

The Welsh Government's Legislative Consent Memoranda on the Public Authorities (Fraud, Error and Recovery) Bill

May 2025



1. Background

1. The Public Authorities (Fraud, Error and Recovery) Bill¹ (the Bill) was introduced into the House of Commons and had its first reading on 22 January 2025. It is sponsored by the Department for Work and Pensions.
2. The Explanatory Notes to the Bill as introduced state:

"The Public Authorities (Fraud, Error and Recovery) Bill ("the Bill") is intended to safeguard public money and protect the economic well-being of the country by reducing public sector fraud, error and debt. The Bill makes provisions to better identify, prevent and deter public sector fraud and error and enable the better recovery of money (debt) owed to the taxpayer where public money has been stolen or overpaid.

The Bill introduces new powers to enable the Cabinet Office to investigate public sector fraud outside of tax and social security, using its expertise to act on behalf of other parts of government. The Bill also introduces new powers to improve the Department for Work and Pensions' ("DWP") ability to address fraud and error in the social security system.

The Bill includes safeguards, reporting mechanisms and oversight provisions to ensure the appropriate, proportionate, and effective use of the powers. The Bill also makes provision for the oversight of investigations conducted by both the Cabinet Office and DWP to ensure these are carried out in line with guidance and any relevant codes of practice."²

3. The long title to the Bill states that it is a Bill to:

"... make provision about the prevention of fraud against public authorities and the making of erroneous payments by public authorities; about the recovery of money paid by public authorities as a result of fraud or error; and for connected purposes."³

¹ The Public Authorities (Fraud, Error and Recovery) Bill, as introduced

² Explanatory Notes to the Bill, as introduced

³ The Public Authorities (Fraud, Error and Recovery) Bill, as introduced, page 1

4. Committee stage in the House of Commons was completed on 18 March 2025. At the time this report was agreed the Bill was at Report stage in the House of Commons.

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5. Standing Orders 29.1 and 29.2 provide that a legislative consent memorandum is required when a relevant Bill before the UK Parliament makes provision in relation to Wales that has regard to devolved matters.

6. On 7 February 2025, Jane Hutt MS, the Cabinet Secretary for Social Justice, Trefnydd and Chief Whip (the Cabinet Secretary), laid before the Senedd a Legislative Consent Memorandum in respect of the Bill (the Memorandum).⁴

7. In paragraphs 4 and 5 of the Memorandum the Cabinet Secretary states:

"The Bill makes provisions to better identify, prevent and deter public sector fraud and error, and enable the better recovery of money (debt) owed to the taxpayer where public money has been fraudulently obtained or overpaid.

*The Bill includes safeguards, reporting mechanisms and oversight provisions to ensure the appropriate, proportionate and effective use of the powers. The Bill also makes provision for the oversight of investigations conducted by both DWP and PSFA to ensure these are conducted in line with guidance and any relevant codes of practice."*⁵

8. The Business Committee agreed that the Legislation, Justice and Constitution Committee and the Public Accounts and Public Administration Committee should report on the Memorandum by 25 April 2025.⁶

9. On 6 March 2025, the Cabinet Secretary laid before the Senedd a Supplementary Legislative Consent Memorandum (Memorandum No. 2) in respect of the Bill.⁷

⁴ Welsh Government, Legislative Consent Memorandum on the Public Authorities (Fraud, Error and Recovery) Bill, February 2025

⁵ Memorandum, paragraphs 4 and 5

⁶ Business Committee: Timetable for consideration: Legislative Consent Memorandum on the Public Authorities (Fraud, Error and Recovery) Bill, February 2025

⁷ Welsh Government, Supplementary Legislative Consent Memorandum (Memorandum No. 2) on the Public Authorities (Fraud, Error and Recovery) Bill, March 2025

10. The Business Committee agreed that the Legislation, Justice and Constitution Committee and the Public Accounts and Public Administration Committee should report on all Memoranda relating to the Bill by 2 May 2025.⁸

Provisions for the which the Senedd's consent is required

11. In the Memorandum, the Welsh Government's assessment is that consent is required for:

- Clause 1 (Core functions of the Minister for the Cabinet Office);
- Clause 2 (Interaction with other public authorities);
- Clause 5 (Information sharing);
- Clause 6 (Amendment of the Investigatory Powers Act 2016);
- Clause 7 (Police and Criminal Evidence Act 1984 etc powers) and Schedule 1 (Fraud against public authorities: Police and Criminal Evidence Act 1984 powers);
- Clause 9 (Incidents etc);
- Clause 10 (Acting for another public authority);
- Clause 64 (Independent review) and clause 65 (Independent review: further provisions);
- Clause 67 (Disclosure of information etc: Interaction with external constraints);
- Clause 69 and Schedule 2 (The Public Sector Fraud Authority).

12. The Memorandum states that the UK Government's view is that consent is required for clauses 1, 2, 7 (and Schedule 1), 9, 64, 65 and 69 (and Schedule 2).⁹

13. The Cabinet Secretary states:

"... there is a difference in position in relation to the need for consent for clauses 5, 6 and 67. In my view, these clauses make provision in relation to Wales that have regard to devolved

⁸ Business Committee: Timetable for consideration: Supplementary Legislative Consent Memorandum (Memorandum No. 2) on the Public Authorities (Fraud, Error and Recovery) Bill, March 2025

⁹ Memorandum, paragraph 11

matters... As a result, in accordance with Standing Order 29, Senedd consent is required.”¹⁰

14. Memorandum No. 2 relates to amendments tabled to the Bill on 21 February 2025. The Cabinet Secretary considers that two amendments – to clauses 6 and 67 – have regard to devolved matters. At paragraph 12 of Memorandum No. 2 the Cabinet Secretary states:

“Two of the 21 February amendments meet the SO 29 test:

(a) Gov 1 – This amendment would limit the scope of clause 6 of the Bill with the effect that only the PSFA could apply for permission to collect communications data in relation to investigations under the Bill (rather than, under the wording of the clause as introduced, “the Cabinet Office”). Those investigations may relate to fraud against Devolved Welsh Authorities (DWA’s). Clause 6 met the SO29 Test on introduction and was subject of the first LCM. Since the amendment alters the scope of a provision which meets the SO29 Test, the amendment itself also meets that test.

(b) Gov 3 – This amendment alters the scope of clause 67(3) which, as introduced, met the SO29 Test and was a subject of the first LCM. Currently, clause 67 provides that a provision of the Bill is to be taken into account in determining whether “disclosure, obtaining or use” of data under it, breaches data protection legislation. The amendment would provide that clause 67(3) applied to all processing of data under a provision of the Bill, not only “disclosure, obtaining or use”. DWAs may well disclose or otherwise process information under the Bill. Clause 67 met the SO29 Test on introduction and was a subject of the first LCM. Since this amendment materially alters the scope of a clause which is already the subject of an LCM, it meets the SO29 Test.”

The Welsh Government’s position

15. In the Memorandum the Cabinet Secretary states:

¹⁰ Memorandum, paragraph 12

"The Welsh Government supports the Public Authorities (Fraud, Error and Recovery) Bill. The provisions in the Bill are consistent with the Welsh Government's focus on the protection of public funds from losses of all types. The Bill contributes to a range of Wellbeing and Future Generations Act goals by supporting:

- *A prosperous Wales – helping to safeguard public funds and public bodies in Wales from fraud, error and recovery.*
- *Protecting public funds – to ensure current and future generations benefit from public services those funds support to provide a good quality of life in safer communities.*
- *Supporting each of the public bodies covered by the Act – from central government to Local Authorities and Health bodies – in the prevention of fraud and recovery of funds from fraud and/or error."*¹¹

16. At paragraph 17 of the Memorandum the Cabinet Secretary states:

"The Bill relates to both devolved matters and reserved matters (most notably the detection, prevention and investigation of crime) and the UK Parliament route is therefore an appropriate way to achieve the desired outcomes most effectively in this area. Not supporting the proposed provisions would disadvantage and deny DWAs additional opportunities to recover public funds."

17. In Memorandum No. 2, the Cabinet Secretary re-iterates her position that "it is appropriate to deal with these provisions in a UK Bill."¹²

18. While not expressly mentioned in the Memorandum, in Memorandum No. 2 the Cabinet Secretary states that Welsh and UK government officials have continued regular contact in relation to the development of the Bill, including in relation to UK Government amendments that affect Wales.¹³

¹¹ Memorandum, paragraph 13

¹² Memorandum No. 2, paragraph 13

¹³ Memorandum No. 2, paragraph 9

2. Committee consideration

19. We considered the Memorandum and Memorandum No. 2 at our meeting on 17 March 2025.¹⁴

20. We wrote to the Cabinet Secretary on 21 March 2025¹⁵ and received a response on 28 March 2025.¹⁶

21. At our meeting on 28 April 2025, we resolved to agree our report outside of the meeting.¹⁷

Our View

Legislative consent

22. We note the Welsh Government's assessment of the provisions within the Bill that require the consent of the Senedd, as set out in the Memorandum and Memorandum No. 2.

23. We also note the position of the UK Government as regards consent, and that it differs from that of the Welsh Government as regards clauses 5, 6 and 67.

24. It appears that there is also a difference of opinion in relation to clause 10, as the Cabinet Secretary considers consent is required but it is not listed as a clause engaging the Senedd's legislative consent process in Annex A to the UK Government's Explanatory Notes to the Bill.

Conclusion 1. We agree with the Welsh Government's assessment, as set out in the Memorandum, of the provisions within the Bill which require consent of the Senedd in accordance with Standing Order 29; but this is subject to our views set out in conclusion 2.

25. As highlighted above, we wrote to the Cabinet Secretary asking for clarity on why the Welsh Government has concluded that only some clauses in Part 1 of the Bill require the Senedd's consent while others do not.

26. It would appear that the Minister for the Cabinet Office could use any of the powers in Part 1 of the Bill on behalf of a Devolved Welsh Authority, and we

¹⁴ ~~Legislation, Justice and Constitution Committee~~, 17 March 2025

¹⁵ ~~Letter to the Cabinet Secretary for Social Justice, Trefnydd and Chief Whip~~, 21 March 2025

¹⁶ ~~Letter from the Cabinet Secretary for Social Justice, Trefnydd and Chief Whip~~, 28 March 2025

¹⁷ ~~Legislation, Justice and Constitution Committee~~, 28 April 2025

highlighted that point to the Cabinet Secretary. The Cabinet Secretary has stated, for example, that the Senedd's consent is required for clause 7 of the Bill which allows the Minister for the Cabinet Office to use powers in the *Police and Criminal Evidence Act 1984* to investigate suspected fraud against a public authority. As such, we said the Committee is unclear why consent is then not also required for clause 3, which allows that Minister to require a person to provide information for the same purposes.

27. We note the Cabinet Secretary's response that she:

*"... remain[s] of the view that, within Part 1 of the Bill, only clauses 1, 2, 5, 6, 7 (and Schedule 1), 9, 10, 64, 65, 67 and 69 (and Schedule 2) of the Bill as introduced which meet the SO29 Test. These clauses either confer functions on DWAs or relate particularly closely to the investigation of fraud against DWAs."*¹⁸

28. We are not persuaded by this reasoning, nor do we consider the response helpful as the Cabinet Secretary has not engaged with the question we asked.

Conclusion 2. We consider that all clauses in Part 1 of the Bill contain provision that have regards to devolved matters (to the extent that the Minister for the Cabinet Office could exercise the powers and functions in Part 1 on behalf of a Devolved Welsh Authority) and, as such, the Senedd's consent should be sought for the entirety of Part 1.

Recommendation 1. The Cabinet Secretary should provide clarity and detailed reasoning as to why the Welsh Government does not consider that the Senedd's consent should be sought for the entirety of Part 1 of the Bill. In responding, the Cabinet Secretary should specifically address why the Welsh Government considers consent is required for clause 7 but not clause 3.

29. In making recommendation 1, we note the Cabinet Secretary's comments regarding clause 99, that she remains of the view that "application clauses do not generally meet the SO29 test because they have no legal effect separate to the provisions to which they relate."¹⁹

Delegated powers

30. Finally we note that, while the Bill does not confer any delegated powers on the Welsh Ministers, Part 1 of the Bill confers a number of powers on the Minister

¹⁸ Letter from the Cabinet Secretary for Social Justice, Trefnydd and Chief Whip, 28 March 2025

¹⁹ Letter from the Cabinet Secretary for Social Justice, Trefnydd and Chief Whip, 28 March 2025

for the Cabinet Office to act in devolved areas, including powers to make subordinate legislation. We further note that this includes three Henry VIII powers in clause 55(4), paragraph 21(4) of Schedule 2, and paragraph 22(1) of Schedule 2.

Recommendation 2. The Cabinet Secretary should explain whether the Welsh Government requested powers in the Bill for the Welsh Ministers equivalent to those delegated to the Minister for the Cabinet Office to act in devolved areas and which could be exercised concurrently with the UK Government.