

## Agenda Supplement – Legislation, Justice and Constitution Committee

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Meeting Venue:	For further information contact:
Video conference via Zoom	P Gareth Williams
Meeting date: 25 November 2024	Committee Clerk
Meeting time: 13.00	0300 200 6565
	<a href="mailto:SeneddLJC@senedd.wales">SeneddLJC@senedd.wales</a>

### Remote – Supplementary Pack

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Please note the documents below are in addition to those published in the main Agenda and Reports pack for this Meeting

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#### **4 Instruments that raise issues to be reported to the Senedd under Standing Order 21.2 or 21.3 – previously considered** (13.10 – 13.15)

##### **4.4 SL(6)535 – The Local Government Finance (Consequential and Miscellaneous Amendments and Revocations) (Secondary Legislation) (Wales) Regulations 2024**

(Pages 1 – 4)

Attached Documents:

LJC(6)–34–24 – Paper 25 – Letter from the Cabinet Secretary for Finance and  
Welsh Language, 22 November 2024

LJC(6)–34–24 – Paper 26 – Letter to the Cabinet Secretary for Finance and  
Welsh Language, 11 November 2024

#### **8 Welsh Language and Education (Wales) Bill: Draft report**

(13.25 – 13.55)

(Pages 5 – 52)

Attached Documents:

LJC(6)–34–24 – Paper 19 – Draft report



Mike Hedges  
Chair  
Legislation, Justice and Constitution Committee

[SeneddLJC@senedd.wales](mailto:SeneddLJC@senedd.wales)

22 November 2024

Dear Mike,

Thank you for your letter of 11 November following the Legislation, Justice and Constitution Committee's consideration of the Welsh Government's response to the Committee's report on the Local Government Finance (Consequential and Miscellaneous Amendments and Revocations) (Secondary Legislation) (Wales) Regulations 2024 ("the Regulations") on 4 November.

In relation to the first technical point, the enabling power in section 54(1) of the Local Government (Wales) Act 1994 ("the 1994 Act") was included in the preamble in error. In terms of addressing the issue, the Welsh Ministers have not identified a power that can be relied upon to omit the provision from the statute book.

However, to ensure that it is clear to anyone reading the Regulations that regulation 11(4) has no legal effect, the Welsh Government's editorial team has confirmed that commentary has been included on [legislation.gov.uk](https://www.legislation.gov.uk) (at <https://www.legislation.gov.uk/wsi/2024/998/regulation/11/made>) to confirm that regulation 11(4) has no effect as the power in section 54(1) was not transferred to the National Assembly for Wales (as it was then) nor subsequently to the Welsh Ministers.

In relation to the third technical point, regulation 23 applies certain amendments previously made to regulation 3(2) of the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 ("the 1989 Regulations") (in respect of England) to Wales. Consideration was given to the most suitable drafting approach given that regulation 3(2) contains parallel text. Whilst the Welsh Government remains content that regulation 23 is legally effective, it is accepted that an alternative may have been to textually amend the 1989 Regulations. The Committee's comments on the drafting approach are noted and will be taken into account when drafting future instruments.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

We trust this clarifies the Welsh Government's position.

Yours sincerely,

A handwritten signature in black ink that reads "Mark Drakeford". The signature is written in a cursive style with a large initial 'M'.

**Mark Drakeford AS/MS**

Ysgrifennydd y Cabinet dros Gyllid a'r Gymraeg  
Cabinet Secretary for Finance and Welsh Language

Mark Drakeford MS

Cabinet Secretary for Finance and Welsh Language

11 November 2024

Dear Mark

**Local Government Finance (Consequential and Miscellaneous Amendments and Revocations)  
(Secondary Legislation) (Wales) Regulations 2024**

You will be aware that we have recently reported on the Local Government Finance (Consequential and Miscellaneous Amendments and Revocations) (Secondary Legislation) (Wales) Regulations 2024.

At our meeting on 4 November 2024 we considered the Welsh Government response to our report on the Regulations. In our view, the responses we have received to the first and third technical reporting points are insufficient. The Committee agreed to write to you to express our concerns.

The first reporting point notes a serious matter; that, to the extent that the Regulations are made under section 54(1) of the *Local Government (Wales) Act 1994*, there appears to be doubt as to whether they are intra vires. This is because a Transfer of Functions Order in 1999 did not transfer the power in section 54(1) of the 1994 Act from the Secretary of State to the National Assembly for Wales, and subsequently to the Welsh Ministers via the Government of Wales Act 2006, as suggested in the preamble to the Regulations.

This fact has been accepted by the Welsh Government. The response to our report provides an explanation that the enabling power in section 54(1) of the 1994 Act was only cited to make the provision in regulation 11(4) of the Regulations, which omitted a spent article from the Local Government Reorganisation (Wales) (Finance) (Miscellaneous Amendments and Transitional Provisions) Order 1996. As such, the Welsh Government considers that regulation 11(4) of the Regulations having no effect will have no impact in practice.

This response does not acknowledge the serious principled issue of the Welsh Ministers purportedly exercising a power that they do not have. You will appreciate that vires is fundamental to the exercise

of subordinate legislation-making powers. We would therefore be grateful to receive further clarity on this matter, particularly as regards why the Welsh Government believed that the Welsh Ministers could exercise this power, and what action the Welsh Government will now take to address this regulation appearing on the statute book despite being acknowledged by the Welsh Government as ultra vires.

Finally, as regards our third technical reporting point, we stated that the approach adopted by the Welsh Government in regulation 23 of the Regulations – i.e. stating that changes made to the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 by two England-only statutory instruments also apply in relation to Wales – does not provide clarity. We said that making textual amendments to the 1989 Regulations would have been clearer and would have made the law more accessible. The response we have received, that the Welsh Government is content that the drafting of regulation 23 achieves the intended effect, is insufficient and does not explain why this drafting approach has been taken, rather than making textual amendments to the 1989 Regulations. We would therefore welcome further information about the decision taken regarding the drafting of regulation 23.

Yours sincerely,

A handwritten signature in black ink that reads "Mike Hedges". The signature is written in a cursive style and is underlined with a single horizontal line.

Mike Hedges  
Chair

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