

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

Background and Purpose

These Regulations make amendments to secondary legislation in consequence to amendments made by the Local Government Finance (Wales) Act 2024 (**the 2024 Act**) to the Local Government Finance Act 1988 (**the 1988 Act**) and the Local Government Finance Act 1992 (**the 1992 Act**).

For example, the Regulations amend:

- various statutory instruments to ensure that those instruments refer to new sections 41ZA and 52ZA of the 1988 Act, which deal with the compilation and maintenance of non-domestic rating lists in relation to Wales;
- the Council Tax (Demand Notices) (Wales) Regulations 1993 to ensure that they refer to the appropriate provisions of the 1992 Act.

The Regulations also make other amendments which are not consequential to the 2024 Act and revoke statutory instruments or omit provisions which no longer have effect.

Procedure

Negative

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

Technical Scrutiny

Three points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(i) – that there appears to be doubt as to whether it is intra vires

The preamble to the Regulations says that section 54(1) of the Local Government (Wales) Act 1994 is one of the powers that the Welsh Ministers used to make the Regulations.



A footnote to the preamble says that the power in section 54(1) was, in relation to Wales, transferred from the Secretary of State to the original National Assembly for Wales via a Transfer of Functions Order in 1999¹ and then from the National Assembly for Wales to the Welsh Ministers via the Government of Wales Act 2006.

However, having looked at the Transfer of Functions Order, it does not appear that the power in section 54(1) was transferred to the original National Assembly for Wales. While the Transfer of Functions Order transferred many of the powers contained in the Local Government (Wales) Act 1994, the power in section 54(1) was not one of them.

Therefore, to the extent that the Regulations are made under section 54(1), there appears to be doubt as to whether they are *intra vires*.

2. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

In regulation 6(4) and (5), “sub-paragraph (ii)” should read “paragraph (ii)”.

3. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation

Regulation 23 deals with consequential amendments to the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 (**the 1989 Regulations**).

Regulation 23 reads as follows:

23. The amendments made to regulation 3(2) of the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 by paragraph 1(b) of Schedule 1 to the Local Government (Non-Domestic Rating) (Consequential Amendments) (England) Order 2008 and regulation 2(b) of the Non-Domestic Rating (Consequential and Other Amendments etc.) (England) Regulations 2023 apply in relation to hereditaments in Wales.

Therefore, regulation 23 does not amend the text of the 1989 Regulations. Rather, regulation 23 simply says that changes made to the 1989 Regulations in relation to England also apply in relation to Wales.

It is unclear why the Welsh Ministers have taken this approach, as opposed to making their own textual amendments to the 1989 Regulations. It seems to us that making textual amendments would have been clearer and made the law more accessible.

We also note that regulation 23 refers to “Schedule 1” to the Local Government (Non-Domestic Rating) (Consequential Amendments) (England) Order 2008. However, there is only one Schedule to that Order, which should be referred to as “the Schedule”.

¹ The National Assembly for Wales (Transfer of Functions) Order 1999 (SI 1999/672).



Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Welsh Government response

A Welsh Government response to reporting points 1 and 3 is required.

Committee Consideration

The Committee considered the instrument at its meeting on 21 October 2024 and reports to the Senedd in line with the reporting points above.



Senedd Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

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Welsh Parliament

Legislation, Justice and Constitution Committee