Agenda Supplement – Legislation, Justice and Constitution Committee

Meeting Venue:

Committee Room 5, Tŷ Hywel

Meeting date: 18 November 2024

Meeting time: 13.00

For further information contact:

P Gareth Williams

Committee Clerk

0300 200 6565

SeneddLJC@senedd.wales

Hybrid – Supplementary Pack

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

---

5 Instruments that raise issues to be reported to the Senedd under Standing Order 21.2 or 21.3 – previously considered

(15.05 – 15.10)

5.4 SL(6)540 – Land Transaction Tax (Relief for Special Tax Sites) (Wales) Regulations 2024

(Page 1)

Attached Documents:

LJC(6)-33-24 – Paper 23 – Letter from the Cabinet Secretary for Finance and Welsh Language, 15 November 2024

7 Papers to note

(15.15 – 15.20)

7.6 Correspondence from the Cabinet Secretary for Finance and Welsh Language: Welsh Language and Education (Wales) Bill

(Pages 2 – 21)

Attached Documents:

LJC(6)-33-24 – Paper 24 – Letter from the Cabinet Secretary for Finance and

Welsh Language, 15 November 2024

LJC(6)-33-24 - Paper 25 - Letter to the Cabinet Secretary for Finance and Welsh Language, 24 October 2024

Mark Drakeford AS/MS
Ysgrifennydd y Cabinet dros Gyllid a'r Gymraeg
Cabinet Secretary for Finance and Welsh Language

Llywodraeth Cymru
Welsh Government

Your ref: SI(6)540

Mike Hedges MS
Chair of Legislation, Justice and Constitution Committee
Senedd Cymru
SeneddLJC@senedd.wales

15 November 2024

Dear Mike,

As part of the scrutiny of the Land Transaction Tax (Relief for Special Tax Sites) (Wales) Regulations 2024, the Committee asked the Welsh Government to confirm whether the Competition and Markets Authority (the "CMA") raised any concerns in relation to the new land transaction tax ("LTT") relief and, if so, provide the Government's response.

As outlined in the Welsh Government's initial response to the Committee, the CMA published their report on the Welsh Freeports Subsidy Scheme on 1st November 2024:

Referral of the proposed Welsh Freeports Subsidy Scheme by the Welsh Government (WG) and the Ministry of Housing, Communities and Local Government (MHCLG) - GOV.UK

The Welsh Government and UK government have now had opportunity to consider the report. I can confirm the CMA did not raise any specific concerns in relation to the new LTT relief.

The Welsh Freeports Subsidy Scheme has been registered on the UK Government subsidy transparency database and is ready for use once the legislation comes into force:

SC11215: Welsh Freeports Subsidy Scheme

Yours sincerely,

Mark Drakeford AS/MS
Ysgrifennydd y Cabinet dros Gyllid a'r Gymraeg
Cabinet Secretary for Finance and Welsh Language

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400
Correspondence.Mark.Drakeford@gov.wales
Gohebiaeth.Mark.Drakeford@llyw.cymru

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

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.

Mark Drakeford AS/MS
Ysgrifennydd y Cabinet dros Gyllid a'r Gymraeg
Cabinet Secretary for Finance and Welsh Language

Llywodraeth Cymru
Welsh Government

Mike Hedges MS
Chair
Legislation, Justice and Constitution Committee

15 November 2024

Dear Mike,

Welsh Language and Education (Wales) Bill

Thank for your letter dated 24 October, following my attendance at your Committee to provide evidence in relation to the Welsh Language and Education (Wales) Bill. I trust the Committee found the session to be informative.

The Annex to your letter poses a number of questions. My response to each of those questions are set out in the Annex to this letter.

I thank the Committee for their interest in this Bill and look forward to considering the Committee's report, in due course.

I am copying this letter to Buffy Williams MS, Chair of the Children, Young People and Education Committee.

Yours sincerely,

Mark Drakeford AS/MS
Ysgrifennydd y Cabinet dros Gyllid a'r Gymraeg
Cabinet Secretary for Finance and Welsh Language

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400
Correspondence.Mark.Drakeford@gov.wales
Gohebiaeth.Mark.Drakeford@llyw.cymru

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

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.

Annex

1. **Have you undertaken a human rights impacts assessment for this Bill and what was the outcome of that assessment?**

   During the Committee discussion both the human rights impact and the Children's Rights Impact Assessment were discussed together.

   As with all Senedd Bill proposals, the Welsh Government carries out a full human rights assessment before introduction, this is done as part of the legislative competence consideration. We are satisfied that the provisions of this Bill are compliant.

   Chapter 9 of the Explanatory Memorandum provides a summary of the impact assessments undertaken as part of the development of the Bill. The full impact assessments required for this Bill were published in the Integrated Impact Assessment to the Welsh Government's website upon introduction of the Bill on 15 July – this includes a Children's Right's Impact Assessment.

2. **What does this Bill enable you to achieve that you cannot within the existing legislative framework?**

   The Bill will provide a coherent framework and clear direction of travel to drive the changes required to achieve our 2050 aim.

   The Bill places a duty on the Welsh Ministers to prepare a Code to describe Welsh language ability. Such a duty on the face of the Bill provides clarity and cohesion in our national approach to describing Welsh language ability. Alongside this new approach, the Bill sets a duty on the Welsh Ministers to review the Welsh language standards. Placing this duty on the Bill indicates that the Code will also be considered in the context of the existing legislative framework.

   Introducing a statutory system for school language categories and the requirement for a school to have a Welsh language education delivery plan, in comparison with the current non-statutory guidance on school language categories, will be key in driving schools to increase their Welsh language education provision where this is reasonably practicable. The plan will strengthen both the accountability aspect and the focussed support that can be provided by local authorities to ensure that sufficient progress is made towards their WESP targets set in the National Framework. The statutory categories will, through regulations, specify a minimum amount of Welsh language education provision alongside the Welsh language learning goals set in the Bill.

   The Bill will provide the Welsh Ministers with the power to set statutory national targets as well as targets on local authorities to meet through their WESPs. This will bridge the gap that currently exists between the Cymraeg 2050 strategy target of one million Welsh speakers and the delivery of WESPs at local authority level.

   The Bill also creates a statutory body to support people to learn Welsh, and facilitate their progress, so that more people (of all ages) are learning the language. There are currently no legislative measures with this role. Creating the Athrofa as a statutory body through this Bill therefore provides stability and a long-term approach to the lifelong learning of Welsh.

3. **The Explanatory Memorandum states that this "is the first piece of primary legislation to be introduced for the purpose of realising the long-term objective" of the Cymraeg 2050 strategy. As the strategy was announced on 10 July 2017, why has it taken over 7 years to bring this legislation forward?**

   The Welsh Language and Education Bill is introduced in the context of the significant challenge of reaching a million Welsh speakers by 2050, as set out in our Welsh language strategy, *Cymraeg 2050.*

   Those challenges require transformational changes to the way we think about the Welsh language, and that is why the strategy commits to reviewing the legislation which underpins the Welsh language to ensure it offers a strong foundation for promoting and facilitating the use of Welsh.

   We see the role that education plays as being a key part on the journey towards a million Welsh speakers.

   Whilst this Bill is the first piece of primary legislation to be introduced for the purpose of realising the long-term objective of the strategy, it is also important to note that this Bill is not the starting point. We made a deliberate decision to build an incremental approach to making changes to the system to build on the goodwill towards the language and to bring people with us. As such, many of the Bill's provisions build upon work that has already taken place.

   We introduced non-statutory guidance on school language categories in 2021, and those categories have been implemented in the PLASC since January 2024. In introducing that non-statutory guidance, the Minister's foreword stated that we would explore the benefits of making the categories statutory over the coming years.

   While this Bill is the first primary legislation introduced since *Cymraeg 2050*, statutory action has also been taken with the introduction of the Welsh in Education Strategic Plans (Wales) Regulations 2019.

   These regulations and the WESP regime have transformed the way local authorities plan their Welsh language education provision, and this Bill builds on the progress that has already been made.

   We recognise that the current education system leads to vastly different linguistic outcomes, depending on the medium of education. We want the education system to embrace Welsh as a language that belongs to all pupils in Wales. We therefore propose in this Bill steps that will reduce the gap in linguistic outcomes of school pupils.

   Building on both non-statutory and statutory actions taken since introducing *Cymraeg 2050,* we believe that now is the time to introduce this primary legislation as the next natural step as we work to realise our ambition of reaching one million speakers.

4. **According to the Statement of Policy Intent, there is currently no policy intent to use several of the regulation-making powers in the Bill and the powers are there to "future-proof the Bill". Can you therefore explain why such powers are included?**

   Language planning is a long-term pursuit, and our journey towards 2050 will require us to review progress and adapt over time as circumstances change.

In preparing the Statement of Policy Intent we have tried to provide as much information as possible to the Senedd committees about how and when we intend to use the subordinate making powers and duties that are contained in the Bill.

There are six occasions where we have set out that there is currently no intent to use the power or that there are no immediate or short term intention to use the power. The reasons why we have included the powers in the Bill are set out at Chapter 5 of the Explanatory Memorandum and in the Statement of Policy Intent. These examples are set out below

i. Section 13(2) which provides the Welsh Ministers with a power to make regulations amending section 9 of the Bill in order to add or revise a language category and section 13(4) which states that any regulations made to add a language category need to include a Welsh language learning goal for that category. At present we are planning that there will be three statutory language categories as set out in the Bill. The power is required to enable the Welsh Ministers to respond to any future developments or responses to a consultation which indicate it would be desirable to add or revise a language category.

ii. Regulations under section 14(2)(b)(vi) – this allows the Welsh Ministers to specify any person who must be consulted by a school's governing body when preparing a Welsh language education delivery plan. The power is required as it may be appropriate to add consultees if, for example, a new body is established that has an interest in school delivery plans, or another person needs to be added to the list of consultees in section 14(2)(b).

iii. Regulations under section 14(4)(a) – (b)- these subsections allow the Welsh Ministers to make regulations to amend the duration of the period that a delivery plan has effect and make provision about the form and content of a delivery plan. The Bill provides that the delivery plan will have effect for 3 school years (s.14(3)). The power is required to allow the Welsh Ministers to amend the duration of the delivery plans at a future point if they are deemed too short or too long. The power in section 14(4)(b) could be used to provide more detail about what Welsh language education delivery plans should include and their form. This would enable consistency of approach by schools.

iv. Regulations under section 20(2) – this power allows the Welsh Ministers to make regulations to make further provision in relation to the Welsh language education plans of community special schools. This power will be exercised as the regulations will give further details to allow community special schools to prepare Welsh language education plans. The details to be included in the plans may change over time, therefore this power is required to provide the Welsh Ministers with flexibility to make changes as the need arises. The Statement of policy intent will be amended to reflect the intention to use this power.

v. Regulations under section 23(9) – this section provides the Welsh Ministers with a power to change what is required or permitted to be included in the National Framework for Welsh Language Education and Learning Welsh, as set out in sections 23(3) – (7) of the Bill. The power is needed to give Ministers the flexibility to vary the requirements as to what should be included in the National Framework, when necessary, in order to respond to new situations that may arise over time.

vi. Regulations under section 53(1) - this section provides the Welsh Ministers with a power to make provision that is incidental or supplementary to any provision in

the Bill or that is consequential on any provision in the Bill, and to make transitional provision, transitory provision or saving provision in connection with any provision of the Bill. This power will be intended to enable the Welsh Ministers to make changes over time, to ensure that this Bill works together with other laws. It is therefore appropriate to introduce regulations to give the Welsh Ministers the flexibility to be able to adapt to unforeseen circumstances.

5. **Can you confirm whether section 3(1) and 3(2)(b) confer regulation making powers or duties? The Statement of Policy Intent is inconsistent in its description.**

   Section 3(1) of the Bill imposes a duty on the Welsh Ministers to make regulations. Sections 3(2)(b) provides a regulation making power. My officials will correct the English version of the Statement of Policy Intent to ensure references are used correctly.

   The descriptions in the Welsh version of the Statement of Policy Intent are correct.

6. **Section 3(1) of the Bill enables the Welsh Ministers to make regulations specifying the data to be used in order to calculate the number of Welsh speakers. Section 3(2) then goes on to explain that, whether a person is a Welsh speaker is be decided by self-assessment or, in the case of a child, on the basis of an assessment by their parent or carer or any other method specified by regulations. Can you explain to us the interaction between sections 3(1) and 3(2)? The Statement of Policy Intent indicates that section 3(2) is a limitation on the power in section 3(1), but this is not clearly set out on the face of the Bill.**

   Whether a person is a Welsh speaker for the purposes of sections 1 and 2 has to be decided in accordance with the provisions of section 3(2). Regulations under section 3(1) must specify the data that is to be used for calculating the number of Welsh speakers for the purposes of sections 1 and 2. Section 3(2) is a limitation on the power in 3(1) as the data used to count Welsh speakers must be linked to the meaning of Welsh speaker in 3(2).

   For example, whether a person aged 16 or over is a Welsh speaker is to be decided on the basis of self-assessment (section 3(2)(a)). The data specified in regulations made under section 3(1) to calculate the number of Welsh speakers aged 16 or over would have to therefore capture those who have self-assessed themselves as Welsh speakers.

7. **Section 10(1) of the Bill requires the Welsh Ministers to make regulations specifying the amount of Welsh language education provided for each language category. Section 13(1) enables the Welsh Ministers to make further provision about the school language categories. The Statement of Policy Intent states that it will be important to consult before making regulations; can you explain why there is no duty for the Welsh Ministers to consult on the face of the Bill?**

   We generally do not place duties in legislation to consult on subordinate legislation. The general public law requirements will apply. It is the Welsh Government's standard practice to consult publicly where appropriate to seek views on the subordinate legislation – and at the appropriate time to do so. As we have set out in the Statement of policy intent, we are of view that these regulations will require a public consultation.

8. **Section 13(1) says the Welsh Ministers may by regulations make further provision about the school language categories. What are the limits of this "further provision" and why can you not be more specific about what this power will be used for?**

Section 13 is limited by Part 3, and in particular by the provisions in section 9. This power is to make '*further* provision'. In terms of what the power will be used for, the intention is to ensure that the Welsh Ministers have sufficient powers to respond to changing circumstances without having to amend primary legislation.

Specificity is provided in section 13(2) in terms of the potential amendments that may be needed to section 9 over time, but the wider power to make further provision in section 13(1) is a power to elaborate on the existing provision in section 9 – to provide more detail on language categories.

9. **Section 13(5) requires the Welsh Ministers to decide whether to exercise their power to increase the minimum amount of Welsh language education provision for the Primarily English Language, partly Welsh category within 5 years of that power coming into force, and after that within 5 years of each period following their most recent decision. Can you confirm the intention behind this provision can the power be exercised as regularly as the Welsh Ministers determine - can the power be exercised as regularly as the Welsh Ministers determine, as long as no more than 5 years elapse between decisions as to whether it should be exercised?**

   The power in section 13(2)(b) may be exercised at any point. The purpose of section 13(5) is to give an assurance that the Welsh Ministers will consider exercising that 13(2)(b) power every 5 years.

10. **Sections 14(3), 29(1) and 44(8) specify that start dates for plans or planning periods shall be set out in regulations. If the dates are not set out on the face of the Bill, is there a danger that the powers may not be exercised and that the provisions are not commenced?**

    There is no danger that these powers may not be exercised. The School delivery plan and the local Welsh in Education Strategic Plans are key elements in the implementation of the Bill.

    I am of the view that it is appropriate that the Welsh Ministers specify the start date for the first 5-year period of the local Welsh in education strategic plan in regulations (section 29(1)), as their preparation is dependent on the date of publication of the National Framework for Welsh Language Education and Learning Welsh. The Welsh Ministers have a duty to lay the first National Framework before the Senedd before 31 July 2028 (section 26(3)). This is the latest date for laying the National Framework. It can, if circumstances permit, be laid sooner than that. It is therefore appropriate to offer flexibility in setting the first date for the local Welsh in education strategic plan in secondary legislation.

    In a similar way, I consider it to be appropriate to allow the Welsh Ministers the flexibility to specify the school year in which the first school delivery plan starts by regulations (section 14(3)) to ensure that the statutory language categories are operational (that is, the amount of Welsh language education provision for each category under section 10(1)) and to allow the relevant local Welsh in education strategic plan to be considered (s14(2)(a)).

    The National Institute for Learning Welsh must prepare a strategic plan, therefore the Welsh Ministers will exercise the power in section 44(8)(a) detailing the first planning period. Subsequent planning periods will last 3 years unless the Welsh Ministers make regulations specifying a different period under the regulation making power in section

44(8)(b). Regulations give the Ministers the flexibility to set the planning phases for the Institute as necessary.

As these examples illustrate, there are a number of interdependencies in terms of the sequencing of various aspects of the Bill. At the Committee session I offered to share with you the current high-level implementation milestones, which is provided alongside this letter in a tabular format at document 1 and as a visual at document 2. In sharing these documents, I wish to highlight to the Committee that these dates represent the current planning assumptions. Further work will be undertaken over the coming months in relation to the detailed implementation arrangements. The indicative timetables do not set out the entirety of the work required to implement the Bill e.g. there will be a need to prepare additional items of subordinate legislation such as Commencement Orders.

11. Why is "lifelong" in brackets in section 23(1)(b), and "national" in brackets in section 23(5)(b)?

In section 23(1)(b) the brackets are intended to provide clarification that Welsh language learning has a broader more general meaning than has been used in the Bill so far, it is not limited to Welsh language learning in a compulsory school age setting.

Similarly, in section 23(5)(b) brackets are used to provide clarity that targets in this paragraph are to reflect the national targets, not local targets referred to in section 23(5)(a).

12. Section 28(3)(a) requires a local Welsh in education strategic plan to include "information on the education practitioners working in the local authority's area". The term "information" is vague – what information do you envisage the local Welsh in education strategic plan including and why is appropriate detail not included on the face of the Bill?

This could include numbers of practitioners or their Welsh language ability, or age. The intention is that regulations under section 33 will be able to provide more detail on what is required to be included in the local Welsh in education strategic plan. This could change as time goes on - our journey towards 2050 will require us to review progress and adapt over time as circumstances change.

13. Sections 30 and 32 allow the Welsh Ministers to issue directions to local authorities in relation to local Welsh in education strategic plans that they have prepared. No procedure is applicable to such directions. Given that this power allows the Welsh Ministers to interfere with a subjective decision making process of the local authority, why is it not subject to a scrutiny procedure?

Sections 30 and 32 of the Bill are direction-making powers that are "executive" in nature, as opposed to being quasi-legislative. Where primary legislation makes provision about the power to make directions of this kind it is not usual for such directions to be subject to a procedure in primary legislation.

14. Section 33 of the Bill contains a power for the Welsh Ministers to make regulations relating to a wide range of matters relating to local Welsh in education strategic plans, as listed in the Statement of Policy Intent.

a. Given the breadth of this power, do you consider that it would be more appropriate to subject it to the affirmative scrutiny procedure?

A number of key concepts relating to the local Welsh in Education Strategic Plans (WESP) are legislated for in the Bill, for example:

- what must be included in the WESP,
- the duration of the WESP and
- who must be consulted.

The power in section 33 enables the Welsh Ministers to make further provision about the plan, but those matters are largely technical and administrative in nature and supplement what is in the Bill, for example:

- the timing of the plan (but not its duration),
- consultation process, and
- approval process.

This would lean towards a negative procedure, as set out in the Welsh Government's guidelines on subordinate legislation.

There is also scope under the power for the regulations to make provision about the content of the plan, which will build upon the express requirements in section 28, and allows the Welsh Ministers to make specific and more detailed provision (as is the case in the current WESP Regulations).

It would also allow the Welsh Ministers to respond to changes in circumstances and priorities over time. That power will be limited by the scope of section 28 – the provisions in the regulations about the content must fall within the ambit and scope of section 28.

Using of the Negative procedure replicates the existing procedure in the School Standards and Organisation (Wales) Act 2013. I consider that a negative procedure is justifiable on the basis that it follows existing practice and legislation.

b. In section 33(2), what do you mean when you say regulations could "apply sections 28 to 32 with modifications" for the purpose of producing joint local Welsh in education strategic plans – what would such modifications look like?

This applies where local authorities are permitted to prepare joint plans as a result of regulations made under section 33(2). In such a scenario it may be necessary to modify some of the requirements of sections 28 to 32 to reflect the joint nature of the plan and that it will cover more than one authority's area. It may also be necessary to modify in order to reflect the separate targets the local authorities will receive in the Framework.

This reflects the power in the current WESP statutory framework (section 87 of the School Standards and Organisation (Wales) Act 2013).

c. Why is there no detail on the face of the Bill relating to joint local Welsh in education strategic plans?

Dealing with joint plans in regulations means that consultation can be undertaken about what kind of joint plans might be sought. That might be different in different parts of Wales. Having a regulation making power will allow a more purposeful and specific mechanism for such plans. This reflects the power in the current WESP statutory framework (section 87 of the School Standards and Organisation (Wales) Act 2013).

15. **Paragraph 2 of Schedule 2 to the Bill allows the Welsh Ministers to make regulations that vary the number of members of the new National Institute for Learning Welsh. The Explanatory Memorandum states that this is subject to the negative scrutiny procedure, but as the power can only be exercised to amend paragraph 2(1) of Schedule 2, can you confirm that it is in fact subject to the draft affirmative procedure in accordance with section 52(4)(b)?**

    We agree with the Committee that regulations made under paragraph 2(4) of Schedule 2 to the Bill would amend paragraph 2(1) of Schedule 2 to the Bill, as it is a power to amend a provision in the Welsh Language and Education (Wales) Act. We agree that the effect of section 52(4)(b) is that the affirmative procedure applies to the regulations. We will consider whether an amendment is required to section 52(4)(a) of the Bill and will amend Table 5.1 of the Explanatory Memorandum to ensure it reflects the text of the Bill.

16. **Paragraph 18 of Schedule 2 to the Bill deals with the obligations of the Auditor General for Wales in relation to the new National Institute for Learning Welsh. Can you provide us with the details of any consideration you gave as to whether paragraph 18 complies with paragraph 5(3) of Schedule 7B to the Government of Wales Act 2006?**

    Paragraph 18 of Schedule 2 to this Bill provides a power for the Auditor General to carry out a financial examination, states that policy objectives are outside the scope of the discretion provided to the Auditor General, and provides what the Auditor General must do before and after conducting a financial examination. There is no provision in paragraph 18 controlling or directing the use of the Auditor General's financial examination functions and the provision complies with paragraph 5(3) of Schedule 7B to the Government of Wales Act 2006.

17. **Paragraph 15(4) of Schedule 2 allows the Welsh Ministers to specify the responsibilities that the accounting officer of the new Institute will have. How are these responsibilities to be specified in practice and will the Senedd have the opportunity to scrutinise them? Why can they not be definitively listed on the face of the Bill, rather than the non-exhaustive list in paragraph 15(5)?**

    The Athrofa will be a Welsh Government sponsored body, operating at arm's length from government but within a strategic planning and funding framework established by the Welsh Ministers. This framework will mirror the standard framework document for a Welsh Government Sponsored Body and will detail the terms and conditions under which the Welsh Ministers provide resources to the Athrofa, the roles and responsibilities of the Welsh Ministers and the Athrofa as well as the relationship between them. This includes the roles and responsibilities of the Accounting Officer (AO) and individual Board members.

    The AO will have specific responsibilities for the propriety and regularity of the public finances for which they are responsible which will be included in a separate memorandum under the framework, including their accountability to the Senedd, the Welsh Government and the Athrofa's board. The Accounting Officer's responsibilities are derived originally from the Treasury - and the Permanent Secretary has a role in ensuring that the responsibilities of the Accounting Officer reflect those responsibilities. The Senedd has no power to intervene in that regard.

    The reason for providing a non- exhaustive list is to give broad parameters of the role but also provide flexibility in relation to the chief accounting officer's functions that are agile enough to reflect Welsh Ministers' evolving requirements on financial accountability

within the funding framework. Quite often, primary legislation does not say anything at all about the duties of the Accounting Officer when setting up a new statutory body, so the aim of paragraph 15 is to give a broad indication of what those duties will be without being unduly prescriptive.

In addition, general accounting principles apply to bodies handling Government funds.

18. **The Bill uses the term "Welsh language education" which is defined separately in section 8(2)(a) for Part 3, and section 35(a) for Part 4. Both definitions are the same. The term is also used in sections 1(1)(c)(i) and 39(2) but is not defined for those purposes. Why was one definition not inserted into section 49(3) of the Bill which would then apply throughout the Bill, and do you agree that the lack of a definition for 'Welsh language education' in sections 1(1)(c)(i) and 39(2) could cause confusion in interpretation?**

    We agree that the term "Welsh language education" is not defined in sections 1(1)(c)(i) and section 39(2). We will consider this matter further.

19. **Section 50 deals with the publication of documents, and states that where a person has a duty to publish a document electronically and they have their own website, the document has to be published on that website. Where is it to be published if they do not have their own website?**

    The provision is similar to section 171 of the Local Government and Elections (Wales) Act 2021. Welsh Government policy at the time was that where a duty to publish electronically fell on a community council under that Act and that community council did not have a website they could ask the local authority to publish the material on their website.

    In this context, if a school did not have a website they could ask the local authority to publish it. In relation to the Local Government and Elections (Wales) Act 2021, there were no concerns that the bodies on whom that duty was imposed would have any problems discharging it.

    On the duty to publish "electronically", a school could also publish documents via an app and section 50(1) allows for that. Other digital or social media platforms may also be used in the future.

20. **These further points have been identified in relation to the Statement of Policy Intent and the Explanatory Memorandum:**

    a. **In the English language version of the Explanatory Notes, which are included in Annex 1 to the Explanatory Memorandum, in relation to section 11, the description in the table entry for the Welsh language learning goal of Primarily English Language, partly Welsh schools states that 'By a date specified by the Welsh Ministers by regulations, that pupils are basic users…' however this does not reflect the drafting of section 11(3)(a). The Welsh language version of the Explanatory Notes read 'Hyd at ddyddiad', meaning 'Until a date.'**

       My officials will correct the English language version of the Explanatory Memorandum to reflect the drafting of the Bill and to ensure both language versions of the Explanatory Memorandum are consistent.

    b. **The Statement of Policy Intent on pages 14 and 18, in relation to sections 10(1), 10(2), 13(2) and 13(4), says that 'Section 13(5) states that the Welsh Ministers**

must decide every 5 years whether to revise/amend the language categories'. However, section 13(5) requires the Welsh Ministers to decide every 5 years whether to exercise the power to make regulations under section 13(2)(b), which is the regulation making power to increase the minimum amount of Welsh Language education provision for the "Primarily English Language, partly Welsh" category.

We agree with the Committee in this respect and my officials will amend the Explanatory Memorandum.

c. **In relation to section 16(6)(c), Table 5.2 of the English language version of the Explanatory Memorandum states that it is a power conferred on the Welsh Ministers, when it is in fact conferred on local authorities. The Welsh language version of the Explanatory Memorandum is correct.**

   My officials will correct the English language version of the Explanatory Memorandum to reflect the drafting of the Bill and to ensure both language versions of the Explanatory Memorandum are consistent.

d. **In relation to section 20(4), Table 5.1 in the Explanatory Memorandum states that 'It imposes a duty to make provision, in relation to voluntary designation, including modifying Part 3 of the Bill' and 'The power enables the Welsh Ministers to amend primary legislation', however, the power is to make regulations that apply Part 3 with modifications, it is not a power to amend primary legislation.**

   We agree with the Committee in this respect and will amend the Explanatory Memorandum to ensure that is clear the power does not enable the Welsh Ministers to amend primary legislation. It is a power to apply Part 3 of the Bill with modifications where a community special schools voluntarily designate a language category. I confirm the regulations will be made under the Affirmative procedure as set out in section 52(4)(b) of the Bill.

e. **In relation to section 23(9), Table 5.1 in the Explanatory Memorandum states that 'The power enables the Welsh Ministers to amend the impact of primary legislation', however the power in section 23(9) enables Welsh Ministers to amend primary legislation, not merely its impact.**

   We agree with the Committee and my officials will amend the Explanatory Memorandum to set out that the power enables the Welsh Ministers to amend primary legislation.

f. **In relation to sections 28(4)(b)(ix) and 29(1)(a), in the Statement of Policy Intent, there are references to a 'section' of the Welsh in Education Strategic Plans (Wales) Regulations 2019 as opposed to 'regulation'.**

   My officials will amend these references.

g. **In relation to paragraph 3(f) of Schedule 2, Table 5.1 of the Explanatory Memorandum states that 'The power enables the Welsh Ministers to amend primary legislation', however the power is to specify, in regulations, the holder of an office, or a member of a body or a member of staff of a body that are disqualified from being a non-executive member of the National Institute for Learning Welsh; these regulations will not amend primary legislation.**

We agree with the Committee that the proposed draft affirmative regulations will specify persons but will not change the text of the primary legislation. My officials will make this clear in the Explanatory Memorandum.

Can you confirm that these points will be addressed and that the Statement of Policy Intent and the Explanatory Memorandum will be amended accordingly?

I am happy to confirm that changes will be made to the Explanatory Memorandum ahead of laying it before the Senedd following Stage 2 proceedings. I will also make a revised version of the Statement of Policy Intent available to your Committee and the Children, Young People and Education Committee at that time.

21. Finally, while a response will not be required in respect of the matters set out below, we wish to bring them to your attention:

a. In section 32(4), the word "Minsters" should instead be "Ministers".

b. In section 37(3)(d), the word "on" after "National Framework" should instead be "for".

I am grateful to the Committee for raising these issues and agree with the Committee that these corrections should be made.

Indicative timeline for implementation of the Bill

This document reflects the current planning assumptions for the implementation of the Bill and will be updated as we continue to work on the Bill's implementation and as dependencies between activities are identified.

Year	Financial year	Date	Activity
1	2025-26	May/June 2025 (Upon Royal Assent)	Duty on the Welsh Ministers to include the Million Welsh Speakers target in strategy on promoting and facilitating the use of Welsh under section 78 of the Government of Wales Act 2006 comes into force. [This is already in place therefore, there will be no action required to implement].
		October 2025	Consultation on the Code
2	2026-27	July 2026	Finalise Code
		October 2026	Consultation on the language categories and WESP regulations
3	2027-28	July 2027	Finalise regs relating to language categories and WESPs
		July 2027	Complete review of standards
		August 2027	Establish National Institute of Learning Welsh
		October 2027	Consultation on the revised Welsh Language Strategy (to include targets on use, education and other requirements of section 1 of the Bill) and the National Framework.
4	2028-29	July 2028	Publication of the revised Welsh language Strategy and the National Framework
		August 2028 onwards	Local Authorities prepare the new WESP
5	2029-30	July 2029	Welsh Ministers approve the new WESP
		August 2029 onwards	Schools prepare Delivery Plans (taking the WESP into account)
6	2030-31	July 2030	Deadline for Local Authorities to approve the Delivery Plans (including school categories)
		August 2030	School Delivery Plans in place
7	2031-32		
8	2032-33	October 2032	Revise the National Framework
9	2033-34	January 2033	2nd Delivery Plan submitted to local authority for agreement
		July 2033	End of Delivery Plans (and end of first exemption, if applicable)

10	2034-35		
11	2035-36	July 2036	End of any further exemption

Welsh Language and Education (Wales) Bill
Indicative Timeline for Implementation of the Bill

Key	
	Activity for Welsh Ministers
	Activity for Local Authorities
	Activity for schools
	No activity required to implement

2025 | 2026 | 2027 | 2028 | 2029 | 2030 | 2031 | 2032 | 2033 | 2034 | 2035 | 2036

Code

- Consult on Code Oct 2025
- Finalise Code July 2026

Language categories

- Schools Prepare Delivery Plans August 2029 onwards
- LAs approve Delivery Plans By July 2030
- Delivery Plans in place Aug 2030 (run until July 2033) July 2033 -End of First Exemption, if applicable
- 2nd Delivery Plans Submitted to LAs for approval January 2033
- 2nd Delivery Plans in place from August 2033 until July 2036. July 2036 - End of any further expemption,

WESP

- Consult on regs relating to language categories and WESPs July 2026
- Finalise regs relating to language categories and WESPs July 2027
- LAs prepare new WESPs Aug 2028 onwards
- WMs approve new WESPs July 2029

Strategy and Framework

- Duty to include million Welsh spekaers target in strategy comes into force Royal Assent (May/June 2025)
- Consultation on Revised WL Strategy and Framework (Oct 2027)
- Publication of Revised WL Strategy and Framework (July 2028)
- Revise National Framework (Oct 2032)

Other

- Complete Review of Standaards July 2027
- Establish Athrofa August 2027

Y Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad
–
Legislation, Justice and Constitution Committee

Senedd Cymru
Bae Caerdydd, Caerdydd, CF99 1SN
SeneddDCC@senedd.cymru
senedd.cymru/SeneddDCC
0300 200 6565
–
Welsh Parliament
Cardiff Bay, Cardiff, CF99 1SN
SeneddLJC@senedd.wales
senedd.wales/SeneddLJC
0300 200 6565

Rt Hon Mark Drakeford MS
Cabinet Secretary for Finance and Welsh Language

24 October 2024

Annwyl Mark

Welsh Language and Education (Wales) Bill

Thank you for appearing before the Committee on 21 October 2024 to inform its consideration of the Welsh Language and Education (Wales) Bill.

As a Committee, we would be grateful if you could provide further information in respect of some matters. These matters are set out in the Annex.

Please could you respond by Friday 15 November 2024.

Yours sincerely,

Mike Hedges
Chair

Annex

1. Have you undertaken a human rights impacts assessment for this Bill and what was the outcome of that assessment?

2. What does this Bill enable you to achieve that you cannot within the existing legislative framework?

3. The Explanatory Memorandum states that this "is the first piece of primary legislation to be introduced for the purpose of realising the long-term objective" of the Cymraeg 2050 strategy. As the strategy was announced on 10 July 2017, why has it taken over 7 years to bring this legislation forward?

4. According to the Statement of Policy Intent, there is currently no policy intent to use several of the regulation-making powers in the Bill and the powers are there to "future-proof the Bill". Can you therefore explain why such powers are included?

5. Can you confirm whether section 3(1) and 3(2)(b) confer regulation making powers or duties? The Statement of Policy Intent is inconsistent in its description.

6. Section 3(1) of the Bill enables the Welsh Ministers to make regulations specifying the data to be used in order to calculate the number of Welsh speakers. Section 3(2) then goes on to explain that, whether a person is a Welsh speaker is be decided by self-assessment or, in the case of a child, on the basis of an assessment by their parent or carer or any other method specified by regulations. Can you explain to us the interaction between sections 3(1) and 3(2)? The Statement of Policy Intent indicates that section 3(2) is a limitation on the power in section 3(1), but this is not clearly set out on the face of the Bill.

7. Section 10(1) of the Bill requires the Welsh Ministers to make regulations specifying the amount of Welsh language education provided for each language category. Section 13(1) enables the Welsh Ministers to make further provision about the school language categories. The Statement of Policy Intent states that it will be important to consult before making regulations; can you explain why there is no duty for the Welsh Ministers to consult on the face of the Bill?

8. Section 13(1) says the Welsh Ministers may by regulations make further provision about the school language categories. What are the limits of this "further provision" and why can you not be more specific about what this power will be used for?

9. Section 13(5) requires the Welsh Ministers to decide whether to exercise their power to increase the minimum amount of Welsh language education provision for the Primarily English Language, partly Welsh category within 5 years of that power coming into force, and after that within 5 years of each period following their most recent decision. Can you confirm the intention behind this provision

– can the power be exercised as regularly as the Welsh Ministers determine, as long as no more than 5 years elapse between decisions as to whether it should be exercised?

10. Sections 14(3), 29(1) and 44(8) specify that start dates for plans or planning periods shall be set out in regulations. If the dates are not set out on the face of the Bill, is there a danger that the powers may not be exercised and that the provisions are not commenced?

11. Why is "lifelong" in brackets in section 23(1)(b), and "national" in brackets in section 23(5)(b)?

12. Section 28(3)(a) requires a local Welsh in education strategic plan to include "information on the education practitioners working in the local authority's area". The term "information" is vague – what information do you envisage the local Welsh in education strategic plan including and why is appropriate detail not included on the face of the Bill?

13. Sections 30 and 32 allow the Welsh Ministers to issue directions to local authorities in relation to local Welsh in education strategic plans that they have prepared. No procedure is applicable to such directions. Given that this power allows the Welsh Ministers to interfere with a subjective decision making process of the local authority, why is it not subject to a scrutiny procedure?

14. Section 33 of the Bill contains a power for the Welsh Ministers to make regulations relating to a wide range of matters relating to local Welsh in education strategic plans, as listed in the Statement of Policy Intent.

a. Given the breadth of this power, do you consider that it would be more appropriate to subject it to the affirmative scrutiny procedure?

b. In section 33(2), what do you mean when you say regulations could "apply sections 28 to 32 with modifications" for the purpose of producing joint local Welsh in education strategic plans – what would such modifications look like?

c. Why is there no detail on the face of the Bill relating to joint local Welsh in education strategic plans?

15. Paragraph 2 of Schedule 2 to the Bill allows the Welsh Ministers to make regulations that vary the number of members of the new National Institute for Learning Welsh. The Explanatory Memorandum states that this is subject to the negative scrutiny procedure, but as the power can only be exercised to amend paragraph 2(1) of Schedule 2, can you confirm that it is in fact subject to the draft affirmative procedure in accordance with section 52(4)(b)?

16. Paragraph 18 of Schedule 2 to the Bill deals with the obligations of the Auditor General for Wales in relation to the new National Institute for Learning Welsh. Can you provide us with the details of any consideration you gave as to whether paragraph 18 complies with paragraph 5(3) of Schedule 7B to the Government of Wales Act 2006?

17. Paragraph 15(4) of Schedule 2 allows the Welsh Ministers to specify the responsibilities that the accounting officer of the new Institute will have. How are these responsibilities to be specified in practice and will the Senedd have the opportunity to scrutinise them? Why can they not be definitively listed on the face of the Bill, rather than the non-exhaustive list in paragraph 15(5)?

18. The Bill uses the term "Welsh language education" which is defined separately in section 8(2)(a) for Part 3, and section 35(a) for Part 4. Both definitions are the same. The term is also used in sections 1(1)(c)(i) and 39(2) but is not defined for those purposes. Why was one definition not inserted into section 49(3) of the Bill which would then apply throughout the Bill, and do you agree that the lack of a definition for 'Welsh language education' in sections 1(1)(c)(i) and 39(2) could cause confusion in interpretation?

19. Section 50 deals with the publication of documents, and states that where a person has a duty to publish a document electronically and they have their own website, the document has to be published on that website. Where is it to be published if they do not have their own website?

20. These further points have been identified in relation to the Statement of Policy Intent and the Explanatory Memorandum:

a. In the English language version of the Explanatory Notes, which are included in Annex 1 to the Explanatory Memorandum, in relation to section 11, the description in the table entry for the Welsh language learning goal of Primarily English Language, partly Welsh schools states that 'By a date specified by the Welsh Ministers by regulations, that pupils are basic users…' however this does not reflect the drafting of section 11(3)(a). The Welsh language version of the Explanatory Notes read 'Hyd at ddyddiad', meaning 'Until a date.'

b. The Statement of Policy Intent on pages 14 and 18, in relation to sections 10(1), 10(2), 13(2) and 13(4), says that 'Section 13(5) states that the Welsh Ministers must decide every 5 years whether to revise/amend the language categories'. However, section 13(5) requires the Welsh Ministers to decide every 5 years whether to exercise the power to make regulations under section 13(2)(b), which is the regulation making power to increase the minimum amount of Welsh Language education provision for the "Primarily English Language, partly Welsh" category.

c. In relation to section 16(6)(c), Table 5.2 of the English language version of the Explanatory Memorandum states that it is a power conferred on the Welsh Ministers, when it is in fact conferred on local authorities. The Welsh language version of the Explanatory Memorandum is correct.

d. In relation to section 20(4), Table 5.1 in the Explanatory Memorandum states that 'It imposes a duty to make provision, in relation to voluntary designation, including modifying Part 3 of the Bill' and 'The power enables the Welsh Ministers to amend primary

legislation', however the power is to make regulations that apply Part 3 with modifications, it is not a power to amend primary legislation.

e. In relation to section 23(9), Table 5.1 in the Explanatory Memorandum states that 'The power enables the Welsh Ministers to amend the impact of primary legislation', however the power in section 23(9) enables Welsh Ministers to amend primary legislation, not merely its impact.

f. In relation to sections 28(4)(b)(ix) and 29(1)(a), in the Statement of Policy Intent, there are references to a 'section' of the Welsh in Education Strategic Plans (Wales) Regulations 2019 as opposed to 'regulation'.

g. In relation to paragraph 3(f) of Schedule 2, Table 5.1 of the Explanatory Memorandum states that 'The power enables the Welsh Ministers to amend primary legislation', however the power is to specify, in regulations, the holder of an office, or a member of a body or a member of staff of a body that are disqualified from being a non-executive member of the National Institute for Learning Welsh; these regulations will not amend primary legislation.

Can you confirm that these points will be addressed and that the Statement of Policy Intent and the Explanatory Memorandum will be amended accordingly?

21. Finally, while a response will not be required in respect of the matters set out below, we wish to bring them to your attention:

a. In section 32(4), the word "Minsters" should instead be "Ministers".

b. In section 37(3)(d), the word "on" after "National Framework" should instead be "for".