

Draft Wales Bill

December 2013

Mesur Cymru drafft

Rhagfyr 2013



**Wales Office
Swyddfa Cymru**



HM Government



Draft Wales Bill

Presented to Parliament
by the Secretary of State for Wales
by Command of Her Majesty

December 2013

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FOREWORD



I welcome the opportunity to publish the draft Wales Bill for pre-legislative scrutiny.

This Government has, from the outset, shown its commitment to Welsh devolution. We delivered on our promises to introduce a referendum on Assembly powers and to establish the independent Commission on Devolution in Wales (the Silk Commission) to review the financial and constitutional arrangements in Wales.

The draft Wales Bill implements almost all of the recommendations from the Silk Commission's first report on the devolution of tax and borrowing powers to the National Assembly for Wales and the Welsh Government. These changes will give Wales more fiscal autonomy, and will make the Assembly and the Welsh Government more accountable to people in Wales for raising the money they spend.

The proposals in the draft Bill to devolve tax-raising powers mean that spending decisions made by the Assembly and the Welsh Government will, for the first time, have consequences in terms of devolved taxation. It also provides the Welsh Ministers with an independent funding stream to support their new capital borrowing powers provided for in the draft Bill. These powers will enable the Welsh Government to borrow to invest in renewing Wales's infrastructure and support growth in the Welsh economy.

The draft Bill provides for the Assembly to decide to trigger a referendum so that people in Wales can decide whether some of their income tax should be devolved, in the same way as in Scotland.

It also makes a number of changes to the Assembly's electoral arrangements, reflecting the outcome of our Green Paper consultation last year, and some other changes which clarify and update the devolution settlement.

Taken together, these are significant reforms which provide the opportunity for devolved governance in Wales to be fairer, more accountable and more able to support economic growth in Wales.

A handwritten signature in black ink, appearing to read "David Jones".

**RT HON DAVID JONES MP
SECRETARY OF STATE FOR WALES**

RHAGAIR



Rwyf yn croesawu'r cyfle i gyhoeddi'r Mesur Cymru drafft ar gyfer craffu cyn y broses ddeddfu.

Mae'r Llywodraeth hon wedi dangos o'r dechrau ei bod wedi ymrwymo i ddatganoli yng Nghymru. Cyflawnwyd ein haddewidion i gyflwyno refferendwm ar bwerau'r Cynulliad ac i sefydlu'r Comisiwn annibynnol ar Ddatganoli yng Nghymru (Comisiwn Silk) i adolygu'r trefniadau ariannol a chyfansoddiadol yng Nghymru.

Mae'r Mesur Cymru drafft yn gweithredu bron y cyfan o'r argymhellion yn adroddiad cyntaf Comisiwn Silk ar ddatganoli pwerau trethu a benthyca i Gynulliad Cenedlaethol Cymru a Llywodraeth Cymru. Bydd y newidiadau hyn yn rhoi mwy o ymreolaeth gyllidol i Gymru, a byddant yn gwneud y Cynulliad a Llywodraeth Cymru yn fwy atebol i bobl Cymru am godi'r arian y maent yn ei wario.

Bydd y cynigion yn y Mesur drafft i ddatganoli pwerau trethu yn golygu y bydd penderfyniadau ar wariant gan y Cynulliad a Llywodraeth Cymru yn arwain, am y tro cyntaf, at ganlyniadau yng nghyd-destun trethi datganoledig. Mae hefyd yn rhoi ffrwd ariannu annibynnol i Weinidogion Cymru i ategu'r pwerau newydd ar gyfer benthyca cyfalaf sydd wedi'u darparu iddynt yn y Mesur drafft. Bydd y pwerau hyn yn galluogi Llywodraeth Cymru i fenthyca arian i'w fuddsoddi er mwyn adnewyddu seilwaith Cymru a hybu twf yn economi Cymru.

Mae'r Mesur drafft yn darparu y caiff y Cynulliad benderfynu cychwyn refferendwm fel y gall pobl Cymru benderfynu a fydd rhywfaint o'u treth incwm yn cael ei ddatganoli, yn yr un modd â'r Alban.

Mae hefyd yn gwneud nifer o newidiadau yn nhrefniadau etholiadol y Cynulliad sy'nadlewyrchu canlyniad yr ymgynghoriad ar ein Papur Gwydd y llynedd, a rhai newidiadau eraill sy'n egluro ac yn diweddarur setliad datganoli.

Gyda'i gilydd, mae'r rhain yn ddiwygiadau sylweddol sy'n rhoi'r cyfle i lywodraethu datganoledig yng Nghymru fod yn decach ac yn fwy atebol ac i gael mwy o allu i hybu twf economaidd yng Nghymru.



**Y GWIR ANRHYDEDDUS DAVID JONES AS
YSGRIFENNYDD GWLADOL CYMRU**

Wales Bill

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DRAFT

OF A

B I L L

TO

Amend the Government of Wales Act 2006; to make provision about local housing authorities in Wales and about the Law Commission in relation to Wales; and for connected purposes.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

THE ASSEMBLY AND WELSH GOVERNMENT

National Assembly for Wales

1 Frequency of Assembly ordinary general elections

- (1) In section 3(1) of GOWA 2006 (date of Assembly ordinary general elections), for “fourth” substitute “fifth”.
- (2) Accordingly, in the Fixed-term Parliaments Act 2011 omit section 5 (date of next Assembly ordinary general election).

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

- (1) GOWA 2006 is amended as follows.
- (2) In section 7 (candidates at general elections)—
 - (a) in subsection (5), for paragraph (c) (and the “or” before it) substitute—
“(c) who is a candidate to be the Assembly constituency member for an Assembly constituency which is not included in the Assembly electoral region, or

- (d) who is a candidate to be the Assembly constituency member for an Assembly constituency included in the Assembly electoral region but is not a candidate of the party.”;
- (b) in subsection (6), for paragraph (c) (and the “or” before it) substitute—
 - (c) a candidate to be the Assembly constituency member for an Assembly constituency which is not included in the Assembly electoral region, or
 - (d) a candidate of any registered political party to be the Assembly constituency member for an Assembly constituency included in the Assembly electoral region.”
- (3) In section 9 (allocation of seats to electoral region members)—
 - (a) in subsection (4), after “as an” insert “Assembly constituency member or”;
 - (b) in subsection (5), at the end insert “(disregarding anyone already returned as an Assembly constituency member, including anyone whose return is void)”;
 - (c) in subsection (6), for the words from “by the return” to “(2)” substitute “(by the return of persons included on it as Assembly constituency members or by the previous application of subsection (1) or (2))”.
- (4) In section 11(8) (electoral region vacancies)—
 - (a) for paragraphs (a) to (c) substitute—
 - (a) was returned as an Assembly member at that election (even if the return was void), or
 - (b) has subsequently been returned under section 10 or this section (even if the return was void);”;
 - (b) in the words after paragraph (c) omit “, or of the successful candidate at the election.”.

3 MPs to be disqualified for membership of Assembly

- (1) In section 16(1) of GOWA 2006 (disqualification from being Assembly member), before paragraph (a) insert—
 - “(za) is a member of the House of Commons (but see sections 17A and 17B),”.
- (2) After section 17 of that Act insert—

“17A Exception from disqualification by virtue of being an MP: recently elected members

- (1) A person returned at an election as an Assembly member is not disqualified under section 16(1)(za) (disqualification by virtue of being an MP) at any time in the period of 8 days beginning with the day the person is so returned.
- (2) Subsection (3) applies where a person—
 - (a) is returned at an election as an Assembly member,
 - (b) on being so returned is a candidate for election to the House of Commons, and
 - (c) is subsequently returned at that election as a member of that House.

- (3) The person is not disqualified under section 16(1)(za) at any time in the period of 8 days beginning with the day the person is returned as a member of the House of Commons.
 - (4) A person is a “candidate for election to the House of Commons” if the person’s nomination paper for election as a member of the House of Commons has been delivered to the returning officer under rule 6 of Schedule 1 to the Representation of the People Act 1983 (parliamentary election rules).
- 17B Exception from disqualification by virtue of being an MP: general election within 6 months**
- (1) This section applies if—
 - (a) an Assembly member is returned as a member of the House of Commons, and
 - (b) the expected day of the next general election is within the period of 6 months beginning with the day the person is so returned (“the return day”).
 - (2) The member is not disqualified under section 16(1)(za) (disqualification by virtue of being an MP) at any time in the period—
 - (a) beginning with the return day, and
 - (b) ending immediately before the day of the next general election.
 - (3) For the purposes of subsection (1)(b) the expected day of the next general election is to be determined by reference to the circumstances as at the beginning of the return day (“the relevant time”).
 - (4) Where, at the relevant time, section 5(2) or (3) (extraordinary general elections) applies—
 - (a) if an Order in Council under section 5(4) has been made, the expected day is the day on which the poll is required to be held in accordance with that Order;
 - (b) if no Order in Council under section 5(4) has been made but a day has been proposed under section 5(1), that is the expected day;
 - (c) otherwise, treat the expected day as being within the period mentioned in subsection (1)(b).
 - (5) For the purpose of determining the expected day, no account is to be taken of the possibility of—
 - (a) an order under section 4 (power to vary date of ordinary general election) being made after the relevant time, or
 - (b) section 5(2) or (3) (extraordinary general elections) first applying after that time.
 - (6) References in this section to the “day” of the election are to the day on which the poll at the election is held.”
- (3) The National Assembly for Wales (Representation of the People) Order 2007 (S.I. 2007/236) is amended as follows.
 - (4) In article 34 (false statements in nomination papers), at the end of paragraph (5)(c) insert “or is disqualified only under section 16(1)(za) of the 2006 Act (disqualification of MPs)”.

- (5) In Schedule 5 (Assembly election rules), in rule 9(4)(c)(ii) (consent to nomination) after “Assembly” insert “or that to the best of his knowledge and belief he is disqualified for membership of the Assembly only under section 16(1)(za) of the 2006 Act (disqualification of MPs)”.

Welsh Government

4 The Welsh Government

- (1) The Welsh Assembly Government is renamed the Welsh Government, or Llywodraeth Cymru.
- (2) Accordingly, in GOWA 2006—
 - (a) omit “Assembly” wherever it occurs in the expression “Welsh Assembly Government”;
 - (b) omit “Cynulliad” where it occurs in section 45(1) (in both places).
- (3) In the following sections of GOWA 2006, as amended by subsection (2), the references to the Welsh Government include, in relation to any time before the coming into force of this section, references to the Welsh Assembly Government—
 - (a) section 37(5) (power to impose requirements on current or former members of staff of the Government);
 - (b) section 52(7)(a) and (8) (power to pay pensions in respect of current or former members of staff of the Government).
- (4) Subsection (2) does not apply to paragraph 63(4) of Schedule 11 to GOWA 2006 (approvals to draw payments during the initial period), which is spent.
- (5) Unless the context requires otherwise, in any enactment, instrument or other document made before the date on which this section comes into force (except the enactments mentioned in subsections (2) to (4))—
 - (a) any reference to the Welsh Assembly Government is to be read as, or as including, a reference to the Welsh Government, and
 - (b) any reference to Llywodraeth Cynulliad Cymru is to be read as, or as including, a reference to Llywodraeth Cymru.

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

In section 46 of GOWA 2006 (the First Minister), at the end of subsection (5)(c) (designation if First Minister ceases to be Assembly member) insert “otherwise than by reason of a dissolution”.

PART 2

FINANCE

Introductory

6 Taxation: introductory

(1) After Part 4 of GOWA 2006 insert—

“PART 4A

TAXATION

CHAPTER 1

INTRODUCTORY

116A Overview of Part 4A

- (1) In this Part—
 - (a) Chapter 2 confers on the Assembly power to set a rate of income tax to be paid by Welsh taxpayers, and
 - (b) Chapters 3 and 4 specify the taxes about which the Assembly may make provision in the exercise of the power conferred by section 107(1).
- (2) The power to make provision about a devolved tax is subject to the restrictions imposed by—
 - (a) subsection (3), and
 - (b) the other provisions of this Part.
- (3) A devolved tax may not be imposed where to do so would be incompatible with any international obligations.
- (4) In this Act “devolved tax” means a tax specified in this Part as a devolved tax.

116B Power to add new devolved taxes

- (1) Her Majesty may by Order in Council amend this Part so as to—
 - (a) specify, as an additional devolved tax, a tax of any description, or
 - (b) make any other modifications of the provisions relating to devolved taxes which She considers appropriate.
- (2) An Order in Council under this section may make such modifications of—
 - (a) any enactment (including any enactment comprised in or made under this Act) or prerogative instrument, or
 - (b) any other instrument or document,as Her Majesty considers appropriate in connection with the provision made by the Order.
- (3) No recommendation is to be made to Her Majesty in Council to make an Order in Council under this section unless a draft of the statutory

- instrument containing the Order has been laid before, and approved by a resolution of, each House of Parliament and the Assembly.
- (4) The amendment of this Part by an Order in Council under this section does not affect—
 - (a) the validity of an Act of the Assembly passed before the amendment comes into force, or
 - (b) the previous or continuing operation of such an Act of the Assembly.”
 - (2) In consequence of the amendment made by subsection (1), GOWA 2006 is further amended as follows.
 - (3) In section 108 (legislative competence of the Assembly)—
 - (a) in subsection (4)(a), after “Schedule 7 and” insert “, subject to subsection (4A);”;
 - (b) after subsection (4) insert—

“(4A) Provision relating to a devolved tax (which is listed under the heading “Taxation” in Part 1 of Schedule 7) is not outside the Assembly’s legislative competence by reason only of the fact that it falls within an exception specified under another heading in that Part of that Schedule.”
 - (4) In section 111 (proceedings on Bills), in subsection (8), for “and 116(3)” substitute “, 116(3) and 116B(4)”.
 - (5) In section 158(2) (references to enactments), after “109(2)” insert “, 116B(2)”.
 - (6) In section 159 (index of defined expressions), at the appropriate place insert—

“devolved tax	section 116A(4)”.
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- (7) Schedule 7 (legislative competency to make Acts of the Assembly) is amended as follows.
- (8) In paragraph 4 (economic development), in the first exception, after “Fiscal, economic and monetary policy” insert “(except so far as relating to devolved taxes)”.
- (9) After paragraph 16 insert—

“*Taxation*

16A Devolved taxes (as defined in section 116A(4)).”

7 Amendments relating to the Commissioners for Revenue and Customs

- (1) The Commissioners for Revenue and Customs Act 2005 is amended in accordance with subsections (2) to (7).
- (2) In section 15 (agency), after subsection (2) insert—
 - (3) For the purposes of section 83 of the Government of Wales Act 2006 (agency arrangements)—
 - (a) the Commissioners are to be treated as a relevant authority, and

- (b) the officers of Revenue and Customs are to be treated as a relevant authority.”
- (3) Accordingly, the heading to that section becomes “Agency: Scotland, Northern Ireland and Wales”.
- (4) Section 18 (confidentiality) is amended in accordance with subsections (5) and (6).
- (5) In subsection (2)–
 - (a) omit “or” at the end of paragraph (h);
 - (b) after paragraph (i) insert “, or
 - (j) which is made to the Welsh Ministers in connection with the collection and management of a devolved tax within the meaning of the Government of Wales Act 2006.”
- (6) In subsection (2A), after “subsection (2)(i)” insert “or (j)”.
- (7) In section 51 (interpretation), after subsection (2A) insert–
 - “(2B) Nor does such a reference include a function which–
 - (a) is conferred on the Commissioners or on officers of Revenue and Customs by or by virtue of an Act of the National Assembly for Wales or an instrument made under such an Act, and
 - (b) relates to a devolved tax within the meaning of the Government of Wales Act 2006.”
- (8) In section 1(1) of the Customs and Excise Management Act 1979 (interpretation), in the definition of “assigned matter”, after “the Scotland Act 1998” insert “or the Government of Wales Act 2006”.

Welsh rate of income tax

8 Welsh rate of income tax

- (1) In Part 4A of GOWA 2006 (as inserted by section 6), after Chapter 1 insert–

“CHAPTER 2

INCOME TAX

116C Power to set Welsh rate for Welsh taxpayers

- (1) The Assembly may by resolution (a “Welsh rate resolution”) set the Welsh rate for the purpose of calculating the rates of income tax to be paid by Welsh taxpayers.
- (2) Section 6(2B) of the Income Tax Act 2007 provides for the calculation of those rates.
- (3) A Welsh rate resolution applies–
 - (a) for only one tax year, and
 - (b) for the whole of that year.
- (4) A Welsh rate resolution may specify only one rate.
- (5) The Welsh rate must be a whole number or half a whole number.

- (6) A Welsh rate resolution—
 - (a) must specify the tax year for which it applies,
 - (b) must be made before the start of that tax year, and
 - (c) must not be made more than 12 months before the start of that year.
- (7) If a Welsh rate resolution is cancelled before the start of the tax year for which it is to apply—
 - (a) the Income Tax Acts have effect for that year as if the resolution had never been passed, and
 - (b) the resolution may be replaced by another Welsh rate resolution.
- (8) The standing orders must provide that only the First Minister or a Welsh Minister appointed under section 48 may move a motion for a Welsh rate resolution.

116D Welsh taxpayers

- (1) In any tax year, a Welsh taxpayer is an individual (T) who, for that year—
 - (a) is resident in the UK for income tax purposes (see Schedule 45 to the Finance Act 2013), and
 - (b) meets condition A, B or C.
- (2) T meets condition A if T has a close connection with Wales (see section 116E).
- (3) T meets condition B if—
 - (a) T does not have a close connection with England, Scotland or Northern Ireland (see section 116E), and
 - (b) T spends more days of that year in Wales than in any other part of the UK (see section 116F).
- (4) T meets condition C if, for the whole or any part of the year, T is—
 - (a) a member of Parliament for a constituency in Wales,
 - (b) a member of the European Parliament for Wales, or
 - (c) an Assembly member.
- (5) In this Chapter “the UK” means the United Kingdom.

116E Close connection with Wales or another part of the UK

- (1) To find whether, for any year, T has a close connection with any part of the UK see—
 - (a) subsection (2) (where T has only one place of residence in the UK), or
 - (b) subsection (3) (where T has 2 or more places of residence in the UK).
- (2) T has a close connection with a part of the UK if in that year—
 - (a) T has only one place of residence in the UK,
 - (b) that place of residence is in that part of the UK, and
 - (c) for at least part of the year, T lives at that place.
- (3) T has a close connection with a part of the UK if in that year—

- (a) T has 2 or more places of residence in the UK,
 - (b) for at least part of the year, T's main place of residence in the UK is in that part of the UK,
 - (c) the times in the year when T's main place of residence is in that part of the UK comprise (in aggregate) at least as much of the year as the times when T's main place of residence is in any one other part of the UK, and
 - (d) for at least part of the year, T lives at a place of residence in that part of the UK.
- (4) In this section “place” includes a place on board a vessel or other means of transport.

116F Days spent in Wales or another part of the UK

- (1) T spends more days of a year in Wales than in any other part of the UK if (and only if)—
 - (a) the number of days in the year on which T is in Wales at the end of the day equals or exceeds
 - (b) the number of days in the year on which T is in any other part of the UK at the end of the day.
- (2) But T is not to be treated as being in the UK at the end of a day if—
 - (a) on that day T arrives in the UK as a passenger,
 - (b) T departs from the UK on the next day, and
 - (c) during the time between arrival and departure T does not engage in activities which are to a substantial extent unrelated to T's passage through the UK.

116G Supplemental powers to modify enactments

- (1) The Treasury may by order provide that subsections (2A), (2B) and (2D) of section 6 of the Income Tax Act 2007 are to be disapplied, or that their effect is to be modified, in relation to any enactment.
- (2) The Treasury may by order make such modifications of any enactment as they consider necessary or expedient in consequence of or in connection with—
 - (a) the power of the Assembly to set a rate under section 116C;
 - (b) the making of a Welsh rate resolution;
 - (c) an order under subsection (1).
- (3) An order under subsection (2) may, in particular, provide that a Welsh rate resolution does not require any change in the amounts repayable or deductible under PAYE regulations between—
 - (a) the beginning of the tax year for which the resolution has effect, and
 - (b) such date (falling after the date of the resolution) as may be specified in the order.
- (4) An order under this section may, to the extent that the Treasury consider it to be appropriate, take effect retrospectively from the beginning of the tax year in which the order is made.

- (5) No order is to be made under this section unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, the House of Commons.
- (6) Subsection (5) does not apply to an order under subsection (2) which makes only such provision as is mentioned in subsection (3); a statutory instrument containing such an order is subject to annulment in pursuance of a resolution of the House of Commons.

116H Reimbursement of expenses

The Welsh Ministers may reimburse any Minister of the Crown or government department for administrative expenses incurred by virtue of this Chapter at any time after the passing of the Wales Act 2014 by the Minister or department.

116I Report by the Comptroller and Auditor General

- (1) The Comptroller and Auditor General must for each financial year prepare a report on the matters set out in subsection (2).
- (2) Those matters are –
 - (a) the adequacy of any of HMRC’s rules and procedures put in place, in consequence of the Welsh rate provisions, for the purpose of ensuring the proper assessment and collection of income tax charged at rates determined under those provisions,
 - (b) whether the rules and procedures described in paragraph (a) are being complied with,
 - (c) the correctness of the sums brought to account by HMRC which relate to income tax which is attributable to a Welsh rate resolution, and
 - (d) the accuracy and fairness of the amounts which are reimbursed to HMRC under section 116H (having been identified by it as administrative expenses incurred as a result of the charging of income tax as mentioned in paragraph (a)).
- (3) The “Welsh rate provisions” are –
 - (a) this Chapter, and
 - (b) the amendments made by section 9 of the Wales Act 2014.
- (4) A report under this section may also include an assessment of the economy, efficiency and effectiveness with which HMRC has used its resources in carrying out relevant functions.
- (5) “Relevant functions” are functions of HMRC in the performance of which HMRC incurs administrative expenses which are reimbursed to HMRC under section 116H (having been identified by it as administrative expenses incurred as a result of the charging of income tax as mentioned in subsection (2)(a)).
- (6) HMRC must give the Comptroller and Auditor General such information as the Comptroller and Auditor General may reasonably require for the purposes of preparing a report under this section.
- (7) A report prepared under this section must be laid before the Assembly not later than 31 January of the financial year following that to which the report relates.

- (8) In this section “HMRC” means Her Majesty’s Revenue and Customs.”
- (2) The sections inserted by subsection (1) come into force in accordance with section 12 (commencement after referendum about income tax provisions).

9 Income tax for Welsh taxpayers

- (1) The Income Tax Act 2007 is amended as follows.
- (2) Section 6 (the rates of income tax) is amended in accordance with subsections (3) to (6).
- (3) At the end of subsection (2A) insert “or of a Welsh taxpayer”.
- (4) In subsection (2B), after “a Scottish taxpayer” insert “or of a Welsh taxpayer”.
- (5) In Step 3 in that subsection—
- (a) for “Add” substitute “Add—
 - (a) in the case of a Scottish taxpayer,”;
 - (b) at the end insert—
 - (b) in the case of a Welsh taxpayer, the Welsh rate (if any) set by the National Assembly for Wales for that year.”
- (6) After subsection (2C) insert—
- “(2D) Chapter 2 of Part 4A of the Government of Wales Act 2006 makes provision about the meaning of “Welsh taxpayer” and the setting of the Welsh rate.”
- (7) In section 10 (income charged at particular rates: individuals)—
- (a) in subsection (3B), after “a Scottish taxpayer” insert “or a Welsh taxpayer”;
 - (b) in subsection (3C), after “a Scottish taxpayer’s” insert “or a Welsh taxpayer’s”.
- (8) In section 16 (savings and dividend income to be treated as highest part), in subsection (1)(za), after “a Scottish taxpayer’s” insert “or a Welsh taxpayer’s”.
- (9) In section 809H (charge on nominated income of long-term UK resident), in subsection (3A)—
- (a) for “(2C)” substitute “(2D)”;
 - (b) after “Scottish taxpayers” insert “or Welsh taxpayers”.
- (10) In section 1 of the Provisional Collection of Taxes Act 1968 (temporary statutory effect of resolution of House of Commons), in subsection (3A)—
- (a) the words from “in relation to” to the end become paragraph (a);
 - (b) after that paragraph insert “, and
 - (b) in relation to Welsh taxpayers (within the meaning of Chapter 2 of Part 4A of the Government of Wales Act 2006) as if it specified the rate calculated in accordance with section 6(2A), (2B) and (2D) of that Act of 2007.”
- (11) The amendments made by this section come into force in accordance with section 12 (commencement after referendum about income tax provisions).

*Referendum on income tax provisions***10 Referendum about commencement of income tax provisions**

- (1) Her Majesty may by Order in Council cause a referendum to be held throughout Wales about whether the income tax provisions should come into force.
- (2) If the majority of the voters in a referendum held by virtue of subsection (1) vote in favour of the income tax provisions coming into force, those provisions are to come into force in accordance with section 12.
- (3) But if they do not, that does not prevent the making of a subsequent Order under subsection (1).
- (4) No recommendation is to be made to Her Majesty to make an Order under subsection (1) unless a draft of the statutory instrument containing the Order has been laid before, and approved by a resolution of, each House of Parliament and the Assembly.
- (5) But subsection (4) is not satisfied unless the resolution of the Assembly is passed on a vote in which the number of Assembly members voting in favour of it is not less than two-thirds of the total number of Assembly seats.
- (6) A draft of a statutory instrument containing an Order under subsection (1) may not be laid before either House of Parliament, or the Assembly, until the Secretary of State has undertaken such consultation as the Secretary of State considers appropriate.
- (7) For further provision about a referendum held by virtue of subsection (1), see Schedule 1.
- (8) In this section “the income tax provisions” means sections 8 and 9.

11 Proposal for referendum by Assembly

- (1) This section applies if—
 - (a) the First Minister or a Welsh Minister appointed under section 48 of GOWA 2006 moves a resolution in the Assembly that, in the Assembly’s opinion, a recommendation should be made to Her Majesty to make an Order under section 10(1), and
 - (b) the Assembly passes the resolution on a vote in which the number of Assembly members voting in favour of it is not less than two-thirds of the total number of Assembly seats.
- (2) The First Minister must, as soon as practicable after the resolution is passed, ensure that notice in writing of the resolution is given to the Secretary of State.
- (3) Within the period of 180 days beginning immediately after the day on which notice under subsection (2) is received—
 - (a) the Minister must lay a draft of a statutory instrument containing an Order under section 10(1) before each House of Parliament, or
 - (b) the Secretary of State must give notice in writing to the First Minister of the fact that the Minister has refused to lay a draft and the reasons for that refusal.

- (4) As soon as practicable after the First Minister receives notice under subsection (3)(b) –
 - (a) the First Minister must lay a copy of the notice before the Assembly, and
 - (b) the Assembly must ensure that the notice is published.
- (5) In this section “the Minister” means the Secretary of State or the Lord President of the Council.

12 Commencement of the income tax provisions if majority in favour

- (1) This section applies where the majority of the voters in a referendum held by virtue of section 10(1) vote in favour of the income tax provisions coming into force.
- (2) Those provisions are to come into force in accordance with an order made by the Treasury.
- (3) An order under this section may –
 - (a) appoint the day on which the income tax provisions are to come into force;
 - (b) provide that a Welsh rate resolution under the provisions inserted by section 8 may be made so as to apply for a tax year appointed by the order or any subsequent tax year;
 - (c) provide that the amendments made by the income tax provisions have effect in relation to –
 - (i) a tax year appointed by the order and subsequent tax years, or
 - (ii) a financial year so appointed and subsequent financial years.
- (4) Different provision may be made for different purposes.
- (5) If a tax year is appointed under subsection (3)(b) or (c) for the purposes of any provision, that tax year must begin on or after the day appointed under subsection (3)(a) for the purposes of that provision.
- (6) In this section “the income tax provisions” means sections 8 and 9.

Welsh tax on land transactions

13 Welsh tax on transactions involving interests in land

- (1) In Part 4A of GOWA 2006 (as inserted by section 6), after Chapter 2 (inserted by section 8) insert –

“CHAPTER 3

TAX ON TRANSACTIONS INVOLVING INTERESTS IN LAND

116J Tax on transactions involving interests in land

- (1) A tax charged on any of the following transactions is a devolved tax –
 - (a) the acquisition of an estate, interest, right or power in or over land in Wales;

- (b) the acquisition of the benefit of an obligation, restriction or condition affecting the value of any such estate, interest, right or power.
- (2) The tax may be chargeable—
 - (a) whether or not there is any instrument effecting the transaction,
 - (b) if there is such an instrument, regardless of where it is executed, and
 - (c) regardless of where any party to the transaction is or is resident.

116K Certain transactions not taxable

- (1) Tax may not be imposed under section 116J on so much of a transaction as relates to land below mean low water mark.
- (2) The following persons are not to be liable to pay a tax imposed under section 116J—

Government

- A Minister of the Crown
- The Welsh Ministers, the First Minister and the Counsel General
- The Scottish Ministers
- A Northern Ireland department

Parliament etc

- The Corporate Officer of the House of Lords
- The Corporate Officer of the House of Commons
- The Assembly Commission
- The Scottish Parliamentary Corporate Body
- The Northern Ireland Assembly Commission.”

- (2) Tax may not be charged in accordance with the provisions inserted by this section on a land transaction within the meaning of Part 4 of the Finance Act 2003 unless section 14 (disapplication of UK stamp duty land tax) has effect in relation to that transaction.

14 Disapplication of UK stamp duty land tax

- (1) Part 4 of the Finance Act 2003 (stamp duty land tax) is amended as follows.
- (2) In section 48 (chargeable interests), in subsection (1)(a), omit “and Wales”.
- (3) In Schedule 2 to this Act—
 - (a) Part 1 contains further amendments relating to the disapplication of stamp duty land tax to Wales, and
 - (b) Part 2 makes provision, in consequence of the disapplication of paragraph 1(1)(b) of Schedule 10 to the Finance Act 2003 (prescribed information in land transaction returns) to transactions relating to land in Wales, about the supply of information to Her Majesty’s Revenue and Customs.
- (4) This section has effect in relation to land transactions with an effective date on or after such date as is appointed by the Treasury by order under this subsection.
- (5) But this section does not have effect in relation to any transaction—

- (a) effected in pursuance of a contract entered into and substantially performed on or before the date on which this Act is passed, or
 - (b) effected in pursuance of a contract entered into on or before that date and not excluded by subsection (6).
- (6) A transaction effected in pursuance of a contract entered into on or before the date on which this Act is passed is excluded if—
 - (a) there is any variation of the contract, or assignment of rights under the contract, after that date,
 - (b) the transaction is effected in consequence of the exercise after that date of any option, right of pre-emption or similar right, or
 - (c) after that date there is an assignment, subsale or other transaction relating to the whole or part of the subject-matter of the contract as a result of which a person other than the purchaser under the contract becomes entitled to call for a conveyance.

Welsh tax on disposals to landfill

15 Welsh tax on disposals to landfill

- (1) In Part 4A of GOWA 2006 (as inserted by section 6), after Chapter 3 (inserted by section 13) insert—

“CHAPTER 4

TAX ON DISPOSALS TO LANDFILL

116L Tax on disposals to landfill

- (1) A tax charged on disposals to landfill made in Wales is a devolved tax.
 - (2) A disposal is a disposal to landfill if—
 - (a) it is a disposal of material as waste, and
 - (b) it is made by way of landfill.”
- (2) Tax may not be charged in accordance with the provision inserted by this section on a disposal if the disposal is made before the date appointed under section 16(3) (disapplication of UK landfill tax).

16 Disapplication of UK landfill tax

- (1) Part 3 of the Finance Act 1996 (landfill tax) is amended as follows.
- (2) In section 40(1) (charge on taxable disposal), omit “and Wales”.
- (3) This section has effect in relation to disposals made on or after such date as is appointed by the Treasury by order under this subsection.

Borrowing

17 Borrowing by the Welsh Ministers

- (1) GOWA 2006 is amended as follows.

- (2) Section 121 (borrowing by Welsh Ministers) is amended in accordance with subsections (3) to (5).
- (3) For subsection (1) substitute –
 - “(1) The Welsh Ministers may borrow from the Secretary of State –
 - (a) any amounts it appears to them are required by them for the purpose of meeting a temporary excess of sums paid out of the Welsh Consolidated Fund over sums paid into that Fund,
 - (b) any amounts it appears to them are required by them for the purpose of providing a working balance in the Welsh Consolidated Fund, and
 - (c) any amounts which in accordance with rules determined by the Treasury are required by the Welsh Ministers to meet current expenditure because of a shortfall in receipts from devolved taxes, or from income tax charged by virtue of a Welsh rate resolution, against forecast receipts.
 - (1A) The Welsh Ministers may, with the approval of the Treasury, borrow by way of loan any amounts it appears to them are required by them for the purpose of meeting capital expenditure.
 - (1B) An amount is required for the purpose of meeting capital expenditure if the expenditure would be capital expenditure for the purposes of accounts under section 131.”
- (4) In subsection (2), after “section” insert “from the Secretary of State”.
- (5) After subsection (3) insert –
 - “(4) The Secretary of State may by order made with the consent of the Treasury amend subsection (1A) so as to vary the means by which the Welsh Ministers may borrow money.
 - (5) No order is to be made under subsection (4) unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, the House of Commons.”
- (6) Section 122 (lending by Secretary of State) is amended in accordance with subsections (7) to (9).
- (7) In subsection (2) for “that section” substitute “section 121(1)”.
- (8) In subsection (3) omit “greater”.
- (9) After subsection (3) insert –
 - “(3A) An amount substituted under subsection (3) may be more or less than the amount for which it is substituted but may not be less than £500 million.”
- (10) After section 122 insert –

“122A Lending for capital expenditure

 - (1) The aggregate at any time outstanding in respect of the principal of amounts borrowed under section 121(1A) shall not exceed £500 million.

- (2) The Secretary of State may by order made with the consent of the Treasury substitute for the amount for the time being specified in subsection (1) such amount as may be specified in the order.
- (3) An amount substituted under subsection (2) may be more or less than the amount for which it is substituted but may not be less than £500 million.
- (4) No order is to be made under subsection (2) unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, the House of Commons.
- (5) A person lending money to a member of the Welsh Government is not bound to enquire whether the member of the Welsh Government has power to borrow the money and is not to be prejudiced by the absence of any such power.
- (6) The Welsh Ministers may not mortgage or charge any of their property as security for money which they have borrowed under section 121(1A).
This is subject to section 121(3).
- (7) Security given in breach of subsection (6) is unenforceable.”

18 Repeal of existing borrowing power

- (1) In Schedule 3 to the Welsh Development Agency Act 1975 (borrowing and guarantees), the following are repealed—
 - (a) paragraph 3 (power for Welsh Ministers to borrow money);
 - (b) paragraph 6 (power for Treasury to guarantee money borrowed under paragraph 3).
- (2) The repeals made by subsection (1) do not affect—
 - (a) the liability of the Welsh Ministers to repay any money borrowed under paragraph 3 of that Schedule before the date when that subsection comes into force, or
 - (b) any guarantee given under paragraph 6 of that Schedule before that date.
- (3) Subsection (4) applies to the aggregate amount (if any) which, immediately before subsection (1) comes into force, is outstanding in respect of the principal of sums borrowed under paragraph 3 of that Schedule for the purpose of meeting capital expenditure.
- (4) For the purpose of section 122A(1) of GOWA 2006 (limit on capital borrowing), that amount is treated as outstanding in respect of the principal of sums borrowed under section 121(1A) of that Act.
- (5) An amount is borrowed for the purpose of meeting capital expenditure if the expenditure would be capital expenditure for the purposes of accounts under section 131 of GOWA 2006.

*Reports on operation of this Part***19 Reports on the implementation and operation of this Part**

- (1) The Secretary of State must—
 - (a) make reports on the implementation and operation of this Part (see subsection (7)),
 - (b) lay a copy of each report before each House of Parliament, and
 - (c) send a copy of each report to the Welsh Ministers, who must lay a copy of it before the Assembly.
- (2) The Welsh Ministers must—
 - (a) make reports on the implementation and operation of this Part (see subsection (7)),
 - (b) lay a copy of each report before the Assembly, and
 - (c) send a copy of each report to the Secretary of State, who must lay a copy of it before each House of Parliament.
- (3) A report must be made under each of subsections (1) and (2)—
 - (a) before the first anniversary of the day on which this Act is passed, and
 - (b) thereafter, before each subsequent anniversary of that day until the final reports are made under subsection (4).
- (4) Final reports must be made on, or as soon as practicable after, the first anniversary of the day on which the last of the provisions of this Part is implemented (as determined under subsections (5) and (6)).
- (5) A provision of this Part is implemented—
 - (a) if it is expressed as applying in relation to events occurring on or after a particular day, on that day;
 - (b) if it is expressed as applying in relation to a tax year or financial year, on the last day of that year;
 - (c) in any other case, on the day on which it comes into force.
- (6) If, in the case of any provision, the application of subsection (5) gives more than one day, the provision is implemented on the last of them.
- (7) A report on the implementation and operation of this Part must include—
 - (a) a statement of the steps that have been taken, whether by the maker of the report or by others, since the making of the previous report (or, in the case of the first report, since the passing of this Act) towards implementation of the provisions of this Part,
 - (b) a statement of the steps that the maker of the report proposes should be taken, whether by the maker of the report or by others, towards the implementation of the provisions of this Part,
 - (c) an assessment of the operation of the provisions of this Part that have been implemented,
 - (d) an assessment of the operation of any other powers to devolve taxes to the Assembly or to change the powers of the Welsh Ministers to borrow money, and of any other changes affecting the provisions inserted or amended by this Part,
 - (e) a statement of the effect of this Part on the amount of any payments made by the Secretary of State under section 118 of GOWA 2006 (payments into the Welsh Consolidated Fund), and

- (f) any other matters concerning the sources of revenue for the Welsh Government (within the meaning of section 45(1) of GOWA 2006) that the maker of the report considers should be brought to the attention of Parliament or the Assembly.
- (8) Until the majority of the voters in a referendum held by virtue of section 10(1) vote in favour of sections 8 and 9 (income tax provisions) coming into force, the statements required by subsection (7)(a) and (b) do not include steps taken, or proposed to be taken, towards the implementation of those provisions.

PART 3

MISCELLANEOUS

20 Local housing authorities: limits on housing revenue account debt

- (1) Part 6 of the Local Government and Housing Act 1989 (housing finance) is amended as follows.

- (2) After section 76 insert –

“76A Limits on indebtedness

- (1) The Treasury may from time to time make a determination providing for the maximum amount of housing debt that may be held, in aggregate, by local housing authorities in Wales that keep a Housing Revenue Account.
- (2) The Welsh Ministers may from time to time make a determination providing for the calculation in relation to each such authority of –
 - (a) the amount of housing debt that, at such time and on such assumptions as the Welsh Ministers may determine, is to be treated as held by the authority, and
 - (b) the maximum amount of such housing debt that the authority may hold.
- (3) The Welsh Ministers must make a determination under subsection (2) in relation to each authority within the period of 6 months beginning immediately after the day on which the Treasury makes a determination under subsection (1).
- (4) The aggregate of the amounts determined under subsection (2)(b) must not exceed the amount determined under subsection (1).
- (5) A local housing authority may not hold debt in contravention of a determination under subsection (2)(b).
- (6) A determination under this section may, in particular, provide for all or part of an amount to be calculated in accordance with a formula or formulae.
- (7) A determination under this section may provide for assumptions to be made in making a calculation whether or not those assumptions are, or are likely to be, borne out by events.
- (8) As soon as practicable after making a determination under subsection (1), the Treasury must –
 - (a) send a copy of it to the Welsh Ministers, and

- (b) lay a copy of it before the House of Commons.
- (9) For the purposes of this section a debt is a “housing debt”, in relation to a local housing authority, if—
 - (a) the debt is held by the authority in connection with the exercise of its functions relating to houses and other property within its Housing Revenue Account, and
 - (b) interest and other charges in respect of the debt are required to be carried to the debit of that account.”
- (3) In section 85 (power to obtain information), in subsections (1) and (3), after “section” insert “76A or”.
- (4) Section 87 (determinations and directions) is amended as follows.
- (5) For “the Secretary of State” (in each place) substitute “the appropriate person”.
- (6) After subsection (1) insert—
 - “(1A) Subsection (1)(b) does not apply to determinations under section 76A(2).”
- (7) In subsection (2)—
 - (a) for “him” substitute “that person”;
 - (b) for “he” substitute “the appropriate person”.

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

- (1) The Law Commissions Act 1965 is amended as follows.
- (2) In section 3(1) (functions of the Commissions), after paragraph (e) insert—
 - “(ea) in the case of the Law Commission, to provide advice and information to the Welsh Ministers;”.
- (3) In section 3A (reports on implementation of Law Commission proposals), after subsection (6) insert—
 - “(7) This section does not require the Lord Chancellor to prepare reports on Law Commission proposals on which the Welsh Ministers are required to report (see section 3C).”
- (4) After section 3B insert—

“3C Report on implementation of Law Commission proposals: Wales

- (1) The Welsh Ministers must prepare a report each year on—
 - (a) the Law Commission proposals relating to Welsh devolved matters that have been implemented since the preparation of the previous report under this section;
 - (b) the Law Commission proposals relating to Welsh devolved matters that have not been implemented as at the preparation of the report.
- (2) The report required under subsection (1)(b) must include—
 - (a) plans for dealing with any of the proposals described in that paragraph;
 - (b) any decision not to implement any of those proposals taken since the preparation of the previous report under this section;

- (c) the reasons for any such decision.
- (3) The Welsh Ministers must lay the report before the National Assembly for Wales.
- (4) The Welsh Ministers must prepare a report under this section—
 - (a) before the first anniversary of the day on which this section comes into force, and
 - (b) thereafter, before each subsequent anniversary of that day.
- (5) In the case of the first report, the references in subsections (1) and (2) to the period since the preparation of the previous report are to be read as references to the period since the coming into force of this section.
- (6) If a decision not to implement a Law Commission proposal is dealt with in a report under this section, subsection (1)(b) does not require a later report to deal with the proposal so far as it is covered by that decision.
- (7) If a decision not to implement a Law Commission proposal has been taken before the coming into force of this section, subsection (1)(b) does not require any report to deal with the proposal so far as it is covered by that decision.
- (8) In this section—
 - (a) “Law Commission proposal” means any proposal or recommendation for the reform of the law that has been published in a report by the Law Commission, and
 - (b) references to the implementation of a Law Commission proposal are to its implementation in whole or in part.
- (9) Whether a Law Commission proposal relates to Welsh devolved matters is to be determined in accordance with section 3D(8).

3D Protocol about the Law Commission’s work: Wales

- (1) The Welsh Ministers and the Law Commission may agree for the purposes of this section a statement (a “protocol”) about the Law Commission’s work relating to Welsh devolved matters.
- (2) The protocol may include (among other things) provision about—
 - (a) the principles and methods to be applied in deciding the work relating to such matters to be carried out by the Law Commission and in the carrying out of that work;
 - (b) the assistance and information that the Welsh Ministers and the Law Commission are to give to each other;
 - (c) the way in which the Welsh Ministers are to deal with Law Commission proposals so far as they relate to Welsh devolved matters.
- (3) The Welsh Ministers and the Law Commission must from time to time review the protocol and may agree to revise it.
- (4) The Law Commission must not agree the protocol (or any revision of it) without the Lord Chancellor’s approval.
- (5) The Welsh Ministers must lay the protocol (and any revision of it) before the National Assembly for Wales.

- (6) The Welsh Ministers and the Law Commission must have regard to the protocol.
- (7) “Law Commission proposal” has the meaning given in section 3C(8)(a).
- (8) In this section and section 3C, the Law Commission’s work (including any of their proposals) relates to Welsh devolved matters so far as it relates to—
 - (a) any matter provision about which would be within the legislative competence of the National Assembly for Wales if it were contained in an Act of the Assembly, or
 - (b) (so far as it is not within paragraph (a)), any matter functions with respect to which are exercisable by the Welsh Ministers, the First Minister for Wales, the Counsel General to the Welsh Government or the National Assembly for Wales Commission.”
- (5) In section 5(4) (expenses to be paid out of money provided by Parliament), after “Parliament” insert “(except to the extent that those expenses are met by the Welsh Ministers)”.

PART 4

GENERAL

22 Orders

Any power to make an order under this Act is exercisable by statutory instrument.

23 Interpretation

In this Act—

- “the Assembly” means the National Assembly for Wales;
- “enactment” includes a Measure or Act of the Assembly and subordinate legislation (within the meaning of the Interpretation Act 1978);
- “GOWA 2006” means the Government of Wales Act 2006;
- “modifications” includes amendments, repeals and revocations.

24 Power to make supplementary, consequential, etc provision

- (1) The Treasury may by order make—
 - (a) such supplementary, incidental or consequential provision as appears appropriate in connection with the provisions of Part 2, and
 - (b) such transitional, transitory or saving provision as appears appropriate in connection with the coming into force of those provisions.
- (2) An order under this section may make—
 - (a) different provision for different cases or classes of case or different purposes;
 - (b) provision which applies generally or subject to specified exceptions or only in relation to specific cases or classes of case.
- (3) An order under this section may make modifications of this Act or of an enactment made before the passing of this Act or in the session in which this Act is passed.

- (4) A statutory instrument containing an order under this section which includes provision modifying any provision of an Act or a Measure or Act of the Assembly may not be made unless a draft of the instrument has been laid before and approved by a resolution of the House of Commons.
- (5) Any other statutory instrument containing an order under this section is subject to annulment in pursuance of a resolution of the House of Commons.

25 Commencement

- (1) This Part comes into force on the day on which this Act is passed.
- (2) The following provisions come into force at the end of the period of 2 months beginning with the day on which this Act is passed—
 - (a) Part 1;
 - (b) Part 2, except sections 8, 9, 17 and 18;
 - (c) section 21.
- (3) Subsection (2)(b) is subject to the provision made in the following sections as to how those sections have effect—
 - (a) sections 13 and 14;
 - (b) sections 15 and 16.
- (4) Sections 8 and 9 come into force in accordance with section 12 (commencement on appointed day after referendum).
- (5) The following provisions come into force on such day as the Treasury may by order appoint—
 - (a) section 17;
 - (b) section 20.
- (6) An order under subsection (5) may appoint different days for different purposes.
- (7) Section 18 comes into force on the day on which section 121(1A) of GOWA 2006 (inserted by section 17) comes into force.

26 Extent and short title

- (1) The amendments and repeals made by this Act have the same extent as the enactments amended or repealed.
- (2) Subject to that, this Act extends to the United Kingdom.
- (3) This Act may be cited as the Wales Act 2014.

S C H E D U L E S

SCHEDEULE 1

Section 10

REFERENDUM ABOUT COMMENCEMENT OF INCOME TAX PROVISIONS

Entitlement to vote

- 1 (1) The persons entitled to vote in a referendum held by virtue of section 10(1) are those who would be entitled to vote in a general election of Assembly members if one were held on the date of the poll at the referendum (as to which, see section 12 of GOWA 2006).
- (2) But an Order under section 10(1) may include provision for disregarding alterations made in a register of electors after a date specified in the Order.

Conduct etc of referendum

- 2 (1) An Order under section 10(1) may make provision for and in connection with the referendum which it causes to be held.
- (2) Such an Order may, in particular, apply or incorporate, with or without modifications, any enactment relating to referendums, elections or donations.
- (3) In sub-paragraph (2) “donations” means anything which is or corresponds to a donation within the meaning of Part 4 of PPERA 2000.

Referendum question and statement

- 3 (1) An Order under section 10(1) –
 - (a) must specify the question to be included on the ballot paper at the referendum which it causes to be held, and
 - (b) may specify a statement to precede the question on that ballot paper.
- (2) A question or statement specified under sub-paragraph (1) must be specified in both English and Welsh.
- (3) The Secretary of State must, no later than the time at which paragraph (b) of section 104(4) of PPERA 2000 (report stating views as to intelligibility of referendum question expressed by Electoral Commission) is complied with, send to the First Minister a copy of the report laid before Parliament under that paragraph.
- (4) As soon as practicable after the First Minister receives a copy of a report under sub-paragraph (3), the First Minister must lay a copy of the report before the Assembly.

Date of referendum

- 4 (1) An Order under section 10(1) must specify the date of the poll at the referendum which it causes to be held.
- (2) The Minister may by order vary the date of the poll specified in such an Order (including a date previously set by virtue of this sub-paragraph) if it appears inappropriate for it to be held on that date.
- (3) The date of the poll, as specified under sub-paragraph (1) or varied under sub-paragraph (2), must not be within the period which—
 - (a) begins 3 months before, and
 - (b) ends 3 months after,the date of the poll at an election, or at another referendum, which is held throughout Wales.
- (4) But sub-paragraph (3) does not apply if the date of the poll at the election or other referendum is not known to the Minister at the time when—
 - (a) the recommendation is made to Her Majesty to make the Order (in the case of an Order under section 10(1)), or
 - (b) the Minister makes the order (in the case of an order under sub-paragraph (2)).
- (5) No order may be made under sub-paragraph (2) without the consent of the Welsh Ministers.
- (6) A statutory instrument containing an order under sub-paragraph (2) is subject to annulment in pursuance of a resolution of either House of Parliament.

Referendum period

- 5 An Order under section 10(1) must determine the referendum period for the purposes of Part 7 of PPERA 2000 in the case of the referendum which it causes to be held.

Combination of polls

- 6 (1) An Order under section 10(1) may make provision for and in connection with the combination of the poll at the referendum which it causes to be held with that at an election or at another referendum (or both).
- (2) Sub-paragraph (1) is subject to paragraph 4(3) (which limits the circumstances in which the poll at a referendum held by virtue of section 10(1) can be combined with a poll at an election or another referendum).

Encouraging voting

- 7 An Order under section 10(1) may authorise or require the Electoral Commission to do things for the purpose of encouraging voting in the referendum which it causes to be held (including imposing obligations or conferring powers on counting officers or other persons).

Provision of information to voters

- 8 (1) This paragraph applies in relation to a referendum held by virtue of section 10(1) if the Electoral Commission have not, before the appropriate day, designated an organisation under section 108 of PPERA 2000 (organisations to whom assistance is available under section 110 of that Act) in relation to each possible outcome of the referendum.
- (2) The Electoral Commission may take such steps as they think appropriate to provide such information for persons entitled to vote in the referendum as the Commission think is likely to promote awareness among those persons about the arguments for each answer to the referendum question.
- (3) Information provided in pursuance of sub-paragraph (2) must be provided by whatever means the Commission think is most likely to secure (in the most cost-effective way) that the information comes to the notice of everyone entitled to vote in the referendum.
- (4) In this paragraph “the appropriate day” means –
- (a) if an order is made under section 109(6) of PPERA 2000 (variation of period for applications for designation under section 108 or period for determination of applications or both) in the case of the referendum, such day as that order specifies as the appropriate day,
 - (b) if no such order is made and one or more applications are made in relation to each possible outcome of the referendum before the 29th day of the referendum period, the 43rd day of that period, and
 - (c) in any other case in which no such order is made, the 29th day of the referendum period.

Referendum material

- 9 Section 126 of PPERA 2000 (details to appear on referendum material) does not apply to any material published for the purposes of a referendum held by virtue of section 10(1) if the publication is required under or by virtue of the Order that causes the referendum to be held.

Funding and accounts

- 10 An Order under section 10(1) must include provision for the funding of costs of the referendum which it causes to be held (and may, in particular, include provision for the costs to be charged on, or payable out of, the Welsh Consolidated Fund).
- 11 An Order under section 10(1) must include provision as to the preparation and audit of accounts relating to payments made by virtue of provision included in the Order under paragraph 10.

No legal challenge to referendum result

- 12 (1) No court may entertain any proceedings for questioning the number of ballot papers counted or votes cast in a referendum held by virtue of section 10(1) as certified by the Chief Counting Officer or a counting officer unless –
- (a) the proceedings are brought by a claim for judicial review, and
 - (b) the claim form is filed before the end of the permitted period.
- (2) “The permitted period” means the period of six weeks beginning with –

- (a) the date on which the Chief Counting Officer or counting officer gives a certificate as to the number of ballot papers counted and votes cast in the referendum, or
- (b) if the Chief Counting Officer or counting officer gives more than one such certificate, the date on which the last is given.

Supplementary

13 An Order under section 10(1) may include provision creating criminal offences.

Interpretation

14 (1) In this Schedule—

“the Minister” means the Secretary of State or the Lord President of the Council;

“PPERA 2000” means the Political Parties, Elections and Referendums Act 2000.

(2) Expressions used in this Schedule and in Part 7 of PPERA 2000 have the same meaning in this Schedule as in that Part.

SCHEDULE 2

Section 14

WELSH TAX ON LAND TRANSACTIONS: CONSEQUENTIAL AMENDMENTS

PART 1

DISAPPLICATION OF UK STAMP DUTY LAND TAX TO WALES

Finance Act 1931

- 1 (1) Section 28 of the Finance Act 1931 (production to Commissioners of instruments transferring land) is amended as follows.
- (2) In subsection (3), at the end of paragraph (c) add “or a Welsh transaction”.
- (3) After subsection (3A) insert—
- “(3B) In subsection (3) “Welsh transaction” means the acquisition of—
- (a) an estate, interest, right or power in or over land in Wales, or
 - (b) the benefit of an obligation, restriction or condition affecting the value of any such estate, interest, right or power.”

Finance Act 2003

- 2 The Finance Act 2003 is amended as follows.
- 3 (1) Section 48 (power to prescribe other chargeable interests) is amended as follows.
- (2) After subsection (1) insert—
- “(1A) See section 48A regarding land which is partly in England and partly in Wales.”

(3) In subsection (5), omit “and Wales”.

4 After section 48 insert –

“48A Interests, transactions and consideration where land in England and Wales

- (1) This section sets out how this Part applies to a transaction which is the acquisition of –
 - (a) an estate, interest, right or power in or over land, or
 - (b) the benefit of an obligation, restriction or condition affecting the value of any such estate, interest, right or power, where the land is partly in England and partly in Wales.
- (2) The transaction is to be treated as if it were two transactions, one relating to the land in England (“the English transaction”) and the other relating to the land in Wales.
- (3) The consideration for the transaction is to be apportioned between those two transactions on a just and reasonable basis.
- (4) Accordingly, the English transaction is to be treated as a land transaction within the meaning of this Part (being the acquisition of a chargeable interest relating to the land in England).
- (5) But subsection (4) does not apply in the case of an exempt interest.”

5 In section 60 (compulsory purchase facilitating development), in subsections (2)(a) and (5)(a), omit “and Wales”.

6 In section 73(5) (definition of mortgage for land acquired under alternative property finance arrangements), in subsection (b)(i), omit “or Wales”.

7 In section 108(1A) (linked transactions), for “the land to which it relates is in Scotland” substitute –

- “(a) the transaction relates to land in Scotland, or
- (b) the transaction relates to land in Wales (whether by virtue of section 48A(2) or otherwise).”

8 In section 117(2) (meaning of “major interest” in England or Wales), omit “or Wales”.

9 In section 121 (minor definitions), in the definition of “jointly entitled”, omit “and Wales”.

10 In Schedule 7 (group relief), in paragraph 2B(4) (certain mortgage arrangements not eligible for relief), omit “and Wales”.

11 In Schedule 9 (right to buy, shared ownership leases, etc), in paragraph 7(2)(b) (shared ownership trusts), omit “or Wales”.

12 In Schedule 10 (returns, enquiries, assessments and appeals), in paragraph 45(2) (definition of “the relevant tribunal”), omit “and Wales”.

Finance Act 2009

13 Schedule 61 to the Finance Act 2009 (alternative finance investment bonds) is amended in accordance with paragraphs 14 and 15.

14 (1) Paragraph 1 is amended as follows.

(2) In the definition of “effective date” in sub-paragraph (1), after “Scotland” (in both places) insert “or Wales”.

(3) For sub-paragraph (1A) substitute –

“(1A) In this Schedule “qualifying interest” means –

- (a) in relation to land in England and Wales –
 - (i) an estate in fee simple absolute, or
 - (ii) a term of years absolute,
whether subsisting at law or in equity;
- (b) in relation to land in Scotland –
 - (i) the interest of an owner of land, or
 - (ii) the tenant’s right over or interest in a property subject to a lease;
- (c) in relation to land in Northern Ireland –
 - (i) any freehold estate, or
 - (ii) any leasehold estate,
whether subsisting at law or in equity;

except that it does not include a lease for a term of years, or (in Scotland) for a period, of 21 years or less.”

15 In the following provisions omit “and Wales” –

- (a) paragraph 5(6) (in both places);
- (b) paragraph 6(1)(a);
- (c) paragraph 11(2);
- (d) paragraph 12(1)(b);
- (e) paragraph 18(5) and (6);
- (f) paragraph 19(1)(a).

Scotland Act 2012

16 In Schedule 3 to the Scotland Act 2012, omit paragraph 31(4) (which inserts paragraph 1(1A) of Schedule 61 to the Finance Act 2009).

PART 2

INFORMATION REGARDING WELSH LAND TRANSACTIONS

17 In this Part of this Schedule –

“HMRC” means Her Majesty’s Revenue and Customs;

“relevant information”, in relation to a Welsh transaction, means information which –

- (a) corresponds to any of the particulars which would be required under Schedule 2 to the Finance Act 1931, but for section 28(3)(c) of that Act, or
- (b) uniquely identifies, or assists in uniquely identifying, any person who gives consideration for, or is a party to, the transaction.

“Welsh transaction” means the acquisition of –

- (a) an estate, interest, right or power in or over land in Wales, or
- (b) the benefit of an obligation, restriction or condition affecting the value of any such estate, interest, right or power.

-
- 18 (1) A person who is a member of the Welsh Government must provide to HMRC such of the information falling within sub-paragraph (2) as HMRC may require.
- (2) Information falls within this sub-paragraph if it is relevant information in relation to a Welsh transaction and is in the possession or under the control of the person.
- (3) Information is to be provided under sub-paragraph (1) in such form as HMRC may reasonably specify.
- 19 Information acquired by HMRC under paragraph 18 is to be treated, for the purposes of the Commissioners for Revenue and Customs Act 2005, as acquired in connection with a function of theirs.

DRAFT WALES BILL

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the draft Wales Bill as published for Pre-Legislative Scrutiny on 18 December 2013. 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 draft 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.
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.

*These notes refer to the draft Wales Bill
Published for pre-legislative scrutiny on 18 December 2013*

The Government responded formally in November 2013, accepting most of the Commission's recommendations.

TERRITORIAL EXTENT AND APPLICATION

6. Although the Bill extends to the whole of the United Kingdom, its practical application is limited to matters which affect Wales.

COMMENTARY ON CLAUSES (AND SCHEDULES)

PART 1: THE ASSEMBLY AND MINISTERS

Clause 1: Frequency of Assembly ordinary general elections

7. 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.
8. 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.
9. 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.
10. 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

11. 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.

12. *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.
13. *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.
14. *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.

Clause 3: MPs to be disqualified for membership of Assembly

15. 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 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."
16. *Subsection (1)* of clause 3 inserts a new subsection (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.
17. *Subsection (2)* of clause 3 sets out some limited exceptions to the disqualification of MPs from membership of the Assembly.
18. 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.

19. New section 17A(2) deals with a person who (i) is a candidate for election to the House of Commons, (ii) is returned at an Assembly election as an AM, and (iii) 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.
20. 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.
21. 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 six months before an expected Assembly general election. In this situation the AM does not have to resign as this provision allows a limited period of “double-jobbing” by permitting an AM to retain their seat in these circumstances so that the need for a by-election can be avoided a short time before a scheduled Assembly election.
22. *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

23. *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 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 subsections (3) and (4).*
24. *Subsection (5) of clause 4 ensures that, where necessary, statutory references to the Welsh Assembly Government, 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

25. 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.
26. 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 Assembly Member. It was not intended that this power could be exercised by the Presiding Officer where the First Minister has ceased to be an Assembly Member 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

27. The Assembly Act provisions 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.
28. Part 2 of the draft Bill enables the Assembly to legislate about devolved taxation. The devolved taxes specified in this Part are a Welsh tax on transactions involving interests in land (replacing stamp duty land tax in Wales) and a Welsh tax on disposals to landfill (replacing landfill tax in Wales). New devolved taxes may be added by Her Majesty making an Order in Council.
29. 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.
30. 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

31. This clause provides the structure within which the Welsh Government may legislate on tax. *Subsection (1)* of clause 6 inserts a new Part 4A into GOWA 2006, commencing with new section 116A (part of the introductory Chapter 1).
32. Section 116A(1) introduces the remaining Chapters in Part 4A which contain provisions on the Welsh rate of income tax (Chapter 2) and the power to make

provision about new devolved taxes on land transactions (Chapter 3) and disposals of waste to landfill (Chapter 4).

33. Section 116A(2) provides that Part 4A imposes restrictions on the power to legislate in relation to devolved taxes, including new section 116A(3)
34. 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 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.
35. 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.
36. Section 116B(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.
37. Section 116B(2) provides that an Order in Council made under subsection (1) can amend other documents, including primary or secondary legislation if this is appropriate
38. Section 116B(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.
39. Section 116B(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.
40. *Subsections (2) to (9) of clause 6 make further consequential changes 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 116B 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.*

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

41. 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, while leaving scope for HMRC to administer these taxes on behalf of Welsh Ministers if desired.
42. 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.
43. *Subsections (2) and (3)* amend section 15 of CRCA 2005 to ensure that HMRC have the power to administer devolved taxes on behalf of Welsh Ministers, if both parties agree to this.
44. *Subsections (4) and (5)* amend HMRC’s statutory duty of confidentiality at section 18 of CRCA 2005 so that HMRC may disclose relevant information to Welsh Ministers in connection with devolved taxes.
45. *Subsection (6)* applies the existing criminal sanction for onward disclosure (forbidding further disclosure of such information without the consent of the Commissioners) to information disclosed to Welsh Ministers.
46. *Subsections (7) and (8)* provide that the Commissioners and officers of HMRC shall not have functions or “assigned matters” conferred on them in relation to the devolved taxes. This ensures that the Assembly is wholly responsible for devolved taxes.

Clause 8: Welsh rate of income tax

47. Clause 8 deals with the Welsh rate of income tax. *Subsection (1)* inserts Chapter 2 into the new Part 4A of GOWA 2006, consisting of sections 116C to 116I. Subsection (2) provides that the sections inserted by subsection (1) will come into force in accordance with section 12. That section provides that, where the majority of voters in a referendum vote in favour of the income tax provisions coming into force, HM Treasury may appoint a tax year as the first tax year for which a Welsh rate resolution set under the new provisions is to have effect.
48. New section 116C confers on the Assembly a power to set, by resolution, a Welsh rate of income tax, for Welsh taxpayers.

49. Section 116C(2) provides a signpost to the reader that the rate is to be calculated under section 6(2B) of the Income Tax Act 2007 (“ITA 2007”). Section 6(2B) is amended by clause 9 of this Bill.
50. Sections 116C(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).
51. Section 116C(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 6(2B) 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.
52. Section 116C(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.
53. Section 116D defines a “Welsh taxpayer” for the purposes of Part 4A of GOWA 2006. Based on the definition currently provided here and in section 80D of the Scotland Act 1998, it would be possible for an individual to qualify as both a Welsh and Scottish taxpayer in the same year. Prior to the introduction of the Bill, the Government will examine what form of ‘tie break’ provision should be introduced in these circumstances. Sections 116D to 116F contain minor drafting differences to the equivalent provisions in sections 80D to 80F of the Scotland Act 1998. These provide a signpost to the statutory residence test introduced by the FA 2013 (references in these Notes to “FA” and a year are to the Finance Act for that year) and make other minor drafting improvements but the effect is the same.
54. Section 116D(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 FA 2013 which introduced a new statutory residence test to determine whether individuals are resident in the UK for tax purposes.
55. Section 116D(2) sets out condition A, and provides that an individual will meet condition A if they have a close connection with Wales.
56. Section 116D(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 if they spend more days of that year in Wales than in any other part of the UK.

57. Section 116D(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.
58. New section 116E 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 116D(2) and 116D(3)(a).
59. Section 116E(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 they meet condition C described above).
60. Section 116E(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, at least as much of the year as 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 at least as much of the year as the times when their main place of residence is in any one other part of the UK.
61. Section 116E(4) provides that, for the purposes of applying the definition of a Welsh taxpayer, a "place" includes a vessel and other means of transport.
62. Section 116F provides the means of determining the number of days in 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.
63. Section 116F(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 equals or exceeds the number of days in the year in which they are in any 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.
64. Section 116F(2) provides an exception from the rule in section 116F(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.

65. Section 116G provides supplemental powers to modify enactments.
66. Section 116G(1) provides that an order by HM Treasury may exclude the effect of the Assembly's tax-varying power in relation to any enactment, or provide that its effect is to be modified in relation to any enactment. 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. The Government wishes to discuss this with relevant stakeholders before coming to a final view on the treatment of such reliefs 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 Note¹ published in May 2012.
67. Section 116G(2) gives HM Treasury a power to make an order modifying any enactment as they consider necessary or expedient in consequence of, or in connection with, the fact that the Assembly has the power to set a Welsh rate (under section 116C), the making of any resolution, or the exercise of the order making power in subsection (1). As set out above, a number of detailed technical consequential amendments would be required to tax legislation as a result of the introduction of the new Welsh rate. It would not be appropriate to set out such details in primary legislation, particularly as the power to set a Welsh rate would be conferred on the Assembly only in the event of the majority of voters in a referendum voting in favour of the income tax provisions coming into force.
68. Section 116G(3) provides that an order made under subsection (2) may, in particular, 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 either did not pass a resolution until shortly before the start of the tax year, or replaced one resolution with another shortly before the start of the tax year, 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). The power provided by section 116G(3) would allow similar provision to be made in relation to the Welsh rate.

¹ <http://www.hmrc.gov.uk/news/technote-scot-taxrate.pdf>

69. Section 116G(4) provides that an order under section 116G may, to the extent that HM Treasury consider it to be appropriate, take effect retrospectively from the beginning of the year of assessment 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.
70. Sections 116G(5) to (6) provide that an order made under this section would be subject to the affirmative resolution procedure in the House of Commons, unless it relates solely to matters described in subsection (3), in which case the negative resolution procedure would be used.
71. New section 116H 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 at any time after the Bill receives Royal Assent. This would include, for example, reimbursing HMRC's additional costs incurred in both implementing and administering the new Welsh rate.
72. New section 116I(1) requires the Comptroller and Auditor General ("C&AG") to make a report for each financial year (ie, each year to 31 March) to the Assembly on HMRC's administration of the Welsh rate of income tax.
73. Section 116I(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.
74. Sections 116I(3) explains that the "Welsh rate provisions" are those set out in this Chapter and other amendment made by clause 9.
75. Section 116I(4) provides 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.
76. Section 116I(6) requires that HMRC provides the C&AG with information necessary to complete the annual report.
77. Section 116I(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: Income tax for Welsh taxpayers

78. Clause 9 amends the ITA 2007 and the Provisional Collection of Taxes Act 1968 (“PCTA 1968”) relating to income tax for Welsh taxpayers.
79. *Subsection (3)* amends section 6(2A) of ITA 2007 (previously inserted by the Scotland Act 2012) to include Welsh taxpayers. Section 6(2) of ITA 2007 provides that the basic rate, higher rate and additional rate for a tax year (i.e. a year for which income tax is charged) are the rates determined as such by Parliament for that year. Section 6(2A), as amended, provides that section 6(2) does not apply to the non-savings income of a Welsh taxpayer.
80. *Subsections (4) and (5)* amend section 6(2B) (previously inserted by the Scotland Act 2012) to include the Welsh rate set by the Assembly in the calculation to determine the rates of tax paid by Welsh taxpayers on their non-savings income. This operates by reducing the basic, higher and additional rates determined by section 6(2) by 10 percentage points, then adding on the Welsh rate set under section 116C. So, a Welsh rate of 10 per cent would mean the rates paid by Welsh taxpayers were the same as elsewhere in the UK, 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.
81. *Subsection (6)* inserts into ITA 2007 a signpost to the provisions of Chapter 2 of Part 4A of GOWA 2006 (inserted by clause 8 of this Act) about the meaning of “Welsh taxpayer” and the setting of the Welsh rate.
82. *Subsections (7) and (8)* amend sections 10 and 16 of ITA 2007. Section 10 of ITA 2007 sets out how much of an individual’s income is subject to tax at the basic, higher and additional rates. Section 10 is subject to section 13 of that Act, which deals with dividend income (as defined by section 19). Dividend income is charged at the dividend ordinary, dividend upper and dividend additional rates rather than at the main rates of income tax. The dividend income of Welsh taxpayers will continue to be charged at these rates. The amended sections apply the rates determined under section 6(2) to the savings income of a Welsh taxpayer and the rates determined under section 6(2B) to the non-savings income of a Welsh taxpayer.
83. *Subsection (9)* 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 (9) of this clause disapplies sections 6(2A) to (2D) of ITA 2007.

84. *Subsection (10)* amends the PCTA 1968. That Act gives temporary statutory effect to resolutions passed by the House of Commons relating to the rate of various taxes, including income tax. This allows HMRC to collect the tax until such time as the Finance Bill containing the relevant tax provisions receives Royal Assent and becomes law, or until such time as the resolutions cease to have effect. Subsection (10) therefore amends the PCTA 1968 so as to include a reference to the rates as calculated in relation to Welsh taxpayers by reference to the amended sections 6(2A) to (2D) of ITA 2007. This would ensure that HMRC can continue to collect tax charged at the Welsh rate of income tax.
85. *Subsection (11)* provides that the amendments made by this section will come into force in accordance with section 12.

Clause 10: Referendum about commencement of income tax provisions

86. Clauses 10 and 11 allow a referendum to be held in Wales about whether the income tax provisions, set out in clauses 8 and 9, should come into force. Clause 10 requires a draft Order in Council causing a referendum to be held to be approved by both Houses of Parliament and by an Assembly resolution, passed by not less than a two-thirds majority of AMs (i.e. at least 40 AMs voting in favour). If the Assembly passes a resolution calling for a referendum (again by at least a two-thirds majority), clause 11 requires that a draft Order in Council be laid, or the Secretary of State must explain the failure to do so. The income tax provisions would be brought into force by HM Treasury order, made under clause 12, if the majority of voters in a referendum vote in favour.
87. 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”² in that Act to come into force. The clauses implement a recommendation made by the Silk Commission in its first report³ 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 model⁴.

² 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.

³ *Empowerment and Responsibility – Financial Powers to Strengthen Wales, Recommendation 26, p.130.*

⁴ *Empowerment and Responsibility – Financial Powers to Strengthen Wales, paragraph 8.2.12.*

88. *Subsection (1)* of clause 10 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 12 (see below).
89. *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.
90. *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.
91. *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.
92. *Subsection (7)* signposts further detail about a referendum in Schedule 1 (see paragraph 169).

Clause 11: Proposal for referendum by Assembly

93. Clause 11 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.
94. *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.
95. *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.

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

96. Clause 12 sets out the procedure for the income tax provisions to come into force if a majority of voters in a referendum vote in favour. *Subsection (2)* permits HM Treasury to make an order. By *subsection (3)*, such an order may specify a day on which the income tax provisions (in clauses 8 and 9) come into force, appoint a tax

year as the first year for which a Welsh rate resolution may be made, or appoint a tax year or financial year for which provisions have effect. Different provision may be made for different parts of the amendments made by clauses 8 and 9 (*subsection (4)*).

Clause 13: Welsh tax on transactions involving interests in land

97. Clause 13 and 14 together provide the mechanism for bringing to an end the collection and management of stamp duty land tax (SDLT) in Wales and allowing the Assembly to bring in its own land transaction tax.
98. Clause 13 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 14 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 and provides for the supply of information about land transactions in Wales to HMRC.
99. SDLT is a transaction tax which applies to acquisitions of a chargeable interest in land. The definition of “chargeable interest” at 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).
100. 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.
101. *Subsection (1)* of clause 13 introduces Chapter 3 (sections 116J and 116K) of new Part 4A of GOWA 2006 which provides for the devolved Welsh tax.
102. New section 116J provides for the devolved Welsh tax and grants a power to the Assembly to charge a transaction tax on those acquisitions. Subsection (1) provides that a tax charged on certain acquisitions relating to land in Wales is a devolved tax. Subsection (2) 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.
103. New section 116K provides that certain transactions and statutory bodies are not subject to the devolved tax. Subsection (1) excludes transactions to the extent that they relate to land below mean low water mark. Subsection (2) excludes Ministers of the UK and devolved governments and corporate bodies associated with legislatures in the UK. This is line with similar exemptions within the SDLT legislation and applies to Ministers only when acting in their Ministerial capacity.

104. *Subsection (2)* 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 14.

Clause 14: Disapplication of UK stamp duty land tax

105. Clause 14 provides for SDLT to be disapplied 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.
106. *Subsection (1)* introduces the amendments to the SDLT provisions in Part 4 of the 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.
107. *Subsection (3)* introduces Schedule 2, which is discussed in more detail at paragraph 170 below.
108. *Subsection (4)* applies the amendments introduced by the clause to land transactions with an effective date on or after a date appointed by HM Treasury.
109. *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 the Royal Assent.
110. *Subsection (6)* disappplies the transitional rules in subsection (5) where certain events in relation to the transaction occur after Royal Assent.

Clause 15: Welsh tax on disposals to landfill

111. 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 15 and 16 together provide the mechanism for bringing to an end the collection and management of landfill tax in Wales and allowing the Assembly to bring in its own tax on disposals of waste to landfill.
112. Clause 15 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 16 disapplies landfill tax by excluding disposals in Wales from the landfill tax charge from a date to be appointed by HM Treasury.
113. *Subsection (1)* introduces Chapter 4 (section 116L) of new Part 4A of GOWA 2006. Section 116L(1) provides that a tax charged on disposals to landfill made in Wales is a devolved tax and section 116L(2) explains when a disposal is a disposal to landfill.

114. *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 16.

Clause 16: Disapplication of UK landfill tax

115. Clause 16 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)*. The effect of this is to limit landfill tax to disposals made in England or Northern Ireland, by virtue of amending section 40 of the FA 1996 under *subsection (2)* (previously amended by the Scotland Act 2012).

Clause 17: Borrowing by the Welsh Ministers

116. 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.

117. 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.

118. *Subsection (1)* introduces the amendments to GOWA 2006.

119. *Subsection (2)* introduces the amendments to the existing borrowing provisions in section 121 of GOWA 2006.

120. *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.

121. Subsection (3) also adds two new subsections into section 121((1A) and (1B)):
 - 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.
122. *Subsection (4)* is a consequential amendment to take account of the fact that not all borrowing need be from the Secretary of State.
123. *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.
124. *Subsection (6)* introduces the amendments to the existing borrowing provisions in section 122 of GOWA 2006.
125. *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)).
126. *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.
127. *Subsection (10)* inserts a new section 122A into GOWA 2006 which includes further provisions on capital borrowing.
128. Section 122A(1) provides that the aggregate outstanding of principal sums borrowed under subsection 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.

129. 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 subsection 122A(4).
130. 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 the breach of subsection (6) is unenforceable.

Clause 18: Repeal of existing borrowing powers

131. This clause repeals the paragraphs in Schedule 3 to the Welsh Development Agency Act 1975 that relate to borrowing and guarantees.
132. *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.
133. *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.
134. *Subsections (3), (4) and (5)* determine that the aggregate outstanding of principal sums borrowed for capital expenditure under paragraph 3, immediately before subsection (1) comes into force, will count towards the capital borrowing limit set out in the new section 122A(1).

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

135. 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.

136. *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.
137. *Subsections (2) and (3)* require 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.
138. *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.
139. *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
 - f) any other matters concerning sources of revenue for the Assembly that should be brought to the attention of Parliament or the Assembly.
140. 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 (7)(b).

PART 3: MISCELLANEOUS

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

141. Clause 20 amends Part 6 of the Local Government and Housing Act 1989 (the “1989 Act”).

142. This clause enables the Treasury to set a cap on the maximum level of housing debt that may be held, in aggregate, by Welsh local housing authorities (“LHAs”) and requires the Welsh 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.
143. *Subsection (1)* introduces the amendments to the 1989 Act.
144. *Subsection (2)* inserts new section 76A into the 1989 Act. It provides:
 - that the Treasury may make a determination of the maximum amount of housing debt that may be held, in aggregate, by Welsh LHAs;
 - that the 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 the Treasury’s determination;
 - that the Welsh Ministers must make determinations within 6 months of receiving one from the Treasury; and
 - 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.
145. *Subsection (3)* amends section 85 of the 1989 Act so that the powers to obtain information from LHAs it provides for can be used by the Welsh Ministers for the purposes of new section 76A.
146. *Subsection (4)* 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).
147. *Subsection (5)* 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.
148. *Subsection (6)* 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.

149. *Subsection (7) applies the defined term “appropriate person” to section 87(2).*

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

150. 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.
151. Clause 21 inserts new provisions into the Law Commissions Act 1965 ("the 1965 Act") in order to impose a new duty on the Law Commission to provide advice and information to the Welsh Ministers directly. This makes it clear that the Welsh Ministers will be able to refer law reform matters to the Law Commission themselves.
152. *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.*
153. New section 3C is inserted into the 1965 Act by *subsection (4)* of clause 21 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.
154. 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 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 National Assembly for Wales Commission.
155. 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.
156. Subsection (4) of clause 21 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.
157. 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.

158. 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.
159. *Subsection (5)* of clause 21 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 22: Orders

160. Clause 22 specifies that any order made under this Act would be made by statutory instrument.

Clause 23: Interpretation

161. Clause 23 is the interpretation clause for the draft Bill.

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

162. *Subsection (1)* of clause 24 empowers HM Treasury, by order, to make supplementary, incidental or consequential provision as appears appropriate in connection with bringing into force the provisions in Part 2 (finance). Such orders may also make such transitional, transitory or saving provision as appears appropriate. *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.
163. 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 10 and 11).
164. *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 25: Commencement

165. Clause 25 sets out how the sections of the Bill are to be commenced. *Subsection (1)* specifies that Part 4 (including this section) 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 and 9 (the income tax provisions), sections 17 and 18 (borrowing by the Welsh Ministers) and section 20 (local housing authorities: limits on housing revenue account debt).
166. *Subsection (3)* clarifies that the bringing into force of sections 13 and 14 (Welsh tax on land transactions) and 14 and 15 (Welsh tax on disposals to landfill) are subject to the provision in those sections about how they are to have effect.
167. *Subsection (4)* provides for the income tax provisions in sections 8 and 9 to come into force after an affirmative referendum vote in accordance section 12. *Subsection (5)* provides for sections 17 and 20 to come into force on a day appointed by HM Treasury order. *Subsection (6)* permits HM Treasury to appoint different days for different purposes in bringing section 17 and section 20 into force. *Subsection (7)* provides for section 18 to come into force on the day on which section 121(1A) of GOWA 2006, inserted by section 17, comes into force. This ensures that the repeal of the existing borrowing power coincides with the coming into force of the new one.

Clause 26: Extent and short title

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

Schedule 1: Referendum about commencement of income tax provisions

169. Schedule 1 sets out a framework for the conduct of a referendum about bringing the income tax provisions into force. It is drafted in similar terms to Schedule 6 to GOWA 2006. 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 10.

Schedule 2: Welsh tax on land transactions: consequential amendments

170. Part 1 of the Schedule contains further amendments relating to the disapplication of SDLT in Wales and Part 2 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).

FINANCIAL EFFECTS

171. The direct financial effects of the Bill are minimal.

*These notes refer to the draft Wales Bill
Published for pre-legislative scrutiny on 18 December 2013*

PUBLIC SECTOR MANPOWER

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

IMPACT ASSESSMENT

173. A summary impact assessment has been prepared to accompany the draft Bill.

COMPATIBILITY WITH THE EUROPEAN CONVENTION ON HUMAN RIGHTS

174. Section 19(1)(a) of the Human Rights Act 1998 requires the Minister in charge of the Bill to make a statement confirming compatibility with the European Convention on Human Rights (“ECHR”).
175. The Wales Office have analysed the ECHR-compatibility of the Bill and are content that, on introduction, the relevant Minister will be in a position to make a statement in accordance with section 19(1)(a) of the Human Rights Act 1998 that the provisions in the Bill are compatible with the rights contained in the ECHR. It is considered unlikely that the Bill's provisions would be challenged as incompatible with the ECHR, or that such a challenge would be successful.

Title: Impact Assessment of the draft Wales Bill IA No:	Impact Assessment (IA)
	Date: 18/12/2013
	Stage: Final
	Source of intervention: Domestic
	Type of measure: Primary legislation
	Contact for enquiries: Peter Newbitt 029 2092 4205

Summary: Intervention and Options	RPC Opinion: Not Applicable
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Cost of Preferred (or more likely) Option				
Total Net Present Value £m	Business Net Present Value £m	Net cost to business per year (EANCB on 2009 prices) £m	In scope of One-In, Two-Out? Yes/No	In/Out/zero net cost

What is the problem under consideration? Why is government intervention necessary? The Government has publicly committed to moving the Assembly to 5 year fixed-terms, overturn the ban on standing as an Assembly candidate in both a constituency and a region and prevent AMs from also sitting as MPs. The draft Wales Bill implements the recommendations made in the Commission on Devolution in Wales's (Silk Commission) Part I report, published in November 2012, including a potential referendum on the devolution of powers over income tax to the National Assembly for Wales and the devolution of smaller yield taxes. The Housing Revenue Account Subsidy (HRAS) system is to be brought to an end in Wales and caps on borrowing under a future regime need to be introduced .
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What are the policy objectives and the intended effects? The draft Bill would move the Assembly to five year fixed terms with the aim of making it less likely that Assembly elections will take place at the same time as UK parliamentary elections, and to introduce additional electoral provisions to make Assembly elections fairer. If the draft Bill is enacted the Welsh Government and National Assembly for Wales will, for the first time, be responsible for raising a proportion of the money that they spend. This is intended to allow the people of Wales to hold the devolved institutions in Wales to account for the money they spend. The draft Bill, if enacted, will also allow provide for caps on borrowing to manage their own housing stock by local authorities in Wales.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base) The provisions relating to elections to the Assembly were subject to a public consultation between May and August 2012. A summary of responses was published in November 2012. The UK Government and the Welsh Government have agreed to cap borrowing by local authorities looking to manage their own housing stock. The recommendations made by the Commission on Devolution in Wales were based on evidence that it had taken from across Wales and further afield, and in November 2013 the UK Government accepted the Commission's recommendations to increase the financial accountability of the devolved institutions in Wales.

Will the policy be reviewed? It will/will not be reviewed. If applicable, set review date: Month/Year							
Does implementation go beyond minimum EU requirements?	N/A						
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	<table border="1"> <tr> <td>Micro No</td> <td>< 20 No</td> <td>Small No</td> <td>Medium No</td> <td>Large No</td> </tr> </table>		Micro No	< 20 No	Small No	Medium No	Large No
Micro No	< 20 No	Small No	Medium No	Large No			
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	<table border="1"> <tr> <td>Traded:</td> <td>Non-traded:</td> </tr> </table>		Traded:	Non-traded:			
Traded:	Non-traded:						

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister: _____ Date: _____

Summary: Analysis & Evidence

Policy Option 1

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)			
			Low: Optional	High: Optional	Best Estimate:	
COSTS (£m)		Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)	
Low	Optional		Optional	Optional	Optional	
High	Optional		Optional	Optional	Optional	
Best Estimate						
Description and scale of key monetised costs by 'main affected groups'						
The cost of providing the devolved institutions in Wales with the power to make decisions on how it raises some of the money it spends is subject to the future policy decisions of the Assembly and Welsh Government, including whether to hold a referendum on the devolution of income tax powers. The caps on local authority borrowing. There is no significant cost associated with the electoral provisions in the draft Bill or other minor constitutional provisions.						
Other key non-monetised costs by 'main affected groups'						
Welsh Government: Devolution of tax powers would increase volatility of budget.						
BENEFITS (£m)		Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)	
			Optional	Optional	Optional	
Low	Optional		Optional	Optional	Optional	
High	Optional		Optional	Optional	Optional	
Best Estimate						
Description and scale of key monetised benefits by 'main affected groups'						
Moving the Assembly to a five-year fixed term will yield an estimated small saving of £4.5m in Net Present Value terms as Assembly elections will take place less frequently. The cost of providing the devolved institutions in Wales with the power to make decisions on how it raises some of the money it spends is subject to the future policy decisions of the Assembly and the Welsh Government, including whether to hold a referendum on the devolution of income tax powers.						
Other key non-monetised benefits by 'main affected groups'						
Welsh Government: Ability to borrow more to fund additional projects and services; UK Government: Caps on borrowing for local authorities will promote more prudent borrowing and spending, and prevent reckless borrowing contributing to the national debt. Welsh electorate: Ability to hold the devolved institutions in Wales to account for the money they spend;						
Key assumptions/sensitivities/risks				Discount rate (%)		
N/A.						

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:	In scope of OI TO?	Measure qualifies as
Costs: Benefits: Net:	No	NA

Evidence Base (for summary sheets)

The draft Wales Bill

The draft Wales Bill is made up of 26 clauses, of which 18 are dealt with in this Impact Assessment. The remaining clauses are constitutional in nature and are thus not within the scope of this Impact Assessment. The evidence base that follows deals with the key areas within the draft Bill separately. The taxation measures provided for in the draft Bill would be implemented by the Welsh Government and National Assembly for Wales (“the Assembly”) so it is impossible to fully quantify any costs associated with such taxes in this Impact Assessment.

1. ELECTORAL MEASURES WITHIN THE DRAFT WALES BILL

Move to five year terms

Description of measures

The Fixed-term Parliaments Act 2011 moved the next Assembly election forward by one year to 2016 on a one-off basis to avoid a coincidence with the next UK parliamentary election in 2015. As part of the Green Paper on Future Electoral Arrangements for the National Assembly for Wales (“the Green Paper”) the Government consulted on permanently extending Assembly terms to five years to reduce the likelihood of them coinciding with parliamentary elections in the future. Following the consultation, in March 2013 the Secretary of State for Wales announced that elections would take place every five years from 2016, and the draft Bill provides for this.

Options considered

The other option on which the Government consulted was to do nothing, ensuring that the Assembly term would remain 4 years, with the two sets of elections potentially coinciding every twenty years. A majority of respondents to the consultation rejected this option in favour of a move to five year fixed terms.

Costs and benefits associated with move to five year terms

Extending Assembly terms from four to five years would require elections to the Assembly to be held less frequently. The Green Paper identified that the administration of an Assembly election costs £5.0m in 2012/13 price terms (£5.12m in 2013/14 price terms), and it also costs political parties a further £1.1m in 2012/13 price terms (£1.12m in 2013/14 price terms), so this would yield a small saving of £4.4m in Net Present Value terms (£4.5m in 2013/14 Net Present Value terms).

Dual candidacy

Description of measures

The provisions in the draft Bill overturn the ban on a candidate at an Assembly election standing in both a constituency and a region at the same time, which was introduced in the Government of Wales Act 2006. The Government consulted on this in the Green Paper, and in March 2013 the Secretary of State for Wales announced that the prohibition would be overturned.

Options considered

The Green Paper also sought views on whether the ban should remain. A small majority of respondents were in favour of retaining the ban, but the Government does not think that a strong enough case for this was made in the consultation responses.

Costs and benefits associated with introduction of dual candidacy

In the Green Paper no additional costs were identified with overturning the ban on dual candidacy. Ending the ban would also benefit the democratic process in Wales by making it less restrictive for candidates and parties, and it would encourage a higher standard of members in the Assembly.

Ban on multiple mandates

Description of measures

The draft Bill contains provisions to prevent a Member of Parliament from sitting as an Assembly Member at the same time, outside of an 8 day grace period. The Government consulted on this in the Green Paper and announced in May 2013 that such a ban would be introduced. The draft Bill provides for this.

Options considered

The Green Paper also sought opinions on whether the status quo should be retained, allowing MPs also to sit as AMs. A majority of respondents rejected this option in favour of a ban.

Costs and benefits associated with ban on multiple mandates

The Green Paper identified a potential cost of £13,600 per annum to the Assembly of implementing the provisions, as AMs who currently also sit as MPs have their salaries reduced by two-thirds, and banning such arrangements would mean that more AMs would be required to be paid full wages. However, electors in Wales would benefit from knowing they were being fully represented by those they elect.

2. TAXATION MEASURES WITHIN THE DRAFT BILL

New taxes

Description of measures

The Commission on Devolution in Wales recommended that the Welsh Government should be given the power to legislate to introduce specific taxes, with the agreement of the UK Government. The UK Government has accepted this recommendation, with the proviso that it would be on a “no detriment” principle, whereby an adjustment to the block grant would be made if a new tax in Wales was expected to reduce revenues to the Exchequer.

Policy options

As part of its consultation, the Commission sought views on whether the Welsh Government should be able to introduce new taxes. An analysis of responses showed 48% were against such a move, although a separate opinion poll commissioned by the Commission showed that 72% of respondents were in favour of the Welsh Government being able to introduce new taxes to change people’s behaviour in a similar way to the introduction of carrier bag charges.

Costs and benefits associated with new taxes in Wales

It is not possible currently to quantify the costs or effects of any new taxes which the Welsh Government (with the agreement of the UK Government) would seek to introduce in the future, as decisions on how to administer and collect those taxes would be a matter for the Welsh Government.

Income tax

Description of taxation measures

The terms of reference for Part I of the Commission on Devolution in Wales (“the Commission”) set out that its role was “To review the case for the devolution of fiscal powers to the National Assembly for Wales and to recommend a package of powers that would improve the financial accountability of the Assembly, which are consistent with the United Kingdom’s fiscal objectives and are likely to have a wide degree of support”. The underlying principle of the taxation measures included in the Bill is to substitute a portion of the block grant with the power for the Assembly to raise some of its own revenue through levying taxes, thereby increasing the accountability of the Assembly and Welsh Government to the people who elect them.

The draft Bill provides for the Welsh Government, subject to a referendum, to share the income tax base in Wales with the UK Government, by deducting 10p from each of the basic, higher and additional rates of income tax in Wales and allowing the Welsh Government to determine, and the Assembly to set, a single rate of income tax across all tax bands, while retaining the structure and thresholds of the wider UK income tax system. HMRC would continue to collect this separate Welsh rate of income tax within existing PAYE and Self Assessment tax collection frameworks. The Welsh rate will apply only to income from earnings, pensions and other non-savings sources.

The draft Bill implements the Commission's recommendation that such devolution of Welsh income tax rate setting powers should not take place unless it is supported by the majority of voters in a referendum, to be triggered by a vote in the Assembly.

Policy options

In recommending that the ability to set the rate of income tax be devolved in Wales, the Commission stated its belief that the Assembly should be responsible for a tax that most people pay, so that decisions made by the Assembly are ones in which people have a stake. The Commission's poll on the question of devolution of income tax powers found that 64% favoured it, with 33% against. The Commission noted that one of the main findings of the poll was that a majority believed that if income tax powers were devolved, the Welsh Government would work harder to increase revenues and help the Welsh economy to grow.

The Commission recommended that the Welsh Government should be able to vary each of the three income tax rates independently, rather than the situation introduced by the Scotland Act 2012, whereby the Scottish Government must vary the three rates up or down in tandem. The UK Government did not accept this recommendation because of its potential impact on the progressivity of the UK tax system and on the UK's revenues as a whole.

The Commission also considered the devolution of other high yield taxes such as corporation tax, value added tax and national insurance contributions but ultimately did not recommend their devolution.

Costs and benefits associated with the devolution of income tax in Wales

As set out above, the draft Bill provides for a referendum, with a majority of voters voting in favour, before income tax powers could be devolved. In 2011 a referendum was held in Wales on whether the Assembly should have full law-making powers in the twenty areas devolved to it. The Electoral Commission reported that the referendum campaign cost a total of £5.89m. This figure was less than originally expected, in part because of the fact that no official "yes" and "no" campaigns were designated by the Electoral Commission, and therefore no public funds were spent on their campaigning. In the event of a referendum on income tax powers, the majority of the cost would fall on the Welsh Government, who would have responsibility for the electoral arrangements, while the costs to the Electoral Commission of any publicity campaign it runs and funds given to any designated "yes" and "no" campaigns would be paid to them through the Consolidated Fund.

In the event of a successful referendum, the costs associated with the devolution of income tax powers would be split into two forms: direct costs derived from any increased tax liabilities as determined by the Welsh rate and those costs associated with the implementation of the Welsh rate.

Income tax receipts currently account for 30% of total tax revenue in Wales, some £4.85bn in 2010-11. However, it is not possible to fully quantify the costs or benefits of devolving income tax in Wales because the rates of tax would be determined in the future by the Welsh Government. However, any difference in the income tax rates within the UK could potentially lead to residents of one country moving to another to enjoy reduced taxation rates, leading to a reduction in tax receipts in the other country. The Commission, however, did not believe that this was a significant issue as the current different council tax burdens in local authorities along the border between Wales and England do not contribute to noticeable migratory flows across it. This issue will be further ameliorated by the system of income tax devolution being implemented in this Bill.

All employers in the UK, regardless of where they are based, will be affected as their payroll systems will need to be able to deal with Welsh taxpayers. A system has been in place across the UK since the Scotland Act 1998 created the Scottish variable rate and therefore may be adapted to comply with the new tax regime in Wales. The exact impact on systems cannot be determined until requirements are clearer on the processes for the Welsh rate; these will be refined as they are developed.

The Commission also noted that the cost of updating HMRC's IT systems and operational processes to support the changes to income tax powers brought about by the Scotland Act 2012 have been estimated to be in the region of £40-45m, with annual running costs of around £4.2m. Lessons learned in the work currently being carried out by HMRC to identify all Scottish taxpayers following the Scotland Act 2012 may help to minimise implementation costs in Wales. The Commission noted that, although Wales has a smaller population than Scotland, the greater economic activity on the border between Wales and England than between Scotland and England would likely give rise to proportionally more enquiries from Welsh taxpayers and therefore could require HMRC to play more of a role. Additional compliance costs related to the treatment of certain tax reliefs and incomes such as Gift Aid and tax relief for pension schemes may also be incurred.

Administrative costs arising from the changes to the UK income tax system necessary to implement and operate the Welsh rate, including possible adaptations to benefit payment systems, would fall to the devolved administration. This is consistent with UK Government's *Statement of Funding Policy*.

As noted above, the Commission believes that the devolution of the rate setting power for such a large tax (income tax receipts in Wales account for approximately 30% of the total tax revenue) would both allow the Welsh Government a significant revenue stream with which to borrow in order to implement its policy priorities and the Welsh electorate to hold them to account for it.

Devolution of Stamp Duty Land Tax and Landfill Tax

Description of measures

The Commission recommended that stamp duty land tax (SDLT) and landfill tax (LFT) should be devolved in Wales, with a corresponding reduction made to the block grant. The draft Wales Bill provides for this by allowing the Assembly to levy its own taxes in respect of land transactions and in respect of the disposal of waste to landfill in Wales. The draft Bill also implements the Commission's recommendation to fully devolve business rates in Wales. The Welsh Government budget would then be directly affected by revenues from business rates in Wales, reflecting the performance of the Welsh economy, rather than being determined by spending funded by business rates in England through the Barnett formula.

Policy options

An opinion poll commissioned by the Commission found that 67% of respondents believed the Welsh Government should have the right to vary the level of SDLT. Following the Commission's recommendation to devolve SDLT, between July and September 2013 the UK Government carried out a further consultation on the impacts that this might have on the construction industry and housing market along Wales' long and populous border with England. The responses were reasonably evenly split between those who supported the proposals and those who did not.

The Commission noted in its Part I report that the evidence received supported the case for the devolution of LFT to the Assembly as it would provide a useful mechanism in an area already devolved to the Assembly, waste management.

As part of its consideration of how to make the devolved institutions in Wales more accountable, the Commission also considered the devolution of a number of other taxes. As well as SDLT, LFT and business rates, the Commission proposed the devolution of air passenger duty (APD), initially for direct long haul flights, and devolution of the aggregates levy, although it noted that discussions are ongoing between the UK Government and the European Commission over potential state aid issues in relation to the levy in Northern Ireland. The UK Government agreed to keep this issue under review, but did not feel that the case had been made for the devolution of APD in Wales.

The Commission also considered the devolution of alcohol and excise duties, vehicle excise duties, capital gains tax, insurance premium tax, stamp duties on shares, inheritance tax, betting and gambling duties and the climate change levy, and decided that these taxes should not be devolved.

Costs and benefits associated with devolution of SDLT, LfT and Business rates in Wales

This Impact Assessment cannot quantify the actual costs of the devolution of SDLT, LfT and business rates as the rates of tax, and therefore the receipts derived from them, will be determined by the Assembly and the Welsh Government in the future.

The costs of changes to HMRC's IT systems and business processes necessary to implement devolution of SDLT and LfT will fall to the devolved administration. This is consistent with UK Government's *Statement of Funding Policy*.

Stamp duty land tax

SDLT receipts from land transactions in Wales amounted to £139m in 2012-13. As elsewhere, receipts fluctuate in line with activity and prices in the property market: they peaked at £235m in 2006-07. While a devolved tax on land transactions in Wales would allow the Welsh Government to raise or lower the rates of tax, research quoted by the Commission in its Part I report shows that transactions costs such as SDLT only marginally influence where individuals decide to locate and would not likely be a decisive factor in deciding where to move.

Existing SDLT returns already identify (by means of a code) the local authority area where a land transaction takes place. In most cases, this will allow transactions in England and Wales to be identified as such by HMRC and any future devolved tax administration. Generally speaking, there is no reason why the compliance burden in Wales or other parts of the UK should increase as a result of the devolution of SDLT in Wales.

There is, however, no separate land registration in England and Wales and a number of registered and unregistered titles to land lie across the border. Following devolution of SDLT, it would be necessary to split these titles into English and Welsh components for tax purposes. In the absence of a centrally-administered solution, it is likely that this burden would fall upon the conveyancing profession, which in turn would be likely to pass this on to their clients in the form of higher fees.

Landfill Tax

The HMRC landfill tax register currently lists 203 landfill operators in the UK. 29 of the 723 landfill sites run by these operators (4%) are in Wales. The Commission estimated that LfT revenues in Wales were in the region of £50m in 2010-11, or just under 6% of the UK total. More recently HMRC has published figures from 1999-00 to 2012-13, which shows that LfT revenues in Wales were again in the region of £50m, 4.5% of the UK total, in 2012-13.

The current landfill tax return form issued by HMRC to registered operators does not require them to identify the geographical location of their taxable activity. The devolution of LfT in Wales is therefore likely to require a Welsh-specific form to declare LfT returns. While landfill operators working across sites in Wales and the rest of the UK may face an additional burden by having to issue separate LfT returns to each administration, in general there should be little or no increase in the compliance burden. Again, this is dependent on decisions made by the Assembly and Welsh Government in the future.

The Commission noted that while the devolution of the smaller yielding taxes would only go a small way to increasing the financial accountability of the devolved institutions in Wales compared to the devolution of income tax, they would also help empower the Welsh Government to deliver its policy objectives, which in turn would help make it more accountable to the Welsh public.

3. BORROWING

Current borrowing

Description of measures

The Commission recommended that the Welsh Government should have new powers to manage the increased volatility of its budget due to the devolution of SDLT and LfT. The draft Bill provides the Welsh Government with short term borrowing powers and a cash reserve. To prevent excessive borrowing by

the Welsh Government impacting on the UK's national debt, the draft Wales Bill also provides that the existing £500m current borrowing limit set out in section 122 of the Government of Wales Act 2006 will also apply to such borrowing. The cash reserve will enable the Welsh Government to build up reserves when devolved tax revenues are high, and use this when devolved tax revenues are lower than forecast.

Options considered

The Commission considered international evidence (and further evidence it received) that current borrowing should be placed within a framework that limits how much can be undertaken. The Commission therefore determined that it would be appropriate to set a limit, and recommended that this should initially be set at the level of the existing arrangements.

Costs and benefits associated with new regime

The Commission recognised that their recommendations to devolve certain taxes would introduce volatility into the Welsh Government budget. Their recommendations for short-term borrowing powers and a cash reserve are therefore designed to enable the Welsh Government to manage this volatility rather than provide the ability to borrow to fund additional current spending.

Capital borrowing

Description of measures

As part of its October 2012 joint announcement with the Welsh Government, the UK Government announced in principle that the Welsh Government should have access to borrowing powers to help fund capital infrastructure projects, subject to an independent revenue stream being in place to support this. The draft Bill implements the Commission's recommendations by allowing the Welsh Government to borrow for capital purposes, supported by the revenues from SDLT and LfT. The draft Bill introduces a limit of £500m on the ability of Welsh Ministers to borrow to fund capital infrastructure. The draft Bill provides that this could be raised by the UK Government following a majority "yes" vote in a subsequent income tax referendum.

Options considered

In their Part I report the Commission noted that as many as 80% of those questioned as part of an opinion poll believed that the Welsh Government should have the power to borrow, and acknowledges that "international evidence suggests that borrowing may be the most economic and equitable way to finance sub-national government capital outlays on the grounds that borrowing can improve the allocation of resources over time". They also suggest that the imposition of some form of limit by a national Government on borrowing by a sub-national government is the most common approach to ensuring that such borrowing does not jeopardise the national Government's fiscal objectives.

Costs and benefits associated with new regime

It is not possible currently to fully quantify the costs or effects of increased capital borrowing by the Welsh Government in the future.

However, the Commission noted in its Part I report that the devolution of 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 high value infrastructure projects than it has at present, which in turn could promote growth and efficiency.

4. HOUSING REVENUE ACCOUNT SUBSIDY (HRAS)

Description of measures

The HRAS system was abolished under the Localism Act 2011, with each local authority in England being given control over their housing business in return for a one off payment to central government to reflect the net present value of their housing business.

The Welsh Government has agreed that a similar change in Wales would be desirable. As each local authority will have access to new future income streams, this could lead to a significant increase in borrowing. To ensure that there is no excessive borrowing in Wales, and therefore an increase in the national debt, the UK and Welsh Governments have agreed to impose limits on local authority borrowing. As the Assembly does not have the legislative competence to introduce an overall cap on

borrowing by Welsh local authorities, the draft Bill includes provisions to provide for such a cap, as well as giving the Welsh Ministers the power to provide for a cap on individual local authorities in Wales.

Aside from the power to introduce an overall borrowing cap as described above, the Welsh Ministers will be given powers equivalent to those given to the Secretary of State in sections 171-173 of the Localism Act 2011.

Options considered

In July 2009 the Government published its consultation paper *Reform of Council Housing Finance*, in which the Government set out its preferred option of abolishing the housing revenue account subsidy in England and replacing it with a devolved system of self financing. The alternative option was to retain but improve the existing system. Responses to this consultation favoured replacing HRAS with a devolved system of responsibility. This was followed in March 2010 by the consultation paper *Council Housing: A Real Future*, which set out proposals for self financing in more detail. The summary of responses to this paper set out that an overwhelming majority of respondents agreed with the principle of self financing.

Before introducing the current system in England, under section 173 of the Localism Act 2011 the Secretary of State was required to consult representatives of local government and each local authority in England. Following this, a public consultation on the self-financing determinations ran from November 2011 to January 2012. In the response to the consultation, the Government noted that the overwhelming majority of local authorities who responded did not challenge the principles of self financing or the broad methodology for calculating settlements and valuation payments.

Costs and benefits associated with new regime

Under the existing HRAS system in Wales the Welsh Government makes calculations on how much income and expenditure each local authority in Wales should have in relation to its housing stock. If estimated spending in Wales is above this figure, the UK Government pays the subsidy to the Welsh Government to cover the shortfall. If, however, the income of local authorities in Wales is greater than spending then the surplus (estimated to be some £73m per annum) is returned to the UK Government as a negative subsidy. In future, any surplus will be retained by Welsh local authorities, leading to estimated savings of around £33m per annum (after the one off payments made by local authorities to the UK Government, via the Welsh Government). The retention of these savings will give local authorities in Wales more independence by allowing them to borrow additional funding to improve their housing stock to benefit the people of Wales. There are likely to be additional costs associated with a move to the new system in Wales although these are not possible to quantify precisely as such costs depend on the policy decisions taken by the Welsh Government in the future.

MESUR CYMRU DRAFFT

NODIADAU ESBONIADOL

CYFLWYNIAD

1. Mae'r Nodiadau Esboniadol hyn yn ymwneud â'r Mesur Cymru drafft a gyhoeddwyd ar gyfer Craffu cyn y Broses Ddeddfu ar 18 Rhagfyr 2013. Maent wedi'u paratoi gan Swyddfa Cymru er mwyn helpu pobl sy'n darllen y Mesur ac i gyfrannu at y drafodaeth arno. Nid ydynt yn rhan o'r Mesur ac nid ydynt wedi'u cymeradwyo gan y Senedd.
2. Bydd angen darllen y Nodiadau ynghyd â'r Mesur. Nid ydynt ac nid yw'n fwriad iddynt fod yn ddisgrifiad cynhwysfawr o'r Mesur. Felly os yw'n ymddangos nad oes angen rhoi eglurhad neu wneud sylw ynghylch cymal neu ran o gymal, ni wneir hynny.

CRYNODEB

3. Mae'r Mesur drafft yn gwneud newidiadau yn y trefniadau etholiadol ar gyfer Cynulliad Cenedlaethol Cymru ("y Cynulliad"), yn gweithredu nifer o'r argymhellion sydd yn adroddiad cyntaf y Comisiwn ar Ddatganoli yng Nghymru ("Comisiwn Silk") ac yn gwneud nifer o newidiadau technegol yn Neddf Llywodraeth Cymru 2006 ("DLIC 2006") ac mewn deddfwriaeth arall er mwyn diweddu gweithrediadau'r setliad datganoli yng Nghymru.

CEFNDIR

4. Ym Mai 2012 cyhoeddodd y Llywodraeth Bapur Gwyrdd ar drefniadau etholiadol y dyfodol ar gyfer Cynulliad Cenedlaethol Cymru a oedd yn gofyn am sylwadau ynghylch nifer o newidiadau arfaethedig yn y ffordd o ethol y Cynulliad. Ar ôl ymgynghori â'r cyhoedd, cyhoeddodd Ysgrifennydd Gwladol Cymru ym Mawrth 2013 y byddai'r Llywodraeth yn cyflwyno deddfwriaeth i newid hyd tymor Cynulliad o bedair blynedd i bum mlynedd, i ddileu'r gwaharddiad ar ymgeisydd mewn etholiad i'r Cynulliad rhag sefyll mewn etholaeth ac mewn rhanbarth ac i roi terfyn ar yr arfer gan Aelodau Cynulliad ("ACau") o eistedd hefyd yn Nhŷ'r Cyffredin.
5. Yn Hydref 2011 roedd y Llywodraeth wedi sefydlu Comisiwn Silk i adolygu'r trefniadau ariannol a chyfansoddiadol presennol. Ym mis Tachwedd 2012,

*Mae'r nodiadau hyn yn cyfeirio at y Mesur Cymru drafst
Cyhoeddwyd ar gyfer Craffu cyn y Broses Ddeddfu ar 18 Rhagfyr 2013*

cyhoeddwyd adroddiad cyntaf y Comisiwn a oedd yn gwneud 33 o argymhellion i wella atebolrwydd ariannol y Cynulliad a Llywodraeth Cymru. Rhoddodd y Llywodraeth ei hymateb ffurfiol ym mis Tachwedd 2013, gan dderbyn y rhan fwyaf o argymhellion y Comisiwn.

RHYCHWANT TIRIOGAETHOL A CHYMHWYSO

6. Er bod y Mesur yn cynnwys y cyfan o'r Deyrnas Unedig, bydd yn cael ei gymhwysyo'n ymarferol i faterion sy'n ymwneud â Chymru'n unig.

SYLWADAU AM GYMALAU (AC ATODLENNI)

Cymal 1: Amlder etholiadau cyffredinol arferol y Cynulliad

7. Cafodd cynnig ei basio gan y Cynulliad ar 16 Mawrth 2011 a oedd yn galw am ohirio ei etholiadau am un flwyddyn er mwyn peidio â gwrthdarol yn erbyn yr etholiadau i Senedd San Steffan. Gweithredwyd hyn gan adran 5 o Ddeddf Seneddau Tymor Penodol 2011 drwy symud dyddiad etholiadau nesaf y Cynulliad o 7 Mai 2015 i 5 Mai 2016. O dan y gyfraith fel y mae, bydd y Cynulliad yn mynd yn ôl at dymhorau pedair blynedd ar ôl hynny.
8. Mae posibilrwydd o hyd y bydd yr etholiadau arferol i Senedd San Steffan ac i'r Cynulliad yn digwydd yr un diwrnod yn y dyfodol. Gan y bydd etholiadau San Steffan yn dilyn cylch pum mlynedd penodol o 2015 ac y bydd etholiadau'r Cynulliad yn dilyn cylch pedair blynedd penodol o 2016, mae disgwyl iddynt gyd-ddigwydd yn 2020 a phob ugain mlynedd ar ôl hynny.
9. Felly mae *is-adran (1)* o gymal 1 yn diwygio adran 3(1) o DLIC 2006 i ddarparu ar gyfer cynnal etholiadau cyffredinol arferol i'r Cynulliad bob pum mlynedd, yn hytrach na phob pedair blynedd fel y mae ar hyn o bryd. Bydd yr etholiadau nesaf i'r Cynulliad ar ôl 2016 yn cael eu cynnal yn 2021, felly ni fyddant yn gwrthdarol yn erbyn etholiadau San Steffan yn 2020.
10. Mae *is-adran (2)* yn diddymu adran 5 o Ddeddf Seneddau Tymor Penodol 2011. Nid oes ei hangen bellach oherwydd, o ganlyniad i *is-adran (1)*, bydd yr etholiadau nesaf i'r Cynulliad ar 5 Mai 2016 a phob pum mlynedd ar ôl hynny.

Cymal 2: Dileu'r gwaharddiad rhag sefyll mewn etholiad ar gyfer etholaeth a rhanbarth etholiadol

11. Mae gan bob etholwr yng Nghymru ddwy bleidlais; un ar gyfer dewis ymgeisydd i'r etholaeth ac un ar gyfer ymgeisydd rhanbarthol. Cyn i DLIC 2006 ddod i rym, roedd ymgeiswyr yn gallu sefyll i gael eu hethol yn aelod etholaeth ac yn aelod rhanbarthol. Roedd adran 7 o DLIC 2006 yn gwahardd hyn oherwydd y gred y byddai ethol

rhywun a oedd wedi colli pleidlais etholaeth yn aelod rhanbarthol yn gallu achosi anfodlonrwydd â'r broses wleidyddol gan ei fod wedi'i wrthod yn bendant gan yr etholwyr fel aelod etholaeth. Fodd bynnag, mae astudiaethau gan y Comisiwn Etholiadol ac eraill wedi dangos nad oes sail i'r pryder hwn a bod y gwaharddiad yn cael effaith anghymesur ar bleidiau llai sydd â llai o ymgeiswyr posibl at eu galw.

12. Mae *is-adran (2)* o gymal 2 yn diwygio adran 7 o DLIC 2006 i ddileu'r cyfyngiad ar sefyll yn ymgeisydd etholaeth ac yn ymgeisydd rhanbarthol mewn etholiad i'r Cynulliad. Ond ni all rhywun sefyll yn ymgeisydd mewn etholaeth y tu allan i'r rhanbarth lle y mae'n sefyll. Mae hefyd yn darparu nad yw ymgeisydd ar restr ranbarthol un o'r pleidiau'n gallu sefyll mewn etholaeth yn ymgeisydd dros blaid arall. Mae'r cymal hefyd yn darparu ar gyfer ymgeiswyr sy'n sefyll fel unigolion ar restr ranbarthol: ni fyddant yn gallu sefyll yn ymgeisydd dros blaid yn un o etholaethau'r rhanbarth nac yn ymgeisydd mewn etholaeth y tu allan i'r rhanbarth hwnnw.
13. Mae *is-adran (3)* o gymal 2 yn diwygio adran 9 o DLIC 2006 i ddarparu ar gyfer y ffordd o ddyrannu seddau rhanbarthol ar ôl dileu'r gwaharddiad.
14. Mae *is-adran (4)* o gymal 2 yn diwygio adran 11(8) o DLIC 2006 i ddarparu na ellir rhoi ymgeisydd a oedd â'i enw ar restr plaid a gyflwynwyd yn yr etholiad cyffredinol blaenorol i lenwi sedd ranbarthol sy'n dod yn wag rhwng etholiadau cyffredinol os oedd yr ymgeisydd hwnnw wedi'i ethol yn yr etholiad blaenorol hwnnw neu os yw wedi'i ethol i'r Cynulliad ers hynny mewn is-etholiad etholaeth.

Cymal 3: Anghymhwysyo ASau rhag bod yn aelodau o'r Cynulliad

15. Mae'r arfer o fod yn AC ac yn aelod o Dŷ'r Cyffredin yr un pryd wedi achosi cryn feirniadaeth, yn enwedig yn sgîl sgandal y treuliau. Ystyriwyd y mater hwn yn adroddiad y Pwyllgor Safonau mewn Bywyd Cyhoeddus 'MPs' Expenses and Allowances: Supporting Parliament, safeguarding the taxpayer' a gyhoeddwyd yn 2009, a'i argymhelliaid oedd: "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 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."
16. Mae *is-adran (1)* o gymal 3 yn mewnosod is-adran newydd (za) yn adran 16(1) o DLIC 2006 i ddarparu bod aelodau o Dŷ'r Cyffredin yn cael eu hangymhwysyo rhag bod yn aelodau o'r Cynulliad.
17. Mae *is-adran (2)* o gymal 3 yn nodi rhai eithriadau cyfyngedig i'r ddarpariaeth bod ASau yn cael eu hangymhwysyo rhag bod yn aelodau o'r Cynulliad.
18. Mae adran newydd 17A(1) yn DLIC 2006 yn darparu y caiff AS gyfnod gras o wyth diwrnod ar ôl ei ethol i'r Cynulliad i ymddiswyddo o'i sedd yn Nhŷ'r Cyffredin cyn ei amghymhwysyo rhag bod yn AC. Gan nad yw AS yn gallu ymddiswyddo yn ystyr

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technegol y gair hwnnw, pwrpas y cyfnod gras hwn yw rhoi amser iddo ofyn am gael ei benodi i swydd fel Stiward neu Feili Cantrefi'r Chilterns er mwyn ei anghymhwys o rhag bod yn aelod o Dŷ'r Cyffredin. Mae hyn yn caniatáu iddo barhau'n AC yn hytrach nag yn AS.

19. Mae adran newydd 17A(2) yn delio â rhywun sydd (*i*) yn ymgeisydd mewn etholiad i Dŷ'r Cyffredin, (*ii*) yn cael ei ethol yn AC mewn etholiad i'r Cynulliad, a (*iii*) yn cael ei ethol wedyn i Dŷ'r Cyffredin. Mewn sefyllfa o'r fath, ni fyddai'n cael ei anghymhwys o rhag bod yn AC yn yr wyth diwrnod ar ôl y diwrnod y cafodd ei ethol i'r Cynulliad. Unwaith eto, mae hyn yn caniatáu rhywfaint o amser i'r AC ei anghymhwys o ei hun rhag bod yn aelod o Dŷ'r Cyffredin. Fel arall, os bydd etholiad i'r Cynulliad ac etholiad i Senedd San Steffan yn digwydd yr un diwrnod neu'n agos i'w gilydd, a bod yr ymgeisydd yn cael ei ethol yn y ddau, bydd y ddarpariaeth hon yn rhoi wyth diwrnod iddo benderfynu pa sedd i'w chymryd.
20. Dim ond rhywun sy'n "ymgeisydd" mewn etholiad i Dŷ'r Cyffredin sy'n cael y cyfnod gras hwn, ar ôl ei ethol yn AC. Ni fydd cyfnod gras tebyg ar gyfer AC presennol sydd wedyn yn cael ei ethol i Dŷ'r Cyffredin. Bydd rhywun o'r fath, ar ôl ei ethol i Senedd San Steffan, yn cael ei anghymhwys o'n awtomatig rhag bod yn aelod o'r Cynulliad o dan adran 16(1)(za) o DLIC 2006. Nid oes angen cyfnod gras am nad oes cyfyngiadau ar ymddiswyddo o'r Cynulliad fel y rhai ar gyfer Senedd San Steffan.
21. Mae is-adran (2) o gymal 3 hefyd yn mewnosod adran newydd 17B yn DLIC 2006. Mae'r adran hon yn gymwys lle y mae AC yn cael ei ethol yn AS o fewn y cyfnod o chwe mis cyn y diwrnod y disgwyllir i etholiad cyffredinol y Cynulliad gael ei gynnwl. Mewn sefyllfa o'r fath, ni fydd yn rhaid i'r AC ymddiswyddo gan fod y ddarpariaeth hon yn rhoi cyfnod cyfyngedig o aelodaeth ddwbl drwy ganiatáu i AC gadw ei sedd o dan yr amgylchiadau hyn fel na fydd angen cynnal is-etholiad ychydig cyn un o etholiadau arferol y Cynulliad.
22. Mae *is-adrannau (4) a (5)* o gymal 3 yn gwneud diwygiadau canlyniadol i Orchymyn Cynulliad Cenedlaethol Cymru (Cynrychiolaeth y Bobl) 2007 (OS 2007/236). Mae Erthygl 34 (datganiadau anwir mewn papurau enwebu) a rheol 9(4)(c)(ii) o Atodlen 5 (rheolau etholiadau'r Cynulliad) yn cael eu diwygio i gynnwys cyfeiriad at y ddarpariaeth i anghymhwys o'r Cynulliad fel y rhai ar gyfer Senedd San Steffan.

Cymal 4: Llywodraeth Cymru

23. Mae *is-adran (1)* o gymal 4 yn ailensi Llywodraeth Cynulliad Cymru yn Llywodraeth Cymru (Welsh Government). Mae hyn yn rhoi'r gallu i ddefnyddio'r term Llywodraeth Cymru mewn dogfennau cyfreithiol, ffurfiol, yn sgil y defnydd cynyddol o'r term hwnnw gan y Llywodraeth Cymru bresennol ac eraill yn y byd cyhoeddus ers etholiad 2011. Mae *is-adran (2)* yn rhoi'r enw newydd yn lle'r hen enw lle bynnag y mae'n digwydd yn DLIC 2006, yn amodol ar ddau eithriad yn *is-adrannau (3) a (4)*.

24. Mae *is-adran* (5) o gymal 4 yn sicrhau, lle y bo angen, fod cyfeiriadau statudol at Lywodraeth Cynulliad Cymru yn cael eu darllen fel pe baent yn gyfeiriadau at Lywodraeth Cymru yn lle hynny. Mae hefyd yn darparu, os yw'r cyd-destun yn galw am hynny, fod y cyfeiriadau hynny'n parhau i gynnwys Llywodraeth Cynulliad Cymru (er enghraifft, mewn cysylltiad â materion sydd wedi'u cwblhau gan Lywodraeth Cynulliad Cymru ond sy'n parhau mewn grym yn gyfreithiol).

Cymal 5: Prif Weinidog: Dileu'r pŵer i benodi ar ôl diddymu'r Cynulliad

25. Mae cymal 5 yn mewnosod geiriau ychwanegol yn adran 46(5)(c) o DLIC 2006 i egluro y bydd y Prif Weinidog yn cadw ei swydd os caiff y Cynulliad ei ddiddymu.
26. Mae adran 46 yn darparu y bydd y Prif Weinidog yn dal ei swydd nes bydd Ei Mawrhydi yn derbyn ei ymddiswyddiad neu nes caiff rhywun arall ei benodi i'r swydd honno. Gall y Llywydd benodi rhywun i gyflawni swyddogaethau'r Prif Weinidog os bydd yn marw, yn dod yn analluog i weithredu neu'n peidio â bod yn Aelod o'r Cynulliad. Nid oedd yn fwriad i'r pŵer hwn gael ei ddefnyddio gan y Llywydd lle y mae'r Prif Weinidog wedi peidio â bod yn Aelod o'r Cynulliad dim ond am fod y Cynulliad wedi'i ddiddymu cyn etholiad. Er mwyn sicrhau na fydd ansicrwydd ynghylch y sefyllfa, mae'r cymal hwn yn diwygio adran 46(5)(c) fel na fydd pŵer i benodi rhywun i arfer swyddogaethau'r Prif Weinidog dim ond am fod y Cynulliad wedi'i ddiddymu.

RHAN 2: CYLLID

27. Mae'r darpariaethau ynghylch Deddfau'r Cynulliad yn DLIC 2006 yn pennu cymhwysedd deddfwriaethol y Cynulliad ac yn rhoi pŵer i'r Cynulliad i wneud cyfreithiau, a elwir yn Ddeddfau'r Cynulliad. Mae polisi treth (heblaw am drethi lleol fel y dreth gyngor) y tu allan i gymhwysedd deddfwriaethol y Cynulliad ar hyn o bryd.
28. Mae Rhan 2 o'r Mesur drafft yn galluogi'r Cynulliad i ddeddfu ynghylch trethi datganoledig. Y trethi datganoledig sydd wedi'u pennu yn y Rhan hon yw treth Gymreig ar drafodion sy'n ymwneud â buddiannau mewn tir (i gymryd lle treth dir y dreth stamp yng Nghymru) a threth Gymreig ar waredu gwastraff mewn safleoedd tirlenwi (i gymryd lle treth tirlenwi yng Nghymru). Gellir ychwanegu trethi datganoledig newydd drwy wneud Gorchymyn yn y Cyfrin Gyngor gan Ei Mawrhydi.
29. Os ceir pleidlais o blaid hynny mewn refferendwm, caiff y Cynulliad hefyd osod cyfradd Gymreig ar gyfer cyfrifo'r cyfraddau treth incwm sydd i'w talu gan drethdalwyr Cymreig.
30. Datganolwyd set o bwerau tebyg i'r Alban o dan Ddeddf yr Alban 2012 (a oedd yn diwygio Deddf yr Alban 1998). Rhagwelir y bydd y trethi sydd i gymryd lle treth dir y dreth stamp a threth tirlenwi yn yr Alban yn cael eu cyflwyno yn Ebrill 2015, a disgwyli'r bydd cyfradd treth incwm yr Alban yn dechrau yn Ebrill 2016.

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Cymal 6: Trethi: rhagarweiniol

31. Y cymal hwn sy'n darparu'r strwythur ar gyfer deddfu ynghylch trethi gan Lywodraeth Cymru. Mae *is-adran (1)* o gymal 6 yn mewnosod Rhan 4A newydd yn DLIC 2006, gan ddechrau ag adran 116A newydd (rhan o'r Bennod 1 ragarweiniol).
32. Mae adran 116A(1) yn cyflwyno gweddill y Penodau yn Rhan 4A sy'n cynnwys darpariaethau ynghylch cyfradd dreth incwm Gymreig (Pennod 2) a'r pŵer i wneud darpariaeth am drethi datganoledig newydd ar drafodion tir (Pennod 3) a gwaredu gwastraff mewn safleoedd tirlenwi (Pennod 4).
33. Mae adran 116A(2) yn darparu bod Rhan 4A yn gosod cyfyngiadau ar y pŵer i ddeddfu ynghylch trethi datganoledig, gan gynnwys adran 116A(3) newydd.
34. Mae adran 116A(3) yn darparu na cheir gosod treth ddatganoledig a gyflwynwyd gan Lywodraeth Cymru os byddai gwneud hynny'n anghyson â rhwymedigaethau rhyngwladol y DU. Byddai hyn yn cynnwys, er enghraifft, trafodion tir penodol mewn amgylchiadau sydd wedi'u nodi mewn erthyglau yng Nghonfensiwn Fienna ar Gysylltiadau Diplomyddol neu Gytniad Gogledd Iwerydd, lle y byddai'n rhaid i Lywodraeth y DU ad-dalu unrhyw dreth a godwyd.
35. Mae adran 116A(4) yn diffinio treth ddatganoledig ("*devolved tax*") i ddibenion DLIC 2006 i olygu treth sydd wedi'i phennu'n dreth ddatganoledig yn y Rhan 4A newydd.
36. Mae adran 116B(1)(a) yn darparu y ceir diwygio Rhan 4A drwy Orchymyn yn y Cyfrin Gyngor i ddarparu ar gyfer datganoli trethi ychwanegol i'r Cynulliad. Mae *is-adran (1)(b)* yn cyflwyno pŵer i wneud gorchymynion sy'n caniatâu i ddiwygiadau gael eu gwneud yng nghyswllt trethi datganoledig.
37. Mae adran 116B(2) yn darparu bod Gorchymyn yn y Cyfrin Gyngor sydd wedi'i wneud o dan *is-adran (1)* yn gallu diwygio dogfennau eraill, gan gynnwys deddfwriaeth sylfaenol neu *is-ddeddfwriaeth* os bydd hyn yn briodol.
38. Mae adran 116B(3) yn pennu bod gorchymyn sydd wedi'i wneud o dan *is-adran (1)* yn cael ei drafod drwy'r weithdrefn penderfyniad cadarnhaol yn y Cynulliad ac yn nau Dŷ'r Senedd cyn y gall ddod yn gyfraith.
39. Mae adran 116B(4) yn sicrhau na fyddai Gorchymyn yn y Cyfrin Gyngor sydd wedi'i wneud o dan yr adran hon yn effeithio ar ddilysrwydd un o Ddeddfau'r Cynulliad sydd wedi'i phasio cyn i'r diwygiad ddod i rym, nac ar weithrediad Deddf o'r fath.
40. Mae *is-adrannau (2) i (9)* i gymal 6 yn gwneud newidiadau canlyniadol pellach yn DLIC 2006. Mae *is-adran (3)(a)* yn diwygio adran 108(4)(a) o DLIC 2006 i bennu bod y prawf cymhwysedd deddfwriaethol yn adran 108(4)(a) hefyd yn dod o dan yr *is-adran (4A)* newydd. Mae *is-adran (3)(b)* yn mewnosod *is-adran (4A)* newydd yn

adran 108 i ddarparu, lle y mae'r Cynulliad yn deddfu ynghylch treth ddatganoledig, na fydd deddfwriaeth o'r fath y tu allan i gymhwysedd deddfwriaethol y Cynulliad dim ond oherwydd ei bod yn dod o dan eithriad sydd wedi'i bennu o dan bennawd arall. Mae hyn yn angenrheidiol er mwyn sicrhau, os gwneir Gorchymyn yn y dyfodol o dan adran 116B yn caniatáu trethi ychwanegol, na fydd yr eithriadau presennol o dan benawdau eraill (sy'n cynnwys, er enghraifft, yswiriant cerbyd modur) yn rhwystr rhag gwneud darpariaeth ynghylch trethi ar y materion hynny. Mae is-adrannau (8) a (9) yn diwygio Atodlen 7 i DLIC 2006 (sy'n rhestru'r pynciau y gall y Cynulliad ddeddfu arnynt) i ddarparu bod trethi datganoledig o fewn cymhwysedd deddfwriaethol y Cynulliad.

Cymal 7: Diwygiadau sy'n ymwneud â'r Comisiynwyr Cyllid a Thollau

41. Mae cymal 7 yn diwygio Deddf Comisiynwyr Cyllid a Thollau 2005 ("DCCTh 2005") a Deddf Rheoli Tollau Tramor a Chartref 1979 i alluogi Cyllid a Thollau Ei Mawrhydi ("CThEM") i ddatgelu gwybodaeth i Weinidogion Cymru am drethi datganoledig; i wneud gwybodaeth o'r fath yn gyfrinachol ac yn destun rheolaeth ar ddatgelu o hynny ymlaen; ac i sicrhau na fydd trethi datganoledig o'r fath yn swyddogaeth nac yn fater wedi'i neilltuo ("*assigned matter*") i CThEM, ond yn parhau'n fater i Weinidogion Cymru, gan adael cyfle i CThEM weinyddu'r trethi hyn ar ran Gweinidogion Cymru os ydynt yn dymuno hynny.
42. Mae dyletswydd cyfrinachedd statudol ar CThEM sy'n pennu'r amgylchiadau lle y gellir datgelu'r wybodaeth y mae'n ei dal yn gyfreithlon. Dim ond mewn nifer bach o amgylchiadau penodol y ceir datgelu gwybodaeth. O ganlyniad i ddatganoli rhai meysydd treth i'r Cynulliad mae angen diwygiadau i DCCTh 2005 i alluogi CThEM i ddatgelu gwybodaeth berthnasol ynghylch trethi datganoledig.
43. Mae *is-adrannau (2) a (3)* yn diwygio adran 15 o DCCTh 2005 i sicrhau bod pŵer gan CThEM i weinyddu trethi datganoledig ar ran Gweinidogion Cymru, os bydd y ddau barti'n cytuno ar hynny.
44. Mae *is-adrannau (4) a (5)* yn diwygio dyletswydd cyfrinachedd statudol CThEM yn adran 18 o DCCTh fel y caiff CThEM ddatgelu gwybodaeth berthnasol i Weinidogion Cymru yng nghyswllt trethi datganoledig.
45. Mae *is-adran (6)* yn cymhwys o'r gosb droseddol bresennol am ddatgelu pellach ar wybodaeth gyfrinachol (gan wahardd datgelu pellach ar wybodaeth o'r fath heb gydsyniad y Comisiynwyr) at wybodaeth a ddatgelir i Weinidogion Cymru.
46. Mae *is-adrannau (7) ac (8)* yn darparu na roddir swyddogaethau na materion wedi'u neilltuo ("*assigned matters*") sy'n ymwneud â'r trethi datganoledig i Gomisiynwyr a swyddogion CThEM. Mae hyn yn sicrhau bod y Cynulliad yn llwyr gyfrifol am drethi datganoledig.

Cymal 8: Cyfradd dreth incwm Gymreig

47. Mae cymal 8 yn ymwneud â chyfradd dreth incwm Gymreig. Mae *is-adran (1)* yn mewnosod Pennod 2 yn y Rhan 4A newydd yn DLIC 2006, sy'n cynnwys adrannau 116C i 116I. Mae *is-adran (2)* yn darparu y bydd yr adrannau sydd wedi'u mewnosod gan *is-adran (1)* yn dod i rym yn unol ag adran 12. Mae'r adran honno'n darparu, os bydd mwyafrif y pleidleiswyr mewn refferendwm yn pleidleisio o blaid gweithredu'r darpariaethau ar dreth incwm, y caiff Trysorlys EM bennu blwyddyn dreth yn flwyddyn dreth gyntaf pryd y bydd cynnig a basiwyd ynghylch cyfradd Gymreig o dan y darpariaethau newydd yn dod i rym.
48. Mae adran 116C newydd yn rhoi pŵer i'r Cynulliad i osod cyfradd dreth incwm Gymreig, drwy basio cynnig, ar gyfer trethdalwyr Cymreig.
49. Mae adran 116C(2) yn rhoi gwybod i'r darllenyydd y bydd y gyfradd yn cael ei chyfrifo o dan adran 6(2B) o Ddeddf Treth Incwm 2007 ("DTI 2007"). Mae adran 6(2B) yn cael ei diwygio gan gymal 9 o'r Mesur hwn.
50. Mae adrannau 116C(3) i (6) yn darparu y bydd cynnig a basiwyd am gyfradd Gymreig yn gymwys ar gyfer un flwyddyn dreth yn unig a bod rhaid iddi fod yn gyfradd sengl (hanner neu rif cyfan) a fydd yn gymwys drwy gydol y flwyddyn honno. Rhaid i'r cynnig a basiwyd bennu'r flwyddyn dreth y mae'n gymwys iddi a rhaid pasio'r cynnig cyn dechrau'r flwyddyn dreth honno (ond dim mwy na 12 mis cyn dechrau'r flwyddyn honno).
51. Mae adran 116C(7) yn darparu, os bydd cynnig a basiwyd ar gyfradd Gymreig yn cael ei ddileu cyn dechrau'r flwyddyn dreth y mae'n gymwys iddi, y bydd y Deddfau Treth Incwm yn gweithredu ar gyfer y flwyddyn honno fel pe bai'r cynnig heb gael ei basio erioed. (Mae hyn yn neilltuol o berthnasol i'r ffordd o gyfrifo cyfraddau treth yn adran 6(2B) o DTI 2007.) Mae Deddf Ddehongli 1978 yn diffinio Deddfau Treth Incwm ("*Income Tax Acts*") i olygu'r holl ddeddfiadau sy'n ymwneud â threth incwm. Os bydd cynnig a basiwyd yn cael ei ddileu, gellir pasio cynnig arall ar gyfradd Gymreig yn ei le ar yr amod bod y cynnig hwnnw'n cael ei basio yn ei le cyn dechrau'r flwyddyn dreth y bydd yn gymwys iddi.
52. Mae adran 116C(8) yn ei gwneud yn ofynnol bod rheolau sefydlog y Cynulliad yn sicrhau mai'r Prif Weinidog neu un o Weinidogion Cymru fydd yr unig rai a gaiff wneud cynnig ar gyfer cyfradd Gymreig.
53. Mae adran 116D yn diffinio trethdalwr Cymreig ("*Welsh taxpayer*") i ddibenion Rhan 4A o DLIC 2006. Ar sail y diffiniad sydd wedi'i ddarparu yma ar hyn o bryd ac yn adran 80D o Ddeddf yr Alban 1998, byddai'n bosibl i unigolyn gael ei ystyried yn drethdalwr Cymreig ac yn drethdalwr Albanaidd yn yr un flwyddyn. Cyn cyflwyno'r Mesur, bydd y Llywodraeth yn ystyried pa fath o ddarpariaeth i'w gyflwyno i 'dorri'r ddadl' mewn amgylchiadau o'r math hwn. Mae mân wahaniaethau o ran drafftio rhwng y darpariaethau yn adrannau 116D i 116F a'r darpariaethau cyfatebol yn

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adrannau 80D i 80F o Ddeddf yr Alban 1998. Mae'r rhain yn cyfeirio'r darllenyydd at y prawf preswylio statudol a gyflwynwyd yn Neddf Cyllid 2013 ac yn gwneud mân welliannau eraill o ran drafftio ond yr un yw'r effaith.

54. Mae adran 116D(1) yn datgan mai unigolyn yw trethdalwr Cymreig (ac nid cwmni neu ymddiriedolaeth, er enghraifft) sy'n preswylio yn y DU i ddibenion treth incwm ac yn bodloni o leiaf un o'r tri amod sydd wedi'u nodi yn yr adran. Mae cyfeiriad yn y ddeddfwriaeth at Atodlen 45 i Ddeddf Cyllid 2013 a gyflwynodd brawf preswylio statudol newydd i benderfynu a yw unigolion yn preswylio yn y DU i ddibenion treth.
55. Mae adran 116D(2) yn disgrifio amod A, ac yn darparu y bydd unigolyn yn bodloni amod A os oes ganddo gysylltiad agos â Chymru.
56. Mae adran 116D(3) yn disgrifio amod B, ac yn darparu y bydd unigolyn yn bodloni amod B os nad oes ganddo gysylltiad agos â Lloegr, yr Alban neu Ogledd Iwerddon ac os yw'n treulio mwy o ddiwrnodau yn y flwyddyn honno yng Nghymru nag mewn unrhyw ran arall o'r DU.
57. Mae adran 116D(4) yn disgrifio amod C. Bydd unigolyn yn bodloni amod C os yw'r unigolyn hwnnw, am y cyfan neu ran o flwyddyn, yn Aelod Seneddol dros etholaeth yng Nghymru, yn aelod o Senedd Ewrop dros Gymru neu'n AC.
58. Mae'r adran 116E newydd yn diffinio beth y mae cysylltiad agos â Chymru neu unrhyw ran arall o'r DU (hynny yw, Lloegr, yr Alban neu Ogledd Iwerddon) yn ei olygu i ddibenion adrannau 116D(2) a 116D(3)(a).
59. Mae adran 116E(2) yn gymwys lle nad oes ond un man preswylio gan unigolyn yn y DU lle y mae'n byw am ran o'r flwyddyn o leiaf. Mae'n darparu y bydd cysylltiad agos gan unigolyn o'r fath â'r rhan o'r DU lle y mae'r man preswylio hwnnw. Os yw'r lle hwnnw yng Nghymru, bydd yr unigolyn yn drethdalwr Cymreig. Os yw'r lle hwnnw mewn rhan arall o'r DU, ni fydd yr unigolyn yn drethdalwr Cymreig (oni bai ei fod yn bodloni amod C sydd wedi'i ddisgrifio uchod).
60. Mae adran 116E(3) yn gymwys lle y mae gan unigolyn ddu neu ragor o fannau preswylio yn y DU. Mae'n darparu y bydd gan unigolyn o'r fath gysylltiad agos â'r rhan o'r DU lle y mae ei brif fan preswylio, ar yr amod ei fod yn byw yn y man preswylio hwnnw am o leiaf ran o'r flwyddyn a bod y cyfnodau y mae ei brif fan preswylio yn y lle hwnnw yn cynnwys, gyda'i gilydd, o leiaf cymaint o'r flwyddyn â'r cyfnodau pan yw ei brif fan preswylio mewn unrhyw ran arall o'r DU. Bydd yr unigolyn yn drethdalwr Cymreig os yw'r cyfnodau y mae ei brif fan preswylio yng Nghymru yn cynnwys gyda'i gilydd o leiaf cymaint o'r flwyddyn â'r cyfnodau pan yw ei brif fan preswylio mewn unrhyw ran arall o'r DU.
61. Mae adran 116E(4) yn darparu, er mwyn cymhwys o'r diffiniad o drethdalwr Cymreig, fod man preswylio ("place") yn cynnwys llong neu ddull cludo o fath arall.

62. Mae adran 116F yn darparu'r ffordd o benderfynu nifer y diwrnodau y mae unigolyn yn eu treulio yng Nghymru neu mewn rhan arall o'r DU. Yr unig rai y byddai hyn yn gymwys iddynt yw unigolion y mae eu statws yn drethdalwyr Cymreig heb gael ei benderfynu eisoes drwy fodloni amodau A neu C.
63. Mae adran 116F(1) yn darparu bod unigolyn yn treulio mwy o ddiwrnodau yng Nghymru nag mewn unrhyw ran arall o'r DU os (a dim ond os) yw nifer y diwrnodau y mae yng Nghymru yn gyfartal neu'n fwy na nifer y diwrnodau yn y flwyddyn y mae mewn unrhyw ran arall o'r DU. Penderfynir ble y mae unigolyn ar ddiwrnod penodol yn ôl lle y mae ar ddiweddu y diwrnod.
64. Mae adran 116F(2) yn darparu eithriad i'r rheol yn adran 116F(1) lle y mae unigolyn yn cyrraedd y DU yn deithiwr ac, y diwrnod nesaf, yn ymadael â'r DU heb gymryd rhan mewn gweithgareddau sydd heb gysylltiad agos â'i daith drwy'r DU. Nid oes angen cyfrif y diwrnodau y bodlonir yr eithriad hwn er mwyn penderfynu a yw unigolyn yn bodloni amod B.
65. Mae adran 116G yn darparu pwerau atodol i addasu deddfiadau.
66. Mae adran 116G(1) yn darparu bod gorchymyn gan Drysorlys EM yn gallu eithrio effaith y pŵer sydd gan y Cynulliad i amrywio trethi mewn cysylltiad ag unrhyw ddeddfiad, neu ddarparu bod ei effaith i'w addasu mewn cysylltiad ag unrhyw ddeddfiad. Mae nifer o ostyngiadau mewn treth yn cael eu cyfrifo drwy gyfeirio at incwm crynswth cyn didynnu treth incwm. Mae cyflwyno cyfradd Gymreig yn codi nifer o gwestiynau ynghylch pa gyfradd i'w defnyddio wrth gyfrifo gostyngiadau ac wrth gyfrifo incwm y didynnir treth ohono yn y ffynhonnell. Mae'r Llywodraeth yn dymuno trafod y mater hwn â rhanddeiliaid perthnasol cyn penderfynu'n derfynol ar y ffordd o drin gostyngiadau o'r fath a delio â materion o'r fath, lle y bo'n briodol, drwy wneud is-ddeddfwriaeth ar ôl cynnal y trafodaethau hynny. Rhagwelir y bydd y dull o drafod y meysydd hyn yn gyson â'r cynigion ar gyfer yr Alban sydd wedi'u nodi yn Nodyn Technegol CThEM¹ a gyhoeddwyd ym Mai 2012.
67. Mae adran 116G(2) yn rhoi pŵer i Drysorlys EM i wneud gorchymyn i addasu unrhyw ddeddfiad yn ôl yr hyn sy'n angenrheidiol neu'n hwylus yn ei farn ef o ganlyniad i neu mewn cysylltiad â'r ffaith bod pŵer gan y Cynulliad i osod cyfradd Gymreig (o dan adran 116C), pasio unrhyw gynnig, neu arfer y pŵer i wneud gorchymynion yn is-adran (1). Fel y nodwyd uchod, byddai angen nifer o ddiwygiadau canlyniadol technegol manwl i ddeddfwriaeth treth o ganlyniad i gyflwyno'r gyfradd Gymreig newydd. Ni fyddai'n briodol cynnwys manylion o'r fath mewn deddfwriaeth sylfaenol, yn enwedig o ystyried mai dim ond ar ôl cael pleidlais o blaid gweithredu'r darpariaethau ar dreth incwm gan fwyafrif y pleidleiswyr mewn refferendwm y byddai'r pŵer i osod cyfradd Gymreig yn cael ei roi i'r Cynulliad.

¹ <http://www.hmrc.gov.uk/news/technote-scot-taxrate.pdf>

68. Mae adran 116G(3) yn darparu, yn benodol, fod gorchymyn sydd wedi'i wneud o dan is-adran (2) yn gallu gohirio dros dro yr effaith o gynnig a basiwyd sy'n ymwneud â gweithredu'r system Talu Wrth Ennill (TWE). Rhan hanfodol o'r system TWE yw'r defnydd o dablau treth gan gyflogwyr i gyfrifo pa faint i'w ddidynnu o gyflogau eu gweithwyr. Pe byddai'r Cynulliad, am ba reswm bynnag, yn peidio â phasio cynnig tan ychydig cyn dechrau'r flwyddyn dreth, neu'n pasio cynnig yn lle un arall ychydig cyn dechrau'r flwyddyn dreth, gallai hymny achosi anawsterau ymarferol i CThEM, darparwyr cyflogres ac eraill wrth wneud y newidiadau angenrheidiol i weithredu'r system TWE yn briodol cyn dechrau'r flwyddyn dreth. Gallai problemau tebyg godi pe na byddai Llywodraeth y DU yn gwneud penderfyniad ynghyllch y prif gyfraddau treth incwm, neu unrhyw lwfansau perthnasol, tan ychydig cyn dechrau'r flwyddyn dreth. Lle y mae problem o'r fath yn codi yng nghyswllt y prif gyfraddau treth incwm, fe geir darpariaeth gan amlaf yn y Ddeddf Cyllid berthnasol i ddelio â'r effaith ar y system TWE (gweler, er enghraifft, adrannau 2(3) a 4(3) o Ddeddf Cyllid 2008). Byddai'r pŵer sydd wedi'i ddarparu gan adran 116G(3) yn caniatáu i ddarpariaeth debyg gael ei gwneud mewn cysylltiad â'r gyfradd Gymreig.
69. Mae adran 116G(4) yn darparu bod gorchymyn sydd wedi'i wneud o dan adran 116G yn gallu bod yn ôl-weithredol a dod i rym ar ddechrau'r flwyddyn asesu pan gafodd ei wneud. Nid yw'n anarferol i Gydsyniad Brenhinol gael ei roi i Ddeddf Cyllid ar ôl dechrau'r flwyddyn dreth y mae'n gymwys iddi ac i ddarpariaethau sydd wedi'u gwneud o dan Ddeddf o'r fath fod yn ôl-weithredol a dod i rym ar ddechrau'r flwyddyn dreth honno. Byddai'r pŵer hwn yn caniatáu i Drysorlys EM wneud unrhyw ddiwygiadau canlyniadol angenrheidiol o ganlyniad i ddarpariaeth o'r fath.
70. Mae is-adrannau 116G(5) i (6) yn darparu y bydd gorchymyn sydd wedi'i wneud o dan yr adran hon yn cael ei drafod drwy'r weithdrefn penderfyniad cadarnhaol yn Nhŷ'r Cyffredin, oni bai ei fod yn ymwneud yn llwyr â materion sydd wedi'u disgrifio yn *is-adran* (3); os felly, byddai'r weithdrefn penderfyniad negyddol yn cael ei defnyddio.
71. Mae adran 116H newydd yn darparu y caiff Gweinidogion Cymru ad-dalu i unrhyw un o Weinidogion y Goron neu i unrhyw un o adrannau'r Llywodraeth am dreuliau gweinyddol sydd wedi'u hysgwyddo oherwydd y Bennod 2 newydd ar unrhyw adeg ar ôl rhoi Cydsyniad Brenhinol i'r Mesur. Er enghraifft, byddai hyn yn cynnwys ad-dalu i CThEM am y costau ychwanegol y mae wedi'u hysgwyddo wrth weithredu a gweinyddu'r gyfradd Gymreig newydd.
72. Mae adran 116I(1) newydd yn ei gwneud yn ofynnol bod y Rheolwr ac Archwilydd Cyffredinol ("RhAC") yn cyflwyno adroddiad i'r Cynulliad ar gyfer pob blwyddyn ariannol (hy, pob blwyddyn hyd 31 Mawrth) am weinyddu'r gyfradd dreth incwm Gymreig gan CThEM.
73. Mae adran 116I(2) yn pennu cwmpas yr adroddiad. Bydd y RhAC yn adrodd ar ddigonolrwydd y rheolau (sydd i fod i gynnwys yr un materion â "regulations" yn adran 2(1) o Ddeddf Adran y Trysorlys a'r Adran Archwilio 1921) a'r gweithdrefnau

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y mae CThEM wedi'u rhoi ar waith i weinyddu a chasglu'r gyfradd Gymreig. Bydd y RhAC hefyd yn adrodd ar gyfrifiad CThEM o'r swm o dreth incwm y gyfradd Gymreig sydd i'w drosglwyddo i Lywodraeth Cymru, ac ar gywirdeb a thegwch y costau y mae Llywodraeth Cymru wedi'u had-dalu i CThEM am weinyddu'r gyfradd Gymreig.

74. Mae adran 116I(3) yn egluro mai darpariaethau'r gyfradd Gymreig ("Welsh rate provisions") yw'r rheini sydd wedi'u nodi yn y Bennod hon ac mewn diwygiadau eraill sydd wedi'u gwneud i gymal 9.
75. Mae adran 116I(4) yn darparu bod y RhAC yn cael arfer disgrifiwn i gynnwys dadansoddiad yn yr adroddiad ynghylch a yw CThEM yn defnyddio ei adnoddau'n effeithiol, yn effeithlon ac yn ddarbodus wrth weinyddu'r gyfradd Gymreig.
76. Mae adran 116I(6) yn ei gwneud yn ofynnol bod CThEM yn darparu i'r RhAC y wybodaeth y mae arno ei hangen i gwblhau'r adroddiad blynnyddol.
77. Mae adran 116I(7) yn ei gwneud yn ofynnol bod yr adroddiad yn cael ei osod gerbron y Cynulliad ddim hwyrach na 31 Ionawr yn y flwyddyn ariannol sy'n dilyn yr un y mae'r adroddiad yn berthnasol iddi.

Cymal 9: Treth incwm ar gyfer trethdalwyr Cymreig

78. Mae cymal 9 yn diwygio DTI 2007 a Deddf Casglu Trethi Dros Dro 1968 mewn cysylltiad â threth incwm ar gyfer trethdalwyr Cymreig.
79. Mae *is-adran (3)* yn diwygio adran 6(2A) o DTI 2007 (a oedd wedi'i mewnosod cyn hyn gan Ddeddf yr Alban 2012) i gynnwys trethdalwyr Cymreig. Mae adran 6(2) o DTI 2007 yn darparu mai'r gyfradd sylfaenol, y gyfradd uwch a'r gyfradd ychwanegol ar gyfer blwyddyn dreth (h.y. blwyddyn y codir treth incwm amdani) yw'r cyfraddau sydd wedi'u penderfynu felly gan y Senedd ar gyfer y flwyddyn honno. Mae adran 6(2A), fel y mae wedi'i diwygio, yn darparu na fydd adran 6(2) yn gymwys i incwm trethdalwr Cymreig nad yw'n deillio o gynillion.
80. Mae *is-adrannau (4) a (5)* yn diwygio adran 6(2B) (a oedd wedi'i mewnosod cyn hyn gan Ddeddf yr Alban 2012) i gynnwys y gyfradd Gymreig sydd wedi'i gosod gan y Cynulliad yn y cyfrifiad i benderfynu'r cyfraddau treth a delir gan drethdalwyr Cymreig ar incwm nad yw'n deillio o gynillion. Mae hyn yn gweithio drwy ostwng y cyfraddau sylfaenol, uwch ac ychwanegol sydd wedi'u penderfynu o dan adran 6(2) o 10 y cant, ac wedyn ychwanegu'r gyfradd Gymreig sydd wedi'i gosod o dan adran 116C. Felly byddai cyfradd Gymreig o 10 y cant yn golygu bod y cyfraddau a delir gan drethdalwyr Cymreig yr un fath â'r rheini a delir mewn mannau eraill yn y DU, byddai cyfradd o 9 y cant yn golygu bod y cyfraddau ychydig yn is a byddai cyfradd o 11 y cant yn golygu eu bod ychydig yn uwch.

81. Mae *is-adran (6)* yn mewnosod cyfeiriad yn DTI 2007 at y darpariaethau ym Mhennod 2 o Ran 4A o DLIC 2006 (sydd wedi'u mewnosod gan gymal 8 o'r Ddeddf hon) ynghylch ystyr trethdalwr Cymreig ("Welsh taxpayer") a gosod y gyfradd Gymreig.
82. Mae *is-adrannau (7) ac (8)* yn diwygio adrannau 10 ac 16 o DTI 2007. Mae adran 10 o DTI 2007 yn egluro pa faint o incwm yr unigolyn sy'n agored i'w drethu ar y cyfraddau sylfaenol, uwch ac ychwanegol. Mae adran 10 yn ddarostyngedig i adran 13 o'r Ddeddf honno, sy'n ymwneud ag incwm difidend (sydd wedi'i ddiffinio yn adran 19). Codir treth ar incwm difidend ar y cyfraddau cyffredin difidend, uwch difidend ac ychwanegol difidend yn hytrach na'r prif gyfraddau treth incwm. Parheir i godi treth ar incwm difidend trethdalwr Cymreig ar y cyfraddau hyn. Mae'r adrannau sydd wedi'u diwygio'n cymhwysôr cyfraddau sydd wedi'u pennu o dan adran 6(2) at incwm y trethdalwr Cymreig sy'n deillio o gynillion a'r cyfraddau sydd wedi'u pennu o dan adran 6(2B) at incwm y trethdalwr Cymreig nad yw'n deillio o gynillion.
83. Mae *is-adran (9)* yn diwygio adran 809H o DTI 2007. Mae Pennod A1 o Ran 14 o DTI 2007 yn darparu ar gyfer codi treth ar sail wahanol ar gyfer unigolion nad ydynt â'u domisil yn y DU. Os yw unigolyn o'r fath yn breswylydd yn y DU at ddibenion treth incwm, caiff wneud hawliad am gymhwysôr sail trethu taliadau. Wrth gymhwysôr sail trethu taliadau, dim ond wrth ddod ag incwm ac enillion i'r DU y codir treth incwm y DU a threth ar enillion cyfalaf y DU arnynt. Fodd bynnag, os yw unigolyn wedi preswylio yn y DU am o leiaf saith o'r naw blwyddyn dreth flaenorol, ac yn dymuno cael ei drethu ar y sail trethu taliadau, o dan adran 809H(2) o DTI 2007 bydd yn rhaid iddo dalu treth incwm a threth ar enillion cyfalaf o £30,000 o leiaf. Os yw unigolyn wedi bod yn preswylio yn y DU am o leiaf 12 o'r 14 blynedd blaenorol, bydd yn rhaid iddo dalu £50,000 o leiaf. Er mwyn cyfrifo treth incwm a godir o dan adran 809H(2), mae *is-adran (9)* o'r cymal hwn yn datgymhwysu adrannau 6(2A) i (2D) o DTI 2007.
84. Mae *is-adran (10)* yn diwygio Deddf Casglu Trethi Dros Dro 1968. Mae'r Ddeddf honno'n ymwneud â chynigion a basiwyd yn Nhŷ'r Cyffredin ynghylch cyfraddau gwahanol drethi, gan gynnwys treth incwm, ac yn eu rhoi mewn grym dros dro. Mae hyn yn caniatáu i CThEM gasglu'r dreth nes rhoi Cydsyniad Brenhinol i'r Mesur Cyllid sy'n cynnwys y darpariaethau treth perthnasol a'i wneud yn gyfraith, neu nes bydd y cynigion a basiwyd yn peidio â bod mewn grym. Felly mae *is-adran (10)* yn diwygio Deddf Casglu Trethi Dros Dro 1968 er mwyn cynnwys cyfeiriad at y cyfraddau sydd wedi'u cyfrifo ar gyfer trethdalwr Cymreig drwy gyfeirio at yr adrannau 6(2A) i (2D) diwygiedig o DTI 2007. Byddai hyn yn sicrhau bod CThEM yn gallu parhau i gasglu treth a godir ar y gyfradd dreth incwm Gymreig.
85. Mae *is-adran (11)* yn darparu y bydd y diwygiadau sydd wedi'u gwneud gan yr adran hon yn dod i rym yn unol ag adran 12.

Cymal 10: Refferendwm yngylch cychwyn darpariaethau ar gyfer treth incwm

86. Mae cymalau 10 ac 11 yn caniatáu i refferendwm gael ei gynnal yng Nghymru yngylch a fydd y darpariaethau ar gyfer treth incwm, sydd wedi'u disgrifio yng nghymalau 8 a 9, yn dod i rym. Mae cymal 10 yn ei gwneud yn ofynnol bod Gorchymyn drafft yn y Cyfrin Gyngor yn peri cynnal refferendwm yn cael ei gymeradwyo gan ddu Dŷ'r Senedd a thrwy basio cynnig yn y Cynulliad gan fwyafrif o ddwy ran o dair o leiaf o ACau (h.y. o leiaf 40 o ACau yn pleidleisio o blaid). Os bydd y Cynulliad yn pasio cynnig yn galw am gynnal refferendwm (hefyd o fwyafrif o ddwy ran o dair o leiaf), mae cymal 11 yn ei gwneud yn ofynnol bod Gorchymyn drafft yn y Cyfrin Gyngor yn cael ei osod, neu bydd yn rhaid i'r Ysgrifennydd Gwladol egluro'r methiant i wneud hynny. Byddai'r darpariaethau ar dreth incwm yn cael eu rhoi mewn grym drwy orchymyn gan Drysorlys EM, wedi'i wneud o dan gymal 12, os oedd mwyafrif y pleidleiswyr mewn refferendwm wedi pleidleisio o blaid hynny.
87. Mae'r weithdrefn sydd wedi'i nodi yn y cymalau hyn yn debyg i'r un yn adrannau 103 a 104 o DLIC 2006, a oedd yn darparu ar gyfer cynnal refferendwm yngylch gweithredu'r darpariaethau ar Ddeddfau'r Cynulliad² yn y Ddeddf honno. Mae'r cymalau'n gweithredu argymhelliaid sydd wedi'i wneud gan Comisiwn Silk yn ei adroddiad cyntaf³ y dylai datganoli treth incwm fod yn ddarostyngedig i refferendwm yng Nghymru. Roedd Comisiwn Silk yn argymhelliaid hefyd fod darpariaeth ar gyfer refferendwm o'r fath yn cael ei chynnwys mewn Deddf sy'n cyflwyno pwerau trethu a benthyca i Gymru, ac yn awgrymu hefyd fod y weithdrefn a ddaeth â'r darpariaethau ar Ddeddfau'r Cynulliad i rym yn fodel priodol⁴.
88. Mae *is-adran (1)* o gymal 10 yn caniatáu i'w Mawrhydi beri cynnal refferendwm yng Nghymru drwy wneud Gorchymyn yn y Cyfrin Gyngor yngylch a fydd y darpariaethau ar dreth incwm yn dod i rym. Os bydd mwyafrif y pleidleiswyr mewn refferendwm yn pleidleisio o blaid, mae *is-adran (2)* yn darparu y bydd y darpariaethau'n dod i rym yn unol â chymal 12 (gweler isod).
89. Mae *is-adran (3)* yn egluro na fyddai pleidlais gan fwyafrif y pleidleiswyr mewn refferendwm yn erbyn gweithredu'r darpariaethau ar dreth incwm yn rhwystr rhag gwneud Gorchmynion yn y Cyfrin Gyngor ar ôl hynny o dan *is-adran (1)*.

² Roedd y darpariaethau ar Ddeddfau'r Cynulliad yn rhoi pŵer i'r Cynulliad i basio Deddfau'r Cynulliad yn yr 20 o feisydd sydd wedi'u datganoli i Gymru os oedd mwyafrif y pleidleiswyr mewn refferendwm yn cymeradwyo'r cynnig i weithredu'r darpariaethau. Cynhalwyd refferendwm ar 3 Mawrth 2011, a chafwyd pleidlais o blaid y cynnig. Daeth y darpariaethau i rym ar 5 Mai 2011.

³ *Grymuso a Chyfrifoldeb – Pwerau Ariannol i Gryfhau Cymru, Argymhelliaid 26, t.137.*

⁴ *Grymuso a Chyfrifoldeb – Pwerau Ariannol i Gryfhau Cymru, paragraff 8.2.12.*

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90. Mae *is-adrannau* (4) a (5) yn pennu mai dim ond os yw'r Gorchymyn drafft wedi'i gymeradwyo gan ddau Dŷ'r Senedd a mwyafrif o ddwy ran o dair o leiaf yn y Cynulliad y gellir argymhell bod Ei Mawrhydi yn gwneud Gorchymyn yn y Cyfrin Gyngor.
91. Mae *is-adran* (6) yn pennu mai dim ond wedi i'r Ysgrifennydd Gwladol ymgynghori yn y ffordd y mae'n ei hystyried yn briodol ynghylch y Gorchymyn drafft y gellir ei osod yn y Senedd neu yn y Cynulliad. Byddai ymgynghori o'r fath yn debygol o gynnwys Llywodraeth Cymru a'r Comisiwn Etholiadol ymysg eraill.
92. Mae *is-adran* (7) yn cyfeirio'r darllenyydd at fanylion pellach am refferendwm yn Atodlen 1 (gweler paragraff 169).

Cymal 11: Cynnig ar gyfer cynnal refferendwm gan y Cynulliad

93. Cymal 11 sy'n darparu'r mecanwaith y gall y Cynulliad ei ddefnyddio i beri cynnal refferendwm. Mae *is-adrannau* (1) a (2) yn pennu y caiff y Prif Weinidog neu un o Weinidogion Cymru wneud cynnig yn y Cynulliad bod argymhelliaid yn cael ei wneud i'w Mawrhydi yn y Cyfrin Gyngor i wneud Gorchymyn yn peri cynnal refferendwm. Os caiff y cynnig ei basio gan ddwy ran o dair o leiaf o ACau, rhaid i'r Prif Weinidog ysgrifennu at yr Ysgrifennydd Gwladol i'w hysbysu am hynny cyn gynted ag y bo modd.
94. Mae *is-adran* (3) yn ei gwneud yn ofynnol bod yr Ysgrifennydd Gwladol neu Arglwydd Lywydd y Cyfrin Gyngor yn gosod Gorchymyn drafft gerbron dau Dŷ'r Senedd o fewn 180 o ddiwrnodau wedi i'r Ysgrifennydd Gwladol gael llythyr y Prif Weinidog. Os na wnânt hynny, rhaid i'r Ysgrifennydd Gwladol ysgrifennu at y Prif Weinidog gan ei hysbysu am eu gwirthodiad i osod y Gorchymyn drafft a'r rhesymau dros beidio â gwneud hynny.
95. Mae *is-adran* (4) yn ei gwneud yn ofynnol bod y Prif Weinidog yn gosod copi o'r hysbysiad gerbron y Cynulliad, a rhaid i'r Cynulliad sicrhau bod yr hysbysiad yn cael ei gyhoeddi.

Cymal 12: Cychwyn y darpariaethau ar dreth incwm os bydd mwyafrif o blaid

96. Mae cymal 12 yn disgrifio'r weithdrefn ar gyfer rhoi'r darpariaethau ar dreth incwm mewn grym os bydd mwyafrif y pleidleiswyr mewn refferendwm yn pleidleisio o blaid hynny. Mae *is-adran* (2) yn caniatáu i Drysorlys EM wneud gorchymyn. Yn ôl *is-adran* (3), gall gorchymyn o'r fath bennu diwrnod pryd y daw'r darpariaethau ar dreth incwm (yng nghymalau 8 a 9) i rym, dynodi blwyddyn dreth yn flwyddyn gyntaf y ceir pasio cynnig ar gyfradd Gymreig ar ei chyfer, neu ddynodi blwyddyn dreth neu flwyddyn ariannol pryd y daw darpariaethau i rym. Gellir gwneud darpariaeth wahanol ar gyfer gwahanol rannau o'r diwygiadau sydd wedi'u gwneud gan gymalau 8 a 9 (*is-adran* (4)).

Cymal 13: Treth Gymreig ar drafodion sy'n ymwneud â buddiannau mewn tir

97. Gyda'i gilydd, mae cymalau 13 a 14 yn darparu'r mecanwaith i roi terfyn ar gasglu a rheoli treth dir y dreth stamp (TDDS) yng Nghymru ac yn caniatáu i'r Cynulliad gyflwyno ei dreth ei hun ar drafodion tir.
98. Mae cymal 13 yn cyflwyno Pennod 3 newydd yn Rhan 4A o DLIC 2006, sy'n diffinio cwmpas y dreth ddatganoledig hon sydd, yn fras, yn dreth ar drafodion sy'n gymwys i gaffael buddiannau mewn tir yng Nghymru. Mae cymal 14 yn datgymhwys TDDS drwy eithrio trafodion tir yng Nghymru o godi tâl am TDDS, oddi ar ddyddiad sydd i'w bennu gan Drysorlys EM. Mae Atodlen 2 yn cynnwys rhagor o ddiwygiadau sy'n ymwneud â datgymhwys TDDS yng Nghymru ac yn darparu ar gyfer cyflenwi gwybodaeth am drafodion tir yng Nghymru i CThEM.
99. Mae TDDS yn dreth ar drafodion sy'n gymwys wrth gaffael buddiant trethadwy mewn tir. Mae'r diffiniad o fuddiant trethadwy ("chargeable interest") yn adran 48 o Ddeddf Cyllid 2003 yn cynnwys ystad, buddiant, hawl neu bŵer mewn neu dros dir yng Nghymru a Lloegr neu Ogledd Iwerddon (mae tir yn yr Alban wedi'i eithrio gan Ddeddf yr Alban 2012, er nad yw'r diwygiadau hynny wedi dod i rym eto).
100. Bydd y dreth yn cael ei datganoli'n llwyr drwy eithrio caffaeliadau ar fuddiannau mewn tir yng Nghymru o godi tâl am TDDS a rhoi pŵer i'r Cynulliad i drethu'r caffaeliadau hynny. Gall y dreth ddatganoledig fod yn gymwys heb ystyriaeth i fan preswylio unrhyw barti i'r trafodiad.
101. Mae *is-adran (1)* o gymal 13 yn cyflwyno Pennod 3 (adrannau 116J a 116K) yn y Rhan 4A newydd o DLIC 2006 sy'n darparu ar gyfer y dreth Gymreig ddatganoledig.
102. Mae adran 116J newydd yn darparu ar gyfer y dreth Gymreig ddatganoledig ac yn rhoi pŵer i'r Cynulliad i godi treth ar drafodion ar y caffaeliadau hynny. Mae *is-adran (1)* yn darparu bod treth a godir ar gaffaeliadau penodol sy'n ymwneud â thir yng Nghymru'n dreth ddatganoledig. Mae *is-adran (2)* yn egluro y ceir cymhwys treth o'r fath pa un a yw'r trafodiad wedi'i gyflawni drwy ddogfen ffurfiol neu beidio a heb ystyriaeth i fan preswylio'r partïon i'r trafodiad.
103. Mae adran 116K yn darparu na fydd trafodion a chyrff statudol penodol yn ddarostyngedig i'r dreth ddatganoledig. Mae *is-adran (1)* yn eithrio trafodion i'r graddau eu bod yn ymwneud â thir sydd o dan y marc distyll cymedrig. Mae *is-adran (2)* yn eithrio Gweinidogion llywodraeth y DU a'r llywodraethau datganoledig a chyrff corfforaethol sy'n gysylltiedig â deddfwrfeidd yn y DU. Mae hyn yn gyson ag eithriadau tebyg yn y ddeddfwriaeth ar TDDS a bydd yn gymwys i Weinidogion dim ond pan fyddant yn gweithredu yn rhinwedd eu swyddi Gweinidogol.
104. Mae *is-adran (2)* yn sicrhau na all y dreth ddatganoledig fod yn gymwys i drafodiad tir y mae TDDS yn gymwys iddo a thrwy hynny'n cysylltu cychwyn y dreth â datgymhwys TDDS yng Nghymru o dan gymal 14.

Cymal 14: Datgymhwys o treth dir y dreth stamp y DU

105. Mae cymal 14 yn darparu ar gyfer datgymhwys o TDDS drwy gyfeirio at ddyddiad dod i rym ("effective date") y trafodiad tir i ddibenion TDDS. Fel arfer, y dyddiad dod i rym yw dyddiad cwblhau'r contract prynu ond gall fod yn gynharach os bydd y trafodiad wedi'i gyflawni i raddau helaeth (hynny yw, os yw'r gydnabyddiaeth am y trafodiad wedi'i thalu neu'r eiddo wedi'i feddiannu) cyn y dyddiad hwn.
106. Mae *is-adran (1)* yn cyflwyno'r diwygiadau i'r darpariaethau ar TDDS yn Rhan 4 o Ddeddf Cyllid 2003, ac mae *is-adran (2)* yn diwygio'r diffiniad o fuddiannau trethatwy ("chargeable interests") yn adran 48 drwy ei gyfyngu i fuddiannau mewn tir yn Lloegr a Gogledd Iwerddon.
107. Mae *is-adran (3)* yn cyflwyno Atodlen 2, sydd wedi'i thrafod yn fanylach ym mharagraff 170 isod.
108. Mae *is-adran (4)* yn cymhwys o'r diwygiadau a gyflwynwyd gan y cymal at drafodion tir ac iddynt ddyddiad dod i rym sydd ar neu ar ôl dyddiad a bennwyd gan Drysorlys EM.
109. Mae *is-adran (5)* yn gwneud darpariaethau trosiannol i sicrhau bod TDDS yn parhau'n gymwys i drafodion lle y mae contract wedi'i wneud cyn neu ar y dyddiad y mae Mesur Cymru yn cael Cydsyniad Brenhinol.
110. Mae *is-adran (6)* yn datgymhwys o'r rheolau trosiannol yn *is-adran (5)* lle y ceir digwyddiadau penodol sy'n ymwneud â'r trafodiad ar ôl cael Cydsyniad Brenhinol.

Cymal 15: Treth Gymreig ar wastraff a waredir mewn safleoedd tirlenwi

111. Ar hyn o bryd codir treth tirlenwi am waredu gwastraff mewn safleoedd tirlenwi yng Nghymru a Lloegr neu Ogledd Iwerddon (mae safleoedd tirlenwi yn yr Alban wedi'u heithrio gan Ddeddf yr Alban 2012, er nad yw'r diwygiadau hynny wedi dod i rym eto). Gyda'i gilydd, mae cymalau 15 ac 16 yn darparu'r mecanwaith i roi terfyn ar gasglu a rheoli treth tirlenwi yng Nghymru a chaniatáu i'r Cynulliad gyflwyno ei dreth ei hun ar waredu gwastraff mewn safleoedd tirlenwi.
112. Mae cymal 15 yn cyflwyno Pennod 4 newydd yn Rhan 4A o DLIC 2006, sy'n diffinio cwmpas pŵer Llywodraeth Cymru i gyflwyno treth ar waredu gwastraff mewn safleoedd tirlenwi yng Nghymru. Mae cymal 16 yn datgymhwys o treth tirlenwi drwy eithrio gwaredu gwastraff yng Nghymru o godi treth tirlenwi oddi ar ddyddiad sydd i'w bennu gan Drysorlys EM.
113. Mae *is-adran (1)* yn cyflwyno Pennod 4 (adran 116L) o Ran 4A newydd o DLIC 2006. Mae adran 116L(1) yn darparu bod treth a godir ar waredu gwastraff mewn safleoedd tirlenwi yng Nghymru'n dreth ddatganoledig ac mae adran 116L(2) yn egluro pryd y mae gwaredu'n waredu mewn safle tirlenwi.

*Mae'r nodiadau hyn yn cyfeirio at y Mesur Cymru drafst
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114. Mae *is-adran* (2) yn sicrhau na ellir codi'r dreth ddatganoledig am waredu gwastraff y mae'r dreth tirlenwi'n gymwys iddo, a thrwy hynny mae'n cysylltu cychwyn y dreth ddatganoledig â datgymhwys o treth tirlenwi yng Nghymru o dan gymal 16.

Cymal 16: Datgymhwys o treth tirlenwi'r DU

115. Mae cymal 16 yn darparu ar gyfer datgymhwys o treth tirlenwi ar waredu gwastraff yng Nghymru drwy gyfeirio at waredu gwastraff ar neu ar ôl dyddiad sydd wedi'i bennu gan Drysorlys EM drwy orchymyn o dan *is-adran* (3). Effaith hyn yw cyfyngu treth tirlenwi i waredu ar wastraff yn Lloegr neu Ogledd Iwerddon yn rhinwedd diwygio adran 40 o Ddeddf Cyllid 1996 o dan *is-adran* (2) (sydd wedi'i diwygio o'r blaen gan Ddeddf yr Alban 2012).

Cymal 17: Benthyc a gan Weinidogion Cymru

116. Mae'r cymal hwn yn diwygio adrannau 121 a 122 o DLIC 2006, ac yn mewnosod adran 122A newydd, i ddiwygio'r amgylchiadau lle y caiff Gweinidogion Cymru fenthyca ac i egluro'r prif reolaethau a chyfyngiadau ar fenthyca o'r fath.
117. Mae'r cymal yn galluogi Gweinidogion Cymru i fenthyca – o dan reolaethau a chyfyngiadau Trysorlys EM – at y dibenion canlynol:
- a) rheoli cyfnewidioldeb y derbyniant yn ystod y flwyddyn, lle y mae gwahaniaeth rhwng yr incwm gwirioneddol ar gyfer mis penodol a'r derbyniant a ragwelwyd ar gyfer y mis hwnnw;
 - b) darparu balans gweithio ar gyfer Cronfa Gyfunol Cymru (CGC) er mwyn rheoli llif arian;
 - c) delio â'r gwahaniaethau rhwng y rhagolwg ar gyfer y flwyddyn gyfan a'r derbyniant alldro ar gyfer trethi datganoledig;
- ch) ariannu gwariant cyfalaf.

118. Mae *is-adran* (1) yn cyflwyno'r diwygiadau i DLIC 2006.
119. Mae *is-adran* (2) yn cyflwyno'r diwygiadau i'r darpariaethau presennol ar fenthyca yn adran 121 o DLIC 2006.
120. Mae *is-adran* (3) yn cymryd lle is-adran (1) yn adran 121. Mae'r *is-adran* (1) newydd:
- yn aildeddfu adrannau 121(1)(a) a (b) o DLIC 2006, sy'n galluogi Gweinidogion Cymru i fenthyca dros dro oddi wrth yr Ysgrifennydd Gwladol i ddarparu balans gweithio ar gyfer CGC ac i reoli cyfnewidioldeb y derbyniant yn ystod y flwyddyn; ac

- yn ymestyn pwerau benthycia presennol Gweinidogion Cymru i gynnwys benthycia oddi wrth yr Ysgrifennydd Gwladol ar draws blynnyddoedd er mwyn ariannu gwyriadau rhwng y rhagolwg ar gyfer y flwyddyn gyfan a derbyniant alldro'r trethi datganoledig.
121. Mae is-adran (3) hefyd yn ychwanegu dwy is-adran newydd yn adran 121((1A) ac (1B)):
- Mae is-adran (1A) yn galluogi Gweinidogion Cymru i fenthyca symiau i ariannu gwariant cyfalaf, ar ôl cael cymeradwyaeth gan Drysorlys EM. Rhaid i'r benthycia fod ar ffurf benthyciad un ai oddi wrth y Gronfa Benthyciadau Cenedlaethol (drwy'r Ysgrifennydd Gwladol) neu oddi wrth ddarparwr benthyciadau arall, fel banc masnachol. Mae'r is-adran newydd yn ei gwneud yn ofynnol bod Gweinidogion Cymru yn benthycia drwy gymryd benthyciadau, ac ni chaniateir iddynt gyhoeddi giltiau neu fondiau Cymreig.
 - Mae is-adran (1B) yn diffinio gwariant cyfalaf. Mae'r diffiniad o wariant cyfalaf wedi'i godi o'r rheolau (sydd wedi'u darparu gan Drysorlys EM i Lywodraeth Cymru) ar gyfer paratoi cyfrifon Gweinidogion Cymru o dan adran 131 o DLIC 2006.
122. Mae *is-adran (4)* yn ddiwygiad canlyniadol i gydnabod y ffaith nad oes rhaid benthycia oddi wrth yr Ysgrifennydd Gwladol ym mhob achos.
123. Mae *is-adran (5)* yn caniatáu i'r Ysgrifennydd Gwladol, drwy orchymyn ac ar ôl cael cydsyniad gan Drysorlys EM, newid y ffynonellau benthycia sydd ar gael i Weinidogion Cymru sydd wedi'u nodi yn yr adran 121(1A) newydd. Rhaid cael cymeradwyaeth gan Dŷ'r Cyffredin i Orchmyntion a wneir o dan yr adran hon drwy'r weithdrefn gadarnhaol.
124. Mae *is-adran (6)* yn cyflwyno'r diwygiadau i'r darpariaethau presennol ar fenthyca yn adran 122 o DLIC 2006.
125. Mae *is-adran (7)* yn pennu bod y terfyn o £500 miliwn sy'n cael ei gymhwys o gyfanswm y prifsymiau sydd heb eu had-dalu a fenthyciwyd o dan yr adran 121 bresennol yn gymwys yn awr i'r pwerau benthycia estynedig sydd wedi'u rhestru yn yr adran 121(1) newydd (hynny yw, nid yw'n cynnwys benthycia ar gyfer gwariant cyfalaf o dan yr is-adran (1A) newydd).
126. Mae *is-adrannau (8) a (9)* yn diwygio adran 122(3) o DLIC 2006 ac yn caniatáu i'r Ysgrifennydd Gwladol, drwy orchymyn ac ar ôl cael cydsyniad gan Drysorlys EM, ddiwygio'r terfyn o £500 miliwn ar fenthyca cyfredol gan Weinidogion Cymru drwy ei godi neu ei ostwng, ond nid yn is na'r terfyn cychwynnol o £500 miliwn ar unrhyw adeg. Mae'r darpariaethau hyn yn galluogi'r Ysgrifennydd Gwladol i gynyddu'r swm o bryd i'w gilydd, er enghraift i gadw'n wastad â chwyddiant neu gwrdd ag amgylchiadau eithriadol. Rhaid cael cymeradwyaeth gan Dŷ'r Cyffredin i Orchmyntion a wneir o dan yr adran hon drwy'r weithdrefn gadarnhaol.

*Mae'r nodiadau hyn yn cyfeirio at y Mesur Cymru drafft
Cyhoeddwyd ar gyfer Craffu cyn y Broses Ddeddfu ar 18 Rhagfyr 2013*

127. Mae *is-adran (10)* yn mewnosod adran 122A newydd yn DLIC 2006 sy'n cynnwys darpariaethau ychwanegol ar fenthyca cyfalaf.
128. Mae adran 122A(1) yn darparu na chaiff cyfanswm y prifsymiau sydd heb eu had-dalu a fenthyciwyd o dan adran 121(1A) – benthycia i ariannu gwariant cyfalaf – fod yn fwy na £500 miliwn. Mae'r ddarpariaeth hon, ynghyd â'r un yn adran 121, yn golygu na all cyfanswm y prifsymiau sydd heb eu had-dalu (gwariant cyfredol a chyfalaf) fod yn fwy nag £1 biliwn.
129. Mae adran 122A(2) a (3) yn caniatáu i'r Ysgrifennydd Gwladol, drwy orchymyn ac ar ôl cael cydsyniad gan Drysorlys EM, ddiwygio'r terfyn o £500 miliwn drwy ei godi neu ei ostwng, ond nid yn is na'r terfyn cychwynnol o £500 miliwn ar unrhyw adeg. Rhaid cael cymeradwyaeth i Orchmynion gan Dŷ'r Cyffredin drwy'r weithdrefn gadarnhaol, yn unol â'r is-adran 122A(4) newydd.
130. Mae adran 122A(5), (6) a (7) yn cynnwys rheolau ychwanegol ar fenthyca gan Weinidogion Cymru i ariannu gwariant cyfalaf. Yn benodol:
 - Mae is-adran (5) yn darparu nad yw darparwyr benthyciadau wedi'u rhwymo i wneud ymholiadau am y pŵer i fenthyca (er enghraifft drwy holi a yw Llywodraeth Cymru wedi torri ei therfynau benthycia neu a yw'n gweithredu heb gymeradwyaeth Trysorlys EM). Heb ddarpariaeth o'r fath, byddai gan ddarparwyr benthyciadau le i ofni y byddai amheuaeth ynghylch y pŵer i fenthyca'n peri nad oedd modd gorfodi ad-daliadau am fenthyciadau a gallent ystyried Llywodraeth Cymru yn fenthyciwr peryglus.
 - Mae is-adran (6) yn datgan bod Gweinidogion Cymru wedi'u gwahardd rhag morgeisio neu arwystlo unrhyw eiddo i warantu arian y maent wedi'i fenthyca (ond nid yw hyn yn effeithio ar y rheol yn adran 121(3) o DLIC 2006 bod benthyciadau i'w codi ar CGC).
 - Mae is-adran (7) yn darparu na ellir cymryd camau gorfodi ynghylch unrhyw warant a roddwyd yn groes i is-adran (6).

Cymal 18: Diddymu'r pwerau benthycia presennol

131. Mae'r cymal hwn yn diddymu'r paragraffau yn Atodlen 3 i Ddeddf Awdurdod Datblygu Cymru 1975 sy'n ymwneud â benthycia a gwarantu.
132. Mae *is-adran (1)* yn diddymu paragraff 3 (pŵer i Weinidogion Cymru i fenthyca arian) a pharagraff 6 (pŵer i Drysorlys EM i warantu arian sydd wedi'i fenthyca o dan baragraff 3) yn Atodlen 3 i Ddeddf Awdurdod Datblygu Cymru 1975.
133. Mae *is-adran (2)* yn datgan nad yw'r diddymiadau yn is-adran (1) yn effeithio ar yr atebolrwydd sydd ar Weinidogion Cymru o hyd i ad-dalu arian a fenthyciwyd o'r

blaen o dan baragraff 3, nac ar unrhyw warant a roddwyd o'r blaen gan Drysorlys EM o dan baragraff 6.

134. Mae *is-adrannau* (3), (4) a (5) yn pennu y bydd cyfanswm y prifsymiau sy'n ddyledus ar ôl eu benthyc a gyfer gwariant cyfalaf o dan baragraff 3, yn union cyn i is-adran (1) ddod i rym, yn cyfrif tuag at y terfyn ar fenthyc a cyfalaf sydd wedi'i nodi yn yr adran 122A(1) newydd.

Cymal 19: Adroddiadau ar gyflawni a gweithredu'r Rhan hon

135. Mae'r cymal hwn yn disgrifio'r gofynion a fydd ar yr Ysgrifennydd Gwladol a Gweinidogion Cymru i adrodd ar gyflawni a gweithredu'r pwerau cyllid newydd.
136. Mae *is-adrannau* (1) a (3) yn ei gwneud yn ofynnol bod yr Ysgrifennydd Gwladol yn cyhoeddi adroddiad ar gyflawni a gweithredu'r darpariaethau cyllid yn Rhan 2 o fewn un flwyddyn ar ôl pasio'r Ddeddf ac wedyn cyn pob pen blwydd ar ôl pasio'r Ddeddf. Rhaid parhau i gyhoeddi'r adroddiadau hyn tan flwyddyn ar ôl trosglwyddo'r pwerau trethu a benthyc a'n llwyr i'r Cynulliad ac i Weinidogion Cymru, yn unol ag *is-adran* (4). Rhaid gosod copïau o'r adroddiadau hyn gerbron dau Dŷ'r Senedd a'u hanfon at Weinidogion Cymru. Rhaid i Weinidogion Cymru osod yr adroddiadau gerbron y Cynulliad.
137. Mae *is-adrannau* (2) a (3) yn ei gwneud yn ofynnol bod Gweinidogion Cymru yn gwneud ac yn gosod adroddiadau o'r un math gerbron y Cynulliad gan ddilyn yr un amserlen, tan y cyfryw amser sydd wedi'i bennu yn is-adran (4), ac yn darparu copi o bob adroddiad i'r Ysgrifennydd Gwladol i'w osod gerbron dau Dŷ'r Senedd.
138. Mae *is-adrannau* (5) a (6) yn egluro sut y penderfynir bod darpariaeth yn Rhan 2 wedi'i chyflawni, er mwyn pennu am ba hyd y bydd yn rhaid parhau i gyhoeddi'r adroddiadau .
139. Mae *is-adran* (7) yn rhestru'r meysydd y mae'n rhaid eu cynnwys ym mhob adroddiad:
- diweddariad ar bob agwedd ar gynnydd tuag at gyflawni'r darpariaethau yn Rhan 2 ers yr adroddiad blaenorol;
 - unrhyw gamau pellach y dylid eu cymryd i gyflawni'r darpariaethau yn Rhan 2;
 - asesiad o weithrediad y darpariaethau yn Rhan 2 sydd wedi'u cyflawni;
 - asesiad o unrhyw newidiadau yn y darpariaethau yn Rhan 2;

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- e) yr effaith ar floc grant Cymru o ganlyniad i drosglwyddo pwerau trethu;
- f) unrhyw faterion eraill sy'n ymwneud â ffynonellau refeniw'r Cynulliad y dylid eu dwyn i sylw'r Senedd neu'r Cynulliad.
140. Nes ceir pleidlais o blaid rhoi'r darpariaethau ar dreth incwm mewn grym, mae *is-adran* (8) yn eithrio adrannau 8 a 9 (darpariaethau ar dreth incwm) o'r datganiadau sy'n ofynnol o dan *is-adran* (7)(a) a (7)(b).

RHAN 3: AMRYWIOL

Cymal 20: Awdurdodau tai lleol: terfynau ar ddyled y cyfrif refeniw tai

141. Mae cymal 20 yn diwygio Rhan 6 o Ddeddf Llywodraeth Leol a Thai 1989 ("Deddf 1989").
142. Mae'r cymal hwn yn galluogi'r Trysorlys i osod terfyn ar lefel uchaf y ddyled tai y mae awdurdodau tai lleol ("ATLlau") Cymru yn cael ei dal, gyda'i gilydd, ac yn ei gwneud yn ofynnol bod Gweinidog Cymru yn penderfynu pa faint o ddyled tai y caiff pob ATLl ei dal o dan y terfyn hwnnw. Mae hyn yn creu system debyg yng Nghymru i'r un sy'n gymwys yn Lloegr yn rhinwedd adrannau 171 – 173 o Ddeddf Lleoliaeth 2011.
143. Mae *is-adran* (1) yn cyflwyno'r diwygiadau i Ddeddf 1989.
144. Mae *is-adran* (2) yn mewnosod adran 76A newydd yn Neddf 1989. Mae'n darparu:
- y caiff y Trysorlys benderfynu ar uchafswm y ddyled tai y caiff ATLlau Cymru ei dal gyda'i gilydd;
 - bod rhaid i'r Trysorlys anfon copi o'i benderfyniad at Weinidogion Cymru a gosod copi ohono gerbron Tŷ'r Cyffredin;
 - y caiff Gweinidogion Cymru wneud penderfyniadau o bryd i'w gilydd yngylch pob ATLl am faint y ddyled tai yr ystyrir ei fod yn ei dal ac uchafswm y ddyled tai y caiff ei dal;
 - na fydd y cyfanswm y caiff Gweinidogion Cymru ei benderfynu fod yn fwy na'r swm sydd wedi'i benderfynu gan y Trysorlys;
 - bod rhaid i Weinidogion Cymru wneud penderfyniadau o fewn 6 mis ar ôl cael penderfyniad gan y Trysorlys;
 - diffiniad o ddyled tai sef dyled sy'n cael ei dal gan yr ATLl yng nghyswllt swyddogaethau tai'r ATLl ac eiddo arall yn ei Gyfrif Refeniw Tai.

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145. Mae *is-adran (3)* yn diwygio adran 85 o Ddeddf 1989 fel bod Gweinidogion Cymru yn gallu defnyddio'r pwerau y mae'n eu darparu i gael gwybodaeth gan ATLLau at ddibenion yr adran 76A newydd.
146. Mae *is-adran (4)* yn cyflwyno diwygiadau i adran 87 o Ddeddf 1989 (sy'n darparu ar gyfer y ffordd o wneud penderfyniadau a hysbysu ATLLau amdanynt).
147. Mae *is-adran (5)* yn newid cyfeiriadau yn adran 87 at "Secretary of State" yn "appropriate person". Y diffiniad o "appropriate person" yn adran 88 o Ddeddf 1989 yw'r Ysgrifennydd Gwladol yn Lloegr a Gweinidogion Cymru yng Nghymru.
148. Mae *is-adran (6)* yn darparu nad yw *is-adran (1)(b)* o adran 87 (sy'n darparu y gellir gwneud penderfyniadau cyn, yn ystod neu ar ôl diwedd y flwyddyn y maent yn ymwneud â hi) yn gymwys i benderfyniadau sydd wedi'u gwneud gan Weinidogion Cymru o dan yr adran 76A newydd.
149. Mae *is-adran (7)* yn cymhwys o'r term "appropriate person" a ddiffiniwyd at adran 87(2).

Cymal 21: Gwaith gan Gomisiwn y Gyfraith sy'n ymwneud â Chymru

150. Mae'r pwerau sydd gan Gomisiwn y Gyfraith ar hyn o bryd ar gyfer cyngori Llywodraeth Cymru yn aneglur. Ar hyn o bryd, adrannau llywodraeth y DU yw'r unig rai sy'n cyfeirio materion sy'n ymwneud â diwygio cyfraith Cymru a Lloegr, er y gall Llywodraeth Cymru ofyn i'r adrannau hyn gyfeirio materion ar ran Llywodraeth Cymru.
151. Mae cymal 21 yn mewnosod darpariaethau newydd yn Neddf Comisiynau'r Gyfraith 1965 ("Deddf 1965") er mwyn gosod dyletswydd newydd ar Gomisiwn y Gyfraith i ddarparu cyngor a gwybodaeth yn uniongyrchol i Weinidogion Cymru. Mae hyn yn ei gwneud yn glir y bydd Gweinidogion Cymru yn gallu cyfeirio materion sy'n ymwneud â diwygio'r gyfraith at Gomisiwn y Gyfraith eu hunain.
152. Mae *is-adran 3* o'r cymal hwn yn darparu nad yw'n ofynnol bod yr Arglwydd Ganghellor, wrth baratoi adroddiadau ar gynigion gan Gomisiwn y Gyfraith o dan yr adran 3A bresennol yn Neddf 1965, yn adrodd ar gynigion y bydd yn ofynnol i Weinidogion Cymru adrodd arnynt o dan yr adran 3C newydd.
153. Mae adran 3C newydd wedi'i mewnosod yn Neddf 1965 gan *is-adran 4* o gymal 21 i ddarparu bod rhaid i Weinidogion Cymru lunio adroddiad blynnyddol i'w osod gerbron y Cynulliad. Rhaid i'r adroddiad gynnwys manylion unrhyw gynigion gan Gomisiwn y Gyfraith sy'n ymwneud â materion a ddatganolwyd i Gymru ac sydd, ers yr adroddiad diwethaf, un ai wedi'u cyflawni neu heb gael eu cyflawni eto.
154. Y diffiniad o gynigion gan Gomisiwn y Gyfraith yw unrhyw gynnig neu argymhelliaid i ddiwygio'r gyfraith sydd wedi'i gyhoeddi mewn adroddiad gan Gomisiwn

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y Gyfraith. Bydd cynnig gan Gomisiwn y Gyfraith yn ymwneud â materion a ddatganolwyd i Gymru ("Welsh devolved matters") os yw o fewn cymhwysedd deddfwriaethol y Cynulliad neu os yw'n fater sy'n ymwneud â swyddogaethau y gellir eu harfer gan Weinidogion Cymru, y Prif Weinidog, Cwnsler Cyffredinol Llywodraeth Cymru neu Gomisiwn Cynulliad Cenedlaethol Cymru.

155. Os cafwyd cynigion yn y flwyddyn flaenorol sydd eto i'w cyflawni, rhaid cynnwys cynlluniau ar gyfer eu cyflawni, unrhyw benderfyniadau i beidio â'u cyflawni, a'r rhesymau dros unrhyw benderfyniad o'r fath, yn adroddiad Gweinidogion Cymru. Os nad oes unrhyw gynigion a gafwyd gan Gomisiwn y Gyfraith yn y flwyddyn ers yr adroddiad blaenorol ar faterion a ddatganolwyd i Gymru sydd heb eu cyflawni, ni fydd yn ofynnol i Weinidogion Cymru lunio adroddiad i'r Cynulliad.
156. Mae is-adran (4) o gymal 21 hefyd yn mewnosod adran 3D newydd yn Nedd 1965 i ddarparu ar gyfer protocol ynghylch gwaith gan Gomisiwn y Gyfraith sy'n ymwneud â Chymru. Byddai Comisiwn y Gyfraith a Gweinidogion Cymru yn cytuno ar y protocol a ddefnyddir ar gyfer gwaith gan Gomisiwn y Gyfraith sy'n ymwneud â materion a ddatganolwyd i Gymru.
157. Mae'n ofynnol bod yr Arglwydd Ganghellor yn cymeradwyo'r protocol, a all gynnwys darpariaeth ynghylch yr egwyddorion a'r dulliau i'w cymhwyswrth benderfynu pa waith y bydd Comisiwn y Gyfraith yn ei gyflawni, y cyngor a'r wybodaeth y bydd Comisiwn y Gyfraith a Gweinidogion Cymru yn rhoi i'w gilydd, a'r ffordd y bydd Gweinidogion Cymru yn delio â chynigion gan Gomisiwn y Gyfraith. Mae'r is-adran hon wedi'i geirio mewn ffordd sy'n caniatáu hyblygrwydd ynghylch darpariaethau'r protocol, er enghraifft yng nghyswllt ariannu ac agweddu ymarferol eraill ar faterion a gaiff eu cyfeirio gan Weinidogion Cymru.
158. Mae is-adran (4) hefyd yn darparu bod rhaid adolygu'r protocol yn gyson a bod rhaid ei osod gerbron y Cynulliad. Mae'n rhoi dyletswydd benodol hefyd ar Weinidogion Cymru a Chomisiwn y Gyfraith i ddal sylw ar y protocol.
159. Mae *is-adran 5* o gymal 21 yn gwneud diwygiad bach yn adran 5 o Ddeddf 1965 i egluro y bydd treuliau Comisiwn y Gyfraith bellach yn deillio nid yn unig o'r Senedd ond oddi wrth Weinidogion Cymru hefyd.

RHAN 4: CYFFREDINOL

Cymal 22: Gorchmynion

160. Mae cymal 22 yn pennu y bydd unrhyw orchymyn a wneir o dan y Ddeddf hon yn cael ei wneud drwy offeryn statudol.

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Cymal 23: Dehongli

161. Cymal 23 yw'r cymal dehongli ar gyfer y Mesur drafst.

Cymal 24: Pŵer i wneud darpariaeth atodol, ganlyniadol, etc

162. Mae *is-adran (1)* o gymal 24 yn rhoi pŵer i Drysorlys EM i wneud darpariaeth atodol, gysylltiedig neu ganlyniadol, drwy wneud gorchymyn, yn ôl yr hyn sy'n ymddangos yn briodol i roi'r darpariaethau yn Rhan 2 (cyllic) mewn grym. Gellir defnyddio gorchymynion o'r fath hefyd i wneud darpariaeth drosiannol, ddarfodol neu arbed yn ôl yr hyn sy'n ymddangos yn briodol. Mae *is-adran (3)* yn egluro bod gorchymyn sydd wedi'i wneud o dan yr adran hon yn gallu addasu'r Ddeddf ei hun, neu ddeddfiad sydd wedi'i basio cyn y Ddeddf hon neu yn yr un sesiwn â'r Ddeddf hon.
163. Mae'r darpariaethau hyn yn rhoi hyblygrwydd i Drysorlys EM i ddiwygio deddfwriaeth, er enghraifft, er mwyn paratoi ar gyfer rhoi'r darpariaethau ar dreth incwm (yng nghymalau 8 a 9) mewn grym ar ôl pleidlais o blaid hynny mewn refferendwm (y darperir ar ei gyfer o dan gymalau 10 ac 11).
164. Mae *is-adran (4)* yn ei gwneud yn ofynnol bod gorchymyn yn cael ei gymeradwyo gan Dŷ'r Cyffredin os yw'n cynnwys darpariaeth sy'n diwygio deddfwriaeth sylfaenol sydd wedi'i gwneud yn y Senedd neu'r Cynulliad. Os nad yw'n cynnwys darpariaeth o'r fath, mae *is-adran (5)* yn pennu y bydd y weithdrefn penderfyniad negyddol yn cael ei defnyddio.

Cymal 25: Cychwyn

165. Mae cymal 25 yn egluro sut y bydd adrannau'r Mesur yn cael eu cychwyn. Mae *is-adran (1)* yn pennu y bydd Rhan 4 (gan gynnwys yr adran hon) yn dod i rym ar y diwrnod y caiff y Ddeddf ei phasio. O dan *is-adran (2)*, bydd adrannau eraill y Mesur yn dod i rym ddau fis ar ôl pasio'r Ddeddf, ac eithrio adrannau 8 a 9 (y darpariaethau ar dreth incwm), adrannau 17 a 18 (benthyc a Weinidogion Cymru) ac adran 20 (awdurdodau tai lleol: terfynau ar ddyled y cyfrif refeniw tai).
166. Mae *is-adran (3)* yn egluro bod y camau i roi adrannau 13 a 14 (treth Gymreig ar drafodion tir) ac adrannau 14 a 15 (treth Gymreig ar waredu gwastraff mewn safleoedd tirlenwi) mewn grym yn ddarostyngedig i'r darpariaethau yn yr adrannau hynny am y ffordd y byddant yn cael eu gweithredu.
167. Mae *is-adran (4)* yn darparu ar gyfer rhoi'r darpariaethau ar dreth incwm yn adrannau 8 a 9 mewn grym ar ôl pleidlais gadarnhaol mewn refferendwm yn unol ag adran 12. Mae *is-adran (5)* yn darparu ar gyfer rhoi adrannau 17 a 20 mewn grym ar ddiwrnod a gaiff ei bennu drwy orchymyn gan Drysorlys EM. Mae *is-adran (6)* yn caniatáu i Drysorlys EM bennu diwrnodau gwahanol at ddibenion gwahanol wrth roi adran 17 ac adran 20 mewn grym. Mae *is-adran (7)* yn darparu ar gyfer rhoi adran 18 mewn grym ar y diwrnod y mae adran 121(1A) o DLIC 2006, sydd wedi'i mewnosod gan

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adran 17, yn dod i rym. Mae hyn yn sicrhau bod y pŵer benthyc a presennol yn cael ei ddiddymu ar yr un pryd ag y mae'r pŵer newydd yn dod i rym.

Cymal 26: Rhychwant a theitl byr

168. Mae cymal 26 yn pennu rhychwant tiriogaethol a theitl byr y Mesur.

Atodlen 1: Refferendwm ynghylch cychwyn darpariaethau ar dreth incwm

169. Mae Atodlen 1 yn disgrifio fframwaith ar gyfer cynnal refferendwm ynghylch rhoi'r darpariaethau ar dreth incwm mewn grym. Mae wedi'i drafftio gan ddefnyddio termau tebyg i'r rhai yn Atodlen 6 i DLIC 2006. Yn benodol, mae'n pennu pwy a fydd yn gymwys i bleidleisio, sut y caiff gwybodaeth ei darparu i bleidleiswyr, sut y caiff y refferendwm ei ariannu a sut y gellir herio'r canlyniad yn gyfreithiol. Mae'r Atodlen yn rhoi mwy o fanylion hefyd am y darpariaethau i'w cynnwys mewn Gorchymyn yn y Cyfrin Gyngor a wneir o dan gymal 10.

Atodlen 2: treth Gymreig ar drafodion tir: diwygiadau canlyniadol

170. Mae Rhan 1 o'r Atodlen yn cynnwys diwygiadau pellach sy'n ymwneud â datgymhwysos TDDS yng Nghymru ac mae Rhan 2 yn darparu ar gyfer cyflenwi gwybodaeth i CThEM am drafodion tir yng Nghymru (gan na fydd y wybodaeth hon ar gael bellach i CThEM mewn datganiadau am drafodion tir).

EFFEITHIAU ARIANNOL

171. Mae effeithiau ariannol uniongyrchol y Mesur yn fach iawn.

GWEITHLU'R SECTOR CYHOEDDUS

172. Rhagwelir na fydd unrhyw newidiadau yn staff adrannau'r Llywodraeth na'u hasiantaethau o ganlyniad i'r Mesur hwn.

ASESIAD ENFAITH

173. Mae asesiad enfaith cryno wedi'i baratoi i gyd-fynd â'r Mesur drafft.

CYDNAWSEDD Â'R CONFENSIWN EWROPEAIDD AR HAWLIAU DYNOL

174. Mae adran 19(1)(a) o Ddeddf Hawliau Dynol 1998 yn ei gwneud yn ofynnol bod y Gweinidog sy'n gyfrifol am y Mesur yn gwneud datganiad sy'n cadarnhau ei fod yn gydnaws â'r Confensiwn Ewropeaidd ar Hawliau Dynol ("CEHD").

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175. Mae Swyddfa Cymru wedi dadansoddi'r Mesur o ran ei gydnawsedd â'r CEHD ac mae wedi'i bodloni y bydd y Gweinidog perthnasol mewn sefyllfa, wrth gyflwyno'r Mesur, lle y bydd yn gallu gwneud datganiad yn unol ag adran 19(1)(a) o Ddeddf Hawliau Dynol 1998 a bod y darpariaethau sydd yn y Mesur yn gydnaws â'r hawliau sydd yn y CEHD. Credir ei bod yn annhebygol y bydd darpariaethau'r Mesur yn cael eu herio ar y sail eu bod yn anghydnaus â'r CEHD, neu y byddai her o'r fath yn llwyddiannus.

		Impact Assessment (IA)
Title: Asesiad Effaith o'r Mesur Cymru drafft		Date: 18/12/2013
IA No:		Stage: Final
Lead department or agency: Swyddfa Cymru		Source of intervention: Domestic
Other departments or agencies: Trysorlys EM, Cyllid a Thollau EM, Adran Gwaith a Phensiynau		Type of measure: Primary legislation
		Contact for enquiries: Peter Newbitt 029 2092 4205

Summary: Intervention and Options	RPC Opinion: Not Applicable
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Cost of Preferred (or more likely) Option				
Total Net Present Value £m	Business Net Present Value £m	Net cost to business per year (EANCB on 2009 prices) £m	In scope of One-In, Two-Out? Yes/No	Measure qualifies as In/Out/zero net cost

What is the problem under consideration? Why is government intervention necessary?

Mae'r Llywodraeth wedi ymrwymo i droi tymhorau'r Cynulliad yn dymhorau penodol 5 mlynedd, i wrth-droi'r gwaharddiad ar sefyll yn ymgeisydd i'r Cynulliad mewn etholaeth ac mewn rhanbarth, ac i atal ACau rhag eistedd hefyd fel ASau. Mae'r Mesur Cymru drafft yn gweithredu'r argymhellion yn adroddiad Rhan I y Comisiwn ar Ddatganoli yng Nghymru (Comisiwn Silk) a gyhoeddwyd ym mis Tachwedd 2012, gan gynnwys y posiblirwydd o gynnal refferendwm ar ddatganoli pwerau dros dreth incwm i Gynulliad Cenedlaethol Cymru a datganoli trethi sy'n codi symiau llai. Rhoddir terfyn ar system Cymhorthdal y Cyfrif Refeniw Tai yng Nghymru ac mae angen cyflwyno capiau ar fenthyc a dan system ar gyfer y dyfodol

What are the policy objectives and the intended effects?

Byddai'r Mesur drafft yn troi tymhorau'r Cynulliad yn dymhorau penodol 5 mlynedd er mwyn ei gwneud yn llai tebygol y bydd etholiadau i'r Cynulliad yn digwydd yr un pryd ag etholiadau seneddol y DU, ac yn cyflwyno darpariaethau etholiadol ychwanegol i wneud etholiadau i'r Cynulliad yn decach. Os caiff y Mesur drafft ei wneud yn Ddeddf bydd Llywodraeth Cymru a Chynulliad Cenedlaethol Cymru yn gyfrifol am y tro cyntaf am godi cyfran o'r arian y maent yn ei wario. Yr amcan yn hyn o beth yw caniatáu i bobl Cymru ddal y sefydliadau datganoledig yng Nghymru yn atebol am yr arian y maent yn ei wario. Os caiff y Mesur drafft ei wneud yn Ddeddf, bydd hefyd yn darparu ar gyfer gosod capiau ar fenthyc gan awdurdodau lleol yng

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Cafwyd ymgynghoriad cyhoeddus ar y darpariaethau yngylch etholiadau i'r Cynulliad rhwng Mai ac Awst 2012. Cyhoeddwyd crynodeb o'r ymatebion ym mis Tachwedd 2012. Mae Llywodraeth y DU a Llywodraeth Cymru wedi cytuno i gapio benthyca gan awdurdodau lleol sy'n bwriadu rheoli eu stoc dai eu hunain. Roedd yr argymhellion gan y Comisiwn ar Ddatganoli yng Nghymru wedi'u seilio ar dystiolaeth a gymerodd ledled Cymru a thu hwnt ac, ym mis Tachwedd 2013, derbyniodd Llywodraeth y DU argymhellion y Comisiwn i roi mwy o atebolwydd ariannol i'r sefydliadau datganoledig yng Nghymru.

Will the policy be reviewed? It will/will not be reviewed. If applicable, set review date: Month/Year

Does implementation go beyond minimum EU requirements?	N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro No	< 20 No	Small No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded:		Non-traded:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister:

Date:

Summary: Analysis & Evidence

Policy Option 1

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)			
			Low: Optional	High: Optional	Best Estimate:	
COSTS (£m)		Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)	
Low	Optional		Optional	Optional	Optional	
High	Optional		Optional	Optional	Optional	
Best Estimate						
Description and scale of key monetised costs by 'main affected groups'						
Bydd y gost o ddarparu pŵer i'r sefydliadau datganoledig yng Nghymru i wneud penderfyniadau ynghylch sut y byddant yn codi rhan o'r arian y maent yn ei wario yn ddarostyngedig i benderfyniadau polisi yn y dyfodol gan y Cynulliad a Llywodraeth Cymru, gan gynnwys a gynhelir refferendwm ar ddatganoli pwerau dros dreth incwm. Y capiau ar fenthyc a awdurdodau lleol. Nid oes cost sylweddol yn gysylltiedig â'r darpariaethau etholiadol yn y Mesur drafft na'r darpariaethau cyfansoddiadol bach eraill						
Other key non-monetised costs by 'main affected groups'						
Llywodraeth Cymru: Byddai datganoli pwerau trethu'n gwneud y gyllideb yn fwy cyfnewidiol.						
BENEFITS (£m)		Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)	
			Optional	Optional	Optional	
Low	Optional		Optional	Optional	Optional	
High	Optional		Optional	Optional	Optional	
Best Estimate						
Description and scale of key monetised benefits by 'main affected groups'						
Bydd troi tymhorau'r Cynulliad yn dymhorau penodol 5 mlynedd yn rhoi arbediad bach sydd wedi'i amcangyfrif yn £4.5 miliwn yn nhermau Gwerth Presennol Net gan y bydd etholiadau'r Cynulliad yn digwydd yn llai aml. Bydd y gost o ddarparu pŵer i'r sefydliadau datganoledig yng Nghymru i wneud penderfyniadau ynghylch sut y byddant yn codi rhan o'r arian y maent yn ei wario yn ddarostyngedig i benderfyniadau polisi yn y dyfodol gan y Cynulliad a Llywodraeth Cymru, gan gynnwys a gynhelir						
Other key non-monetised benefits by 'main affected groups'						
Llywodraeth Cymru: Y gallu i fenthyc a symiau mwy i ariannu prosiectau a gwasanaethau ychwanegol; Llywodraeth y DU: Bydd capiau ar fenthyc a awdurdodau lleol yn hyrwyddo benthyca a gwariant mwy darbodus, ac yn atal benthyca di-hid rhag cyfrannu at y ddyled genedlaethol. Etholwyr Cymru: Y gallu i ddal y sefydliadau datganoledig yng Nghymru yn atebol am yr arian y maent yn ei wario						
Key assumptions/sensitivities/risks			Discount rate (%)			
Amherthnasol.						

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:	In scope of OIOT?	Measure qualifies as
Costs: Benefits: Net:	No	NA

Sylfaen Dystiolaeth (ar gyfer y taflenni crynodeb)

Y Mesur Cymru drafft

Mae'r Mesur Cymru drafft yn cynnwys 26 o gymalau ac mae'r Asesiad Effaith hwn yn trafod 18 o'r rhain. Mae'r cymalau sy'n weddill o natur gyfansoddiadol ac felly nid ydynt o fewn cwmpas yr Asesiad Effaith hwn. Mae'r sylfaen dystiolaeth sy'n dilyn yn delio â'r meysydd allweddol yn y Mesur drafft fusul un. Byddai'r mesurau ynghylch trethiant sydd wedi'u darparu yn y Mesur drafft yn cael eu gweithredu gan Lywodraeth Cymru a Chynulliad Cenedlaethol Cymru ("y Cynulliad") felly mae'n amhosibl pennu union faint unrhyw gostau sy'n gysylltiedig â threthi o'r fath yn yr Asesiad Effaith hwn.

1. MESURAU ETHOLIADOL YN Y MESUR CYMRU DRAFFT

Mabwysiadu tymhorau pum mlynedd

Disgrifiad o'r mesurau

Mae Deddf Seneddau Tymor Penodol 2011 wedi symud etholiadau nesaf y Cynulliad ymlaen un flwyddyn i 2016 am unwaith yn unig fel na fyddant yn digwydd yr un pryd ag etholiadau seneddol nesaf y DU yn 2015. O dan y papur Gwydd ar Drefniadau Etholiadol y Dyfodol ar gyfer Cynulliad Cenedlaethol Cymru ("y Papur Gwydd") ymgyngorodd y Llywodraeth ar gynnig i ymestyn tymhorau'r Cynulliad yn barhaol i bum mlynedd er mwyn ei gwneud yn llai tebygol iddynt gyd-ddigwydd ag etholiadau seneddol yn y dyfodol. Ar ôl yr ymgyngoriad, ym Mawrth 2013 cyhoeddodd Ysgrifennydd Gwladol Cymru y bydd etholiadau'n digwydd bob pum mlynedd o 2016, ac mae'r Mesur drafft yn darparu ar gyfer hyn.

Opsiynau a ystyriwyd

Yr opsiwn arall yr ymgyngorodd y Llywodraeth arno oedd peidio â gwneud dim, gan sicrhau bod tymor y Cynulliad yn parhau'n 4 blynedd o hyd, fel bod posibilrwydd y bydd y ddwy set o etholiadau'n cyd-ddigwydd bob 20 mlynedd. Gwrthodwyd yr opsiwn hwn gan fwyafir yr ymatebwyr i'r ymgyngoriad a oedd o blaid mabwysiadu tymhorau penodol 5 mlynedd.

Costau a buddion sy'n gysylltiedig â mabwysiadu tymhorau 5 mlynedd

Byddai ymestyn tymhorau'r Cynulliad o bedair i bum mlynedd yn galw am gynnal etholiadau i'r Cynulliad yn llai aml. Nododd y Papur Gwydd mai cost gweinyddu etholiadau'r Cynulliad yw £5.0 miliwn yn nhermau prisiau 2012/13 (£5.12 miliwn yn nhermau prisiau 2013/14), ac maent hefyd yn costio £1.1 miliwn pellach i bleidiau gwleidyddol yn nhermau prisiau 2012/13 (£1.12 miliwn yn nhermau prisiau 2013/14), felly byddai hyn yn rhoi arbediad bach o £4.4 miliwn yn nhermau Gwerth Presennol Net (£4.5 miliwn yn nhermau Gwerth Presennol Net 2013/14).

Ymgeisyddiaeth ddeuol

Disgrifiad o'r mesurau

Mae'r darpariaethau yn y Mesur drafft yn gwrth-droi'r gwaharddiad ar ymgeiswyr yn etholiadau'r Cynulliad rhag sefyll mewn etholaeth ac mewn rhanbarth yr un pryd, a gyflwynwyd yn Neddf Llywodraeth Cymru 2006. Ymgyngorodd y Llywodraeth ar hyn yn y Papur Gwydd, ac ym Mawrth 2013 cyhoeddodd Ysgrifennydd Gwladol Cymru y bydd y gwaharddiad yn cael ei ddileu.

Opsiynau a ystyriwyd

Gofynnwyd hefyd yn y Papur Gwydd am sylwadau ynghylch a ddylai'r gwaharddiad barhau. Roedd mwyafir bach o ymatebwyr o blaid cadw'r gwaharddiad, ond nid yw'r Llywodraeth yn credu bod dadl ddigon cryf wedi'i chyflwyno o blaid hyn yn yr ymatebion i'r ymgyngoriad.

Costau a buddion sy'n gysylltiedig â chyflwyno ymgeisyddiaeth ddeuol

Yn y Papur Gwydd, ni nodwyd unrhyw gostau ychwanegol a fyddai'n gysylltiedig â gwrth-droi'r gwaharddiad ar ymgeisyddiaeth ddeuol. Byddai terfynu'r gwaharddiad yn fanteisiol i'r broses ddemocratiaidd yng Nghymru hefyd drwy gyfyngu i lai o raddau ar ymgeiswyr a phleidiau, a byddai'n hyrwyddo safon uwch o aelodau yn y Cynulliad.

Gwahardd mandadau lluosog

Disgrifiad o'r mesurau

Mae'r Mesur drafft yn cynnwys darpariaethau i atal Aelod Seneddol rhag eistedd yn Aelod Cynulliad yr un pryd, ar ôl cyfnod gras o 8 diwrnod. Ymgynghorodd y Llywodraeth ar hyn yn y Papur Gwydd a chyhoeddodd ym Mai 2013 y bydd gwaharddiad o'r fath yn cael ei gyflwyno. Mae'r Mesur drafft yn darparu ar gyfer hyn.

Opsiynau a ystyriwyd

Gofynnwyd hefyd yn y Papur Gwydd am sylwadau ynghylch a ddylid cadw'r sefyllfa bresennol, gan ganiatáu i ASau eistedd yn ACau hefyd. Roedd mwyafrif yr ymatebwyr yn gwrthod yr opsiwn hwn gan ffafrio gwaharddiad.

Costau a buddion sy'n gysylltiedig â gwahardd mandadau lluosog

Nododd y Papur Gwydd fod cost ddichonol o £13,600 y flwyddyn i'r Cynulliad am weithredu'r darpariaethau, gan fod cyflogau ACau sydd hefyd yn eistedd yn ASau yn ddwy ran o dair yn llai, a byddai gwahardd trefniadau o'r fath yn golygu bod angen talu cyflog llawn i fwy o ACau. Fodd bynnag, byddai etholwyr yng Nghymru ar eu hennill o wybod eu bod yn cael eu cynrychioli'n llawn gan y rhai y maent yn eu hethol.

2. MESURAU TRETHU YN Y MESUR DRAFFT

Trethi newydd

Disgrifiad o'r mesurau

Roedd y Comisiwn ar Ddatganoli yng Nghymru wedi argymhell i gyflogu trethi penodol, gyda chytundeb Llywodraeth y DU. Mae Llywodraeth y DU wedi derbyn yr argymhelliaid hwn, ar yr amod y bydd ar sail yr egwyddor o "ddim niwed", fel y bydd y grant bloc yn cael ei addasu os rhagwelir y bydd treth newydd yng Nghymru'n lleihau refeniwr Trysorlys.

Opsiynau polisi

Yn ei ymgynghoriad, gofynnodd y Comisiwn am sylwadau ynghylch a ddylai Llywodraeth Cymru gael y gallu i gyflwyno trethi newydd. Roedd dadansoddiad o'r ymatebion yn dangos bod 48% yn erbyn unrhyw newid o'r fath, er bod arolwg barn ar wahân a gomisiynwyd gan y Comisiwn yn dangos bod 72% o'r ymatebwyr o blaid rhoi'r gallu i Lywodraeth Cymru i gyflwyno trethi newydd er mwyn newid ymddygiad pobl mewn ffordd debyg i'r taliadau am fagiau siopa sydd wedi'u cyflwyno.

Costau a buddion sy'n gysylltiedig â threthi newydd yng Nghymru

Ar hyn o bryd nid yw'n bosibl pennu'r costau neu effeithiau o unrhyw drethi newydd y byddai Llywodraeth Cymru yn ceisio eu cyflwyno yn y dyfodol (gyda chytundeb Llywodraeth y DU), gan y byddai penderfyniadau ynghylch sut i weinyddu a chasglu'r trethi hynny'n fater i Lywodraeth Cymru.

Treth incwm

Disgrifiad o'r mesurau trethu

Roedd y cylch gorchwyl ar gyfer Rhan I o'r Comisiwn ar Ddatganoli yng Nghymru ("y Comisiwn") yn nodi mai ei rôl oedd "Adolygu'r dadleuon o blaidd datganoli pwerau cyllidol i Gynulliad Cenedlaethol Cymru ac argymhell pecyn o bwerau a fyddai'n gwella atebolrwydd ariannol y Cynulliad, sy'n gyson ag amcanion cyllidol y Deyrnas Unedig ac yn debygol o dderbyn cefnogaeth eang". Egwyddor sylfaenol y mesurau trethu yn y Mesur yw cyfnewid rhan o'r grant bloc am bŵer i'r Cynulliad godi rhywfaint o'i refeniw ei hun drwy godi trethi, gan wneud y Cynulliad a Llywodraeth Cymru yn fwy atebol i'r bobl sy'n eu hethol.

Mae'r Mesur drafft yn darparu ar gyfer rhannu'r sylfaen treth incwm yng Nghymru rhwng Llywodraeth Cymru a Llywodraeth y DU, ar yr amod y ceir pleidlais o blaid hynny mewn refferendwm, drwy ddidynnu 10c o'r cyfraddau treth incwm sylfaenol, uwch ac ychwanegol yng Nghymru a chaniatáu i Lywodraeth Cymru benderfynu, ac i'r Cynulliad osod, cyfradd dreth incwm sengl ar draws yr holl fandiau treth. Byddai CThEM yn parhau i gasglu'r gyfradd dreth incwm Gymreig ar wahân o fewn y fframweithiau presennol ar gyfer TWE a Hunanasesu. Bydd y gyfradd Gymreig yn gymwys i incwm o enillion, pensiynau a ffynonellau eraill heblaw cynillion yn unig.

Mae'r Mesur drafft yn gweithredu argymhelliaid y Comisiwn na fydd pwerau i osod cyfradd dreth incwm Gymreig yn cael eu datganoli oni bai fod mwyafrif y pleidleiswyr yn cefnogi hynny mewn refferendwm a gychwynnir drwy bleidlais yn y Cynulliad.

Opsiynau polisi

Wrth argymhelliaid bod y gallu i osod y gyfradd dreth incwm yn cael ei ddatganoli i Gymru, datganodd y Comisiwn ei gred y dylai'r Cynulliad fod yn gyfrifol am dreth y mae'r rhan fwyaf o bobl yn ei thalu, fel y bydd rhan gan bobl yn y penderfyniadau a wneir gan y Cynulliad. Yn arolwg barn y Comisiwn yngylch datganoli pwerau treth incwm, cafwyd bod 64% o blaid hynny a 33% yn erbyn. Nododd y Comisiwn mai un o brif ganfyddiadau'r arolwg barn oedd bod mwyafrif yn credu y byddai datganoli pwerau treth incwm yn peri i Lywodraeth Cymru weithio'n galetach i gynyddu refeniw a hybu economi Cymru.

Roedd y Comisiwn wedi argymhelliaid bod Llywodraeth Cymru yn cael y gallu i amrywio pob un o'r tair cyfradd dreth incwm yn annibynnol ar ei gilydd, yn hytrach na'r sefyllfa a gyflwynwyd drwy Ddeddf yr Alban 2012, lle y mae'n rhaid i Lywodraeth yr Alban amrywio'r tair cyfradd i fyny neu i lawr i'r un graddau. Nid oedd Llywodraeth y DU wedi derbyn yr argymhelliaid hwn oherwydd ei effaith bosibl ar flaengaredd system drethi'r DU ac ar refeniw'r DU yn gyffredinol.

Roedd y Comisiwn hefyd wedi ystyried datganoli trethi eraill sy'n codi symiau sylweddol fel treth gorfforaeth, treth ar werth a chyfraniadau yswiriant gwladol ond ni roddodd argymhelliaid o blaid eu datganoli yn y diwedd.

Costau a buddion sy'n gysylltiedig â datganoli treth incwm yng Nghymru

Fel y nodwyd uchod, mae'r Mesur drafft yn darparu ar gyfer cynnal refferendwm, lle y bydd mwyafrif y pleidleiswyr yn pleidleisio o blaid, cyn y gellir datganoli pwerau treth incwm. Yn 2011 cynhalwyd refferendwm yng Nghymru yngylch a ddylid rhoi pwerau deddfu llawn i'r Cynulliad yn yr 20 o feysydd sydd wedi'u datganoli iddo. Cafwyd gwybod gan y Comisiwn Etholiadol fod ymgyrch y refferendwm wedi costio cyfanswm o £5.89 miliwn. Roedd y ffigur hwn yn llai na'r hyn a ragwelwyd yn wreiddiol, yn rhannol am nad oedd y Comisiwn Etholiadol wedi dynodi ymgyrchoedd swyddogol "o blaid" ac "yn erbyn", fel nad oedd unrhyw arian cyhoeddus wedi'i wario ar eu hymgyrchu. Os ceir refferendwm ar bwerau treth incwm, byddai'r rhan fwyaf o'r gost yn cael ei hysgwyddo gan Lywodraeth Cymru a fyddai'n gyfrifol am y trefniadau etholiadol, tra byddai'r costau i'r Comisiwn Etholiadol am unrhyw ymgyrch gyhoeddusrwydd y mae'n ei chynnal ac am arian a roddir i unrhyw ymgyrchoedd "o blaid" ac "yn erbyn" a ddynodir yn cael eu talu iddo drwy'r Gronfa Gyfunol.

Pe byddai'r refferendwm yn llwyddiannus, byddai'r costau sy'n gysylltiedig â datganoli pwerau treth incwm yn cael eu rhannu'n ddau fath: costau uniongyrchol sy'n deillio o unrhyw gynnydd yn yr atebolrwydd i dalu treth a bennir drwy'r gyfradd Gymreig a'r costau sy'n gysylltiedig â gweithredu'r gyfradd Gymreig.

Ar hyn o bryd, derbyniadau treth incwm yw 30% o gyfanswm y refeniw treth yng Nghymru, sef tua £4.85bn yn 2010-11. Fodd bynnag, nid yw'n bosibl pennu'r costau neu fuddion o ddatganoli treth incwm yng Nghymru yn union gan y byddai'r cyfraddau treth yn cael eu penderfynu yn y dyfodol gan Lywodraeth Cymru. Fodd bynnag, mae'n bosibl y byddai unrhyw wahaniaeth rhwng y cyfraddau treth incwm o fewn y DU yn gallu peri i breswylwyr un o'r gwledydd symud i wlad arall i fwynhau cyfraddau treth is, fel y byddai'r derbyniadau treth yn llai yn y wlad arall. Er hynny, nid oedd y Comisiwn yn credu bod hyn yn ystyriaeth bwysig gan nad yw'r gwahaniaeth presennol ym meichiau'r dreth gyngor rhwng awdurdodau lleol ar hyd y ffin rhwng Cymru a Lloegr yn cyfrannu at lifau ymfudo amlwg ar draws y ffin. Bydd y broblem hon yn cael ei lleddfu ymhellach gan y system ar gyfer datganoli treth incwm sy'n cael ei gweithredu yn y Mesur hwn.

Bydd effaith ar yr holl gyflogwyr yn y DU, lle bynnag y maent, gan y bydd angen gallu delio â threthdalwyr Cymreig yn eu systemau cyflogres. Mae system wedi bod ar waith ledled y DU ers creu cyfradd amrywiadwy'r Alban yn Neddf yr Alban 1998 ac felly gellir ei haddasu i gydymffurfio â'r system dreth newydd yng Nghymru. Ni fydd modd pennu'r union effaith ar systemau nes bydd gofynion y prosesau ar gyfer y gyfradd Gymreig yn fwy clir; bydd y rhain yn cael eu mireinio wrth eu datblygu.

Nododd y Comisiwn hefyd mai'r amcangyfrif o'r gost am uwchraddio systemau TG a phrosesau gweithredu CThEM i ddelio â'r newidiadau mewn pwerau treth incwm o ganlyniad i Ddeddf yr Alban 2012 yw tua £40-45 miliwn, a bod y costau rhedeg blynnyddol oddeutu £4.2 miliwn. Mae'n bosibl y bydd y gwensi a ddysgir drwy'r gwaith cyfredol gan CThEM i bennu'r holl drethdalwyr Albanaidd ar ôl pasio Ddeddf yr Alban 2012 yn helpu i leihau'r costau gweithredu yng Nghymru. Nododd y Comisiwn ei bod yn debygol, er bod poblogaeth Cymru'n llai nag un yr Alban, y bydd y ffaith bod mwy o weithgarwch economaidd ar y ffin rhwng Cymru a Lloegr nag ar y ffin rhwng yr Alban a Lloegr yn arwain at fwy o ymholiadau ar gyfartaledd gan drethdalwyr Cymreig ac felly ei bod yn bosibl y bydd mwy o ran i'w chwarae gan CThEM. Mae'n bosibl hefyd y bydd costau ychwanegol ar gyfer cydymffurfio wrth ddelio â mathau penodol o incymau a gostyngiadau yn y dreth fel Cymorth Rhodd a gostyngiadau yn y dreth ar gyfer cynlluniau pensiwn.

Bydd costau gweinyddu sy'n deillio o newidiadau sydd eu hangen yn system treth incwm y DU i gyflawni a gweithredu'r gyfradd Gymreig, gan gynnwys unrhyw addasiadau posibl i systemau talu budd-daliadau, yn cael eu hysgwyddo gan y weinyddiaeth ddatganoledig. Mae hyn yn gyson â *Statement of Funding Policy* Llywodraeth y DU.

Fel y nodwyd uchod, mae'r Comisiwn yn credu y byddai datganoli'r pŵer i osod cyfraddau ar gyfer treth mor fawr (derbyniadau o dreth incwm yng Nghymru yw tua 30% o gyfanswm y refeniw treth) yn rhoi llif refeniw sylweddol i Lywodraeth Cymru i ganiatáu iddi fenthyca symiau i gyflawni ei blaenoriaethau polisi ac i etholwyr Cymru ei dal yn atebol am hynny.

Datganoli Treth Dir y Dreth Stamp a Threth Tirlenwi

Disgrifiad o'r mesurau

Argymhellodd y Comisiwn fod treth dir y dreth stamp (TDDS) a threth tirlenwi yn cael eu datganoli i Gymru, a bod gostyngiad cyfatebol yn cael ei wneud yn y grant bloc. Mae'r Mesur Cymru drafft yn darparu ar gyfer hyn drwy ganiatáu i'r Cynulliad godi ei drethi ei hun mewn cysylltiad â thrafodion tir ac mewn cysylltiad â gwaredu gwastraff mewn safleoedd tirlenwi yng Nghymru. Mae'r Mesur drafft hefyd yn gweithredu argymhelliaid y Comisiwn i ddatganoli ardrethi busnes yn llwyr i Gymru. Byddai effaith uniongyrchol wedyn ar gyllideb Llywodraeth Cymru o refeniw o ardrethi busnes yng Nghymru, gan adlewyrchu perfformiad economi Cymru, yn hytrach na'i bod yn cael ei phennu gan wariant sydd wedi'i ariannu gan ardrethi busnes yn Lloegr drwy fformiwla Barnett.

Opsiynau polisi

Mewn arolwg barn a gomisiynwyd gan y Comisiwn, cafwyd bod 67% o ymatebwyr yn credu y dylai Llywodraeth Cymru gael hawl i amrywio lefel TDDS. Yn dilyn argymhelliaid y Comisiwn i ddatganoli TDDS, cynhaliodd Llywodraeth y DU ymgynghoriad pellach rhwng Gorffennaf a Medi 2013 ar yr effeithiau posibl o hynny ar y diwydiant adeiladu a'r farchnad dai ar hyd y ffin hir a phoblog rhwng Cymru a Lloegr. Roedd yr ymatebion wedi'u rhannu'n weddol gyfartal rhwng y rheini a oedd y blaid y cynigion a'r rheini a oedd yn eu herbyn.

Nododd y Comisiwn yn ei adroddiad ar Ran I fod y dystiolaeth a gafwyd yn ategu'r ddadl o blaid datganoli treth tirlenwi i'r Cynulliad gan y byddai'n rhoi mecanwaith defnyddiol iddo mewn maes sydd eisoes wedi'i ddatganoli i'r Cynulliad, sef rheoli gwastraff.

Wrth ystyried sut i wneud y sefydliadau datganoledig yng Nghymru'n fwy atebol, rhoddodd y Comisiwn ystyriaeth hefyd i ddatganoli nifer o drethi eraill. Yn ogystal â datganoli TDDS, treth tirlenwi ac ardrethi busnes, roedd y Comisiwn hefyd yn awgrymu datganoli toll teithwyr awyr (TTA), ar gyfer teithiau hir yn gyntaf, a datganoli'r ardoll agregau, er iddo nodi bod trafodaethau'n parhau rhwng Llywodraeth y DU a'r Comisiwn Ewropeaidd ynghylch problemau posibl o ran cymorth gwladwriaethol mewn cysylltiad â'r

ardoll yng Ngogledd Iwerddon. Cytunodd Llywodraeth y DU i ddal y mater hwn dan sylw, ond nid oedd yn teimlo bod dadl berswadiol wedi'i chyflwyno o blaidd datganoli TTA yng Nghymru.

Rhoddodd y Comisiwn ystyriaeth hefyd i ddatganoli treth ar alcohol a thollau cartref, treth car, treth ar enillion cyfalaif, treth ar bremiymau yswiriant, toll stamp ar gyfranddaliadau, treth etifeddiant, trethi ar fetio a hapchwareae a'r ardoll newid yn yr hinsawdd, a phenderfynodd na ddylid datganoli'r trethi hyn.

Costau a buddion sy'n gysylltiedig â datganoli TDDS, treth tirlenwi ac ardrethi busnes yng Nghymru

Nid yw'r Asesiad Effaith hwn yn gallu pennu'r union gostau o ddatganoli TDDS, treth tirlenwi ac ardrethi busnes gan y bydd y cyfraddau treth, ac felly'r derbyniadau ohonynt, yn cael eu penderfynu gan y Cynulliad a Llywodraeth Cymru yn y dyfodol.

Bydd costau'r newidiadau sydd eu hangen yn systemau TG a phrosesau busnes CThEM i ddatganoli TDDS a'r dreth tirlenwi yn cael eu hysgwyddo gan y weinyddiaeth ddatganoledig. Mae hyn yn gyson â *Statement of Funding Policy* Llywodraeth y DU.

Treth dir y dreth stamp

Y derbyniadau o TDDS ar drafodion tir yng Nghymru oedd £139 miliwn yn 2012-13. Yn yr un modd â mannau eraill, bydd derbyniadau'n amrywio yn ôl gweithgarwch a phrisiau yn y farchnad eiddo: roeddent ar eu huchaf yn 2006-07 ar £235 miliwn. Er y byddai treth ddatganoledig ar drafodion tir yng Nghymru yn caniatáu i Lywodraeth Cymru godi neu ostwng y cyfraddau treth, mae ymchwil a ddyfynnwyd gan y Comisiwn yn ei adroddiad ar Ran I yn dangos mai dylanwad ffyniol yn unig a gaiff costau trafodion fel TDDS ar benderfyniadau gan unigolion yngylch lleoliad ac na fyddent yn debygol o fod yn ffactor tyngedfennol wrth benderfynu ble i symud.

Mae'r ffurflenni TDDS presennol eisoes yn dangos (drwy god dynodi) ym mha ardal awdurdod lleol yr oedd y trafodiad tir wedi digwydd. Yn y rhan fwyaf o achosion, bydd hyn yn galluogi CThEM ac unrhyw weinyddiaeth sy'n codi'r dreth ddatganoledig yn y dyfodol i wahaniaethu rhwng trafodion yng Nghymru a Lloegr. Yn gyffredinol, nid oes lle i gredu y bydd y baich am sicrhau cydymffurfiaeth yng Nghymru neu mewn rhannau eraill o'r DU yn fwy o ganlyniad i ddatganoli TDDS yng Nghymru.

Er hynny, nid oes systemau ar wahâr ar gyfer cofrestru tir yng Nghymru a Lloegr ac mae nifer o deitlau cofrestredig ac anghofrestredig i dir yn pontio'r ffin. Ar ôl datganoli TDDS, byddai angen gwahanu'r teitlau hyn yn elfennau Cymreig a Seisnig at ddibenion treth. Gan nad oes ffordd o weinyddu hyn yn ganolog, mae'n debygol y byddai'r baich hwn yn cael ei ysgwyddo gan drawsgladwyr a fyddai'n debygol, yn eu tro, o'i drosglwyddo i'w cleientiaid drwy godi ffioedd uwch.

Treth Tirlenwi

Ar hyn o bryd mae 203 o weithredwyr tirlenwi ar gofrestr treth tirlenwi CThEM ar gyfer y DU. O'r 723 o safleoedd tirlenwi sy'n cael eu rhedeg gan y gweithredwyr hyn, mae 29 (4%) yng Nghymru. Yn ôl amcangyfrif y Comisiwn, y refeniw o dreth tirlenwi yng Nghymru yn 2010-11 oedd tua £50 miliwn, neu ychydig llai na 6% o gyfanswm y DU. Yn fwy diweddar, mae CThEM wedi cyhoeddi ffigurau ar gyfer y cyfnod rhwng 1999-00 a 2012-13, sy'n dangos eto fod y refeniw o dreth tirlenwi yng Nghymru oddeutu £50 miliwn, neu 4.5% o gyfanswm y DU, yn 2012-13.

Nid yw'r ffurflen bresennol ar gyfer treth tirlenwi a ddarperir i weithredwyr cofrestredig gan CThEM yn gofyn iddynt nodi lleoliad daearyddol eu gweithgarwch trethadwy. Felly mae'n debygol y bydd datganoli treth tirlenwi yng Nghymru yn galw am gael ffurflen benodol i Gymru i ddatgan ffigurau ar gyfer treth tirlenwi. Er ei bod yn bosibl y bydd gweithredwyr tirlenwi sy'n gweithio ar draws safleoedd yng Nghymru a gweddill y DU yn wynebu baich ychwanegol drwy orfol rhoi datganiadau ar wahâr ar gyfer treth tirlenwi i bob gweinyddiaeth, yn gyffredinol ni fydd fawr o gynydd yn y baich o ran cydymffurfio. Unwaith eto, bydd hyn yn dibynnu ar benderfyniadau gan y Cynulliad a Llywodraeth Cymru yn y dyfodol.

Nododd y Comisiwn na fyddai datganoli trethi sy'n codi symiau llai yn cyfrannu llawn gymaint at gynyddu atebolwydd ariannol y sefydliadau datganoledig yng Nghymru ag y byddai datganoli treth incwm, ond y byddent yn helpu i rymuso Llywodraeth Cymru er mwyn cyflawni ei hamcanion polisi ac y byddai hyn yn ei dro yn ei gwneud yn fwy atebol i'r cyhoedd yng Nghymru.

3. BENTHYCA

Benthycia cyfredol

Disgrifiad o'r mesurau

Argymhellodd y Comisiwn fod Llywodraeth Cymru yn cael pwerau newydd i reoli'r cyfnewidioldeb cynyddol yn ei chyllideb o ganlyniad i ddatganoli TDDS a threth tirlenwi. Mae'r Mesur drafft yn darparu pwerau benthycia tymor byr a chronfa arian parod i Lywodraeth Cymru. Er mwyn sicrhau na fydd benthycia gormodol gan Lywodraeth Cymru yn effeithio ar ddyled genedlaethol y DU, mae'r Mesur Cymru drafft yn darparu hefyd y bydd y terfyn presennol ar fenthyca o £500 miliwn sydd wedi'i bennu yn adran 122 o Ddeddf Llywodraeth Cymru 2006 yn gymwys hefyd i fenthyca o'r math hwn. Bydd y gronfa arian parod yn galluogi Llywodraeth Cymru i gronni arian wrth gefn pan geir refeniu uchel o drethi datganoledig, a'i ddefnyddio pan fydd y refeniu o drethi datganoledig yn is na'r hyn a ragwelwyd.

Opsiynau a ystyriwyd

Edrychodd y Comisiwn ar dystiolaeth o wledydd tramor (a thystiolaeth ychwanegol a gafodd) a oedd o blaid cynnwys benthycia cyfredol mewn fframwaith sy'n cyfyngu maint y benthycia. Felly penderfynodd y Comisiwn y byddai'n briodol gosod terfyn, ac argymhell ei osod ar y dechrau ar yr un lefel â'r trefniadau presennol.

Costau a buddion sy'n gysylltiedig â'r system newydd

Roedd y Comisiwn yn cydnabod y byddai ei argymhellion ar ddatganoli trethi penodol yn creu cyfnewidioldeb yng nghyllideb Llywodraeth Cymru. Felly pwrrpas ei argymhellion ar gyfer pwerau benthycia tymor byr a chronfa arian wrth gefn yw galluogi Llywodraeth Cymru i reoli'r cyfnewidioldeb hwn yn hytrach na rhoi'r gallu i fenthyca i ariannu gwariant cyfredol ychwanegol.

Benthycia cyfalaf

Disgrifiad o'r mesurau

Yn ei datganiad ar y cyd â Llywodraeth Cymru yn Hydref 2012, cyhoeddodd Llywodraeth y DU ei bod o blaid yr egwyddor o ddarparu pwerau benthycia i Lywodraeth Cymru i'w helpu i ariannu prosiectau seilwaith cyfalaf, ar yr amod bod llif refeniu annibynnol ar gael i gynnal hyn. Mae'r Mesur drafft yn gweithredu argymhellion y Comisiwn drwy ganiatáu i Lywodraeth Cymru fenthyca at ddibenion cyfalaf. Mae'r Mesur drafft yn cyflwyno terfyn o [XYZ] ar allu Gweinidogion Cymru i fenthyca symiau i ariannu seilwaith cyfalaf. Mae'r Mesur drafft yn darparu y gall Llywodraeth y DU godi hyn ar ôl cael pleidlais "o blaid" gan fwyaf mewn refferendwm a gynhelir yn y dyfodol ar ddatganoli treth incwm.

Opsiynau a ystyriwyd

Yn ei adroddiad ar Ran 1, nododd y Comisiwn fod cynifer â 80% o'r rheini a holwyd ar gyfer arolwg barn yn credu y dylai Llywodraeth Cymru gael pŵer i fenthyca, ac mae'n cydnabod bod y "dystiolaeth o wledydd tramor yn awgrymu ei bod yn bosibl mai benthycia yw'r ffordd fwyaf darbodus a theg o ariannu gwariant cyfalaf gan lywodraethau is-genedlaethol ar y sail bod benthycia'n gallu gwella'r dyrannu ar adnoddau dros amser". Mae hefyd yn awgrymu mai gosod rhyw fath o derfyn gan Lywodraeth genedlaethol ar fenthyca gan lywodraeth is-genedlaethol yw'r dull mwyaf cyffredin o sicrhau nad yw benthycia o'r fath yn peryglu amcanion cyllidol y Llywodraeth genedlaethol.

Costau a buddion sy'n gysylltiedig â'r system newydd

Ar hyn o bryd nid yw'n bosibl pennu'r union gostau ac effeithiau o gynnydd mewn benthycia cyfalaf gan Lywodraeth Cymru yn y dyfodol.

Er hynny, nododd y Comisiwn yn ei adroddiad ar Ran 1 y byddai nifer o fanteision heb werth ariannol yn codi o ddatganoli pwerau benthycia, gan gynnwys grymuso Llywodraeth Cymru a'i gwneud yn fwy atebol drwy roi mwy o hyblygrwydd iddi ar gyfer buddsoddi mewn prosiectau seilwaith o werth uchel nag sydd ganddi ar hyn o bryd. Byddai hyn yn ei dro yn gallu hybu twf ac effeithlonrwydd.

4. CYMHORTHDAL Y CYFRIF REFENIW TAI (HRAS)

Disgrifiad o'r mesurau

Diddymwyd y system HRAS o dan Ddeddf Lleoliaeth 2011, a rhoddwyd rheolaeth i bob awdurdod lleol yn Lloegr dros ei fusnes tai yn gyfnewid am daliad untro i lywodraeth ganolog i adlewyrchu gwerth presennol net ei fusnes tai.

Mae Llywodraeth Cymru wedi cytuno y byddai newid tebyg yng Nghymru'n ddymunol. Gan y bydd llifau incwm newydd ar gael i bob awdurdod yn y dyfodol, gallai hyn arwain at gynnydd sylweddol mewn benthyca. Er mwyn sicrhau na cheir benthyca gormodol yng Nghymru, a chynnydd yn y ddyled genedlaethol o ganlyniad i hynny, mae Llywodraeth y DU a Llywodraeth Cymru wedi cytuno i osod terfynau ar fenthyca gan awdurdodau lleol. Gan nad oes cymhwysedd deddfwriaethol gan y Cynulliad i osod terfyn cyffredinol ar fenthyca gan awdurdodau lleol yng Nghymru, mae'r Mesur drafft yn darparu ar gyfer gosod terfyn o'r fath, ac yn rhoi pŵer hefyd i Weinidogion Cymru i osod terfyn ar awdurdodau lleol penodol yng Nghymru.

Ar wahân i'r pŵer i gyflwyno'r terfyn cyffredinol ar fenthyca sydd wedi'i ddisgrifio uchod, bydd Gweinidogion Cymru yn cael pwaerau sy'n cyfateb i'r rheini a roddwyd i'r Ysgrifennydd Gwladol yn adrannau 171-173 o Ddeddf Lleoliaeth 2011.

Opsiynau a ystyriwyd

Ym mis Gorffennaf 2009 cyhoeddodd y Llywodraeth ei phapur ymgynghori *Reform of Council Housing Finance*, lle y disgrifiodd y Llywodraeth yr opsiwn y mae'n ei ffafrio, sef diddymu cymhorthdal y cyfrif refeniw tai yn Lloegr a rhoi system hunan-gyllido ddatganoledig yn ei le. Yr opsiwn arall oedd cadw'r system bresennol a'i gwella. Roedd ymatebion i'r ymgynghoriad hwn yn ffafrio cyflwyno system gyfrifoldeb ddatganoledig yn lle HRAS. Ar ôl hynny, ym Mawrth 2010, cyhoeddwyd y papur ymgynghori *Council Housing: A Real Future*, a oedd yn rhoi eglurhad manylach o'r cynigion ar gyfer hunan-gyllido. Roedd y crynodeb o ymatebion i'r papur hwn yn dangos bod mwyafrif helaeth o'r ymatebwyr yn cytuno ag egwyddor hunan-gyllido.

Cyn cyflwyno'r system bresennol yn Lloegr, o dan adran 173 o Ddeddf Lleoliaeth 2011 roedd yn ofynnol bod yr Ysgrifennydd Gwladol yn ymgynghori â chynrychiolwyr Llywodraeth leol a phob awdurdod lleol yn Lloegr. Ar ôl hynny, cynhaliwyd ymgynghoriad cyhoeddus ar y penderfyniadau yngylch hunan-gyllido rhwng Tachwedd 2011 ac Ionawr 2012. Yn yr ymateb i'r ymgynghoriad, nododd y Llywodraeth nad oedd y mwyafrif helaeth o awdurdodau lleol a ymatebodd wedi herio egwyddorion hunan-gyllido na'r fethodoleg gyffredinol ar gyfer cyfrifo setliadau a thaliadau prisio.

Costau a buddion sy'n gysylltiedig â'r system newydd

O dan y system HRAS bresennol yng Nghymru mae Llywodraeth Cymru yn cyfrifo maint yr incwm a gwariant a ddylai fod gan bob awdurdod lleol yng Nghymru mewn cysylltiad â'i stoc dai. Os bydd yr amcangyfrif o wariant yng Nghymru'n uwch na'r ffigur hwn, bydd Llywodraeth y DU yn talu'r cymhorthdal i Lywodraeth Cymru am y diffyg. Fodd bynnag, os yw incwm yr awdurdodau lleol yng Nghymru'n fwy na gwariant, yna mae'r warged (yr amcangyfrifwyd ei fod tua £73 miliwn y flwyddyn) yn cael ei ddychwelyd i Lywodraeth y DU ar ffurf cymhorthdal negyddol. Yn y dyfodol, bydd awdurdodau lleol Cymru yn cadw unrhyw warged a geir, gan arbed tua £33 miliwn y flwyddyn yn ôl yr amcangyfrif (ar ôl gwneud taliadau untro gan awdurdodau lleol i Lywodraeth y DU, drwy Lywodraeth Cymru). Drwy gadw'r arbedion hyn, bydd mwy o annibyniaeth gan awdurdodau lleol yng Nghymru gan y byddant yn gallu benthyca cyllid ychwanegol i wella eu stoc dai er budd pobl Cymru. Mae'n debygol y bydd costau ychwanegol yn gysylltiedig â mabwysiadu'r system newydd yng Nghymru er nad yw'n bosibl eu mesur yn union gan fod costau o'r fath yn dibynnu ar benderfyniadau polisi a wneir gan Lywodraeth Cymru yn y dyfodol.



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