

WELSH TAX ACTS etc. (POWER TO MODIFY) ACT 2022

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes are for the Welsh Tax Acts etc. (Power to Modify) Act 2022 (“the Act”) which was passed by Senedd Cymru on 12 July 2022 and received Royal Assent on 8 September 2022. They have been prepared by the Economy, Treasury and Constitution Group of the Welsh Government in order to assist the reader of the Act. The Explanatory Notes should be read in conjunction with the Act but are not part of it.

BACKGROUND AND SUMMARY OF THE ACT

2. Senedd Cymru (“the Senedd”) has passed three Acts that relate to taxation; the Tax Collection and Management (Wales) Act 2016 (“TCMA”), the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 (“LTTA”) and the Landfill Disposals Tax (Wales) Act 2017 (“LDTA”). These three Acts are collectively referred to as the ‘Welsh Tax Acts’ in the Act.
3. The Act provides the Welsh Ministers with a power to make changes, by means of regulations, to the Welsh Tax Acts and regulations made under those Acts, if the Welsh Ministers consider that it is necessary or appropriate to make those changes for or in connection with any of the four purposes specified in the Act.
4. The regulations can be made either under the draft affirmative procedure, or in urgent cases only, under the made affirmative procedure (discussed further below).

COMMENTARY ON SECTIONS

Section 1 – Power to amend the Welsh Tax Acts etc.

5. **Section 1(1)** provides that the Welsh Ministers may make regulations which modify the Welsh Tax Acts and regulations made under them if the Welsh Ministers consider that the modifications are necessary or appropriate for or in connection with any of the following purposes –
6. **Subsection 1(1)(a)** – to ensure that land transaction tax and landfill disposals tax are not imposed where to do so would be incompatible with any international obligations. The power in section 1 might be used for this purpose, for example, where a trade deal or double taxation agreement is concluded with another country and the imposition of landfill disposals tax or land transaction tax in a particular case is contrary to that deal or agreement.

7. **Subsection 1(1)(b)** – to protect against tax avoidance in relation to landfill disposals tax and land transaction tax. The Welsh Ministers may wish to take such action where they consider that amendment of the legislation will put its intended application beyond any doubt, as well as in cases where a loophole is being exploited. Tax avoidance is not defined in the Act. It therefore takes its natural meaning.
8. **Subsection 1(1)(c)** – to respond to changes made to the predecessor taxes which affect, or may affect, the amounts paid by the Secretary of State into the Welsh Consolidated Fund. The predecessor taxes are defined in section 1(4) as being stamp duty land tax and landfill tax.
9. **Subsection 1(1)(d)** – to respond to a court or tribunal decision which affects, or may affect the operation of the Welsh Tax Acts or regulations made under those Acts. These decisions need not necessarily be decisions on the provisions of the Welsh Tax Acts themselves, or their associated regulations. Decisions affecting the predecessor taxes or on general points of law may also be capable of affecting the operation of the Welsh Tax Acts and their associated regulations.
10. Section 1(2) places certain restrictions on the general power provided to the Welsh Ministers by section 1. Those restrictions are set out in sections 2(4), (5) and (6) and are discussed further below.
11. Sections 1(3) and 1(4) provide a series of definitions.

Section 2 – Regulations under section 1: supplementary

12. Section 2(1) permits regulations made using the power in section 1 to impose landfill disposals tax and land transaction tax and to impose or extend liability to a penalty.
13. Section 2(2) allows regulations made using the power in section 1 to have retrospective effect, as long as-
 - the regulations do not retrospectively impose any new penalty or extend liability to any existing penalty (section 2(2)(a));
 - those regulations that retrospectively create or increase a liability to land transaction tax or landfill disposals tax, do not have effect from a date earlier than the date of an oral or written statement to the Senedd by the Welsh Ministers (section 2(2)(b));
 - those regulations that retrospectively reduce or withdraw an entitlement to a landfill disposals tax credit, do not have effect from a date earlier than the date of an oral or written statement to the Senedd by the Welsh Ministers (section 2(2)(c)).
14. Section 2(3)(a) allows the regulations made using the power in section 1 to make different provision for different purposes.

15. Section 2(3)(b) allows the regulations made using the power in section 1 to make incidental, consequential, supplementary etc. provision.
16. Sections 2(1) to 2(3) are not an exhaustive list of what regulations made using the power in section 1 may do.
17. Section 2(4)(a) prevents the power in section 1 from being used to modify Part 2 of the Tax Collection and Management (Wales) Act 2016. Those provisions relate primarily to the creation of the Welsh Revenue Authority and its governance.
18. Section 2(4)(b) and (c) prevent the regulation-making power in section 1 from being used to modify regulations setting rates and bands for land transaction tax or tax rates for landfill disposals. The Welsh Ministers already have the power to modify those tax rates and bands by means of regulations, which are subject to the made affirmative procedure.
19. Section 2(5) prohibits regulations made under section 1 from making provision that relates to the investigation of criminal offences.
20. Section 2(6) prohibits regulations made under section 1 from altering any Senedd procedure for making statutory instruments under the Welsh Tax Acts. For example, regulation making powers subject to the draft affirmative procedure within the Welsh Tax Acts cannot be changed to be made subject to the made affirmative procedure.
21. Section 2(7) provides that the regulation-making power in section 1 does not affect any other power the Welsh Ministers already have to make regulations in the Welsh Tax Acts. Equally, the power in section 1 is not affected by the ability of the Welsh Ministers to make regulations using existing powers in the Welsh Tax Acts.

Section 3 – Policy statement: regulations under Section 1 which have retrospective effect

22. Section 3(1) places a duty on the Welsh Ministers to publish a statement on their policy with respect to the exercise of the power to make regulations that have retrospective effect.
23. Section 3(2) provides that the statement must be published before the end of the period of three months beginning with the date the Act receives Royal Assent.
24. Section 3(3) allows the Welsh Ministers to revise their statement of policy. If they do so, this revised statement must be published.

Section 4 – Procedure for regulations under section 1

25. Section 4(1) provides that the power to make regulations under section 1 is exercisable by statutory instrument.

26. Section 4(2) provides that a statutory instrument containing regulations under section 1 may be made either under the draft affirmative or, where the Welsh Ministers consider there is a need to make them urgently, under the made affirmative procedure.
27. Under the draft affirmative procedure, a statutory instrument cannot be made unless a draft of the instrument has been laid before Senedd Cymru and approved by it.
28. Under the made affirmative procedure a statutory instrument can be made and can come into force before it has been approved by the Senedd. Where the made affirmative procedure is used, section 4(4) provides that the instrument must be laid before Senedd Cymru, and section 4(5) provides that the Senedd must approve the regulations within a maximum period of 60 days¹ in order for the regulations contained in the instrument to remain in effect after that period ends. Section 4(6) provides that where the Senedd votes on a motion to approve the instrument before the end of the 60-day period and the instrument is not approved, the regulations contained in the instrument will cease to have effect at the end of the day on which the vote takes place. Section 4(7) provides that any motion to approve the instrument made under the made affirmative procedure cannot be moved in the Senedd (and so the instrument cannot be considered and voted upon by the Senedd) until 28 days have elapsed from (and including) the date the regulations are made².

Section 5 – Regulations ceasing to have effect: supplementary

29. Section 5 sets out what happens if a statutory instrument containing regulations under section 1 is made under the made affirmative procedure but fails to achieve Senedd approval (and so the regulations contained in that instrument cease to have effect).
30. Section 5(2) provides that any liability, or increased liability, to land transaction tax or landfill disposals tax that would not have arisen but for the regulations is to be treated as never having arisen.
31. Section 5(3) provides that any withdrawal of an entitlement to a tax credit, or reduction in such an entitlement (in relation to landfill disposals tax) that would not have occurred but for the regulations is to be treated as never having occurred.
32. Section 5(4) provides that any liability to a penalty, or an increase to the amount of a penalty, that would not have occurred but for the regulations is to be treated as never having arisen.

¹ The 60-day period does not include any period during which Senedd Cymru is dissolved or is in recess for more than 4 days.

² The 28-day period does not include any period during which Senedd Cymru is dissolved or is in recess for more than 4 days.

33. Section 5(5) provides that anything done under or in reliance on the regulations is not affected by the fact that the regulations have ceased to have effect. This will ensure that actions taken by the taxpayer in accordance with the regulations during the period they had effect are not unlawful, and also will similarly protect actions taken by the Welsh Revenue Authority.

Section 6 – Review of operation and effect of this Act

34. Section 6 imposes a duty on the Welsh Ministers to review the operation and effect of the Act and publish the conclusions of that review within 4 years of the date that the Act came into force. That review must include an assessment of any alternative legislative mechanisms to make changes to the Welsh Tax Acts. Furthermore, the Welsh Ministers must consult the Senedd and such other persons they consider appropriate as part of the review.

Section 7 – Expiry of the power under section 1

35. Section 7(1) provides that the power to make regulations in section 1 expires five years after the date that the Act comes into force, unless the Welsh Ministers make regulations under section 7(2) to extend that period for a further period up to a maximum end date of 30 April 2031.
36. The power in section 7(2) may be exercised only once (section 7(4)).
37. A statutory instrument containing regulations under that power must be made under the draft affirmative procedure.
38. Section 7(5) provides that the regulations, cannot be laid in draft before the conclusions of the review set out in section 6 have been published, and that the Senedd cannot approve the regulations after the initial five-year period has ended.
39. Section 7(6) provides that regulations made under section 1, before the expiry of that power, continue in force following its expiry.

Section 10 – Short title

40. The short title of this Act is the Welsh Tax Acts etc. (Power to Modify) Act 2022.

RECORD OF PROCEEDINGS IN SENEDD CYMRU

41. The following table sets out the dates for each stage of the Act’s passage through the Senedd. The Record of Proceedings and further information on the passage of this Act can be found on the Senedd website at:

[Welsh Tax Acts etc. \(Power to Modify\) Bill \(senedd.wales\)](https://www.senedd.wales)

*These notes refer to the Welsh Tax Acts etc. (Power to Modify) Act 2022 (asc 2)
which received Royal Assent on 8 September 2022*

Stage	Date
Introduced	13 December 2021
Stage 1 - Debate	26 April 2022
Stage 2 Scrutiny Committee - consideration of amendments	9 June 2022
Stage 3 Plenary - consideration of amendments	5 July 2022
Stage 4 Approved by the Senedd	12 July 2022
Royal Assent	8 September 2022