in the referendum (this is not in the Bill). Under PPERA, the Electoral Commission must be consulted as to the intelligibility of the question. It has issued [intelligibility guidelines](#), and its assessment of the question used in Wales in 2011 is available from its website.<sup>99</sup>

There is no provision for a minimum threshold for voting. The question of a threshold is addressed in [Library Standard Note 2809 Thresholds in Referendums](#).

Schedule 1 also requires the date of the referendum to be set out in the Order, with power to vary the date if necessary. There are provisions for the combination of polls, and for the provision of information for voters by the Electoral Commission, in line with earlier referendum legislation in the 2006 Act and elsewhere. In the 2011 referendum the Electoral Commission provided a booklet to each household in Wales.<sup>100</sup>

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<sup>99</sup> [Referendum on law making powers of the National Assembly for Wales](#) Electoral Commission 2010

<sup>100</sup> Electoral Commission [Report on the referendum on law making powers in Wales 2011](#) para 2.22

### 3.5 Other taxes (clauses 14-18; Schedule 2)

**Clauses 14-18** provide the mechanism for ending the assessment and collection of both stamp duty land tax (SDLT) and landfill tax in Wales, allowing the Assembly to bring in its own taxes on both acquisitions of interests in land in Wales, and disposals to landfill sites in Wales. The Command Paper notes the intention “is to ‘switch off’ the UK-wide versions of these taxes insofar as they apply to Wales from April 2018,” though “the UK Government will consult with Welsh Ministers before determining a final date” for doing this.<sup>101</sup> In the case of stamp duty, the Welsh Government will be required to provide HMRC with information about land transactions in Wales after this ‘cut off’ point.<sup>102</sup> At present the SDLT return collects data for the Valuation Office Agency used in other parts of the tax system and for wider HMRC compliance work.<sup>103</sup> Any additional costs associated with the devolution of both taxes (net of savings to the UK Government arising from the fact that those taxes will no longer be collected or administered in Wales) are to be borne by the Welsh Government.<sup>104</sup>

In their report on the draft Bill, the Welsh Affairs Committee discussed the devolution of these smaller taxes, observing “the Welsh Government will be able to change the rates of tax in these two areas as well as the structure and progressivity of these taxes, unlike with income tax.” Several witnesses broadly welcomed these changes, though some “stressed that since these taxes raised very little in revenue, devolving them was likely to have ‘relatively little’ impact on financial accountability in Wales.” Over the period 2007/08 to 2012/13, SDLT raised between £210 million and £100 million a year. Annual revenues from landfill tax varied between £38 million and £50 million.<sup>105</sup> The Committee noted that the revenue from both taxes combined “amounts to about 1% of public expenditure in Wales,<sup>106</sup>” but did not make any recommendations as to the future structure of either tax.<sup>107</sup>

The Government anticipate that in principle there is no reason why the compliance burden should increase, either for those buying property or those operating a landfill site in one part of the UK. There may be additional costs for those buying property or land straddling the English-Welsh border. This is to be treated as two transactions – one liable to SDLT, one to its Welsh equivalent – with the value apportioned across the two “on the basis of their relative values.”<sup>108</sup> The Government carried out a consultation on the potential impact of devolving SDLT on the housing and construction sectors during 2013, and concluded that there was “no strong evidence that devolution of SDLT will have a disproportionate impact on businesses.”<sup>109</sup>

Existing SDLT returns already identify (by means of a code) the local authority area where a land transaction takes place. In most cases, this will allow transactions in England and Wales

<sup>101</sup> Cm 8838 March 2014 para 16

<sup>102</sup> Clause 16 would insert new section 116M to GOWA 2006 to this effect.

<sup>103</sup> Cm 8838 March 2014 para 22

<sup>104</sup> *op.cit.* para 25. Estimates of these costs with regard to switching off SDLT in Scotland are to be available later in 2014. The costs of similar work with regard to landfill tax has been negligible (*Wales Bill Impact Assessment*, 17 March 2014 p13, p14).

<sup>105</sup> Wales Office (see Cm 8838 March 2014 p23)

<sup>106</sup> Based on data from 2012/13. Public expenditure data is for Total Managed Expenditure (TME) cited in The Commission on Devolution in Wales, *Empowerment and Responsibility: Financial Powers to Strengthen Wales*, (November 2012), p158. Tax revenue data is from Wales Office written evidence to the Committee (DWB 20)

<sup>107</sup> HC 962 2013-14, paras 76-7

<sup>108</sup> Cm 8838 March 2014 para 20

<sup>109</sup> *Empowerment and responsibility: devolving financial powers to Wales*, November 2013 pp19-22 (Appendix B); see also, *Wales Bill Impact Assessment*, 17 March 2014 p12.

to be identified as such by HMRC and any body established in future to collect and manage devolved taxes.<sup>110</sup> With regard to landfill, it is anticipated that site operators will need to submit a Wales-specific form, because the current return issued by HMRC does not require details of geographical location. That said, the Government take the view that in general there should be little or no increase in the compliance burden.<sup>111</sup>

### 3.6 Borrowing (clauses 19-20)

The borrowing provisions are in **clauses 19 and 20**. **Clause 19** defines the circumstances under which Welsh Ministers may borrow and sets out the constraints on such borrowing. Welsh Ministers may borrow for four purposes:

- to manage in-year volatility of receipts, where actual income for a month differs from the forecast receipts for that month;
- 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; and
- to fund capital expenditure.<sup>112</sup>

Welsh Ministers already have powers under existing legislation to borrow for the first two of these reasons.

#### **Current borrowing**

The Bill provides Welsh Ministers with the power to borrow up to £500 million for current spending (with a maximum of £200 million in a single year). The UK Government intends this power to come into force alongside the implementation of devolved taxes in 2018/19. The £500 million limit is unchanged from that in the *GOWA 2006*. The UK Government may increase or decrease the overall limit by secondary legislation but not below the initial £500 million.<sup>113</sup>

#### **Capital borrowing**

The Bill allows the Welsh Government to borrow for capital purposes, subject to limits. According to the UK Government, this will provide Welsh Ministers with “the autonomy and flexibility to determine when and how to make additional investment in infrastructure in Wales to help grow the Welsh economy”.<sup>114</sup>

The Bill sets an overall cap of £500 million on capital borrowing, with an annual limit of £125 million. The devolution of stamp duty land tax and landfill tax will provide the Welsh Government with an independent source of revenue against which it will be able to borrow. The Welsh Government’s capital borrowing power will come into force in 2018/19. According to the UK Government, this borrowing “will provide additional flexibility and bring a further element of financial accountability to the Welsh Government.”<sup>115</sup>

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<sup>110</sup> [Wales Bill Impact Assessment](#), 17 March 2014 p13

<sup>111</sup> *op.cit.* p14

<sup>112</sup> Bill 186 EN para 167

<sup>113</sup> [Cm 8838](#) March 2014 paras 83-86

<sup>114</sup> *op. cit.* March 2014 para 93

<sup>115</sup> *op. cit.* March 2014 para 87

The Bill allows the UK Government to increase or decrease the £500 million limit (but not below the initial £500 million) without primary legislation. The overall cap on capital borrowing will be based on the UK Government's view of the economic and fiscal conditions, the effect of inflation and the size of the revenue stream available to the Welsh Government.<sup>116</sup>

In its pre-legislative scrutiny of the draft Bill, the Welsh Affairs Committee recommended that the Government explain how the limit of £500 million on both current and capital borrowing was arrived at. It also noted the argument that the borrowing limits be reached by negotiation between the UK and Welsh Governments rather than being written on the face of the Bill.<sup>117</sup>

With respect to capital borrowing, the Command Paper noted that the limit was higher than implied by the ratio of borrowing to tax revenue permitted in Scotland. It said that the capital borrowing limit had been increased to £500 million to permit the Welsh Government to make improvements to the M4 before the devolution of income tax powers.<sup>118</sup> If income tax powers were devolved to Wales, the annual and overall limits would be reviewed with the expectation being that they would be the same as in Scotland (10% of capital departmental expenditure limit each year).

The UK Government has agreed that the Welsh Government can use its existing borrowing powers to move forward with improvements to the M4, if it wishes to do so. This would be before the new capital borrowing powers come into force in 2018/19.

### ***Bond finance***

The Welsh Government may borrow from the National Loans Fund or commercial banks to finance its capital spending.

The Welsh Affairs Committee discussed whether the Welsh Government should have the power to borrow by issuing bonds. This had been recommended by the Silk Commission, although it noted that bonds were likely to be a relatively costly form of borrowing, at least in the short term. The Scottish Government has recently been given this power.<sup>119</sup> The Committee concluded that there were arguments for allowing the Welsh Government to issue bonds, as long as the overall borrowing limit were unchanged. In its scrutiny of the draft Bill, the Committee recommended that the Government explain why the Welsh Government would not be allowed to issue bonds.<sup>120</sup>

The Bill permits the UK Government to alter the sources of finance available to the Welsh Government without the need for primary legislation. This could include bonds and the UK Government has said that "it is willing to consider further whether this might be appropriate alongside the package of financial powers initially being devolved by the Wales Bill."<sup>121</sup>

**Clause 20** repeals parts of the *Welsh Development Agency Act 1975* relating to borrowing and guarantees.

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<sup>116</sup> *op. cit.* March 2014 para 91

<sup>117</sup> [HC 962 2013-14](#), para 103

<sup>118</sup> [Cm 8838](#) March 2014 paras 88-90

<sup>119</sup> HM Treasury and Scotland Office, [Government is granting the Scottish government the power to issue its own bonds](#), 19 February 2014

<sup>120</sup> [HC 962 2013-14](#), paras 111-12

<sup>121</sup> [Cm 8838](#) March 2014 para 94

### 3.7 Budgetary procedures & Reports (clauses 21-22)

The current Assembly procedures for considering the budget cannot be altered by the Assembly. The Silk Commission said:

These procedures will no longer be fit for purpose once the Assembly is given legislative responsibility for borrowing and tax-raising.<sup>122</sup>

The Silk Commission went on to say: “we believe that the National Assembly for Wales should have legislative control of its own budgetary procedures.”<sup>123</sup>

The draft Bill did not include such a provision. The Welsh Affairs Committee noted that “there is a case for the Bill to be the mechanism by which the Assembly gains control of the legislative competence to amend its own budgetary procedures.<sup>124</sup> The Committee also recommended that the Government consider amending the draft Bill to give the Assembly this control.<sup>125</sup>

**Clause 21** is a new clause which was not in the draft Bill. It allows the Assembly to legislate for its own budgetary procedures, such as setting and scrutinising the annual budget. It would also permit the Assembly to pass an annual Finance Act instead of the current annual budget motion.

**Clause 22** specifies the reports which the Secretary of State and Welsh Ministers must make on the implementation and operation of the new financial powers. These reports must be laid before both Houses of Parliament and the Assembly.

### 3.8 Adjustment of the Block Grant

Until now, the Assembly’s funding has come almost entirely from a block grant from the Treasury. Under the proposals in the Bill and Command Paper, part of the Assembly’s budget will come from devolved taxes. The block grant will remain but will be reduced to take account of the taxation powers devolved to the Assembly. The method for adjusting the block grant and the implications for the Welsh Budget are explained below.

#### ***Income tax***

The Welsh Affairs Committee recommended that more information be provided about how the block grant would be adjusted to take account of Welsh income tax revenues. The Committee noted that the method was not specified in the draft Bill.<sup>126</sup>

The Command Paper provides details on how the Welsh block grant will be reduced if income tax powers are devolved to Wales.<sup>127</sup> The indexed deduction method will be used as recommended by the Silk Commission. This method was originally proposed by the Holtham Commission and is also the method which will be used in Scotland.

The mechanism has two parts:

- A first year adjustment

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<sup>122</sup> Commission on Devolution in Wales, *Empowerment and Responsibility: Financial Powers to Strengthen Wales*, November 2012, p135

<sup>123</sup> *op.cit.* p136

<sup>124</sup> [HC 962 2013-14](#), para 121

<sup>125</sup> [HC 962 2013-14](#), para 122

<sup>126</sup> [HC 962 2013-14](#), para 27

<sup>127</sup> [Cm 8838](#) March 2014 paras 52-69

- Subsequent indexation of this amount by growth in UK taxable non-savings and non-dividend income.

The Government has accepted the recommendation of the Silk Commission that there be a transitional period of two or three years to help manage the transfer of risk.

#### *Transitional period*

During the transitional period, the block grant would be reduced by the amount of money raised by setting the Welsh rate of income tax at 10p. This deduction would be the same whether the Assembly decided to set the Welsh rate at 10p or at a different rate. If a 10p rate were set, the Welsh Government's budget would be the same as under the current system. The revenue raised by the 10p rate would be exactly offset by the reduction in the block grant. If a higher rate were set, for example, the Welsh budget would be increased compared with the current arrangements. The deduction from the block grant would still be the same but revenues from the Welsh rate of income tax would be higher, leading to a net increase in the budget.

During the transitional period, the block grant deduction and the payment to the Welsh Government of revenue from the Welsh rate of income tax will both be based on revenue forecasts made by the Office for Budget Responsibility (OBR).<sup>128</sup> There will be no reconciliation of the forecast revenues to the actual amounts at the end of the year, so the Welsh Government will not face any risks from the forecast revenues differing from the outturns.

#### *After the transitional period*

In the first year after the transitional period, the reduction in the block grant and revenues from the Welsh rate of income tax will be based on actual outturn figures rather than OBR forecasts. This will take place around a year after the end of the financial year to enable HMRC to collect information from self-assessment taxpayers.

In the second year after the transitional period and subsequent years, the block grant will be adjusted as follows. The previous year's deduction will move in line with the UK income tax base (excluding savings and dividend income). This arrangement has the following consequences:

- The Welsh budget will be affected by performance of the Welsh economy relative to the UK. The Command Paper explains this as follows:

If the Welsh Government sets a rate of 10p, then its budget will be higher (than under current arrangements) if the NSND tax base in Wales grows faster than the UK average, but lower if growth in Wales is slower.<sup>129</sup>

- It protects the Welsh budget from economic shocks which affect the whole of the UK.

#### *Implications for the Welsh budget*

The effect of the proposed changes is to make the Welsh budget more dependent on tax revenue raised in Wales, assuming Wales voted in favour of more power over income tax. It was suggested to the Silk Commission that the weaker Welsh tax base risked

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<sup>128</sup> The OBR will start forecasting Welsh taxes from the 2014 Autumn Statement and biannually thereafter ([Cm 8838](#) March 2014 para 96)

<sup>129</sup> [Cm 8838](#) March 2014 para 65. NSND means non-savings and non-dividend income.

disadvantaging Wales compared to the current arrangements. There was some discussion of this argument in the Silk Commission report:

5.5.15 The key advantage of adopting the indexed deduction method for the block grant off-set is that it is not the actual level of tax revenue that is raised in Wales that would determine whether the budget of the Welsh Government would be more or less than in a wholly block grant funded scenario. The important determinant is the relative growth in tax revenues in Wales compared to the rest of the United Kingdom.

5.5.16 Between 2000-01 and 2009-10, on average, income tax revenues excluding savings and dividend income in Wales have grown faster than across the United Kingdom as a whole [...]. If Welsh income tax revenues grow at a faster rate than across the United Kingdom as a whole, the budget of the Welsh Government would be higher than if it were wholly dependent on the block grant.

5.5.17 The main reason for the trends [...] is the relative change in the employment rate. In 2000, the employment rate in Wales was 5 percentage points below the average for the United Kingdom as a whole. This gap has now narrowed to 2.6 percentage points. [...] [B]etween 2002 and 2008 the employment rate in Wales was a lot higher than at the start of the decade. Across the United Kingdom as a whole, the growth in the employment rate was more modest. While the employment rate fell in Wales at a faster rate than across the United Kingdom as a whole during 2009 and 2010, since then the employment rate in Wales has increased at a faster rate than across the United Kingdom as a whole. Our research paper “Economic Context in Wales”, published on our website, discusses these economic trends in Wales in more detail.

5.5.18 While there are indeed risks that in the future Welsh income tax revenues grow at a slower rate than across the United Kingdom as a whole, our analysis shows that unless the income tax base in Wales grows at a much slower rate than the rest of the United Kingdom then the financial impact is relatively modest. A pessimistic outlook for Wales in comparison with the rest of the United Kingdom is in no way inevitable (see Annex E for a full analysis).<sup>130</sup>

### ***Stamp duty land tax, landfill tax and business rates***

The block grant will also be reduced following the devolution of stamp duty land tax and landfill tax. This reflects the fact that the Welsh Government will keep the revenue from its replacements for these taxes and the fact that the UK Government will no longer be receiving income from these taxes in Wales.

In its pre-legislative scrutiny, the Welsh Affairs Committee noted that the mechanism for adjusting the block grant in relation to these taxes was not set out in the draft Bill. It recommended that the Government state how the mechanism would operate by the time the Bill was introduced.<sup>131</sup>

The UK Government has said that the method used for adjusting the block grant when business rates were devolved in Scotland and Northern Ireland is “a useful starting point”.<sup>132</sup> It has also said:

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<sup>130</sup> Commission on Devolution in Wales, *Empowerment and Responsibility: Financial Powers to Strengthen Wales*, November 2012, pp93-95

<sup>131</sup> HC 962 2013-14, paras 81-82

<sup>132</sup> Cm 8838 March 2014 para 29

The Government continues to discuss this proposal, and other options, with the Scottish Government and has now opened similar discussions with the Welsh Government.<sup>133</sup>

There will also be a one-off adjustment to the block grant to reflect full devolution of business rates.<sup>134</sup>

## **4 Part 3: Miscellaneous (housing revenue accounts and Law Commission)**

### **4.1 Limits on housing revenue account debt (clause 23)<sup>135</sup>**

#### ***Background***

The eleven Welsh local authorities with retained housing stock are required to record all income and expenditure in relation to these dwellings in their ring-fenced Housing Revenue Accounts (HRAs).<sup>136</sup> Where an authority's notional HRA expenditure (mainly on management and maintenance of the stock) exceeds its assumed income the UK Government pays Housing Revenue Account Subsidy (HRAS) to make up the deficit. Where notional expenditure is less than assumed income the authority is required to pay the surplus to the Exchequer. The surplus is known as 'negative subsidy.' All eleven of the stock retaining Welsh local authorities are in this position – the annual surplus paid by Welsh authorities to the Exchequer is estimated to be £73 million.<sup>137</sup>

The [Explanatory Memorandum](#) to the *Housing (Wales) Bill* highlights issues with the operation of the HRAS:

The current system is not influenced by the efficiency of local authorities. The system in England made assumptions about spending needs based on a wide range of statistical data, whereas in Wales, the subsidy system provides a single management and maintenance allowance. This has been uplifted annually to provide an above-inflation real increase. If a local authority spends more or less than the management and maintenance allowance on delivering services, it does not alter the amount of subsidy which it is eligible to receive or surplus it is required to pay.

...Each year, approximately £73 million is collected from local authorities and paid to the UK Government. This means that these funds are not available to local authorities for use on improving their housing stock.

The system acts as a significant disincentive for local authorities to build new housing stock because any new properties held in the system would have to be included in the calculation of the subsidy. If an authority develops new houses and includes them in the Housing Revenue Account Subsidy system, this will increase the sum paid to the UK Government.<sup>138</sup>

The *Localism Act 2011* provided for the abolition of HRAS in England; in April 2012 English stock owning authorities moved to a self-financing regime. Background to this change and subsequent developments are covered in two Library notes: [The reform of Housing Revenue](#)

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<sup>133</sup> *op. cit.* March 2014 para 32

<sup>134</sup> *op. cit.* March 2014 para 14

<sup>135</sup> This section contributed by Wendy Wilson.

<sup>136</sup> The Housing Revenue Account Subsidy system is governed by the *1989 Local Government and Housing Act* (as amended by the *2003 Local Government Act*)

<sup>137</sup> [Explanatory Memorandum](#), *Housing (Wales) Bill*, November 2013, para 3.92

<sup>138</sup> [Explanatory Memorandum](#), *Housing (Wales) Bill*, November 2013, paras 3.91-3.93

*Account Subsidy* (SN04341) and *Local housing authorities - the self-financing regime: progress and issues* (SN06776).

The HRAS has continued to operate in Wales while the Welsh Assembly Government conducted negotiations with the Treasury over an exit strategy. Subsequently, in a joint Written Statement issued on 25 June 2013 the Finance Minister, Jane Hutt, and Carl Sargeant, Minister for Housing and Regeneration, confirmed that agreement had been reached to enable the abolition of HRAS in Wales:

We are delighted to announce that the Chief Secretary to the Treasury has agreed for the 11 stock retaining local authorities in Wales to exit from the Housing Revenue Account Subsidy (HRAS) system.

There has been concern for many years at the substantial transfers from local authorities in Wales to HM Treasury, via the Welsh Government, as a result of this complex system. These currently amount to some £73 million per annum.

There are two elements to the agreement. The first part will involve local authorities buying themselves out of the existing subsidy system through a one off lump sum and local authorities will take on new debt to fund the settlement. These reforms will generate a total of £33 million in savings to the 11 stock retention local authorities each year.

The second element, which is a condition of the agreement, will involve the imposition of a housing related borrowing cap. We have managed to negotiate the level of the debt cap which will allow local authorities to continue to invest in their housing stock in line with their current housing business plan commitments. Local authorities will have more to spend on bringing their homes up to the Wales Housing Quality Standard which will bring real and tangible benefits to their tenants.

We will issue a further update on timescales once agreed with the Treasury and we will continue to work closely with local authorities and the Welsh Local Government Association on implementation.

We appreciate that this has been a complex and challenging area of work and we are very grateful for the support of previous Ministers, local authorities, the Welsh Local Government Association and our officials in achieving this historic agreement.<sup>139</sup>

Provisions to enable the abolition of the HRAS are contained in Part 5 of the *Housing (Wales) Bill* which is currently progressing through the National Assembly. The Assembly's Research Service published a [guide](#) to this Bill in January 2014.<sup>140</sup>

### **The Bill**

As part of the abolition of HRAS in England the Government took new powers under the *Localism Act 2011* to impose a cap on the level of borrowing that local housing authorities can undertake under the self-financing regime:

Our reforms must not jeopardise the Government's first economic priority, which is to reduce the national deficit. Borrowing made possible by any income stream, including housing rents, must be affordable not just locally but within the national fiscal framework. The prudential borrowing rules were designed to focus solely on local affordability. It is for this reason that the Government also has reserve powers to

<sup>139</sup> Written Statement – reform of Housing Revenue Account Subsidy System, 25 June 2013

<sup>140</sup> National Assembly for Wales Research Service, *Housing (Wales) Bill*, January 2014, p20

address any nationally unsustainable increase in borrowing. The housing borrowing cap will help to ensure that such exceptional measures do not become necessary.<sup>141</sup>

**Clause 23** would amend Part 6 of the *Local Government and Housing Act 1989* to allow the UK Government to set an aggregate cap on Welsh local authority borrowing in relation to housing. Welsh Ministers will be required to set a cap on individual local authorities. The effect of the clause is to give Welsh Ministers powers equivalent to those in sections 171-173 of the *Localism Act 2011*.

The Explanatory Memorandum to the *Housing (Wales) Bill* states:

The total borrowing limit agreed for Wales overall is £1.85 billion. This includes local housing authorities' existing borrowing and the new debt required to fund the buy-out.<sup>142</sup>

While the move to self-financing in Wales has been welcomed the imposition of a borrowing cap is likely to attract less support. English authorities argue that they are already subject to the Prudential Code for Capital Finance and can demonstrate a good track record which should be viewed as a sufficient safeguard against imprudent borrowing.<sup>143</sup> The Chartered Institute of Housing and others have argued that capping debt at opening levels (in England) has artificially restricted "spend to save" type investment which has the capacity to provide better value for money in the longer term. Arguments around the debt cap are fully fleshed out in [Local housing authorities - the self-financing regime: progress and issues](#) (SN06776).

#### **4.2 The work of the Law Commission in Wales (clause 24)**

**Clause 24** provides for a protocol between the Law Commission and the Welsh Government in respect of the Commission's work relating to Welsh devolved matters. The Lord Chancellor is required to approve the protocol. The *Explanatory Notes* explain that currently the powers of the Law Commission in relation to the Welsh Government are unclear.

The Law Commission's role is to codify the law, eliminate anomalies, repeal obsolete and unnecessary enactments and reduce the number of separate statutes. It is established under the *Law Commissions Act 1965*. A separate Northern Ireland Commission was established in 2007.<sup>144</sup> The clause inserts two new sections into the 1965 Act, setting out the parameters within which the protocol will operate.

The protocol might facilitate the development of a legal jurisdiction in Wales which is separate from the existing England and Wales jurisdiction. The Welsh Government launched a consultation in 2012 on specific aspects of a potential separate legal jurisdiction for Wales.<sup>145</sup> A [summary of responses](#) was produced in December 2013. This noted the views of the Welsh Government:

The Welsh Government believes that we should prepare for a time when a separate legal jurisdiction may be necessary and beneficial. As part of that preparation, the Welsh Government will aim proactively to enhance the Welsh identity within the shared jurisdiction of England and Wales, and to develop the foundations on which any

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<sup>141</sup> Cm 8401, July 2012, para 16

<sup>142</sup> [Explanatory Memorandum, Housing \(Wales\) Bill](#), November 2013, para 7.312

<sup>143</sup> CLG, [summary of responses](#) to the prospectus, *Council housing: a real future*, November 2010, p7

<sup>144</sup> [The Northern Ireland Law Commission: About Us](#)

<sup>145</sup> [Consultation on a separate legal jurisdiction for Wales](#) Welsh Government 2012

separate Welsh legal jurisdiction could be formed should a decision be taken to do so in the future.<sup>146</sup>

The National Assembly for Wales Constitutional and Legislative Affairs Committee produced a report *Inquiry into a separate Welsh jurisdiction* in December 2012. It argued for changes to be made within the current unified Wales and England model to ensure that it reflects and recognises this emerging legal identity. This included changes to the operation of the Law Commission or the creation of a new body.<sup>147</sup>

### 4.3 Devolution of business rates<sup>148</sup>

The UK Government plans to fully devolve business rates to the Assembly. This will be done via a change in the way that the Barnett Formula affects the funding of the Assembly. This is not a legislative matter and there is therefore no provision for it in the Bill.

Currently, the Welsh Government can legislate to change the current business rates system, including introducing alternative schemes for relief and changing the multiplier. However, the revenue generated does not directly affect the level of funding of the Welsh Government. The levels of business rates revenue in England are included in the baseline of the Welsh block grant; when there are changes in the level of local government spending in England funded by business rates, Barnett consequentials ensue. The first report of the Silk Commission stated:

The overall revenue raised from business rates in Wales has no influence on the size of the Welsh budget. Changes in this total are determined by changes in the DCLG Local Government consequential. If Welsh business rates income fell or increased by £100 million, this change would not have any impact on the Barnett determined resources transferred to the Welsh Government. This removes risk and is an advantage to Wales if English rates are more buoyant than in Wales. But it also means there is no incentive to increase collection rates and grow the economy.<sup>149</sup>

The change proposed will mean that the revenue from business rates collected in Wales will be retained in Wales, providing an incentive to growth for the Welsh Government.

This was recommended by the first report of the Silk Commission.<sup>150</sup> It was also recommended by the independent review of business rates carried out for the Welsh Government by Professor Brian Morgan.<sup>151</sup> The Morgan Review noted that the existing system benefited Wales when overall business rate revenue was rising. Gerald Holtham, in an article on the 2010-11 funding settlement for Wales, argued that the treatment of business rate revenue caused Wales's funding to be reduced by a greater amount than Scotland's or Northern Ireland's.<sup>152</sup>

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<sup>146</sup> Welsh Government *Specific aspects of a potential separate legal jurisdiction for Wales summary of responses* December 2013

<sup>147</sup> *Inquiry into a separate Welsh jurisdiction National Assembly for Wales* Constitutional and Legislative Affairs Committee Recommendation 3

<sup>148</sup> This section contributed by Mark Sandford.

<sup>149</sup> Commission on Devolution in Wales, *Empowerment and Responsibility: financial powers to strengthen Wales*, 2012, pp. 57

<sup>150</sup> Commission on Devolution in Wales, *Empowerment and Responsibility: financial powers to strengthen Wales*, 2012, pp. 56-58

<sup>151</sup> Professor Brian Morgan, *Business Rates Wales Review: Incentivising Growth*, 2012, p. 14

<sup>152</sup> Gerald Holtham, "Why Wales has been hit", *ClickonWales*, 2 November 2010

## **5 Part 4: commencement, consequential provisions etc**

**Clause 27** contains the power to make supplementary or consequential provision. An order modifying an act of Parliament or a measure or act of the Assembly is subject to approval by resolution of the House of Commons. Other orders under this clause are subject to annulment by the House of Commons.

**Clause 28** covers commencement, which is two months after the Act is passed for Part 1, clause 24 and those clauses in Part 2 not subject to the referendum, apart from clauses 19 and 20. Clauses 19 and 23 will be commenced on a day appointed by the Treasury, and clause 20 is subject to clause 19.

**Clause 29** sets the extent of the Bill: while amendments and repeals are limited to the extent of the instruments they affect, the rest of the Bill applies to the UK.