



Jocelyn Davies AM  
Chair  
Finance Committee  
National Assembly for Wales  
Cardiff Bay  
CF99 1NA

1 October 2015

Dear Jocelyn,

At the Finance Committee's Stage 1 scrutiny of the Tax Collection and Management (Wales) Bill, I committed to provide further information in relation to:

- 1) the circumstances where the section 14 direction-making power might be used, (including the rationale for providing that the power could not be exercised in relation to section 28 [accounts] and section 29 [tax statement], whilst there is no such restriction in relation to section 32 [accounting officer arrangements]); and,
- 2) the current arrangements provided for in the Bill for appointing members of the Welsh Revenue Authority.

#### **Section 14: General directions**

Tax collection is a function of government: the revenues collected will go into the Welsh Consolidated Fund to support public services in Wales. Welsh Ministers should rightly give strategic direction to the WRA on operational policy priorities (for example, the emphasis that the WRA should place on compliance and anti-avoidance).

The Assembly and Welsh public will, quite rightly, expect Welsh Ministers to be accountable for the strategic direction of the WRA. They should and will expect the WRA to be accountable for the efficient and effective collection of devolved taxes within the strategic framework set by Welsh Ministers. The Bill fully protects the confidentiality of taxpayer information and specific taxpayer situations from any involvement from Welsh Ministers, and ensures the operational independence of the WRA. However, tax revenue is a fundamentally important element of the Welsh Government budget, and Welsh Ministers should have the ability, if absolutely required, to ensure that the WRA is indeed collecting devolved taxes efficiently and effectively.

For that reason, the Bill provides for a direction-making power. I would envisage a direction being given only rarely and in unusual circumstances. This could be, for example, where there is a critical risk to the effective collection of Welsh tax receipts. It is difficult to provide a specific example, because the precise circumstances of tax collection difficulties in the future cannot be known.

In considering our approach and this provision we have looked carefully at the arrangements elsewhere between Ministers and HMRC and Revenue Scotland. Different approaches have been adopted:

- On the one hand, section 11 of the Commissioners for Revenue and Customs Act 2005 provides that in the exercise of their functions the Commissioners shall comply with any directions of a general nature given to them by the Treasury;
- On the other hand, however, the Revenue Scotland and Tax Powers Act 2014 provides that the Scottish Ministers must not give directions relating to, or otherwise seek to control, the exercise by Revenue Scotland of its functions (section 7). The Scottish Ministers may, however, give guidance to Revenue Scotland, to which Revenue Scotland must have regard (section 8).

Having considered both arrangements, my preference is to remain consistent with the current Treasury/HMRC model, although with the introduction of a greater degree of transparency (because Welsh Ministers will be under a duty to publish directions unless they consider that this would prejudice the effective exercise of WRA's functions). Whilst WRA should be operationally independent from Welsh Ministers in terms of how it deals with individual taxpayers, that has to be balanced against a need to ensure that the delivery of devolved tax operational policy is being carried out effectively. Section 14 allows this balance to be struck in a similar way to section 11 of the Commissioners for Revenue and Customs Act 2005.

### **What safeguards are in place?**

The Bill throughout provides extensive safeguards for taxpayers to ensure that they are treated fairly, impartially and in accordance with the law. There are two main points to recognise:

Firstly, the power itself is limited to issuing directions of a general nature. Welsh Ministers will simply not be able to interfere in individual taxpayers' affairs. This is distinct from other bodies, for example Natural Resources Wales, where Ministers are able to issue directions of a specific nature.

Secondly, Welsh Ministers must publish any directions given unless they consider that publication would prejudice the effective exercise of WRA's functions. This goes further than the equivalent provision for HMRC, which does not require publication at all. This openness and possibility for public scrutiny will further ensure that the powers will not be inappropriately used. Such directions, issued publicly, would be subject to scrutiny by the Assembly. They would be subject to normal public law principles and could, potentially, be challenged in the courts.

It is also important to note that the rest of the Bill also contains significant and comprehensive safeguards for taxpayers. Any decisions by WRA will need to be reasonable and taken in accordance with the law. WRA's decisions will be subject to extensive judicial scrutiny. For example:

- Part 4, provides that when WRA uses its powers to require the public to provide information, or to access premises, it can only do so with the approval of the Tribunal. That is a very important safeguard which, in some respects, provides greater security for the public than is the case in Scotland and the UK;
- Part 8 of the bill confers extensive rights on the public to review or appeal against a wide range of WRA decisions, including those that determine tax liability or liability to penalties.

The Bill provides for comprehensive judicial oversight of WRA's functions which will guard against inappropriate Ministerial interference in individual taxpayers' affairs.

I would also refer to sections 16 and 19 of the Bill which make it a criminal offence for anybody working in WRA (or organisations acting under delegation) to disclose protected taxpayers' information, other than in tightly defined circumstances. Again, this is a significant safeguard against inappropriate interference in taxpayers' affairs.

**The rationale for providing that directions cannot not be exercised in relation to sections 28 (accounts) and 29 (tax statement), but not 32 (accounting officer arrangements)**

Sections 28 and 29 already provide for specific directions in a particular context. Therefore Section 14, for clarity, stipulates that the general direction-making power cannot *also* apply.

It was questioned whether section 32 should be outside the scope of the general direction making powers in section 14. Section 32 empowers Welsh Ministers to specify the responsibilities of WRA's accounting officer (who will be the Chief Executive), and such responsibilities may include the signing of the WRA's accounts, ensuring the propriety and regularity of the WRA's finances, and the economy, efficiency and effectiveness with which WRA resources are used. As this provision relates to the personal responsibilities of the Chief Executive, as accounting officer, rather than the functions of the WRA, the direction making-power cannot be applied: that is, it is already outside the scope of the general direction-making powers in section 14. As such, an exemption like that provided for sections 28 and 29 is not necessary.

**Section 3: Membership arrangements for the Welsh Revenue Authority**

The Bill provides that the Chair and other non-executive members of the WRA Board will be appointed by Welsh Ministers and that Welsh Ministers will appoint a Deputy Chair from among the non-executive members.

Welsh Ministers will also appoint the first Chief Executive but subsequent chief executives will be appointed by WRA, although Welsh Ministers will have a role in approving the terms of appointment. WRA are responsible for the appointment of its staff (who will be civil servants), although again Welsh Ministers have an approval role in relation to the terms and conditions of those appointments. WRA will nominate the executive members of the WRA Board.

The non-executive members will be public appointments made in accordance with the Code of Practice for Ministerial Appointments to Public Bodies (the Nolan principles). Amongst other things, the Nolan principles state that no reappointment or extension is made without a satisfactory performance appraisal, evidence of which must be made available to the Commissioner for Public Appointments on request; and no individual will serve in any one post for more than ten years.

The terms and conditions of non-executive members will be set by Welsh Ministers. Such appointments will be for the next Welsh Government to make, but I would not anticipate that the terms and conditions of appointments would depart significantly from the existing terms and conditions model used for non-executive appointments to the Welsh Government Board. These are generally for a fixed period of two years with the possibility of extension. The Seven Principles of Public Life would apply.

A handwritten signature in black ink that reads "Jane". The signature is written in a cursive style with a horizontal line above the name.

**Jane Hutt AC / AM**

Y Gweinidog Cyllid a Busnes y Llywodraeth  
Minister for Finance and Government Business