

*These notes refer to the Wales Bill as brought from the House of Commons
on 25th June 2014 [HL Bill 34]*

WALES BILL

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Wales Bill as brought from the House of Commons on 25th June 2014. They have been prepared by the Wales Office in order to assist the reader of the Bill and help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
2. The Notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

SUMMARY

3. The Bill makes changes to the electoral arrangements for the National Assembly for Wales (“the Assembly”), gives effect to many of the recommendations set out in the first report of the Commission on Devolution in Wales (“Silk Commission”) and makes a number of technical changes to the Government of Wales Act 2006 (“GOWA 2006”) and other legislation in order to update the operation of the devolution settlement in Wales.

BACKGROUND

4. In May 2012 the Government published “A Green Paper on future electoral arrangements for the National Assembly for Wales” which sought views on a number of proposed changes to how the Assembly is elected. Following public consultation, the Secretary of State for Wales announced in March 2013 that the Government would bring forward legislation to change the length of an Assembly term from four years to five years, to remove the prohibition on a candidate at an Assembly election standing in both a constituency and a region and to bring to an end the practice of Assembly Members (“AMs”) also sitting in the House of Commons.

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5. In October 2011 the Government established the Silk Commission to review the current financial and constitutional arrangements in Wales. The Commission published its first report in November 2012, making 33 recommendations to improve the financial accountability of the Assembly and the Welsh Government. The Government responded formally in November 2013, accepting most of the Commission's recommendations.
6. The Bill was published in draft on 18 December 2013 and was subject to Pre-Legislative scrutiny by the Welsh Affairs Select Committee whose report was published on 28 February 2014. The Government responded to the Committee on 20 March.

TERRITORIAL EXTENT AND APPLICATION

7. Although the main provisions of the Bill extend to the whole of the United Kingdom, its practical application is limited to matters which affect Wales. The exception to this is clause 11 which relates directly to Scotland but is consequential to the changes in relation to Wales.

COMMENTARY ON CLAUSES (AND SCHEDULES)

PART 1: THE ASSEMBLY AND WELSH GOVERNMENT

Clause 1: Frequency of Assembly ordinary general elections

8. The Assembly passed a resolution on 16 March 2011 which called for its elections to be delayed by one year to avoid a clash with the Westminster elections. This was implemented by section 5 of the Fixed-term Parliaments Act 2011 which moved the date of the next Assembly elections from 7 May 2015 to 5 May 2016. Under the law as it stands, the Assembly will revert to four year terms thereafter.
9. There remains the potential for scheduled Westminster and Assembly elections to take place on the same day in future. Given that currently Westminster elections operate on a fixed five year cycle from 2015 and Assembly elections operate on a fixed four year cycle from 2016, they are due to coincide in 2020 and every twenty years thereafter.
10. *Subsection (1)* of clause 1 therefore amends section 3(1) of GOWA 2006 to provide for ordinary general elections to the Assembly to take place every five years, rather than every four years as at present. The next Assembly elections after 2016 would be in 2021, thus avoiding a clash with the 2020 Westminster election.

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11. *Subsection (2)* repeals section 5 of the Fixed-term Parliaments Act 2011. It is no longer required because the effect of *subsection (1)* is that the next Assembly election will be on 5 May 2016 and every five years thereafter.

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

12. Every voter in Wales has two votes: one for their preferred constituency candidate and one for a regional candidate. Before GOWA 2006 came into force, candidates could stand for election as both a constituency member and a regional member. Section 7 of GOWA 2006 prohibited this as it was thought that a member who had lost a constituency vote but was elected as a regional member could cause dissatisfaction with the political process because they would have been explicitly rejected by the electorate as a constituency member. However, this concern has been refuted in studies by the Electoral Commission and others which have demonstrated that the prohibition has a disproportionate impact on smaller parties who have a smaller pool of potential candidates to draw upon.
13. *Subsection (2)* of clause 2 amends section 7 of GOWA 2006 to remove the restriction on standing as both a constituency and a regional candidate in an Assembly election. But a person cannot stand as a candidate in a constituency outside of the region in which they are standing. It also provides that a candidate on a regional party list cannot stand in a constituency as a candidate for another party. The clause also makes provision for individual candidates standing on a regional list: they can stand neither as party candidates in a constituency in the region nor as a candidate for a constituency outside that region.
14. *Subsection (3)* of clause 2 amends section 9 of GOWA 2006 to provide how regional seats are to be allocated following the removal of the prohibition.
15. *Subsection (4)* of clause 2 amends section 11(8) of GOWA 2006 to provide that a regional vacancy occurring between general elections cannot be filled by a candidate on a party list submitted at the previous general election if the candidate was returned at that election or has since been returned in an Assembly constituency by-election or under section 11.

Clause 3: MPs to be disqualified from membership of Assembly

16. The practice of simultaneously being an AM and a member of the House of Commons (commonly known as "double jobbing") has been the source of some criticism. In its 2009 report on "MPs' Expenses and Allowances: Supporting Parliament, safeguarding the taxpayer", the Committee on Standards in Public Life examined the issue and recommended "that the practice of holding dual mandates in both the House of Commons and the devolved legislatures should be brought to an end as soon as

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possible. Ideally that would happen by the time of the scheduled elections to the three devolved legislatures in May 2011, or failing that by 2015 at the very latest.”.

17. *Subsection (1)* of clause 3 inserts a new paragraph (za) into section 16(1) of GOWA 2006 to provide that members of the House of Commons are disqualified from being members of the Assembly.
18. *Subsection (2)* of clause 3 sets out some limited exceptions to the disqualification of MPs from membership of the Assembly.
19. A new section 17A(1) in GOWA 2006 provides that when an MP is elected to the Assembly, they have eight days’ grace in which to resign their seat in the House of Commons before becoming disqualified from becoming an AM. Given that technically an MP cannot resign, this grace period is to allow them time in which to ask to be appointed to an office such as the Steward or Bailiff of the Chiltern Hundreds in order to disqualify them from the House of Commons. This allows them to continue as an AM rather than an MP.
20. New section 17A(2) deals with a person who (a) is a candidate for election to the House of Commons, (b) is returned at an Assembly election as an AM, and (c) is then subsequently elected to the House of Commons. In this situation, they would not be disqualified from being an AM in the eight days following the day on which they are returned as such. Again, this allows an AM some time in which to disqualify themselves from their seat in the House of Commons. Alternatively, if an Assembly election and a Westminster election take place on the same day or in close proximity, and a candidate is elected at both, this provision would allow them eight days in which to decide which seat to take up.
21. The period of grace is only given to a person who is a “candidate” for election to the House of Commons on being returned as an AM. No period of grace is otherwise given to an existing AM who is then elected to the House of Commons. Such a person will, on successful return to Westminster, automatically be disqualified for membership of the Assembly under section 16(1)(za) of GOWA 2006. No grace period is required because the Assembly does not have the same restrictions on resigning that exist at Westminster.
22. *Subsection (2)* of clause 3 also inserts new section 17B into GOWA 2006. This applies where an AM is returned as an MP within the period of 372 days before an expected Assembly general election. The period of 372 days reflects the maximum period possible (even allowing for leap years) between a scheduled Westminster general election and the subsequent scheduled Assembly election. If an AM was elected at a scheduled Westminster general election, they would therefore not be disqualified under section 16(1)(za) of GOWA 2006 because section 17B allows a limited period of “double-jobbing”. In these circumstances, an AM would retain their

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seat so that the expense of a by-election is avoided when a scheduled Assembly election is only approximately one year away.

23. *Subsections (4) and (5)* of clause 3 make consequential amendments to the National Assembly for Wales (Representation of the People) Order 2007 (SI 2007/236). Article 34 (false statements in nomination papers) and rule 9(4)(c)(ii) of Schedule 5 (Assembly election rules) are amended to include reference to the disqualification of MPs provision in section 16(1)(za) of GOWA 2006.

Clause 4: The Welsh Government

24. *Subsection (1)* of clause 4 renames the Welsh Assembly Government the Welsh Government (Llywodraeth Cymru). This enables the use of the term Welsh Government in formal, legal documents, following the increasing use of that term by the current Welsh Assembly Government and others in the public domain since the 2011 election. *Subsection (2)* gives effect to the renaming wherever it occurs in GOWA 2006, subject to a couple of exceptions in *subsection (3)*.
25. *Subsection (4)* of clause 4 ensures that, where necessary, statutory references to the Welsh Assembly Government (other than those in GOWA 2006), are to be read as references to the Welsh Government instead. It also provides that, where the context requires it, those references continue to include the Welsh Assembly Government (for example, in relation to events which were completed by the Welsh Assembly Government but have continuing legal effect).

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

26. Clause 5 inserts additional wording into section 46(5)(c) of GOWA 2006 to clarify that the First Minister retains his post in the event of dissolution of the Assembly.
27. Section 46 provides that the First Minister holds office until Her Majesty accepts his resignation or if another person is appointed to that office. The Presiding Officer can appoint someone to exercise the First Minister's functions if he dies, becomes unable to act or ceases to be an AM. It was not intended that this power could be exercised by the Presiding Officer where the First Minister has ceased to be an AM only by reason of the dissolution of the Assembly before an election. To put the position beyond doubt, this clause amends section 46(5)(c) so that there is no power to appoint a person to exercise the First Minister's functions just because of the dissolution of the Assembly.

PART 2: FINANCE

28. The Assembly Act provisions¹ in GOWA 2006 specify the legislative competence of the Assembly and give the Assembly the power to make laws, known as Acts of the Assembly. Tax policy (other than for local taxes such as council tax) is currently outside the Assembly's legislative competence.
29. Part 2 of the Bill enables the Assembly to legislate about devolved taxation. The devolved taxes specified in the new Part 4A of GOWA 2006 are a Welsh tax on transactions involving interests in land (replacing stamp duty land tax in Wales) and a Welsh tax on disposals to landfill (replacing landfill tax in Wales). New devolved taxes may be added by Her Majesty making an Order in Council.
30. Subject to a vote in favour in a referendum, the Assembly may also set a Welsh rate for the purpose of calculating the rates of income tax to be paid by Welsh taxpayers.
31. A similar set of powers was devolved to Scotland under the Scotland Act 2012 (which amended the Scotland Act 1998). Scotland's replacement taxes for stamp duty land tax and landfill tax are expected to be introduced in April 2015, and the Scottish rate of income tax is anticipated to commence in April 2016.

Clause 6: Taxation: introductory

32. This clause provides the structure within which the Welsh Government may legislate on tax. *Subsection (2)* of clause 6 inserts a new Part 4A into GOWA 2006, commencing with new section 116A (part of the introductory Chapter 1).
33. Section 116A(1) introduces Chapters 3 and 4 into Part 4A which specify taxes on land transactions (Chapter 3) and on disposals of waste to landfill (Chapter 4) as devolved taxes.
34. Section 116A(2) provides that Part 4A imposes restrictions on the power to legislate in relation to devolved taxes, including new section 116A(3).
35. Section 116A(3) provides that a devolved tax introduced by the Welsh Government may not be imposed where to do so would be incompatible with the UK's international obligations. This would include, for example, certain land transactions in

¹ The "Assembly Act provisions" conferred power on the Assembly to pass Acts of the Assembly in the twenty areas devolved to Wales if a majority of voters in a referendum approved the provisions coming into force. A referendum was held on 3 March 2011, and resulted in a vote in favour. The provisions came into force on 5 May 2011.

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circumstances covered by articles of the Vienna Convention on Diplomatic Relations or the North Atlantic Treaty, where any tax levied would have to be reimbursed by the UK Government.

36. Section 116A(4) defines a “devolved tax” for the purposes of GOWA 2006 as meaning a tax specified in the new Part 4A as a devolved tax.
37. In short, section 116B confers legislative competence on the Assembly to provide for the appointment of civil servants to a body it establishes in connection with devolved taxes. However, only the employees of the body whose functions relate to the collection and management of devolved taxes and/or local government finance matters can be civil servants. Regardless of on whom the Assembly confers the power to appoint those civil servants, the costs associated with their appointment are to be borne by the Welsh Ministers.
38. Section 116B(1) provides that this section applies where the Assembly legislates to establish a body that is to exercise functions in relation to the collection and management of devolved taxes. Reference is made to the fact that the Assembly may also choose to provide for that same body to exercise functions in relation to local government finance matters (such as council tax and business rates) or any other matter.
39. Section 116B(2) defines "relevant official" for the purposes of this section. Relevant officials means, in relation to a body established under subsection (1), those officers or members of staff who have no functions other than functions relating to (a) the collection or management of devolved taxes; or (b) local government finance. Therefore, officers or members of staff appointed to the body, whose functions relate to any other matter, will not be "relevant officials" for the purposes of this section.
40. Section 116B(3) confers on the Assembly legislative competence to provide for the appointment of relevant officials as civil servants as provided for in this section.
41. Section 116B(4) defines "relevant civil servants" to be those relevant officials who have been appointed as civil servants as provided for in this section. Subsections (5)-(7) will only apply to those civil servants.
42. Section 116B(5) provides that the Welsh Ministers are responsible for payment of the salaries and expenses of relevant civil servants appointed by virtue of section 116B(3), irrespective of on whom the Assembly chooses to confer the power to appoint them.
43. Section 116B(6) requires the Welsh Ministers to make payments to the Minister for the Civil Service at such times as he may determine in respect of pensions etc. payable to past and present relevant civil servants and in respect of any expenses to be incurred in administering those pensions etc.

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44. Section 116B(7) provides that the Welsh Ministers may, if they so wish, make payments towards the provision of pensions etc. to or in respect of past and present relevant civil servants.
45. Section 116C(1)(a) provides that Part 4A may be amended by Order in Council to provide for additional taxes to be devolved to the Assembly. Subsection (1)(b) introduces an order making power allowing amendments to be made in relation to devolved taxes.
46. Section 116C(2) provides that an Order in Council made under subsection (1) can amend other documents, including primary or secondary legislation if this is appropriate.
47. Section 116C(3) specifies that an Order made under subsection (1) is subject to the affirmative resolution procedure in the Assembly and both Houses of Parliament before it can become law.
48. Section 116C(4) ensures that an Order in Council made under this section would not affect the validity of an Act of the Assembly passed before the amendment comes into force, or the operation of such an Act.
49. *Subsections (3) to (9)* of clause 6 make further amendments to GOWA 2006. *Subsection (3)(a)* amends section 108(4)(a) of GOWA 2006 to specify that the legislative competence test in section 108(4)(a) is now also subject to the new subsection (4A). *Subsection (3)(b)* inserts this new subsection (4A) into section 108 to provide that where the Assembly legislates in relation to a devolved tax, such legislation will not be outside the Assembly's legislative competence by reason only of the fact that it falls within an exception specified under another heading. This is necessary to ensure that, if in the future an Order is made under section 116C permitting additional taxes, the existing exceptions under other headings (which include, for example, motor vehicle insurance) do not prevent provision about taxes on those matters. *Subsections (8) and (9)* amend Schedule 7 to GOWA 2006 (which lists the subjects on which the Assembly can legislate) to provide that devolved taxes are within the Assembly's legislative competence. Devolved taxes in this context are considered to cover everything necessary to implement devolved taxation including the collection and management of such taxes.

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

50. Clause 7 amends the Commissioners for Revenue and Customs Act 2005 (“CRCA 2005”) and the Customs and Excise Management Act 1979 to enable Her Majesty’s Revenue and Customs (“HMRC”) to disclose information to Welsh Ministers regarding devolved taxes; to make such information confidential and subject to onward disclosure controls; and to ensure that such devolved taxes are neither a function nor an “assigned matter” of HMRC, but remain a matter for Welsh Ministers,

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while leaving scope for HMRC to administer these taxes on behalf of Welsh Ministers if desired.

51. HMRC has a statutory duty of confidentiality which sets out the circumstances in which lawful disclosure of information it holds can be made. Disclosure may only occur in a limited number of specific circumstances. Devolution of some areas of taxation to the Assembly means that amendments are needed to the CRCA 2005 to enable HMRC to disclose relevant information regarding devolved taxes.
52. *Subsections (3) and (4)* amend section 15 of CRCA 2005 to ensure that HMRC has the power to administer devolved taxes on behalf of Welsh Ministers.
53. *Subsection (5)* amends section 17 of CRCA 2005 to ensure that an Act, or instrument made under such an Act, of the Assembly may not restrict or prohibit the use of information acquired by HMRC in connection with any of its functions.
54. *Subsections (6) and (7)* amend HMRC's statutory duty of confidentiality under section 18 of CRCA 2005 so that HMRC may disclose relevant information to Welsh Ministers in connection with devolved taxes.
55. *Subsection (8)* applies the existing criminal sanction under section 19 of CRCA 2005 for onward disclosure (forbidding further disclosure of such information without the consent of the Commissioners) to information disclosed to Welsh Ministers.
56. *Subsection (9)* amends section 18(4)(e) to ensure that an Act, or instrument made under such an Act, of the Assembly may not permit disclosure by HMRC of information held in connection with one of its functions. *Subsection (10)* makes similar provision in relation to the Revenue and Customs Prosecution Office.
57. *Subsections (11), (12) and (13)* amend section 51 of CRCA 2005 (interpretation). *Subsection (12)* provides that, unless the context otherwise requires, references to enactments in CRCA 2005 include an Act, or instrument made under such an Act, of the Assembly. *Subsection (13)* inserts a new subsection (2B) which prevents any function relating to a devolved tax from being a function of HMRC.
58. *Subsection (14)* amends Schedule 7 to GOWA 2006 to make clear the circumstances in which the Assembly can amend the functions of HMRC. *Subsection (14)(a)* amends Part 2 of Schedule 7 to set out a general rule that the Assembly cannot amend, remove or add to HMRC's functions. *Subsection (14)(b)* amends Part 3 of the Schedule to provide an exception to this general rule so that, if the Treasury consents, the Assembly can confer functions relating to devolved taxes on HMRC and also, once conferred, amend these functions. This ensures that functions can only be conferred on HMRC by the Assembly by mutual agreement.

Clause 8: Welsh rate of income tax

59. Clause 8 deals with the Welsh rate of income tax. *Subsection (3)* inserts Chapter 2 into the new Part 4A of GOWA 2006, consisting of sections 116D to 116K. *Subsection (2)* inserts a reference to Chapter 2 into the introductory Chapter 1 of new Part 4A. The amendments made by clause 8 will come into force in accordance with clause 14.
60. New section 116D confers on the Assembly a power to set, by resolution, a Welsh rate of income tax, for Welsh taxpayers.
61. Section 116D(2) provides a signpost to the reader that the overall rates of tax paid by Welsh taxpayers are to be calculated under section 6B of the Income Tax Act 2007 (“ITA 2007”) and that the income charged at those rates is determined by section 11B of ITA 2007. Sections 6B and 11B are inserted by clause 9.
62. Section 116D(3) to (6) provide that a Welsh rate resolution applies for only one tax year and must be a single rate (either a half or whole number) which applies for the whole of that year. The resolution must specify the tax year to which it applies and must be made before the start of that tax year (but no more than 12 months before the start of that year).
63. Section 116D(7) provides that if a Welsh rate resolution is cancelled before the start of the tax year for which it is to apply the Income Tax Acts have effect for that year as if the resolution had never been passed. (This is particularly relevant in relation to the calculation of tax rates at section 6B of ITA 2007.) The Interpretation Act 1978 defines the “Income Tax Acts” as meaning all enactments relating to income tax. If a resolution is cancelled it may be replaced by another Welsh rate resolution, provided that that replacement resolution is passed before the start of the tax year for which it is to apply.
64. Section 116D(8) requires that the standing orders of the Assembly ensure only the First Minister or a Welsh Minister may move a motion for a Welsh rate resolution.
65. New section 116E defines a “Welsh taxpayer” for the purposes of Part 4A of GOWA 2006.
66. Section 116E(1) states that a Welsh taxpayer is an individual (and not, for example, a company or a trust) who is resident in the UK for income tax purposes and meets at least one of the three conditions specified in the section. The legislation includes a signpost to Schedule 45 to the Finance Act 2013 (references in these Notes to “FA” and a year are to the Finance Act for that year) which introduced a new statutory

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residence test to determine whether individuals are resident in the UK for tax purposes.

67. Section 116E(2) sets out condition A, and provides that an individual will meet condition A if they have a close connection with Wales.
68. Section 116E(3) sets out condition B, and provides that an individual will meet condition B if they do not have a close connection with England, Scotland or Northern Ireland and spend more days of that year in Wales than in any other part of the UK.
69. Section 116E(4) sets out condition C. An individual will meet condition C if, for a whole or part of a year, that individual is a member of Parliament for a constituency in Wales, a member of the European Parliament for Wales or an AM.
70. Section 116E(5) sets out that section 116E(1) will not apply if the individual is a Scottish parliamentarian for the whole (or any part of) the tax year – further explanation is set out in section 116F.
71. Section 116E(6) defines a Scottish parliamentarian as an individual, who in respect of section 116E(5) and section 116F, is a member of the UK Parliament with a constituency in Scotland, a member of the Scottish Parliament or a member of the European Parliament for Scotland during a tax year.
72. New section 116F sets out the circumstances in which a Scottish parliamentarian can be a Welsh taxpayer.
73. Section 116F(1) sets out that if an individual has been a Scottish parliamentarian in a tax year, they will be a Welsh taxpayer if they are UK resident for the tax year, have also been a Welsh parliamentarian in that tax year and can meet one of the two conditions set out in the section. Taken with section 116E(5) this means that, if an individual is a Scottish parliamentarian for part of the year, but not a Welsh parliamentarian in that tax year, they will be a Scottish (rather than Welsh) taxpayer, even if, for example, they also have a close connection with Wales.
74. Section 116F(2) provides that whether an individual will be a Welsh taxpayer if they are both a Welsh and Scottish parliamentarian in the same tax year will be determined by comparing the amounts of time for which they have been a Scottish and Welsh parliamentarian. If they have been a Welsh parliamentarian for the longer period, they will be a Welsh taxpayer.
75. Section 116F(3) addresses the situation of an individual being a Welsh and Scottish parliamentarian for the same amount of time in a tax year. If this occurs, the individual would need to consider conditions A and B in section 116E and would be a Welsh taxpayer for the year if they met one of those conditions.

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76. New section 116G defines what is meant by a close connection with Wales or any other part of the UK (that is, England, Scotland or Northern Ireland) for the purposes of sections 116E(2) and 116E(3)(a).
77. Section 116G(2) applies where an individual has only one place of residence in the UK in which they live for at least part of the year. It provides that such an individual will have a close connection with the part of the UK in which that place of residence is located. If that place is in Wales the individual will be a Welsh taxpayer. If that place is in another part of the UK, the individual will not be a Welsh taxpayer (unless the special rules for Welsh parliamentarians apply).
78. Section 116G(3) applies where an individual has two or more places of residence in the UK. It provides that such an individual will have a close connection with the part of the UK in which their main place of residence is located, provided they live in that residence for at least part of the year and the times when their main place of residence is in that place comprise, in aggregate, more of the year than the times when their main place of residence is in any one other part of the UK. The individual will be a Welsh taxpayer if the times when their main place of residence is in Wales comprise in aggregate more of the year than the times when their main place of residence is in any one other part of the UK. For example, an individual who has their main place of residence in England for the first 120 days of the tax year, then moves to Wales for the remainder of the year would be a Welsh taxpayer, as their main place of residence would have been in Wales for a longer period. An individual who has their main place of residence in Wales for 165 days, in England for 100 days and in Scotland for 100 days would also be a Welsh taxpayer.
79. Section 116G(4) provides that, for the purposes of applying the definition of a Welsh taxpayer, a “place” includes a vessel and other means of transport.
80. Section 116H provides the means of determining the number of days which an individual spends in Wales or in another part of the UK. This would only apply to individuals who have not already had their Welsh taxpayer status determined by meeting conditions A or C.
81. Section 116H(1) provides that an individual spends more days in Wales than in any other part of the UK if (and only if) the number of days in the year in which they are in Wales exceeds the number of days in the year in which they are in any one other part of the UK. An individual’s whereabouts on a particular day is determined by where they are at the end of a day.
82. Section 116H(2) provides an exception from the rule in section 116G(1) where an individual arrives in the UK as a passenger and, on the next day, departs from the UK without engaging in activities which are to a substantial extent unrelated to their passage through the UK. Days meeting this exception need not be counted for the purposes of determining whether an individual meets condition B.

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83. New section 116I provides supplemental powers to modify enactments.
84. Section 116I(1) provides that an order by HM Treasury may alter the definition of income which is charged to income tax at the Welsh rates under new section 11B of ITA 2007 or the application of that section to a particular class of income which is so charged. For administrative ease, it may be beneficial for individuals if some types of non-savings income remain chargeable at the main rates, rather than at the Welsh rates. The power will allow for such changes to be made via secondary legislation. Section 116I(8) makes clear that the power can only be used to remove types of non-savings income from the charge to tax under section 11B – it cannot be used to include savings or dividend income as being chargeable at the Welsh rate.
85. Section 116I(2) allows for references to the basic rate, higher rate and additional rate to be amended in relation to Welsh taxpayers. (The order making power is limited so that amendments cannot be made to Chapter 2 of Part 2 of ITA 2007, which determines the rates at which income tax is charged on income.) Several tax reliefs are calculated by reference to gross income before deduction of income tax. The introduction of a Welsh rate raises a number of questions about which rate should be used in the calculation of reliefs and of income from which tax is deducted at source.
86. The Government wishes to discuss these issues with relevant stakeholders before coming to a final view on the treatment of such reliefs and income types and, where appropriate, to deal with such matters by secondary legislation once those discussions have taken place. It is anticipated that the approach taken in these areas would follow the proposals in Scotland set out in the HMRC Technical Note² published in May 2012.
87. Section 116I(3) provides that an order may be made to postpone temporarily the effect of a resolution in relation to the operation of PAYE. A fundamental part of the PAYE system is the use of tax tables by employers to calculate how much is to be deducted from their employees. If for any reason the Assembly did not pass a resolution until shortly before the start of the tax year, replaced one resolution with another shortly before the start of the tax year or did not pass a resolution at all, there may be practical difficulties for HMRC, payroll providers and others in making the necessary changes required to properly operate the PAYE system before the start of the tax year. 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. Where such a problem arises in relation to the main rates of income tax the relevant Finance Act normally contains a provision to deal with the impact on the PAYE system (see, for example, sections 2(3) and 4(3) of FA 2008).

² <http://www.hmrc.gov.uk/news/technote-scot-taxrate.pdf>

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The power provided by section 116I(3) would allow similar provision to be made in relation to the Welsh rate.

88. Section 116I(4) gives HM Treasury a power to make an order modifying any enactment to address any further changes that are needed in consequence of or in connection with an order under subsections (1)-(3).
89. Section 116I(5) provides that an order under section 116I may, to the extent that HM Treasury consider it to be appropriate, take effect retrospectively from the beginning of the tax year in which it is made. It is not uncommon for a Finance Act to receive Royal Assent after the start of the tax year to which it applies and for provisions made under such an Act to be given retrospective effect from the start of that tax year. This power would allow HM Treasury to make any necessary consequential amendments required as a result of such a provision.
90. Section 116I(6) and (7) provide that an order made under this section would be subject to the affirmative resolution procedure in the House of Commons, unless it is an order under section 116I(3), in which case the negative resolution procedure would be used.
91. New section 116J provides that the Welsh Ministers may reimburse any Minister of the Crown or any government department for administrative expenses incurred by virtue of new Chapter 2. This would include, for example, reimbursing HMRC's additional costs incurred in both implementing and administering the new Welsh rate.
92. New section 116K requires the Comptroller and Auditor General ("C&AG") to make a report for each financial year (i.e. each year to 31 March) to the Assembly on HMRC's administration of the Welsh rate of income tax.
93. Section 116K(2) sets out the scope of the report. The C&AG will report on the adequacy of the rules (which is intended to cover the same matters as "regulations" in section 2(1) of the Exchequer and Audit Departments Act 1921) and procedures which HMRC have put in place to administer and collect the Welsh rate. The C&AG will also report on HMRC's calculation of the amount of Welsh rate income tax to be paid over to the Welsh Government, and on the accuracy and fairness of costs reimbursed to HMRC by the Welsh Government for the administration of the Welsh rate.
94. Section 116K(3) explains that the "Welsh rate provisions" are those set out in this Chapter (including orders made using the powers in section 116I) and other legislation relating to the Welsh, basic, higher and additional rates (for example, the provisions inserted into ITA 2007 by clause 9).

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95. Section 116K(4) and (5) provide that the C&AG has the discretion to include in the report an analysis of whether HMRC is using its resources in administering the Welsh rate in an effective, efficient and economic manner.
96. Section 116K(6) requires that HMRC provides the C&AG with information necessary to complete the annual report.
97. Section 116K(7) requires that the report must be laid before the Assembly no later than 31 January of the financial year following that to which the report relates.

Clause 9: Welsh basic, higher and additional rates of income tax

98. Clause 9 amends ITA 2007 and other legislation to calculate the rates of tax paid by Welsh taxpayers.
99. *Subsection (2)* amends section 6 of ITA 2007 to include a reference to the Welsh basic, higher and additional rates.
100. *Subsection (3)* inserts a new section 6B into ITA 2007, setting out the calculation to determine the Welsh basic, higher and additional rates of income tax.
101. Section 6B(1) sets out that the UK basic, higher and additional rates will be reduced by 10 percentage points and the Welsh rate, set by the Assembly, added across the (reduced) basic, higher and additional rates. So, a Welsh rate of 10 per cent would mean the rates paid by Welsh taxpayers were the same as the UK rates, a rate of 9 per cent would mean the rates were slightly lower and a rate of 11 per cent would mean they were slightly higher. Section 6B(2) points to Chapter 2 of Part 4A (as amended) of GOWA 2006 for rate setting provisions.
102. *Subsection (4)* inserts an entry for new section 11B in section 10 of ITA 2007, which signposts provisions that apply different rates of tax to certain types of income.
103. *Subsection (5)* inserts new section 11B into ITA 2007 which explains the types of income that will be chargeable at the Welsh basic, higher and additional rates.
104. Section 11B(1)-(3) sets out that the Welsh basic, higher and additional rates apply to “non-savings income” that would otherwise be chargeable at the main basic, higher and additional rates if the individual were not a Welsh taxpayer.
105. Section 11B(4) defines “non-savings income” for the purposes of this section. The effect is that the Welsh basic, higher and additional rates do not apply to savings income as defined in section 18 of ITA 2007.

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106. Section 11B(5) and (6) make new section 6B subject to section 13 of ITA 2007 and other cases where income may be charged at a different rate.
107. *Subsection (6)* of clause 9 amends section 13 of ITA 2007, which applies the dividend rates to dividend income. The effect is that dividend income continues to be charged at the dividend ordinary, upper and additional rates rather than at the Welsh rates.
108. *Subsection (7)* amends section 16 of ITA 2007, which determines that income that is not savings or dividends is the first slice of taxable income; savings income is the second slice; dividend income is the third slice. The effect of subsection (7) is to apply these rules to determine the extent to which a Welsh taxpayer's non-savings income would otherwise be charged at the basic rate, higher rate or additional rate and so (with section 11B) determine which part of a Welsh taxpayer's income will be subject to the Welsh rates.
109. *Subsection (8)* amends section 809H of ITA 2007. Chapter A1 of Part 14 of ITA 2007 provides for an alternative basis of charge for individuals who are not domiciled in the UK. Such an individual, if resident for income tax purposes in the UK, may make a claim for the remittance basis to apply. Under the remittance basis, income and gains only come within the charge to UK income tax and UK capital gains tax when they are brought into the UK. However, an individual who has been resident in the UK for at least seven of the previous nine tax years, and who wishes to be taxed on the remittance basis, is subject under section 809H(2) of ITA 2007 to a minimum charge to income tax and capital gains tax of £30,000. An individual who has been resident in at least 12 of the previous 14 years is subject to a minimum charge of £50,000. For the purposes of calculating income tax charged under section 809H(2), subsection (8) treats Welsh taxpayers as being UK taxpayers.
110. *Subsection (9)* amends section 828B of ITA 2007. Sections 828A-828D of ITA 2007 provide for an income tax exemption for low income employees working in the UK who are resident (but not domiciled) in the UK and meet certain conditions (set out in section 828B). Such individuals will typically be migrant workers employed in seasonal work in the agricultural or service sectors in the UK and in other countries in the same tax year and whose overseas income is subject to tax where it is earned. This amendment ensures that any such individuals who are Welsh taxpayers would continue to benefit from that exemption.
111. *Subsections (10) and (11)* amend section 989 of and Schedule 4 to ITA 2007 to include the definitions of Welsh basic, higher and additional rates of income tax as separate entries. This means that, unless otherwise provided for, references to the basic, higher and additional rates mean the UK main rates in section 6 of ITA 2007.
112. *Subsection (12)* amends section 7 of the Taxes Management Act 1970 ("TMA 1970"). This section imposes requirements on individuals to notify HMRC if they are chargeable to income tax in a year. Section 7(6) of TMA 1970 includes an exemption

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from the requirement to notify for individuals whose income has either had (or been treated as having) income tax paid on it or who have received dividend income, and who are not “liable to tax at a rate other than the basic rate, the dividend ordinary rate or the starting rate for savings” for that year. The amendment made by subsection (12) ensures Welsh taxpayers would continue to benefit from this exemption.

113. *Subsections (13) to (15)* amend the Taxation of Chargeable Gains Tax 1992 (“TCGA 1992”). Section 4 of TCGA 1992 sets out the rates of Capital Gains Tax (“CGT”) that an individual pays – this can be affected by the rates of income tax at which an individual is liable. *Subsections (14) and (15)* therefore make amendments to sections 4 and 4A of TCGA 1992 to ensure that Welsh taxpayers continue to pay CGT at the appropriate rate.

Clause 10: Welsh taxpayers for social security or child support purposes

114. Clause 10 inserts new section 155A into GOWA 2006 which enables the Secretary of State to deem an individual to be, or not to be, a Welsh taxpayer and to treat the Welsh basic rate, Welsh higher rate or Welsh additional rate of income tax as being a specified rate, for all or specified purposes of social security or child support.
115. *Subsection (1)* permits the Secretary of State by order to provide for individuals to be treated as if they were, or were not, Welsh taxpayers for all or specified purposes of social security or child support. The power might, for example, be used to deem a newly self-employed earner who had moved to Wales during the course of a tax year to be a Welsh taxpayer for the purpose of calculating the amount of an income-related benefit due to them.
116. *Subsection (2)* permits the Secretary of State by order to specify that the Welsh basic rate, Welsh higher rate or Welsh additional rate of income tax is to be treated as being a specified rate for all or specified purposes of social security or child support. This power might, for example, be used where a person’s tax status as a potential Welsh taxpayer is not in doubt but there is a question about the amount of income that has to be taken into account in awarding benefit. This could be because the person concerned says that they are not being paid for work performed and the decision maker then has to determine the amount of net earnings to be included in the income-related benefit calculation. The power would remove uncertainty for assessment purposes and so enable claims to be settled promptly.
117. *Subsection (3)* makes clear that *subsections (1) and (2)* will apply whether or not the individuals concerned have a close connection with Wales.

Clause 11: Amendments to the definition of a Scottish taxpayer

118. Clause 11 introduces a number of amendments to the definition of a Scottish taxpayer in the Scotland Act 1998 (“the 1998 Act”). There are broadly two types of changes

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being made. The first is a series of amendments required as a consequence of the introduction of the Welsh rate of income tax, to ensure that an individual cannot be a Welsh and a Scottish taxpayer in the same year. The second relate to areas where improvements have been identified to the definition to add clarity – these are included in the Welsh rates provisions and parallel amendments are being made to the Scottish provisions so that the terminology used across the two definitions is aligned as far as possible. The former will become operative at the same time as the Welsh rate provisions and the latter will become operative at the same time as the Scottish rate provisions.

119. *Subsections (3) and (4)* make minor changes to the wording in section 80D of the 1998 Act to use the same wording as is being inserted in the equivalent section 116E of GOWA 2006 (inserted by clause 8). These changes will be implemented at the time when the Scottish rate is brought into effect.
120. *Subsections (5) and (6)* set out how the rules relating to Scottish taxpayers apply to individuals who have been a Welsh parliamentarian for some or all of a tax year.
121. *Subsection (5)* inserts new subsections (4A) and (4B) into section 80D. These set out that the normal Scottish taxpayer rules do not apply to individuals who have been a Welsh parliamentarian in the tax year and define what is meant by a Welsh parliamentarian by reference to section 116E(4) of GOWA 2006 (inserted by clause 8).
122. *Subsection (6)* inserts new section 80DA into the 1998 Act. This is the equivalent provision to section 116F of GOWA 2006 and sets out the circumstances in which a Welsh parliamentarian can be a Scottish taxpayer for a year.
123. The changes made by *subsections (5) and (6)* mean that an individual who is a Welsh parliamentarian in a tax year will be a Welsh taxpayer (and not a Scottish taxpayer) unless they are also a Scottish parliamentarian in the same tax year. If the individual is both a Welsh parliamentarian and a Scottish parliamentarian in the same tax year they will be a Scottish taxpayer if they are a Scottish parliamentarian for more of the year than they are a Welsh parliamentarian. If they are a Scottish parliamentarian and a Welsh parliamentarian for the same number of days in a tax year they will be a Scottish taxpayer if they meet one of the other rules applicable to Scottish taxpayers. These changes will be implemented at the time when the Welsh rate is brought into effect.
124. *Subsection (7)(a)* amends the operation of condition A (the close connection rule) in section 80E of the 1998 Act so that an individual will need to have their main place of residence in Scotland for “more of the year” than in another part of the UK (rather than for “at least as much of the year”) to be a Scottish taxpayer. This change will be implemented at the time when the Welsh rate is brought into effect. *Subsection (7)(b)* makes a minor change to the close connection rule to be clear how this operates in

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relation to comparisons between the different parts of the UK. This change will be implemented at the time when the Scottish rate is brought into effect.

125. *Subsection (8)(a)* amends condition B (the day counting test) in section 80F of the 1998 Act, so that an individual will need to spend more days in Scotland than another part of the UK to meet this test and also amends the day counting test so that days in Scotland are considered against the other parts of the UK individually (rather than collectively). These changes will be implemented at the time when the Welsh rate is brought into effect. *Subsection (8)(b)* makes a minor change to the day counting test to ensure that the exemption in relation to individuals passing through the UK in transit operates properly. This change will be implemented at the time when the Scottish rate is brought into effect.

Clause 12: Referendum about commencement of income tax provisions

126. Clauses 12 and 13 allow a referendum to be held in Wales about whether the income tax provisions, set out in clauses 8 and 9, should come into force. Clause 12 requires a draft Order in Council causing a referendum to be held to be approved by both Houses of Parliament and by an Assembly resolution, passed by not less than a two-thirds majority of AMs (i.e. at least 40 AMs voting in favour). If the Assembly passes a resolution calling for a referendum (again by at least a two-thirds majority), clause 13 requires that a draft Order in Council be laid, or the Secretary of State must explain the failure to do so. The income tax provisions would be brought into force by HM Treasury order, made under clause 14, if the majority of voters in a referendum vote in favour.
127. The procedure set out in these clauses is similar to that in sections 103 and 104 of GOWA 2006, which allowed for a referendum in respect of the “Assembly Act provisions”³ in that Act to come into force. The clauses implement a recommendation made by the Silk Commission in its first report⁴ that the devolution of income tax should be subject to a referendum in Wales. The Silk Commission also recommended that provision for such a referendum should be contained in an Act which introduces tax and borrowing powers for Wales, and further suggested the procedure which brought the Assembly Act provisions into force as an appropriate model⁵.

³ The “Assembly Act provisions” conferred power on the Assembly to pass Acts of the Assembly in the twenty areas devolved to Wales if a majority of voters in a referendum approved the provisions coming into force. A referendum was held on 3 March 2011, and resulted in a vote in favour. The provisions came into force on 5 May 2011.

⁴ *Empowerment and Responsibility – Financial Powers to Strengthen Wales, Recommendation 26, p.130.*

⁵ *Empowerment and Responsibility – Financial Powers to Strengthen Wales, paragraph 8.2.12.*

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128. *Subsection (1)* of clause 12 permits Her Majesty by Order in Council to cause a referendum to be held in Wales about whether the income tax provisions should come into force. If a majority of voters in a referendum vote in favour, *subsection (2)* provides for the provisions to come into force in accordance with clause 14 (see below).
129. *Subsection (3)* makes clear that a majority of voters in a referendum voting against the income tax provisions coming into force would not prevent subsequent Orders in Council under *subsection (1)* from being made.
130. *Subsections (4) and (5)* stipulate that a recommendation to Her Majesty to make an Order in Council can only be made if the draft Order is approved by both Houses of Parliament and by at least a two-thirds majority in the Assembly.
131. *Subsection (6)* specifies that a draft Order in Council can be laid in Parliament or the Assembly only once the Secretary of State has undertaken such consultation in respect of the draft Order as he or she considers appropriate. Such consultation would likely include, but not be limited to, the Welsh Government and the Electoral Commission.
132. *Subsection (7)* signposts further detail about a referendum in Schedule 1 (see paragraph 136).

Clause 13: Proposal for referendum by Assembly

133. Clause 13 provides the mechanism under which the Assembly can trigger a referendum. *Subsections (1) and (2)* specify that the First Minister or a Welsh Minister may move a resolution in the Assembly that a recommendation should be made to Her Majesty in Council to make an Order causing a referendum to be held. If the resolution is passed by at least two-thirds of AMs, the First Minister must write giving notice to the Secretary of State as soon as practicable.
 134. *Subsection (3)* requires the Secretary of State or the Lord President of the Council to lay a draft Order before each House of Parliament within 180 days of the Secretary of State receiving the First Minister's letter. If they do not, the Secretary of State must write to the First Minister giving notice of their refusal to lay the draft Order and reasons for not doing so.
 135. *Subsection (4)* requires the First Minister to lay a copy of the notice before the Assembly, and the Assembly must ensure that the notice is published.
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Schedule 1: Referendum about commencement of income tax provisions

136. Schedule 1 sets out a framework for the conduct of a referendum about bringing the income tax provisions into force. Specifically, it sets out who is eligible to vote, how information will be provided to voters, how the referendum will be funded and how the outcome can be legally challenged. The Schedule also sets out further detail of what should be provided for in an Order in Council made under clause 12.

Clause 14: Commencement of the income tax provisions etc if majority in favour

137. Clause 14 sets out the procedure for the income tax provisions and certain of the amendments made by clause 11 to come into force if a majority of voters in a referendum vote in favour.
138. *Subsection (2)* permits HM Treasury to make an order bringing the income tax provisions into force.
139. *Subsection (3)(a)* explains that a day must be appointed by order for each of the provisions inserted by clauses 8 and 9 to come into force and *subsection (3)(b)* sets out that an order can provide for the provisions in clauses 8 and 9 to have effect in relation to a tax year or financial year.
140. *Subsection (4)* sets out that a tax year appointed under *subsection (3)(b)* must begin on or after a day appointed under *subsection (3)(a)*.
141. *Subsection (5)* provides that a tax year must be appointed as the first year for which a Welsh rate resolution can be made as part of an order bringing those provisions into force.
142. *Subsection (6)* enables clause 10 to come into force by order of the Secretary of State if the majority of voters in a referendum held under clause 12 vote in favour of clauses 8 and 9 (the income tax provisions) coming into force.
143. *Subsections (7) and (8)* provide the commencement provision for the amendments made by clause 11 to the definition of a Scottish taxpayer which are to take effect when the Welsh rate provisions become operative. These provisions will be brought into effect by an order made by HM Treasury. *Subsection (8)* provides that these amendments cannot have effect before the Scottish rate of income tax is introduced (expected to be April 2016).
144. *Subsection (9)* allows different provision to be made for different parts of the amendments made by clauses 8 and 9. For example, it will be necessary for sections 116J and 116K of GOWA 2006 to have effect before other provisions so that costs incurred by HMRC in the implementation of the Welsh rate can be reimbursed and so the C&AG can report on HMRC's performance in introducing the Welsh rate.

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Clause 15: Welsh tax on transactions involving interests in land

145. Clauses 15 and 16 together provide the mechanism for bringing to an end the collection and management of stamp duty land tax (SDLT) in Wales and allowing the Assembly to bring in its own land transaction tax.
146. Clause 15 introduces a new Chapter 3 into Part 4A of GOWA 2006, which defines the scope of this devolved tax, broadly a transaction tax applying to acquisitions of interests in land in Wales. Clause 16 disapplies SDLT by excluding land transactions in Wales from the SDLT charge, from a date to be appointed by HM Treasury. Schedule 2 contains further amendments relating to the disapplication of SDLT to Wales.
147. SDLT is a transaction tax which applies to acquisitions of a chargeable interest in land. The definition of “chargeable interest” in section 48 of FA 2003 includes an estate, interest, right or power in or over land in England and Wales or Northern Ireland (land in Scotland is excluded by the Scotland Act 2012, although those amendments have not yet come into effect).
148. The tax is to be fully devolved by excluding acquisitions of interests in land in Wales from the charge to SDLT and granting a power to the Assembly to tax those acquisitions. The devolved tax could apply regardless of the residence of any party to the transaction.
149. *Subsection (1)* of clause 15 introduces Chapter 3 (sections 116L and 116M) of new Part 4A of GOWA 2006 which provides for the devolved Welsh tax.
150. New section 116L provides for the devolved Welsh tax and, when read with the amendment to Schedule 7 made by clause 6(9), grants a power to the Assembly to charge a transaction tax on those acquisitions. Section 116L(1) provides that a tax charged on a Welsh land transaction and which complies with the requirements of this section is a devolved tax. Section 116L(2) defines a Welsh land transaction.
151. Section 116L(3) makes clear that such a tax may apply regardless of whether or not the transaction is effected by means of a formal document or the residence of the parties to the transaction.
152. Section 116L(4) excludes transactions to the extent that they relate to land below mean low water mark. Section 116L(5) excludes Ministers of the UK and devolved governments and corporate bodies associated with legislatures in the UK. This is in line with similar exemptions within the SDLT legislation and applies to Ministers only when acting in their Ministerial capacity.

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153. *Subsection (2)* of clause 15 ensures that the devolved tax cannot apply to a land transaction to which SDLT applies and thereby links commencement of the tax to the disapplication of SDLT in Wales under clause 16.

Clause 16: Disapplication of UK stamp duty land tax

154. Clause 16 provides for SDLT to be disappplied by reference to the “effective date” of a land transaction for SDLT purposes. This is normally the date on which the purchase contract is completed but may be earlier if the transaction is “substantially performed” (that is, if the consideration for the transaction is paid or the property is occupied) before this date.
155. *Subsection (1)* introduces the amendments to the SDLT provisions in Part 4 of FA 2003, and *subsection (2)* amends the definition of “chargeable interests” in section 48 by limiting it to interests in land in England and Northern Ireland.
156. *Subsection (3)* introduces Schedule 2, which is discussed in more detail at paragraph 166 below.
157. *Subsection (4)* applies the amendments introduced by the clause and Schedule 2 to land transactions with an effective date on or after a date appointed by HM Treasury.
158. *Subsection (5)* makes transitional provisions to ensure that SDLT continues to apply to transactions where a contract is entered into on or before the date on which the Wales Bill receives Royal Assent.
159. *Subsection (6)* disapplies the transitional rules in *subsection (5)* where certain events in relation to the transaction occur after Royal Assent.

Clause 17: Information on Welsh land transactions

160. Clause 17 provides for the supply of information to HMRC about land transactions in Wales, as this information will no longer be available to HMRC from land transaction returns.
161. *Subsection (1)* inserts a new section 116M into Chapter 3 of Part 4A of GOWA 2006 (inserted by clause 15), which imposes a duty to provide certain information to HMRC about Welsh land transactions.
162. Section 116M(1) provides that the Welsh Government must provide to HMRC such information falling within subsection (2) as HMRC may require. Section 116M(2) provides that the information concerned is relevant information in relation to a Welsh land transaction (as defined in new section 116L) and that the information need only be disclosed if it is in the possession or under the control of the Welsh Government.

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163. Section 116M(3) defines “relevant information” for this purpose and section 116M(4) provides that the information is to be provided in such a format as HMRC may reasonably require.
164. Section 116M(5) provides that information acquired by HMRC under this section is to be treated for the purposes of CRCA 2005 as acquired in connection with a function of theirs.
165. *Subsection (2)* of clause 17 provides that the clause has effect for transactions which are subject to the devolved tax provided for by section 116L.

Schedule 2: Welsh tax on land transactions: consequential amendments

166. This Schedule contains further amendments relating to the disapplication of SDLT in Wales.

Clause 18: Welsh tax on disposals to landfill

167. Currently landfill tax is charged on the disposal of waste to landfill in England and Wales or Northern Ireland (landfill in Scotland is excluded by the Scotland Act 2012, although those amendments have not yet come into effect). Clauses 18 and 19 together provide the mechanism for bringing to an end the collection and management of landfill tax in Wales and allowing the Assembly to bring in its own tax on disposals of waste to landfill.
168. Clause 18 introduces new Chapter 4 into Part 4A of GOWA 2006, which sets out the scope of the Welsh Government’s power to introduce a tax on disposals to landfill made in Wales. Clause 19 disapplies landfill tax by excluding disposals in Wales from the landfill tax charge from a date to be appointed by HM Treasury.
169. *Subsection (1)* introduces Chapter 4 (section 116N) of new Part 4A of GOWA 2006. Section 116N(1) provides that a tax charged on disposals to landfill made in Wales is a devolved tax and section 116N(2) explains when a disposal is a disposal to landfill.
170. *Subsection (2)* ensures that the devolved tax cannot be charged on disposals to which landfill tax applies, and thereby links the commencement of the devolved tax to the disapplication of landfill tax in Wales under clause 19.

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Clause 19: Disapplication of UK landfill tax

171. Clause 19 provides for landfill tax on disposals made in Wales to be disapplied by reference to disposals made on or after a date appointed by HM Treasury by order under *subsection (3)*. *Subsection (2)* limits landfill tax to disposals made in England or Northern Ireland, by virtue of amending section 40 of FA 1996 (previously amended by the Scotland Act 2012).

Clause 20: Borrowing by the Welsh Ministers

172. This clause amends sections 121 and 122 of GOWA 2006, and inserts a new section 122A, to revise the circumstances under which the Welsh Ministers may borrow and to set out the main controls and limits on such borrowing.
173. The clause enables the Welsh Ministers to borrow – subject to HM Treasury’s controls and limits – for the following purposes:
- a) to manage in-year volatility of receipts, where actual income for a month differs from the forecast receipts for that month;
 - b) to provide a working balance to the Welsh Consolidated Fund (WCF) in order to manage cash-flow;
 - c) to deal with differences between the full year forecast and outturn receipts for devolved taxes; and
 - d) to fund capital expenditure.
174. *Subsection (1)* introduces the amendments to GOWA 2006.
175. *Subsection (2)* introduces the amendments to the existing borrowing provisions in section 121 of GOWA 2006.
176. *Subsection (3)* replaces subsection (1) in section 121. The new subsection (1):
- re-enacts sections 121(1)(a) and (b) of GOWA 2006, which enable Welsh Ministers to borrow temporarily from the Secretary of State to provide a working balance to the WCF and to manage in-year volatility of receipts; and
 - extends the Welsh Ministers’ existing borrowing powers to include borrowing from the Secretary of State across years to fund deviations between full year forecast and outturn receipts of the devolved taxes.
177. *Subsection (3)* also adds two new subsections into section 121((1A) and (1B)):

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- Subsection (1A) enables the Welsh Ministers to borrow to fund capital expenditure, subject to HM Treasury's approval. The borrowing must be in the form of a loan either from the National Loan Fund (through the Secretary of State) or from another lender, such as a commercial bank. The new subsection requires the Welsh Ministers to borrow by way of loan, and they are not permitted to issue Welsh gilts or bonds.
 - Subsection (1B) defines capital expenditure. The definition of capital expenditure is drawn from the rules (provided by HM Treasury to the Welsh Government) governing the preparation of the Welsh Ministers' accounts under section 131 of GOWA 2006.
178. *Subsection (4)* is a consequential amendment to take account of the fact that not all borrowing need be from the Secretary of State.
179. *Subsection (5)* allows the Secretary of State, by order and with the consent of HM Treasury, to change the sources of borrowing available to Welsh Ministers as set out in the new section 121(1A). Orders under this section are subject to the approval of the House of Commons through the affirmative procedure.
180. *Subsection (6)* introduces the amendments to the existing borrowing provisions in section 122 of GOWA 2006.
181. *Subsection (7)* specifies that the £500m limit applied to the aggregate outstanding of principal sums borrowed under the existing section 121 now applies to the extended borrowing powers listed in new section 121(1) (that is, it does not include borrowing for capital expenditure under the new subsection (1A)).
182. *Subsections (8) to (9)* amend section 122(3) of GOWA 2006 and allow the Secretary of State, by order and with the consent of HM Treasury, to revise the £500m limit on the Welsh Ministers' current borrowing either upwards or downwards, although never below the initial £500m. These provisions enable the Secretary of State to increase the amount from time to time, for example to keep pace with inflation or to meet exceptional circumstances. Orders under this section are subject to the approval of the House of Commons through the affirmative procedure.
183. *Subsection (10)* inserts a new section 122A into GOWA 2006 which includes further provisions on capital borrowing.
184. Section 122A(1) provides that the aggregate outstanding of principal sums borrowed under section 121(1A) – borrowing to fund capital expenditure – must not exceed £500 million. This provision, together with that in section 121, means that the total aggregate outstanding of principal (both current and capital) cannot exceed £1 billion.

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185. Section 122A(2) and (3) allow the Secretary of State, by order and with the consent of HM Treasury, to revise the £500 million limit either upwards or downwards, but never below the initial £500 million. Orders are subject to the approval of the House of Commons through the affirmative procedure, as set out in new section 122A(4).
186. Section 122A(5), (6) and (7) contain further rules on Welsh Ministers' borrowing to fund capital spending. In particular:
- *Subsection (5)* provides that lenders are not bound to make enquiries into the power to borrow (such as checking whether the Welsh Government has breached its borrowing limits or is acting without HM Treasury approval). In the absence of such a provision, lenders could fear that doubtful vires could render loans unenforceable and could see the Welsh Government as a risky borrower.
 - *Subsection (6)* states that Welsh Ministers are prohibited from mortgaging or charging any property as security for money which they have borrowed (but this does not affect the rule in section 121(3) of GOWA 2006 that borrowing is to be charged on the WCF).
 - *Subsection (7)* provides that any security given in breach of *subsection (6)* is unenforceable.

Clause 21: Repeal of existing borrowing power

187. This clause repeals the paragraphs in Schedule 3 to the Welsh Development Agency Act 1975 that relate to borrowing and guarantees.
188. *Subsection (1)* repeals paragraph 3 (power for Welsh Ministers to borrow money) and paragraph 6 (power for HM Treasury to guarantee money borrowed under paragraph 3) in Schedule 3 to the Welsh Development Agency Act 1975.
189. *Subsection (2)* states that the repeals in *subsection (1)* do not affect the outstanding liability of Welsh Ministers to repay money previously borrowed under paragraph 3, nor any guarantee previously given by HM Treasury under paragraph 6.
190. *Subsections (3), (4) and (5)* determine that the aggregate outstanding, immediately before *subsection (1)* comes into force, of principal sums borrowed for capital expenditure (as defined by section 131 of GOWA 2006) under paragraph 3, on or after the day on which this Act is passed, will count towards the capital borrowing limit set out in the new section 122A(1). This therefore excludes from the £500m capital borrowing limit any legacy debt inherited by the Welsh Government prior to this Act being passed, but includes any new borrowing undertaken under these powers after this Act is passed (a limited amount of which HM Treasury has agreed the Welsh

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Government will be able to undertake in relation to the M4, should it decide to proceed with this project).

Clause 22: Budgetary procedures

191. Clause 22 gives the Assembly the competence to legislate for its own budgetary procedures by amending Schedule 7 to GOWA 2006 (which lists the subjects about which the Assembly can legislate).
192. *Subsection (2)* inserts a new subject in paragraph 13 (National Assembly of Wales) of Part 1 of Schedule 7, by providing that *budgetary procedures* are within the Assembly's legislative competence. The new subject defines budgetary procedures as procedures for a financial year relating to any one of three things. Firstly, the authorisation of the amount of resources which may be used or retained either by relevant persons or pursuant to a relevant enactment. Secondly, the authorisation of the amounts which may be paid out of the Welsh Consolidated Fund to relevant persons or pursuant to a relevant enactment. "Relevant persons" is defined as including the Assembly Commission and the Welsh Ministers. "Relevant enactment" is defined as an enactment which provides for payment out of the Welsh Consolidated Fund. Thirdly, budgetary procedures relate to scrutiny (by the Assembly) of use of these amounts, or of the exercise of borrowing powers by the Welsh Ministers.
193. This would enable the Assembly to legislate in relation to procedures for scrutinising and setting the annual budget of Welsh Ministers, other relevant persons and any other body receiving payments from the Welsh Consolidated Fund by virtue of an enactment (either Parliamentary or Assembly), and for example would allow the Assembly to pass an annual Finance Act in place of the current annual budget motion. As the Assembly also has competence for devolved taxes, these procedures could include the determination of the tax rates in relation to such taxes, tax receipt forecasts, variances, borrowing for current and capital purposes and amounts for repaying borrowing in addition to authorising how much "relevant persons" may spend. As described in paragraph 60 of these notes, the Welsh rate of income tax (which is subject to a referendum) must be set by an Assembly resolution. It is for the Assembly to decide whether that resolution should be considered in the context of its budgetary procedures.
194. In order to legislate for new budgetary procedures, the Assembly will need to modify various sections in Part 5 of GOWA 2006 which refer to the current budget motion process.
195. *Subsection (3)* amends paragraph 5 of Part 2 of Schedule 7 (general restrictions on competence) to allow the Assembly to modify the sections of GOWA 2006 listed in that paragraph. *Subsection (3)(a)* includes in this list section 120(2) and sections 125 to 128. *Subsection (3)(b)* includes section 119, but only in so far as any modification relates to the estimated payments for a financial year into the Welsh Consolidated

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Fund or to the Welsh Ministers, the First Minister or the Counsel General. In addition, the Assembly may need to make limited adjustments to other provision in Part 5, and *subsection (3)* therefore inserts a new sub-paragraph (4A) into paragraph 5 enabling an Act of the Assembly to make amendments to other sections in Part 5 or section 159 of GOWA 2006 provided they are (a) incidental to, or consequential on, provisions in an Assembly Act relating to budgetary procedures or devolved taxes, and (b) consented to by the Secretary of State.

Clause 23: Reports on the implementation and operation of this Part

196. This clause sets out the requirements for the Secretary of State and Welsh Ministers to report on the implementation and operation of the new finance powers.
197. *Subsections (1) and (3)* require the Secretary of State to publish a report on the implementation and operation of the finance provisions in Part 2 within one year from when the Act is passed and thereafter before each anniversary of the Act being passed. These reports must continue until a year after the tax and borrowing powers are fully transferred to the Assembly and the Welsh Ministers, as set out in *subsection (4)*. Copies of such reports must be laid before both Houses of Parliament and sent to Welsh Ministers, who must lay the reports before the Assembly.
198. *Subsections (2) and (3)* require the Welsh Ministers to make and lay reports before the Assembly of the same kind and to the same timetable, until such time as set out in *subsection (4)*, and to provide a copy of each report to the Secretary of State to lay before both Houses of Parliament.
199. *Subsections (5) and (6)* set out how it is determined that a Part 2 provision is implemented, for the purpose of determining for how long the reports must continue.
200. *Subsection (7)* sets out the areas that each report must include:
 - a) an update on all aspects of progress towards the implementation of the Part 2 provisions since the previous report;
 - b) any further steps that should be taken towards implementation of Part 2 provisions;
 - c) an assessment of the operation of the Part 2 provisions that have been implemented;
 - d) an assessment of any changes to the Part 2 provisions;
 - e) the impact on the Welsh block grant as a result of transferring tax powers; and

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f) any other matters concerning sources of revenue for the Assembly that should be brought to the attention of Parliament or the Assembly.

201. Until a vote in favour of income tax provisions coming into force, *subsection (8)* excludes sections 8 and 9 (income tax provisions) from the statements required by *subsection (7)(a) and (b)*.

PART 3: MISCELLANEOUS

Clause 24: Local housing authorities: limits on housing revenue account debt

202. Clause 24 amends Part 6 of the Local Government and Housing Act 1989 (the “1989 Act”).

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

204. *Subsection (1)* introduces the amendments to the 1989 Act.

205. *Subsection (2)* inserts new sections 76A and 76B into the 1989 Act. It provides:

- that HM Treasury may make a determination of the maximum amount of housing debt that may be held, in aggregate, by Welsh LHAs;
- that HM Treasury must send a copy of its determination to the Welsh Ministers and lay a copy of it before the House of Commons;
- that the Welsh Ministers may from time to time make determinations in relation to each LHA of the amount of housing debt they are to be treated as holding and the maximum amount of housing debt they may hold;
- that the aggregate amount the Welsh Ministers may determine cannot exceed HM Treasury’s determination;
- that the Welsh Ministers must make determinations within 6 months of receiving one from HM Treasury;
- a definition of housing debt as debt held by the LHA in relation to the LHA’s housing functions and other property within its Housing Revenue Account; and

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- that the Welsh Ministers have the power to obtain information from Welsh LHAs in order for them to make the determinations.
206. *Subsection (3)* introduces amendments to section 87 of the 1989 Act (which provides for how determinations are to be made and how they are to be communicated to LHAs).
207. *Subsection (4)* changes references in section 87 from “Secretary of State” to “appropriate person”. “Appropriate person” is defined in section 88 of the 1989 Act as the Secretary of State in England and the Welsh Ministers in Wales.
208. *Subsection (5)* provides that subsection (1)(b) of section 87 (which provides that determinations can be made before, during or after the end of the year to which it relates) does not apply to determinations made by the Welsh Ministers under new section 76A.
209. *Subsection (6)* applies the defined term “appropriate person” to section 87(2).

Clause 25: The work of the Law Commission so far as relating to Wales

210. The powers of the Law Commission in relation to advice to the Welsh Government are currently unclear. At present law reform matters relating to the law of England and Wales are only referred by UK government departments, albeit the Welsh Government can request these departments to refer a matter on behalf of the Welsh Government.
211. Clause 25 inserts new provisions into the Law Commissions Act 1965 ("the 1965 Act") in order to impose a new duty on the Law Commission to provide advice and information to the Welsh Ministers directly. This makes it clear that the Welsh Ministers will be able to refer law reform matters to the Law Commission themselves.
212. *Subsection (3)* of this clause provides that, in preparing reports on Law Commission proposals under the existing section 3A of the 1965 Act, the Lord Chancellor is not required to report on proposals on which the Welsh Ministers will be required to report under new section 3C.
213. New section 3C is inserted into the 1965 Act by *subsection (4)* of clause 25 to provide that Welsh Ministers must produce an annual report to be laid before the Assembly. The report must include details of any Law Commission proposals which relate to Welsh devolved matters and either have been implemented since the last report or have yet to be implemented.
214. Law Commission proposals are defined as any proposal or recommendation for the reform of the law that has been published in a report by the Law Commission. A Law

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Commission proposal relates to “Welsh devolved matters” if it would be within the legislative competence of the Assembly or if it is a matter relating to functions which are exercisable by the Welsh Ministers, First Minister, Counsel General to the Welsh Government or the Assembly Commission.

215. If in the previous year there are proposals that have yet to be implemented, the Welsh Ministers’ report must include plans for implementation, any decisions not to implement, and the reasons for any such decision. If there are no outstanding Law Commission proposals on Welsh devolved matters in the year since the previous report, the Welsh Ministers will not be required to produce a report for the Assembly.
216. *Subsection (4)* of clause 25 also inserts a new section 3D into the 1965 Act to provide for a protocol about the Law Commission’s work as regards Wales. The protocol would be agreed between the Law Commission and Welsh Ministers for purposes of the Law Commission’s work relating to Welsh devolved matters.
217. The Lord Chancellor is required to approve the protocol, which may include provision about the principles and methods to be applied when deciding which work the Law Commission carries out, the advice and information that the Law Commission and Welsh Ministers are to give each other, and the way in which the Welsh Ministers are to deal with the Law Commission proposals. This subsection deliberately allows flexibility in respect of the provisions of the protocol, for example in relation to the funding and other practicalities of Welsh Ministers’ references.
218. *Subsection (4)* also provides that the protocol must be kept under review from time to time and it must be laid before the Assembly. There is also an explicit duty on Welsh Ministers and the Law Commission to have regard to the protocol.
219. *Subsection (5)* of clause 25 makes a minor amendment to section 5 of the 1965 Act to clarify that the expenses of the Law Commission will now derive not just from Parliament, but also from the Welsh Ministers.

PART 4: GENERAL

Clause 26: Orders

220. Clause 26 specifies that any order made under this Act would be made by statutory instrument.

Clause 27: Interpretation

221. Clause 27 is the interpretation clause for the Bill.

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Clause 28: Power to make supplementary, consequential, etc provision

222. *Subsection (1)* of clause 28 empowers HM Treasury, by order, to make supplementary, incidental or consequential provision as appears appropriate in connection with the provisions of Part 2 (Finance) and such transitional, transitory or saving provision as appears appropriate in connection with the coming into force of those provisions. *Subsection (3)* clarifies that an order made under this section may make modifications of the Act itself, or of an enactment passed before or in the same session as this Act.
223. These provisions provide flexibility for HM Treasury to amend legislation to, for example, take account of the income tax provisions (in clauses 8 and 9) coming into force following a vote in favour in a referendum (provided for under clauses 12 and 13).
224. *Subsection (4)* requires an order to be approved by the House of Commons if it includes provision amending primary legislation made in Parliament or the Assembly. If it does not, *subsection (5)* specifies the negative resolution procedure.

Clause 29: Commencement

225. Clause 29 sets out how the provisions of the Bill are to be commenced. *Subsection (1)* specifies that Part 4 (including this clause) comes into force on the day the Act is passed. Under *subsection (2)*, the other sections of the Bill come into force two months after the Act is passed, except sections 8, 9, 10 and 11(5), (6), (7)(a) and (8)(a) (the "referendum-related" provisions), sections 20 and 21 (borrowing by the Welsh Ministers) and section 24 (local housing authorities: limits on housing revenue account debt).
226. *Subsection (3)* clarifies that the bringing into force of sections 15, 16 and 17 (Welsh tax on land transactions) and 18 and 19 (Welsh tax on disposals to landfill) are subject to the provision in those sections about how they are to have effect.
227. *Subsection (4)* provides for the "referendum-related" provisions in sections 8, 9, 10 and 11(5), (6), (7)(a) and (8)(a) to come into force after an affirmative vote in a referendum called in accordance with section 12. *Subsection (5)* provides for sections 20 and 24 to come into force on a day appointed by order of HM Treasury. *Subsection (6)* permits HM Treasury to appoint different days for different purposes in bringing section 20 and section 24 into force. *Subsection (7)* provides for section 21 to come into force on the day on which section 121(1A) of GOWA 2006, inserted by section 20, comes into force. This ensures that the repeal of the existing borrowing power coincides with the coming into force of the new one.

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Clause 30: Extent and short title

228. Clause 30 sets out the territorial extent and short title of the Bill.

FINANCIAL EFFECTS

229. The direct costs to the UK Government as a result of the Bill's provisions are minimal. The exceptions to this are any costs incurred by the Electoral Commission in the event that a referendum on devolving income tax powers is called and any further costs incurred by the Comptroller and Auditor General as a result of the duty imposed in Clause 8, new section 116K of GOWA 2006 (see paragraphs 92 – 97 above). As set out in HM Treasury's Statement of Funding Policy, the costs associated with the devolution of devolved taxes and income tax upon HMRC will be borne by the Welsh Government. Some additional costs may also fall upon the Welsh Government, especially in relation to conducting any referendum on income tax powers.

PUBLIC SECTOR MANPOWER

230. No changes in the staff of Government departments and their agencies are expected as a result of this Bill.

IMPACT ASSESSMENT

231. The Wales Office, together with HM Treasury and HM Revenue and Customs, has produced a full impact assessment to accompany the Bill. The Impact Assessment has been placed in the printed paper office and is available on www.gov.uk. The Bill devolves powers to the Assembly and therefore does not impose significant regulation on business, as such the direct impact of the Bill is considered to be minimal.
232. The Impact Assessment makes clear that, whilst there is no reason for the compliance burden to increase as a result of the devolution of stamp duty land tax and landfill tax, the nature of any change in the compliance burden is dependent on the decisions made by the Assembly and Welsh Government in future in terms of replacement taxes. Similarly, the impact of the devolution of a part of income tax, subject to a referendum, would depend on future policy and administrative decisions taken by the Welsh Government.
233. It is not possible to quantify fully the costs or effects of increased capital borrowing by the Welsh Ministers in future. However, the Silk Commission noted that capital borrowing powers would have a number of non-monetised benefits, including increasing the empowerment and accountability of the Welsh Government by providing it with more flexibility to invest in infrastructure in Wales, which in turn could promote growth and efficiency.

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234. The impact assessment also sets out the costs and benefits of the proposed changes to the Assembly's electoral arrangements. The measures neither incur significant costs nor yield significant savings.

COMPATIBILITY WITH THE EUROPEAN CONVENTION ON HUMAN RIGHTS

235. Section 19(1)(a) of the Human Rights Act 1998 ("the 1998 Act") requires the Minister in charge of the Bill in either House of Parliament to make a statement about the compatibility of the provisions of the Bill with the Convention rights (as defined by section 1 of the 1998 Act).
236. Baroness Randerson has made the following statement:
- "In my view the provisions of the Wales Bill are compatible with the Convention rights."
237. The Bill largely deals with the constitutional arrangements regarding the division of responsibility between the UK Government and the Welsh Government under GOWA 2006, and therefore does not have any direct impact on any person's rights under the European Convention on Human Rights ("ECHR").
238. GOWA 2006 itself has inbuilt protection for ECHR rights because Assembly Acts are not law so far as any of their provisions are incompatible with any of the Convention rights.⁶ Furthermore, the Welsh Ministers have no power to make any subordinate legislation, or to do any other act, so far as the legislation or act is incompatible with any of the Convention rights.⁷
239. Accordingly, the amendments to GOWA 2006 which are contained in the Bill and the devolution of powers to the Assembly should be considered in the context of explicit requirements which GOWA 2006 already imposes upon the Assembly and the Welsh Ministers in respect of the obligation to act compatibly with the ECHR.
240. In light of that context, the Government does not consider that the Bill's clauses engage the ECHR, aside from those set out below. In respect of each of the clauses below, the Government has concluded that, even though Convention rights are arguably engaged, there is no ECHR incompatibility.

⁶ Section 108(6)(c) of GOWA 2006.

⁷ Section 81(1) of GOWA 2006.

MPs to be disqualified for membership of Assembly: clause 3

241. Although the right to free elections under Article 3 of Protocol 1 (“A3P1”) to the ECHR obliges states to hold elections which ensure the free expression of the opinion of the people (including the right stand for election), that right is not absolute and may be subject to limitations.⁸ In *M v. UK* for example, the Commission (Plenary) held that “*the condition that one must not be a member of another legislature is a requirement which is reconcilable with the rights enshrined in Article 3 of the First Protocol*”.⁹
242. Although prohibiting dual mandates in the Bill may arguably engage A3P1, the Government considers this limitation to be a proportionate and reasonable limitation, which aims to preserve the effectiveness of the electoral system by ensuring that elected representatives are properly capable of carrying out their mandate. Indeed, prohibiting dual mandates has been recommended explicitly by the Committee on Standards in Public Life in its 2009 report on MP’s expenses.¹⁰
243. The Government is therefore satisfied that the limitation on the right to be simultaneously an MP and an AM does not curtail the right to stand for election to such an extent as to impair its very essence or deprive it of its effectiveness. Candidates are permitted to stand for election to both the Assembly and the House of Commons and it is their choice as to which membership they pursue.
244. It is worth noting that there are currently no MPs who are also AMs to which this provision would apply. Furthermore, anyone who may be considering pursuing a dual mandate between now and the commencement of this clause, has had notice of this provision since the draft Wales Bill was published on 18 December 2013.
245. Although the prohibition of discrimination (Article 14 of the ECHR) is also arguably engaged by prohibiting AMs from being MPs yet not prohibiting them from membership of the House of Lords, the Government is satisfied that the difference in treatment can be objectively justified and would not lead to an Article 14 incompatibility. Clearly, the House of Lords is a different type of Chamber whose members are not, on the whole, paid salaries and who have traditionally undertaken other work in addition to their membership of the House. The Government considers

⁸ *Ahmed v United Kingdom* (1998) 29 E.H.R.R. 1 (paragraph. 75).

⁹ Application no. 10316/83, 7 March 1984, Commission (Plenary).

¹⁰ Committee on Standards in Public Life, *MPs’ Expenses and Allowances: Supporting Parliament, safeguarding the taxpayer*, November 2009. See paragraph 12.22 and Recommendation 40 of <http://www.official-documents.gov.uk/document/cm77/7724/7724.pdf>.

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that the demands of membership of the House of Lords are different (both in terms of workload and responsibility), and therefore such demands would not have the same impact on the exercise of an AM's responsibilities.

The Welsh Rate of Income Tax: clause 8

246. Subject to a referendum, clause 8 of the Bill creates a power for the Assembly to set the rate of income tax to be paid by "Welsh taxpayers". Depending on the rate of tax set by the Assembly, an individual falling within the definition of a Welsh taxpayer may find that they are liable to pay more or less tax than a person who does not fall within that definition. This would arguably interfere with that person's rights under Article 1 of Protocol 1 ("A1P1") to the ECHR to have their property protected.
247. Although taxation provisions generally tend to engage A1P1, the second paragraph of that Article expressly provides that the State may enforce such laws as it deems necessary to secure the payment of taxes or other contributions. It is clear from the European Court of Human Rights' jurisprudence that contracting states enjoy a very wide margin of appreciation in implementing policies in the area of taxation.¹¹ The Government considers that this wide margin of appreciation clearly includes the general policy of whether or not to devolve to a regional government the discretion to establish its own rates of tax.
248. A Welsh taxpayer may seek to argue that it is disproportionate for them to have to pay the Welsh rate of tax because the definition of a Welsh taxpayer produces an anomalous result in their particular case. However, it is likely that *any* definition of a "Welsh taxpayer" would be capable of producing some difficult results in marginal cases. The courts have nevertheless accepted that contracting states are entitled to draw "bright lines" and that difficult cases may fall on either side of the line.¹² The Government is content that the definition in clause 8 (and the amendments to the definition of Scottish taxpayer made in clause 11) has been drafted in a logical and proportionate way, such that any anomalous results will be minimised.

Welsh tax on land transactions and disposals to landfill (clauses 15-19)

249. Given that these provisions essentially provide for SDLT and landfill tax in Wales to be "switched off", with the Assembly being empowered to impose its own taxes in

¹¹ The leading case is *National & Provincial Building Society and Others v. UK* (1997) 25 EHRR 127. Also, see the key legal principles on A1P1 in relation to tax, which are summarised by the ECtHR on page 11 of *MA v Finland* (2003) 37 E.H.R.R. CD210.

¹² See for example, *Carson v UK* (2010) 51 EHRR 369; and *R (RJM) v Secretary of State for Work and Pensions* [2008] UKHL 63, [2009] 1 AC 311.

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these areas from that date, the Government does not consider that any A1P1 incompatibility arises. Any ECHR issues will be for the Assembly to consider when it legislates for any new devolved land transaction tax or landfill tax.

250. As discussed above, GOWA 2006 has inbuilt ECHR protection by providing that Assembly legislation is outside competence and not law so far as any of its provisions are incompatible with Convention rights.

WALES BILL

EXPLANATORY NOTES

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