

The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 3) on the Public Authorities (Fraud, Error and Recovery) Bill

June 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. The Bill completed its passage through the House of Commons on 29 April 2025, and first reading in the House of Lords took place on 30 April 2025. Committee stage in the House of Lords began on 4 June 2025.

The Welsh Government's Legislative Consent Memorandum and Supplementary Legislative Consent Memorandum (Memorandum No. 2)

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. On 6 March 2025, the Cabinet Secretary laid before the Senedd a Supplementary Legislative Consent Memorandum (Memorandum No. 2) in respect of the Bill.⁵

8. We published our report on the Memorandum and Memorandum No. 2 (our first report) on 1 May 2025.⁶

9. Paragraphs 11 to 14 of our first report set out the provisions of the Bill which, at the time, the Welsh Government considered to require the Senedd's consent.

10. Paragraphs 15 to 18 of our first report set out the Welsh Government's position on the Bill, as set out in the Memorandum.

11. Our first report contained two conclusions and two recommendations.

12. The Cabinet Secretary responded to our first report on 11 June 2025.⁷

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

⁵ Welsh Government, Supplementary Legislative Consent Memorandum (Memorandum No. 2) on the Public Authorities (Fraud, Error and Recovery) Bill, March 2025

⁶ Legislation, Justice and Constitution Committee, Report on the Welsh Government's Legislative Consent Memoranda on the Public Authorities (Fraud, Error and Recovery Bill), May 2025

⁷ Cabinet Secretary's response to the Legislation, Justice and Constitution Committee's Report on the Welsh Government's Legislative Consent Memoranda on the Public Authorities (Fraud, Error and Recovery Bill), June 2025

The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 3)

13. On 7 May 2025, the Cabinet Secretary laid before the Senedd a Supplementary Legislative Consent Memorandum (Memorandum No. 3) in respect of the Bill.⁸

14. The Business Committee agreed that the Legislation, Justice and Constitution Committee and the Public Accounts and Public Administration Committee should report on Memorandum No. 3 by 20 June 2025.⁹

Provisions for the which the Senedd's consent is required

15. Memorandum No. 3 relates to amendments tabled by the UK Government on 23 April 2025 during Report Stage in the House of Commons.

16. At paragraph 11 of Memorandum No. 3, the Cabinet Secretary sets out details of the amendments for which the Senedd's consent is required, and provides an update on the Welsh Government's position since the publication of the Memorandum and Memorandum No. 2. The Cabinet Secretary states consent is required for:

- Gov 72 (which alters Schedule 1 to the Bill to enable the Public Sector Fraud Authority (PSFA) to transfer evidence it obtains under a *Police and Criminal Evidence Act 1984* (PACE) warrant to other organisations) because the “possibility of such transfer alters the potential effect of a request by a devolved Welsh authority ('DWA') for the Minister/PSFA to use their powers of investigation under clause 1 and therefore makes relevant provision because it alters the scope and effect of a DWA's power to make such a request”.
- Gov 45 (which alters Schedule 1 of the Bill so as to enable the Minister or the PSFA to obtain material defined as “excluded” by section 11 of PACE) because it “makes relevant provision because it alters the scope and effect of a DWA's power to make a request under clause 2 of the Bill”.

⁸ Welsh Government, Supplementary Legislative Consent Memorandum (Memorandum No. 3) on the Public Authorities (Fraud, Error and Recovery) Bill, May 2025

⁹ Business Committee: Timetable for consideration: Supplementary Legislative Consent Memorandum (Memorandum No. 3) on the Public Authorities (Fraud, Error and Recovery) Bill, May 2025

- Gov 76 and Gov 75 (which widen the definition of “fraud” in clause 70 to include offences under sections 6 and 7 of the *Fraud Act 2006* and make certain provision about the interpretation of the new parts of the definition) because “[w]idening the meaning of “fraud” in turn widens the circumstances under which a DWA could make a request under clause 2 that the core functions under clause 1 be exercised” and “by amending the definition of “fraud” it changes the scope of a function of DWAs”.
- Gov 79, Gov 78, Gov 77, Gov 74 and Gov 73 (which extend the limitation period for DWAs to bring a legal claim in relation to covid-related fraud to 12 years by expanding the scope of clause 99) because they make relevant provision as they alter the scope of DWAs’ function of bringing legal proceedings.

17. Memorandum No. 3 does not include information on the UK Government’s view as to which of the amendments tabled on 23 April 2025 require the consent of the Senedd.

18. At paragraph 12 of Memorandum No. 3, the Cabinet Secretary concludes:

“In my view, it is appropriate to deal with these provisions in a UK Bill. The legislation is consistent with the Welsh Government’s focus on safeguarding public funds from fraud and error. Therefore, I recommend the Senedd supports the proposals and gives its consent.”

2. Committee consideration

19. We considered Memorandum No. 3 at our meeting on 2 June 2025.¹⁰

20. We agreed our report at our meeting on 9 June 2025.¹¹ We received the Cabinet Secretary’s response to our first report prior to the laying of our report. As such, we considered the Cabinet Secretary’s response at our meeting on 16 June 2025, and subsequently agreed a revised version of our report.¹²

¹⁰ ~~Legislation, Justice and Constitution Committee~~, 2 June 2025

¹¹ ~~Legislation, Justice and Constitution Committee~~, 9 June 2025

¹² ~~Legislation, Justice and Constitution Committee~~, 16 June 2025

Our View

Legislative consent

21. We note the Welsh Government's assessment of the amendments to the provisions within the Bill that require the consent of the Senedd, as set out in Memorandum No. 3.

22. In our first report we noted¹³ the Cabinet Secretary's comments regarding clause 99 of the Bill, and that she was 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."¹⁴

23. It appears that the Cabinet Secretary now considers that the Senedd's consent is required for clause 99 as amended, although this is not expressly stated in Memorandum No. 3. The Cabinet Secretary states that the five amendments to clause 99 (Gov 73, 74, 77 to 79) "make relevant provision because they alter the scope of DWAs' function of bringing legal proceedings".¹⁵

24. We further note that the position of the UK Government as regards the amendments which are the subject of Memorandum No. 3 is unknown.

Conclusion 1. We continue to agree with the Welsh Government's assessment, as set out in the Memorandum, Memorandum No. 2 and Memorandum No. 3, of the provisions (and amendments to those 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. We highlighted in our first report that 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.¹⁶ As such, we concluded that all clauses in Part 1 of the Bill contain provision that have regards to devolved matters.¹⁷

¹³ Legislation, Justice and Constitution Committee, Report on the Welsh Government's Legislative Consent Memoranda on the Public Authorities (Fraud, Error and Recovery Bill), paragraph 29

¹⁴ Letter from the Cabinet Secretary for Social Justice, Trefnydd and Chief Whip, 28 March 2025

¹⁵ Memorandum No. 3, paragraph 11

¹⁶ Legislation, Justice and Constitution Committee, Report on the Welsh Government's Legislative Consent Memoranda on the Public Authorities (Fraud, Error and Recovery Bill), paragraph 26

¹⁷ Legislation, Justice and Constitution Committee, Report on the Welsh Government's Legislative Consent Memoranda on the Public Authorities (Fraud, Error and Recovery Bill), conclusion 2

26. We note that, in addition to the amendments listed in Memorandum No. 3, the UK Government tabled other amendments to Part 1 of the Bill for Commons Report Stage. These include:

- Gov 23 and Gov 24, which amend clause 3 so that the Minister for the Cabinet Office may, by information notice, require a person to provide special procedure material under PACE, but not journalistic material or excluded material.
- Gov 25 and Gov 26, which amend clause 9 (which itself amends Part 2 of the *Police Reform Act 2002*) to extend the functions of the Director General of the Independent Office for Police Conduct to include oversight of public sector fraud investigators.
- Gov 27, Gov 28 and Gov 29, which amend clause 22 and provision relating to the amount of deductions from a bank account under a direct deduction order.
- Gov 30 and Gov 31, which amend clause 67 to provide that subsection (5) (which relates to the protection of material subject to legal professional privilege) does not apply in relation to the provisions of PACE as applied by section 7 and to remove subsection (6) (which provides that a person may not be required under a provision in Part 1 of the Bill to give information which tends to incriminate themselves or their partner).

Conclusion 2. We continue to hold the view 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). As such, the Senedd's consent should also be sought for Gov amendments 23 to 31 which amend clauses 3, 9, 22 and 67 of the Bill.

27. Recommendation 1 in our first report asked the Cabinet Secretary to 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. We wrote to the Cabinet Secretary on 4 June 2025 to request that this information is provided to us as a matter of urgency.¹⁸

¹⁸ Letter to the Cabinet Secretary for Social Justice, Trefnydd and Chief Whip, 4 June 2025

28. We acknowledge the Cabinet Secretary's response, sent to us on 11 June, in which she states:

"7. The subject-matter of Part 1 of the Bill relates to matters which are reserved by operation of paragraph 39 of Schedule 7A to the Government of Wales Act 2006 ('GoWA') ('prevention, detection and investigation of crime'). Consequently, Part 1 of the Bill is, largely, outside the legislative competence of the Senedd.

8. However, there are some provisions which are seen to affect Devolved Welsh Authorities (DWAs), including, in the case of some clauses, the conferral of functions on DWAs. These specific clauses are considered to meet the test set out in Standing Order (SO) 29 of the Senedd Standing Orders ('the SO29 Test') and, therefore, are considered to require Legislative Consent. This is not the case for the majority of clauses in Part 1 of the Bill.

9. Although Part 1 of the Bill is titled "Functions exercisable on behalf of public authorities" the nature of almost all these functions means they are, essentially, functions of the Minister/PSFA and will be exercised as they see fit, without reference to the referring public authority, including DWAs (which do not have these functions themselves). For this reason, most of the functions in Part 1 (including clause 3) do not materially impact DWAs. Where a provision of the Bill does confer a specific function for public authorities (e.g. clause 5) an LCM has been laid in respect of it.

10. Clause 7 (together with Schedule 1) does not confer functions on public authorities/DWAs but it does enable the Minister/PSFA to use intrusive powers of search and seizure during an investigation into fraud perpetrated against a public authority. Such investigations may well involve the use of coercive powers against individuals and businesses in Wales to recover money for DWAs. Therefore, the use of these powers could significantly affect the reputation of DWAs and their relationship with the individuals in Wales whom they serve. An

LCM was also laid in respect of Clause 6 (which enables the obtaining of communications data) for similar reasons.”¹⁹

29. However, the response does not provide information that leads us to change our view that all clauses in Part 1 of the Bill contain provision that have regard 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 DWA) and, as such, the Senedd's consent should be sought for the entirety of Part 1.

30. In addition, we are disappointed to again have to note that the Cabinet Secretary has not answered our direct request to explain why consent is being sought for clause 7 but not for clause 3, given that both allow the Minister for the Cabinet Office to require a person to provide information for the same purpose of investigating suspected fraud against a public authority.

Delegated powers

31. Recommendation 2 in our first report asked the Cabinet Secretary to 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.

32. We note the Cabinet Secretary's confirmation that she did not request such powers in the Bill.²⁰ We also note the Cabinet Secretary's comments that:

- the need for the powers in Wales is not equivalent to the need in England;
- the fraud risk carried by the UK Government is substantially and proportionately greater than the risk to the Welsh Government;
- the inclusion of access to the Public Sector Fraud Authority (PSFA) for DWAs within the provisions of the Bill provides a sufficient, effective, cost-efficient and proportionate option;

¹⁹ Cabinet Secretary's response to the Legislation, Justice and Constitution Committee's Report on the Welsh Government's Legislative Consent Memoranda on the Public Authorities (Fraud, Error and Recovery Bill)

²⁰ Cabinet Secretary's response to the Legislation, Justice and Constitution Committee's Report on the Welsh Government's Legislative Consent Memoranda on the Public Authorities (Fraud, Error and Recovery Bill)

- the ability to analyse and evaluate large data sets from across the whole of the United Kingdom may prove to be valuable, particularly because fraudsters are not respecters of administrative boundaries;
- the PSFA is leading on the professionalisation of counter fraud services within the UK Civil Service and this leadership will serve to ensure consistent, high-quality investigative services are freely available for the Welsh Government's use.²¹

²¹ Cabinet Secretary's response to the Legislation, Justice and Constitution Committee's Report on the Welsh Government's Legislative Consent Memoranda on the Public Authorities (Fraud, Error and Recovery Bill)
