



Llywodraeth Cymru
Welsh Government

Justice System Impact Identification

Form

1. Policy lead contact details

1.1. Name / Job Title

1.2. Department / office /
business area

1.3. Telephone number

1.4. Email address

1.5. a) Date of submission of
this form

Date of Submission: 14/9/18

1.6. b) When is a response
required?

2. Additional contact details

2.1. Legal Contact

2.2. Telephone number

2.3. Email address

3. General information

- 3.1. Please provide a) contact details of your lead official for the appraisal of costs or savings and;
b) the Justice Policy lead if known.

- 3.2. In brief, what is your proposal? **(no more than half a page)** (*This information is provided to help MoJ officials understand the intent of the proposed change in order to be able to comment as fully as possible on its potential impacts*).

The Local Government and Elections (Wales) Bill

JSII Form Ref Batch 2: 3 of 3

Non-domestic rates avoidance

Background

Since 1 April 2015, full fiscal responsibility of non-domestic rates has been devolved to the National Assembly for Wales. This means that revenue generated from non-domestic rates now has a direct impact on the overall resources available to Welsh local authorities. An amount of fraud and avoidance activity exists within the system, which Welsh Ministers are committed to tackling as part of a wider reform programme to ensure local taxes are fair.

Since 2015 we have undertaken extensive research about the common methods of avoidance behaviour and we have assessed the revenue loss to avoidance of at least £10 million to £20 million per annum. The Welsh Government has consulted twice on proposals:

<https://beta.gov.wales/tackling-avoidance-non-domestic-rates-wales>

[https://gov.wales/betaconsultations/localgovernment/draft-local-government-\(wales\)-bill-consultation/?lang=en](https://gov.wales/betaconsultations/localgovernment/draft-local-government-(wales)-bill-consultation/?lang=en)

Proposals

1. Enable the Welsh Ministers, through regulations, to require ratepayers to notify Billing Authorities of a change in their circumstance that affects their rates liability or eligibility for relief.
2. Enable Billing Authorities to enter and inspect a property for the purpose of helping them to discharge their billing function. The provision largely replicates similar powers that Valuation Officers have relating to the valuation function.
3. Enable Billing Authorities to request information from ratepayers and third parties that would help them to discharge their billing function. Valuation Officers have similar powers relating to the valuation function (though these are restricted to owners and occupiers). Anybody providing false information would be liable to further penalties.

Primary legislation is required to give effect to these proposals. The provisions have an impact on the Valuation Office Agency and the Valuation Tribunal for Wales and we are in discussion with these organisations.

Benefits

At present, the non-domestic rates legislation does not place any obligation on the ratepayer to notify the Billing Authority of changes in circumstance. Most other tax systems include requirements on taxpayers to notify relevant authorities of changes in circumstances. The main benefits of the proposals are:

- increased accuracy and timeliness of information held by Billing Authorities so that ratepayers pay the right amount of tax at the right time, lowering the risk of ratepayers facing large backdated liabilities;
- provide a deterrent to those considering fraudulent or avoidance activity and punish those that misreport or provide false information;
- ratepayers that act with honesty and integrity will benefit from evidence that the Welsh Government has sought to close down the methods of avoidance by neighbouring ratepayers;
- local government and local services will benefit from reduced fraud and avoidance and potentially a slight increase in tax revenue. All of the non-domestic rates collected by local authorities is used to fund local services – it is important to note that the Welsh Government itself would not be a beneficiary of increased revenue;
- officers working in Billing Authorities will expend less resource on investigating and searching for the correct information about properties and ratepayers;
- some agents / advisors that offer ‘rates mitigation schemes’ will be less able to exploit vulnerable businesses by charging high amounts of commission for participation in avoidance schemes. This is an advantage for organisations that act with integrity when providing genuine advice and support to ratepayers.

Disbenefits:

- a potential disadvantage of the proposals is a slight increase in administrative burden for ratepayers, though arguably, ratepayers are required to undertake a certain amount of administration for all other taxes they pay (such as for corporation tax, VAT). Proper administration of a ratepayer’s affairs should mean less resource wasted on risky and potentially unsuccessful efforts to avoid tax liability.

Mitigating circumstances

It is proposed that the legislation will provide for protections where necessary in the form of rights of appeal, penalty maximums and (for property inspections) applications to the Valuation Tribunal for Wales.

- For proposal 1, a person would have a right of appeal to a valuation tribunal if they are aggrieved by the imposition of a penalty for not reporting a change in circumstance;
- For proposal 2, before wishing to inspect a property a Billing Authority must obtain approval from the Valuation Tribunal for Wales and provide 24 hours notice to the ratepayer.
- For proposal 3, a person would have a right of appeal to a valuation tribunal if they are aggrieved by the imposition of a penalty for failure to provide information. The maximum penalty for failure to provide information cannot exceed the greater of £500 or the Rateable Value of the hereditament concerned for the day on which the penalty notice is served. The valuation tribunal or the billing authority may mitigate or remit any penalty imposed;

Evaluating success

We set a baseline for the current level of fraud and avoidance activity in late 2017 through an extensive survey of billing authority held data. Success will be evaluated through gathering evidence at intervals from Billing Authority systems, and through our ratepayer and stakeholder forums, of any measurable decrease (or increase) in the number of fraud and avoidance cases.

The timeframe for achieving success is a long term timeframe. We anticipate receiving royal assent to the Act in early 2020. Subordinate legislation, including regulations and statutory guidance will then be made following the passage of the Act. Developing any required subordinate legislation and guidance will require detailed policy development, further research and public consultation. We will also wish to undertake a large scale communications exercise with every ratepayer in Wales to ensure they understand the changes to requirements.

- 3.3. Please specify the name of this (and any related) legislation. How do you expect the relevant provisions of this (new) legislation to be enacted?

Related legislation:

Local Government Finance Act 1988

Proposed legislation:

Local Government and Elections (Wales) Bill 2019, Part 8 Miscellaneous, provision j207

The relevant provisions of this legislation will be implemented by commencement order.

Please note, proposals 2 and 3 are included in the Bill on introduction, proposal 1 will be included in amending stages.

- 3.4. Please indicate the anticipated date when a) the legislative changes are expected to come into force and b) the date when the first anticipated impact on the justice system will arise.

a) 1 April 2021

b) Unknown, potentially a few months after the provisions are commenced.

- 3.5. If altering or introducing an offence, sanction or penalty, which of the following groups will the proposal affect and in what circumstances? (Tick all that apply)

- ☒ Individuals
☒ Private Institutions (e.g. Businesses)
☒ Public Institutions (e.g. Government Departments)

Welsh ratepayers of non-domestic rates can be businesses, individuals and public institutions. There are currently around 110,000 ratepayers in Wales.

Billing authorities will be able to request information from third parties holding valuable information about the property. These are expected to be landlords, utility companies, rating agents, etc.

- 3.6. Does your legislation only have impact in Wales or are you working jointly with other administrations? Tick all that apply and provide brief details as appropriate, including whether your proposal will create different laws in Wales compared to England, Scotland and / or Northern Ireland.

Please note that, with the exception of the devolved tribunals, the MoJ administers the justice system in England and Wales only. Please talk directly to the MoJ devolution unit if you anticipate your proposal could have an impact on courts or prisons in Scotland or Northern Ireland.

- ☒ Wales only
☐ England
☐ Scotland
☐ Northern Ireland
☐ Other (Please Specify)

Non-domestic rates is a devolved matter. The powers and duties will affect Welsh ratepayers or individuals, businesses and public institutions that hold information about Welsh ratepayers or non-domestic properties in Wales only.

- 3.7. If your legislation could directly impact visitors to Wales or other people not normally resident in Wales, or if your legislation is significantly different from elsewhere in England, Scotland or Northern Ireland;-

- a) what arrangements have you made to ensure ongoing awareness raising of the different legislative approach on this issue in Wales?
- b) what will be the implications on the enforcement agencies of taking forward action against individuals not usually resident in Wales?

N/A

3.8. What are the options under consideration and how does this change the existing situation?

- **Do nothing** – the accuracy of billing and property information held by local authorities would not be improved. Ratepayers would continue to have the opportunity not to disclose important information to Billing Authorities that would affect their liability, Billing Authorities would continue to be restricted in their ability to investigate avoidance cases and gather the necessary evidence to challenge successfully. Ratepayers could continue to face large backdated demands.
- **Encourage improved behaviour through non-legislative measures** – non-legislative measures such as working with local authorities and businesses through our established forums have not shown to be effective. Agents running avoidance schemes on behalf of ratepayers are prolific and widespread.
- **Introduce new duties and powers through provisions in a Local Government and Elections (Wales) Bill** – intended to mirror similar taxpayer obligations as those that exist in law for other taxes, and extend powers of valuation officers to billing authorities. Appropriate civil and criminal enforcement, but also necessary protections, will ensure compliance with the new duties and powers.

3.9. If you are creating a new civil sanction or penalty which court or tribunal, in your opinion, should deal with it?

Proposal 1 – Empower the Welsh Ministers to require ratepayers to notify billing authorities of changes in circumstance

Failure to report changes in circumstances could lead to a penalty notice issued by the Billing Authority. Ratepayers should be able to appeal to the Valuation Tribunal for Wales.

Proposal 2 - Billing authorities to enter and inspect properties

A billing authority should obtain approval from the Valuation Tribunal for Wales before exercising this power. A person who wilfully delays or obstructs an inspection is liable on summary conviction to a fine not exceeding level 1 on the standard scale by a Magistrates Court.

Proposal 3 - Billing authorities to request information from ratepayers and third parties

Billing Authority to issue penalties if information is not provided on time (£100 penalty if information is not served within 56 days, an additional £100 penalty if information is not provided within 21 days of a further notice and a £20 daily fine (up to £500 or RV of hereditament (whatever is greatest)) thereafter). Magistrates Court if a person provides false information – liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Criminal Offences and Civil Penalties and Sanctions

3.10. Which of the following are you creating / amending? (Tick all that apply)

- ☒ Civil Sanctions
- ☒ Fixed Penalties
- ☐ Civil Orders
- ☐ Criminal Sanctions
- ☒ Criminal Offences
- ☐ Other (Please Specify)

Proposal 1 - Empower the Welsh Ministers to require ratepayers to notify billing authorities of changes in circumstance

A person who fails to report a change in circumstances within 56 days (this timeframe is currently under discussion) would be served a penalty notice at a level that does not exceed level 1 on the standard scale (to be clear, this would not be made by a Magistrates Court. Reference to standard scale is only to illustrate the level the penalty will be). Subject to Ministerial consideration in the coming months, the level of the penalty could change if it were felt to be too low.

Proposal 2 - Billing authorities to enter and inspect properties

A person who wilfully delays or obstructs an inspection would be liable on summary conviction to a fine not exceeding level 1 on the standard scale.

Proposal 3 - Billing authorities to request information from ratepayers and third parties

If a person fails to comply within 56 days the Billing Authority may serve a penalty of £100. If the person fails to comply within a further 21 days the Billing Authority may serve a further penalty of £100 plus £20 per day up to a maximum of £500 or the daily Rateable Value of the property (whichever is greater). If the person provides false information they are liable on summary conviction to a fine not exceeding level 3 on the standard scale.

3.11. If you are creating a criminal offence, is it:

- ☒ Summary Only (heard before a bench of lay magistrates / judge only)
- ☐ Triable Either Way
- ☐ Indictable Only (heard before a judge and jury)

3.12. Who will be responsible for the enforcement of your legislative proposal and how will they take this role forward? Will there be a reduced need for enforcement action?

Billing Authorities will be responsible for issuing penalty notices in the majority of cases. In the most serious (but limited cases) where an inspection of a property has been wilfully obstructed or where false information is provided, Billing Authorities will prosecute to the Magistrates Court.

Billing Authorities will be responsible for seeking approval of the Valuation Tribunal for Wales to inspect a property.

The provisions are an extension of the existing enforcement role Billing Authorities already have in relation to administering other taxes, fees and in delivering services. Local authority officers have the necessary resource to undertake all that is required of these duties. Local authorities have welcomed our proposals.

3.13. What is the anticipated number of cases per year? Please provide details of any evidence of assumptions on which estimates are based.

Similar powers for the Valuation Office Agency to issue requests for information and the issue of penalties provide some useful evidence of the potential impact of our proposals. Over the previous 5 years (2013-14 to 2017-18), the VOA issued 1,481 requests for information from Welsh ratepayers. Of these, an average of 37%, or 546, result in penalties being issued. The VOA has not prosecuted anyone for providing false information.

The Valuation Tribunal for Wales hears appeals against penalty notices that have been issued by the Valuation Office Agency where ratepayers have failed to provide information. Appeals are very rare. There are currently no appeals waiting to be heard, one was brought forward at the beginning of this financial year which has since been settled.

It should be noted that much of the avoidance activity we assessed in 2017 was a result of avoidance of rates charged on empty properties, which would not be solved by the above new primary legislation – this is being dealt with separately in amending secondary legislation.

3.14. Do you expect proceedings to be heard in the Magistrates' Court, the Crown Court, or a Civil Court? What will the proportions be?

Proposal 1 - Empower the Welsh Ministers to require ratepayers to notify billing authorities of changes in circumstance

0% will go to court

Proposal 2 - Billing authorities to enter and inspect properties

Where a person who wilfully delays or obstructs an inspection, 100% of cases will be heard in the Magistrates Court. We anticipate that the number of these cases will be relatively low. The VOA has not prosecuted anyone for delaying or obstructing an inspection.

Proposal 3 - Billing authorities to request information from ratepayers and third parties

Where a person provides false information, 100% of cases will be heard in the Magistrates Court. We anticipate that the number of these cases will be relatively low. The VOA has not prosecuted anyone for providing false information, however, this is not because the policy does not work, it is because VOA can rely on other means of determining a property's value.

3.15. Please state the maximum associated fine and/or custodial penalties. In the case of offences involving penalties of a fine or custody, please indicate and explain the circumstances which would result in a custodial sentence upon conviction and the proportion of custodial penalties which will be at the maximum level.

See 3.10 for levels of fines. These are based largely around what already exists in similar circumstances in relation to Valuation Officer powers and functions.

3.16. Please provide details of any proxy or current offences and / or penalties on which the proposed penalties are based.

Some of the proposed penalties and offences are based on the same or similar regimes that already exist for Valuation Officers when carrying out their valuation function (Local Government Finance Act 1988, schedule 9, paragraph 5).

- 3.17. Please provide details of the relevant legislation (where appropriate) and confirm whether the creation or amendment of criminal offences and penalties has been agreed in line with the guidance available at <https://www.gov.uk/government/publications/making-new-criminal-offences>.

The proposed penalties and offences are considered appropriate as they are largely an extension of those that already exist in the Local Government Finance Act 1988, schedule 9, paragraph 5.

- 3.18. What will be the short, medium and lifelong implications for an individual found guilty of this offence, and how is this proportionate to the offence created?

An individual could only be found guilty of a summary offence in the case of wilfully obstructing a Billing Authority inspection of a property or for providing false information. We anticipate the number of these cases will be relatively low.

Proposal 2 - Obstruction

A person convicted of this offence would have a criminal record.

Proposal 3 - Providing false information

A person convicted of this offence would have a criminal record.

In both cases, if a person receives a fine, their conviction will be spent after 1 year. This could impact any employment applications they make in the medium term.

For some occupations an employer may ask the candidate for a job about any spent offences they may have. Likewise, some employers/occupations require enhanced DBS checks. For these purposes, a person convicted of providing false information will only have these entries removed after 11 years. This will be the long term impact on the person.

- 3.19. Does this legislation impose any duty on the public sector? If so, please provide your assessment of the likelihood of individuals or businesses taking action against the public sector for non-compliance with this legislation.

No.

4. HM Courts & Tribunals Service and the Welsh Tribunals Service

Estimating the change to caseload of the Courts and Tribunals Service (including devolved tribunals)

- 4.1. Do you expect there to be a change in Court or Tribunals process or an increase / decrease in applications / cases to HM Courts and Tribunals Service and / or the Welsh Tribunals through the creation or amendment of this law? Please provide an estimate of the change to volumes of cases going through the court system as a whole, explain any changes in process and outline the evidence and sources that support these estimates.

No we do not expect a change in process or a significant increase in the number of cases. We will liaise with the Valuation Tribunal for Wales.

The Valuation Tribunal for Wales already hears appeals against penalty notices that have been issued by the Valuation Office Agency where ratepayers have failed to provide information. Appeals are very rare. There are currently no appeals waiting to be heard, one was brought forward at the beginning of this financial year which has since been settled.

- 4.2. Please confirm if the courts / tribunals would be under any duty to inform any regulatory authorities of any convictions made under this offence.

☒ No

☐ Yes (please provide details)

Appeal Rights

- 4.3. Does your proposal create a new right of appeal or expand an existing jurisdiction in the Unified Tribunals System or route to judicial review? If so, how do you expect these to be handled (i.e. administered by HM Courts & Tribunals Service or Welsh Tribunals)?

A person ratepayer or third party will have a right of appeal to the Valuation Tribunal for Wales if they are aggrieved by the imposition of a penalty for failure to provide information that has been requested by a Billing Authority. This right of appeal already exists in relation to similar powers for Valuation Officers.

A ratepayer will have a right of appeal to the Valuation Tribunal for Wales if they are aggrieved by the imposition of a penalty for failure to report a change in circumstance to a Billing Authority within 56 days.

- 4.4. Do you expect to establish a new tribunal jurisdiction? If so, has this been discussed with the Welsh Tribunals Unit / Ministry of Justice?

No.

Alternative Dispute Resolution

- 4.5. To what extent could the use of alternative dispute resolution (ADR) procedures (including mediation) be appropriate? How will success in ADR be measured?

Alternative dispute resolution procedures are not proposed.

Prosecution and Enforcement

- 4.6. If the proposal is to add a new offence, will the Crown Prosecution Service act to prosecute defendants? If not, please identify who will prosecute.

No, billing authorities will prosecute.

- 4.7. Will the proposal require enforcement mechanisms for civil debts, civil sanctions or criminal penalties? If yes, who do you expect to enforce these?

Billing authorities, but enforcing penalty regimes in relation to local taxes will not be new for them.

HMCTS Procedural Rules, Sentencing and Penalty Guidelines

- 4.8. Do you anticipate that Court and/or Tribunal procedural rules will have to be amended? If so, when is the likely date for the changes?

We do not anticipate that Court or Tribunal procedural rules will need to be amended, but we will liaise further with relevant organisations.

- 4.9. Will the proposals require sentencing and / or penalty guidelines to be amended?

The proposals will not require sentencing or penalty guidelines.

5. Legal Aid and Court Fees

- 5.1. What evidence is there that individuals affected by your proposal will be able to afford:

- a) legal representation and legal advice in order to secure a fair hearing of their case
- b) associated court fees

What legal costs for a typical case could each party bear and what provisions exist for a party found innocent to recover all or any of their legal costs?

There will not be any legal aid. Legal costs are not known at this time.

- 5.2. Once implemented, is your proposal likely to require individuals to seek legal advice and to apply for legal aid in any of the following areas? In each case please provide supporting evidence.

- ☐ Criminal
- ☐ Civil (including Family)
- ☐ Asylum
- ☐ Legal aid not available (please provide supporting evidence)

N/A

5.3. If legal aid may be affected, would legal aid costs increase or be reduced (and by what margin)?

N/A

6. Prisons and Offender Management Services

Impact on HM Prison Services

6.1. Will the proposals result in a change in the number of offenders being committed to custody (including on remand) or probation (including community sentences)? If so, please provide an estimate and reasoning behind it, an estimated timeframe to reach this number of sentences, what evidence this is based on, and the source for your information.

No.

6.2. Does the proposal create, remove or change an existing offence with a custodial or probationary sentence, or change the way offenders go through the prison / probation service? If so, please provide details, including the expected impact on probationary services.

No.

7. Main Justice System Impacts Identified

7.1. Volumes and Costs or Savings (please lengthen if necessary):-

NB in all cases, assume an average annual figure or make clear if a different timespan is being considered. Where there may be significance variance from average in the first years of implementation, please add additional information in the notes below.

Identify the court or tribunal or MoJ service that will be affected by this proposal?	Volumes (please provide both numeric estimates and min-max ranges)	Type (e.g. prison place, tribunal hearing, fixed penalty, etc.)	Estimated recurring annual costs or savings (both numeric estimate and min-max range) (£)	Estimated initial set up costs (£)	Additional Information
Criminal Offences and Sanctions	Delaying or obstructing property inspection: Rare, perhaps 1 case per financial year	Summary conviction to a fine not exceeding level 1 on the standard scale	None, Billing Authorities will prosecute	None, Billing Authorities will prosecute	The threat of prosecution will encourage co-operation in the vast majority of cases
	Providing false information: Rare	Summary conviction to a fine not exceeding level 3 on the standard scale	None, Billing Authorities will prosecute	None, Billing Authorities will prosecute	The threat of prosecution will encourage co-operation in the vast majority of cases
Civil Penalties	Failure to report changes in circumstances: Maximum 50 cases per financial year	Level 1 on standard scale	None, Billing Authorities will issue	None, Billing Authorities will issue	
	Non-provision of information: Maximum 100 cases per financial year	Fixed penalty of £100 after 56 days, then £20 per day if further non-compliance up to a maximum of £500 or the daily rateable value of the property	None, Billing Authorities will issue	None, Billing Authorities will issue	Based on VOA numbers relating to similar regimes
HM Courts & Tribunals					

Identify the court or tribunal or MoJ service that will be affected by this proposal?	Volumes (please provide both numeric estimates and min-max ranges)	Type (e.g. prison place, tribunal hearing, fixed penalty, etc.)	Estimated recurring annual costs or savings (both numeric estimate and min-max range) (£)	Estimated initial set up costs (£)	Additional Information
Services					
Welsh Tribunals	1 per financial year	Appeal hearing	xxx	None	In discussion with VTW
Legal Aid	N/A	N/A	N/A	N/A	
Notes:-					

7.2. Prisons and Offender Management Services (lengthen if necessary, only complete if maximum penalty is something other than a fine):

Offence	Maximum Penalty	No. of prosecutions brought per annum (numeric estimate and min-max range)	Likely proportion sentenced to immediate custody	Likely average custodial sentence length given	Estimated costs or savings p.a. (£) ¹ (please provide numeric estimate and min-max range)
N/A					
N/A					
Notes:					

Please be aware that any costs or savings identified as a result of any changes to the justice system /additional work must be factored in to the financial assessment of your legislation.

¹ The MoJ publish statistics on "Prison cost per place and cost per prisoner:" - see <https://www.gov.uk/government/statistics/announcements/prison-cost-per-place-and-cost-per-prisoner-2017-to-2018>