

Agenda Supplement – Legislation, Justice and Constitution Committee

Meeting Venue:	For further information contact:
Video conference via Zoom	P Gareth Williams
Meeting date: 28 April 2025	Committee Clerk
Meeting time: 13.30	0300 200 6565
	SeneddLJC@senedd.wales

Remote – Supplementary Pack

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

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

(13.35 – 13.40)

3.4 SL(6)602 – The Education (Information about Children in Independent Schools) (Pilot) (Wales) Regulations 2025

(Pages 1 – 3)

Attached Documents:

LJC(6)-13-25 – Paper 53 – Report

LJC(6)-13-25 – Paper 54 – Welsh Government response

5 Papers to note

(13.45 – 13.50)

5.13 Correspondence from the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs: Welsh Government response to the Committee's report on the Disused Mine and Quarry Tips (Wales) Bill

(Pages 4 – 14)



Attached Documents:

LJC(6)-13-25 – Paper 55 – Letter from the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs, 24 April 2025

5.14 Correspondence from the Cabinet Secretary for Economy, Energy and Planning: Welsh Government response to the Committee's report on the Legislative Consent Memoranda on the Data (Use and Access) Bill

(Pages 15 – 23)

Attached Documents:

LJC(6)-13-25 – Paper 56 – Letter from the Cabinet Secretary for Economy, Energy and Planning, 24 April 2025

12 Supplementary Legislative Consent Memorandum (Memorandum No. 3) on the Data (Use and Access) Bill

(14.55 – 15.15)

(Pages 24 – 49)

Attached Documents:

LJC(6)-13-25 – Paper 50 – Legal Advice Note

LJC(6)-13-25 – Paper 51 – Draft report

13 Correspondence to the Business Committee: Review of the Public Bill and Members Bill processes

(15.15 – 15.25)

(Pages 50 – 56)

Attached Documents:

LJC(6)-13-25 – Paper 52 – Draft response

SL(6)602 – The Education (Information about Children in Independent Schools) (Pilot) (Wales) Regulations 2025

Background and Purpose

These Regulations place a statutory duty on proprietors of independent schools in Wales to share information about children on roll with them, with the local authority where the child is ordinarily resident.

According to the Explanatory Memorandum, the information is required by the local authority so that they can be assured that the child is not missing education (CME) and be assured that they do not need to undertake enquiries in relation to that child.

These Regulations are being made for pilot purposes only and cease to be in effect six weeks after they come into force.

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

The following point is identified for reporting under Standing Order 21.2 in respect of this instrument.

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

In Schedule 1 to these Regulations, the names of a few of the pilot local authorities are slightly different when compared with Schedule 1 to the Children Act 2004 (Children Missing Education Database) (Pilot) (Wales) Regulations 2025 –

- a) in these Regulations, it refers to “Gwynedd Council” but in the other Regulations it refers to “Gwynedd **County** Council”. In the Welsh text, this also means that the name of this Council is not listed according to alphabetical order in Schedule 1 to these Regulations as it is listed as “Cyngor Gwynedd” rather than “Cyngor **Sir** Gwynedd”;



- b) in the English version of these Regulations, it refers to the “Rhondda Cynon Taff County Borough Council” but in the other Regulations it refers to the “Rhondda, Cynon, Taff County Borough Council”. In addition, “Taff” is spelt as “Taf” on the council website.

Please could clarification be provided as to the names of the above pilot local authorities.

Merits Scrutiny

The following points are identified for reporting under Standing Order 21.3 in respect of this instrument.

2. Standing Order 21.3(ii) - that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

There is a sunset provision included in the Regulations. Regulation 1(2) provides that the regulations will come into force on 8 April 2025 and cease to have effect on 20 May 2025.

3. Standing Order 21.3(ii) - that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

The proprietor of an independent school in Wales is required to disclose to a relevant local authority, by 20 May 2025, specified information it holds in relation to a child who is a registered pupil at that school. Seven local authorities will be involved in the pilot. These are Cardiff County Council, Carmarthenshire County Council, Gwynedd County Council, Isle of Anglesey County Council, Monmouthshire County Council, Powys County Council and Rhondda Cynon Taff County Borough Council.

Welsh Government response

A Welsh Government response is required for point one only.

Committee Consideration

The Committee considered the instrument at its meeting on 31 March 2025 and reports to the Senedd in line with the reporting points above.



Government Response: The Education (Information about Children in Independent Schools) (Pilot) (Wales) Regulations 2025

Technical Scrutiny point 1: The Welsh Government notes that two Welsh local authorities are referred to slightly differently in these Regulations than in Schedule 1 to the Children Act 2004 (Children Missing Education Database) (Pilot) (Wales) Regulations 2025. Despite these minor differences, the Welsh Government considers that the Regulations are clear as to which local authorities the pilot applies. The Regulations cease to have effect on 20 May 2025.



Llywodraeth Cymru
Welsh Government

Eich cyf/Our ref: MA/HIDCC/0865/25

Mike Hedges MS
Chair
Legislation, Justice and Constitution Committee
Welsh Parliament
Cardiff Bay
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CF99 1SN

24 April 2025

Dear Mike,

Thank you for your Report on the Disused Mine and Quarry Tips (Wales) Bill. Please see below my responses to the recommendations set out in your report.

Recommendation 1. The Cabinet Secretary should confirm whether the consent of His Majesty and the Duke of Cornwall has been received in accordance with Standing Order 26.67.

Response - Accept

I confirm that Duke of Cornwall consent has been received in relation to the relevant provisions. We are awaiting a decision from His Majesty. As you know, we are required to signify we have received consent prior to Stage 4 proceedings.

Recommendation 2. The Cabinet Secretary should review all the indicative guidance he has provided with a view to:

- a) identifying provisions in that guidance that are more appropriate to be included on the face of the Bill or in regulations (subject to an appropriate procedure)**
- b) tabling appropriate amendments to the Bill.**

Response - Accept

I am happy to accept the recommendation and have noted Conclusion 2 in the Committee's report that "the balance between provisions that will be on the face of the primary legislation or to be made by regulations versus what is to be left to guidance is inappropriate". I have asked officials to review the indicative guidance.

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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.

As set out in my response to the Climate Change Environment and Infrastructure Committee, there are areas where I have asked officials to begin work on drafting amendments to redress that balance, for example, in relation to management plans and placing requirements on the face of the Bill in relation to minimum frequency of inspections for category 1 and 2 disused tips.

Recommendation 3. The Cabinet Secretary should table an amendment to the Bill to supplement the Authority's main objective in section 2(1) with additional strategic secondary objectives covering what is expected of the Authority.

Response – Accept

I am happy to accept the recommendation, and I have asked officials to begin drafting an amendment to reframe section 2 of the Bill to remove the concept of objectives, so it requires the Authority to exercise its functions under the Act with a view to ensuring that disused tips do not threaten human welfare by reason of their instability. The amendment will also require the Authority to promote high standards in relation to the management of disused tips and threats to their stability, when exercising its functions under the Act.

Recommendation 4. The Cabinet Secretary should table an amendment to the Bill to provide a comprehensive list of the Authority's functions.

Response - Reject

As almost every section in the Bill contains a function of the Authority, it would not be practical for the Bill to set out a comprehensive list of the Authority's functions. That would simply result in a long list. Instead, I have asked officials to amend the Explanatory Memorandum to the Bill to include a summary of the Authority's principal functions.

Recommendation 5. The Cabinet Secretary should table an amendment (or amendments) to section 10 of the Bill such that the minimum requirements relating to the monitoring and inspection of disused tips are to be set out in regulations in order to enable the Authority to perform its duty under section 10(1).

This regulation-making power should be subject to the affirmative procedure.

Response - Accept

Recommendation 6. The Cabinet Secretary should table an amendment to the Bill to set out what information may be included in guidance in relation to the monitoring and inspection of disused tips (in addition to the requirements to be set out in regulations as a consequence of recommendation 5).

Response – Accept in principle

I have considered the evidence provided in the report and the Committee's recommendations, and I am happy to accept recommendation 5, and to accept recommendation 6 in principle. I have asked officials to begin drafting amendments that will place the minimum frequency of inspections on the face of the Bill for category 1 and 2 tips, and another amendment that will place a duty on Welsh Ministers to consult on and issue guidance to the Authority on its monitoring functions under section 10.

I believe that this strikes an appropriate balance. As set out in response to recommendation 2 above, detail on how the Authority will actually monitor and inspect disused tips is best suited to guidance, rather than regulations, due to changes in technology and best practice.

It is also for that reason, I do not wish to specify on the face of the Bill what guidance on monitoring and inspection must include.

Recommendation 7. The Cabinet Secretary should set out the sections of the Bill that are intended to deal with emergency situations that may arise or be discovered as a result of monitoring and the action the Authority will be able or required to take.

Response - Accept

I am happy to accept this recommendation.

There are a number of provisions in the Bill that enable the Authority to take immediate action in response to an emergency. They relate to empowering the Authority to undertake necessary operations to stabilise a disused tip or to prevent it becoming unstable, including without giving notice of those operations before they commence, and conferring powers to enter land.

Ability to carry out emergency works

Section 42 gives the Authority the power to carry out operations on any land to (a) prevent or deal with threats to the stability of a disused tip; or (b) stabilise a disused tip or prevent a disused tip from becoming more unstable, so as to avoid or reduce threats to human welfare. Section 42(3) gives the Authority the power to carry out any consequential works of reinstatement that it considers to be reasonably necessary.

Ordinarily, the Authority must give the owner of land at least 21 clear days' notice of its intention to carry out operations under section 42. However, the Bill also allows the Authority to carry out operations immediately in an emergency situation. Section 44(3) provides that where the Authority considers that operations need to be carried out immediately, it may carry out those operations without giving notice or, where it has given notice, before the end of the 21-day notice period.

Powers of entry

Sections 62 to 67 make provisions related to powers of entry. The powers of entry have been designed to allow access to land to carry out operations, including in emergency scenarios, whilst still being mindful of the safeguards that must be afforded to residential land.

Section 62 allows a person authorised by the Authority to enter land to do any of the things listed in subsection (1), which includes carrying out operations under section 42. There is also power, pursuant to subsection (2) to take other persons, equipment and material onto the land, and leave such equipment and material on the land.

Ordinarily, pursuant to section 63, at least 48 hours' notice must be given before demanding entry as of right, under section 62, to any land that is occupied. However, section 63(3) disapplies subsections (1) and (2) (which set out the 48 hour notice requirement), if the Authority believes that a disused tip is unstable, and the instability poses a threat to human welfare that requires the Authority to enter the land immediately for a purpose mentioned in section 62(1)(c) or (e) (i.e. investigating if operations are needed under Part 3 or for the purpose of carrying out operations under section 42).

Where the conditions in subsection (3) are satisfied, an authorised person may demand entry as of right to land which is occupied, without giving notice, and may demand that other persons be permitted to enter the land, and that equipment or material are taken onto, and left on, the land.

There is an exception to this in relation to residential land (as defined in section 63(7)). If an occupier of residential land does not consent to entry, the authorised person must apply for a warrant to enter the land. The court has a process for applying for an emergency warrant.

Section 64(1) provides that a justice of the peace may issue a warrant conferring a power to enter land, if necessary, by force. Section 65(1) provides that a warrant issued under section 64 can only confer a power to enter land at a reasonable time, other than where the circumstances in subsection (2) are satisfied. Where the conditions in subsection (2) are met, the warrant may confer a power to enter land at any time. The conditions in subsection (2) are that (a) a disused tip is unstable, and (b) the tip's instability poses a threat to human welfare that requires immediate entry to the land (by force if necessary) for a purpose mentioned in section 62(1)(c) or (e).

Section 67(1) enables an authorised person to enter Crown land without the permission of the appropriate Crown authority where the Authority believes a disused tip is unstable and that the tip's instability poses a threat to human welfare that requires immediate entry to the land for a purpose mentioned in section 62(1)(c) or (e).

Recommendation 8. The Cabinet Secretary should consider whether the Bill needs strengthening generally in relation to dealing with emergency preparedness and emergency situations, including to ensure that relevant provisions are easily identifiable.

Response – Accept

I have considered the Committee's report, and I am happy to accept this recommendation. I can confirm that I am satisfied that, as demonstrated in my response to recommendation 8, the Bill makes the necessary provisions to enable the Authority to carry out works to stabilise/prevent instability of a disused tip in an emergency situation.

However, I have asked my officials to begin work to draft an amendment to place a duty on the Authority to prepare management plans. This is discussed more fully in response to recommendations 18,19 and 20 below. The amendment will set out areas that must be covered by a management plan, as a minimum. This will include information that the Authority considers may be relevant in an emergency involving the tip; information about the roles and responsibilities of the Authority and other public authorities in such an emergency, including how they will co-operate.

I am of the view this amendment will strengthen the Bill and will mean that provisions dealing with emergency preparedness are easily identifiable.

Recommendation 9. The Cabinet Secretary should table amendments to the Bill to require that regulations subject to the affirmative procedure set out how preliminary and full assessments of disused tips are to be undertaken, including by specifying minimum requirements.

Response – Reject

Recommendation 10. The Cabinet Secretary should table an amendment to the Bill to set out what information may be included in guidance in relation to how preliminary and full assessments of disused tips are to be undertaken (in addition to the requirements to be set out in regulations as a consequence of recommendation 9).

Response - Reject

I have asked officials to begin work on drafting an amendment to place a duty on Welsh Ministers to consult on and publish guidance on preliminary and full assessment.

I am of the view this strikes an appropriate balance in this instance. I believe that a number of the more technical elements of the regime, including the approach to assessments, will require input from expertise within the Authority, which is why I do not support recommendations 9 and 10.

Using guidance supports the principles of an adaptive and futureproof regime as it will allow the practical experience of the Authority, as it develops, to be incorporated into guidance. This approach aligns with consultation responses made to Welsh Government following its White Paper.

This will enable those with expertise and experience to inform and shape the guidance and as the process for assessment becomes more sophisticated and adaptive we can quickly amend guidance to keep pace with changing circumstances, be they, for example, related to climate change, or technological advances.

I have already shared summary guidance for the Committee to consider, which gives an indication of the type of information that will need to be included – this will continue to be developed with expert stakeholders until the Authority is in place in April 2027.

Recommendation 11. The Cabinet Secretary should explain the difference in wording between section 11(a) and section 13(1)(a) of the Bill as regards the carrying out of preliminary assessments.

Response - Accept

I am happy to accept this recommendation and can provide the following explanation.

Section 11 provides an overview of the content of Chapter 2 of the Bill. Section 12 defines "preliminary assessment" for the purposes of Chapter 2. Section 13(1)(a) places a duty on the Authority to carry out a preliminary assessment in relation to every disused tip in Wales. There is a difference in the wording because section 11, rather than providing an operative provision, provides an overview of the Chapter.

Recommendation 12. The Cabinet Secretary should table an amendment to the Bill to leave out section 38(5) and table amendments to make separate provision in the Bill about criminal sanctions relevant to the failure to comply with matters concerning the determination of applications under section 36 of the Bill (Right of owner and interested parties to appeal against notice).

Response – Reject

Having considered the Committee's report, I am not able to support the recommendation. I believe that the principle of creating criminal offences in regulations is well established, for example, criminal offences are contained in the Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020, the Environmental Protection (Single-use Vapes) (Wales) Regulations 2024 and the Food (Promotion and Presentation) (Wales) Regulations 2025.

This provision is also subject to appropriate safeguards, as regulations made using the power in section 38(5) are subject to the affirmative procedure. In addition, liaison with the Ministry of Justice, through the justice impact assessment process, is required whenever Welsh Government is considering the creation of criminal sanctions, whether they be in primary or secondary legislation.

In addition, I do not think that it is possible to draft amendments to place criminal offences on the face of the Bill without knowing what is to be contained in regulations made under section 38.

Recommendation 13. The Cabinet Secretary should table an amendment to section 69 of the Bill to place a duty on the Welsh Ministers to issue, following consultation, guidance relevant to the operation of the new regime to be introduced by the Bill once enacted.

Response - Accept

I am pleased to accept this recommendation, and I have asked officials to begin work on drafting amendments to the Bill that require Welsh Ministers to consult on and publish guidance to the Authority on key aspects of the Bill.

The Committee is sighted on high level guidance relating to these key areas already, and my officials have commenced work to develop the detailed guidance. Officials will continue to engage with and consult with stakeholders and those with the relevant expertise and experience to inform and contribute to the development of the detailed guidance on the key aspects of the Bill.

Recommendation 14. The Cabinet Secretary should explain the circumstances in which the Authority may need to acquire an estate or interest in land, so there is clarity around the Welsh Government's justification for including section 80 in the Bill.

Response - Accept

I can confirm that there are no plans for the Authority to acquire land. However, it is not possible to say definitively that the Authority will never acquire land at a future point, and it is not inconceivable that the Authority will own tips in the future, in a similar way that Natural Resources Wales own reservoirs.

Two possible examples of scenarios in which the Authority may need to acquire an estate or interest in land could be:

- the Authority acquiring an easement over land, so as to be able to gain entry to a site without having to give advance warning and/or seek a warrant, or
- the Authority acquiring a lease over part of a tip so that it can store equipment and materials there.

Recommendation 15. The Cabinet Secretary should table an amendment to section 81 of the Bill to provide a free-standing definition of “disused tip” without the need to make reference to the Quarries Regulations 1999 or the Mines Regulations 2014.

Response - Reject

The Quarries Regulations 1999 and the Mines Regulations 2014 apply to active tips. It is important that the definition of "disused tips" in the Bill makes clear that the Bill does not apply to any active tips that are associated with operational mines or quarries.

It is also essential that the definition in the Bill refers to the Quarries Regulations 1999 and the Mines Regulations 2014 to reflect the interplay between the Bill and the legislation governing active tips. If those regulations were not referred to, there would be a risk of creating a gap or overlap between these regimes, which would cause practical and legal difficulty.

Recommendation 16. The Cabinet Secretary should table an amendment to section 81 of the Bill to provide for a duty to consult in respect of regulations to be made under section 81(4).

Response – Reject

Section 81(3) sets out the meaning of a disused tip as a tip situated wholly or partly in Wales other than one to which the Quarries Regulations 1999 or the Mines Regulations 2014 applies. Section 81(4) gives Welsh Ministers the power to amend the definition of disused tip if either of these regulations is amended/revoked. As a result, any amendment to definition of ‘disused tip’ could be very technical and will need to ensure that the various regimes dovetail so as to avoid gaps or overlaps between the regimes.

After considering the report, I do not support the recommendation as a change to the Quarries Regulations 1999 or Mines Regulations 2014 might force us to change our definition of disused tip, possibly at short notice. So, requiring consultation could result in a meaningless consultation (because there's no other option except for what is being proposed) and/or unhelpfully delay action that needs to be taken for technical reasons. In addition, given the likely extremely technical nature of any amendment, it is not considered appropriate to attach a consultation requirement, although officials would, of course, consult with those with the relevant technical expertise if required.

Recommendation 17. In reviewing the definition of disused tip in accordance with recommendation 16, the Cabinet Secretary should consider whether information can be placed on the face of the Bill about the tips that are not to be treated as disused tips, rather than relying solely on the regulation-making power provided by section 81(5).

Response - Reject

After considering the report and the definition, I am not able to support this recommendation at this time.

On balance, I do not think that we are able to categorically state the specific characteristics that should be considered in reviewing the definition of a disused tip. I believe that this will be informed by the knowledge, expertise and practical experience of the Authority, once it is established and I want to be cautious and ensure that we do not take any action now, which may inhibit the ability of the Authority to improve the regime in the future.

However, given the importance of this particular regulation making power, I have asked officials to start work on preparing an amendment that will require Welsh Ministers to consult before making regulations under section 81(5).

Recommendation 18. The Cabinet Secretary should table amendments to the Bill to:

- **place a duty on the Authority to produce management plans for Category 1 and 2 disused tips; and**
- **enable the Authority to produce management plans for Category 3 and 4 disused tips.**

Response - Accept

Recommendation 19. The Cabinet Secretary should table amendments to the Bill to:

- **provide the Welsh Ministers with a regulation-making power, subject to the affirmative procedure to set out the minimum content of management plans; and**
- **provide a duty to consult for regulations that set out the minimum content of management plans.**

Response – Accept

Recommendation 20. The Cabinet Secretary should table an amendment to the Bill to set out what information may be included in guidance in relation to management plans (in addition to the requirements to be set out on the face of the Bill and in regulations as a consequence of recommendations 18 and 19).

Response – Accept in principle

I have always placed great emphasis on the importance of management plans, and I understand the Committee's view (as reflected in their report and the above recommendations) that provision should be made for management plans on the face of the Bill.

I have asked officials to begin work on drafting an amendment to give effect to recommendation 18, requiring the Authority to produce management plans for category 1 and 2 tips, with a discretion to prepare plans for those disused tips in category 3 or 4.

The amendment that is in development, will, in my view, go further than recommendation 19, by describing, on the face of the Bill, the minimum content that be set out in a management plan. I have also asked officials to begin work on drafting an amendment that places a duty on Welsh Ministers to consult on and publish guidance on management plans. The guidance will, of course, provide further information in respect of the areas that need to be covered in a management plan.

Recommendation 21. The Cabinet Secretary should table amendments to the Bill to put an appropriate civil sanctions regime in place.

Response – Reject

For the reasons already articulated in Committee and in correspondence, I do not accept this recommendation.

The framework of criminal sanctions in the Bill is sufficient to fully enforce the Bill's provisions. Table 1 below demonstrates the strength of the criminal sanctions regime that is included in the Bill, with, for example, failure to comply with notices requiring operations on land punishable by an unlimited fine. The kinds of matters to which we have applied criminal sanctions (e.g. obstructing monitoring activities or assessments, failing to comply with notices requiring operations) are of such a level of seriousness that, in my view, civil sanctions would be inadequate and would give the wrong message. In addition, the Authority is permitted to bring prosecutions, so it is not dependent on the Director of Public Prosecutions to prosecute.

To include supplementary civil sanctions would in my view be unnecessary. For example, compliance notices and stop notices would be technical and would mean a significant amount of additional administration and bureaucracy as well as the likelihood of delays caused by appeals against such notices. I also consider that civil sanctions would not foster the collaborative approach the Bill favours with a focus on the Authority providing advice and assistance.

The system of notices backed by offences for non-compliance is an effective and proportionate way of enforcing the regime established by the Bill. The Bill allows the Authority or the landowner to seek a contribution from anyone whose conduct has caused or contributed to the need for operations on land. This will act as an additional deterrent to engaging in conduct that is detrimental to the stability of a disused tip.

Table 1

Section	Offence	Fine
32(1)	<p>Penalty for obstructing monitoring activities or assessments</p> <p>A person who intentionally obstructs or interferes with—</p> <p>(a) an inspection or other monitoring activity under Chapter 1, or</p> <p>(b) a preliminary assessment or full assessment under Chapter 2, commits an offence.</p>	unlimited
39(1)	<p>Penalty for failure to comply with notice</p> <p>An owner of land who is given a notice under section 33 commits an offence if, without reasonable excuse, the owner fails to carry out the operations required by the notice within the period specified in the notice or, if that period is extended under section 37, within the extended period.</p>	unlimited
54 (1) and (2)	<p>Penalty for obstructing operations etc.</p> <p>(1) A person who intentionally obstructs or interferes with—</p>	unlimited

	<p>(a) an investigation into—</p> <p>(i) whether operations need to be required under section 33 or carried out under section 42, or</p> <p>(ii) whether operations are being carried out in compliance with a notice given under section 33,</p> <p>(b) the carrying out of operations required by a notice under section 33, or</p> <p>(c) the carrying out of operations under section 42,</p> <p>commits an offence.</p> <p>2) A person who intentionally damages or otherwise interferes with any works completed in the course of operations required by a notice under section 33 or carried out under section 42 commits an offence.</p>	
61(1)	<p>Penalties in connection with notices requiring information</p> <p>(1) A person who is required to give information under section 58 or 60 commits an offence if the person fails, without reasonable excuse, to give the information.</p>	Not exceeding level 3 on the standard scale (currently £1,000)
61(3)	<p>Penalties in connection with notices requiring information</p> <p>3) A person who is required to give information under section 58 or 60 commits an offence if the person, in purported compliance with the notice—</p> <p>(a) gives information which is false or misleading in a material respect, and</p> <p>(b) either—</p> <p>(i) knows that the information is false or misleading, or</p> <p>(ii) is reckless as to whether the information is false or misleading</p>	unlimited

66	<p>Penalty for obstructing entry to land</p> <p>(1) This section applies where a power to enter land is conferred on a person by section 62(1) or by a warrant issued under section 64(1).</p> <p>(2) A person who intentionally obstructs the exercise of the power commits an offence.</p>	<p>Not exceeding level 3 on the standard scale (currently £1,000)</p>
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Recommendation 22. The Cabinet Secretary should table amendments to the Bill to apply the affirmative procedure to the making of all regulations in the Bill that amend primary legislation and to which the negative procedure currently applies.

Response - Accept

I have asked officials to begin drafting amendments to give effect to this recommendation. If you have any further questions, please let me know.

Yours sincerely,



Huw Irranca-Davies AS/MS

Y Dirprwy Brif Weinidog ac Ysgrifennydd y Cabinet dros Newid Hinsawdd
a Materion Gwledig
Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs

Rebecca Evans AS/MS
Cabinet Secretary for Economy, Energy and Planning
Ysgrifennydd y Cabinet dros yr Economi, Ynni a Chynllunio



Eich cyf/Your ref

Llywodraeth Cymru
Welsh Government

Mike Hedges MS
Chair
Legislation, Justice and Constitution Committee
Senedd Cymru
Cardiff Bay
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24 April 2025

Dear Mike Hedges MS

I would like to thank you, as well as the members of the Legislation, Justice and Constitution Committee, for considering the first two Legislative Consent Memoranda laid in respect of the Data (Use and Access) Bill.

I have considered the conclusions set out in both reports and have responded to each of the recommendations in the accompanying report.

In addition, during my appearance at the Committee's evidence session on the Bill on 3 February 2025, my officials committed to provide feedback regarding the Scottish version of National Underground Asset Register (NUAR). The Scottish Community Apparatus Data Vault (or VAULT for short) has been operational since 2011 and remains integral for Scotland due to its ties with the road works register and its established use. The Scottish Government is continuing to engage on the NUAR programme in relation to cross-border integration/data sharing, and building good working practices. The Welsh Government is also engaging with Transport Scotland to understand how the data captured can be best utilised for wider purposes.

I hope this provides further clarity to the Committee.

Yours sincerely,

Rebecca Evans AS/MS
Cabinet Secretary for Economy, Energy and Planning
Ysgrifennydd y Cabinet dros yr Economi, Ynni a Chynllunio

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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.

The Welsh Government's Legislative Consent Memorandum and Supplementary Legislative Consent Memorandum (Memorandum No. 2) on the Data (Use and Access) Bill

Welsh Government response to the Legislation, Justice and Constitution Committee's reports

24 April 2025

In March 2025, the Legislation, Justice, and Constitution (LJC) Committee laid its report on the Welsh Government's Legislative Consent Memorandum on the Data (Use and Access) Bill. The report includes six recommendations.

In April 2025, the LJC Committee laid its report on the Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No.2) on the Data (Use and Access) Bill. The report includes four recommendations.

This is the Welsh Government's response to the recommendations in both reports.

Introduction

The Data (Use and Access) Bill was introduced in the House of Lords on 23 October 2024. It completed its passage through the House of Lords on 5 February 2025 and was introduced into the House of Commons on 6 February 2025. At the time of publication, the Bill was at Report Stage in the House of Commons.

The Bill has been designed to achieve three policy objectives by the UK Government namely, to harness the power of data for economic growth, support a modern digital government, and improve people's lives.

It was the view of both the Welsh and UK Governments that the Bill required the legislative consent of the Senedd. To this end a Legislative Consent Memorandum (LCM) was laid in the Senedd on 2 January 2025.

The LCM stated that whilst the Welsh Government was supportive of the policy intent behind the Bill, there remained concerns from a constitutional perspective with several provisions in the Bill. Therefore, further engagement was required with the UK Government on the role of the Welsh Ministers and the Senedd within the Bill on these matters. As a result, the LCM did not provide a recommendation as to whether the Senedd should give consent to this Bill.

A Supplementary LCM (SLCM) No.2 was subsequently laid on 12 March 2025 in respect of UK Government amendments tabled on the Bill on 26 February 2025. As discussions

with the UK Government regarding constitutional concerns were still ongoing at that time, LCM No.2 stated further engagement was required with the UK Government on the role of the Welsh Ministers and the Senedd within the Bill before a recommendation could be given on whether the Senedd should give consent to this Bill.

Following positive discussions between the two governments, amendments were tabled on 25 March 2025 by the UK Government at Report Stage in the House of Commons. As a result, in SLCM No.3 laid on 3 April 2025, the Cabinet Secretary for Economy, Energy and Planning recommended that the Senedd supports the Bill and gives its consent.

The Welsh Government has set out its response to the individual recommendations in the Committee's reports on the Welsh Government's LCM No.1 and SLCM No.2 on the Data (Use and Access) Bill below.

Responses to recommendations

LCM Recommendation 1 - The Cabinet Secretary should ensure that any supplementary legislative consent memoranda, which may be required because of amendments being proposed or made to the Bill in the UK Parliament, are laid before the Senedd as soon as possible to give Senedd Committees the best possible chance of considering the legislative changes as they apply to devolved matters.

Welsh Government response

The Welsh Government is committed to ensuring the efficient discharge of the legislative consent process in accordance with the requirements of Standing Order 29.

The Welsh Government laid a SLCM No.3 on 3 April 2025, following UK Government amendments tabled to the Bill on 25 March 2025.

LCM Recommendation 2 - The Cabinet Secretary should update the Committee and the Senedd as soon as possible on the specific changes to Part 1 of the Bill that are being sought by the Welsh Government, and provide details of the progress of discussions with the UK Government.

Welsh Government response

The Welsh Government has been in discussions with the UK Government, at both Ministerial and Official level, regarding the devolved implications of provisions within Part 1 of the Bill. These discussions sought to address the differing conclusions reached by both governments in their devolution analysis of Part 1.

On Part 1 of the Bill, the Welsh Government requested that the UK Government provide Welsh Ministers with a formal role in relation to establishing Smart Data schemes.

Discussions on these matters have now concluded and SLCM No.3 provided an update on the Welsh Government's position on the Bill following the amendments tabled by the UK Government on 25 March 2025.

LCM Recommendation 3 - The Cabinet Secretary should update the Committee and the Senedd as soon as possible on the specific changes to clause 49 in Part 2 of the Bill that are being sought by the Welsh Government, and provide details of the progress of discussions with the UK Government.

Welsh Government response

The Welsh Government has been in discussions with the UK Government, at both Ministerial and Official level, regarding the devolved implications of certain provisions within Part 2 the Bill. These discussions sought to address the different conclusions reached by both governments in their devolution analysis of these provisions.

The Welsh Government requested that the UK Government amend clause 49 to provide a more formal role for Welsh Ministers in relation to preparing and publishing a code of practice on Digital Verification Services.

Discussions on these matters have now concluded and SLCM No.3 provided an update on the Welsh Government's position on the Bill following the amendments tabled by the UK Government on 25 March 2025.

LCM Recommendation 4 - The Cabinet Secretary should update the Committee and the Senedd as soon as possible on the specific changes to clauses 56, 57(3), 57(4), and 57(9) in Part 3 of the Bill that are being sought by the Welsh Government, and provide details of the progress of discussions with the UK Government.

Welsh Government response

The Welsh Government has been in discussions with the UK Government, at both Ministerial and Official level, regarding the devolved implications of provisions within Part 3 of the Bill. Both governments agreed that this part of the Bill required legislative consent.

The legislative approach taken in Part 3 of the Bill had caused Welsh Government the most concern from a constitutional perspective, particularly as this is an area of the Bill where Welsh Government and UK Government are in full agreement on the need for legislative consent.

The Welsh Government requested amendments to Part 3 of the Bill to provide the necessary constitutional safeguards regarding provisions within this Part.

As a result of positive discussions, the UK Government tabled amendments to clauses 56, 57(3), 57(4), and 57(9) in Part 3 of the Bill on 25 March 2025. As set out in SLCM No.3, these amendments provide the necessary constitutional safeguards and will ensure devolved interests remain protected in the development of further subordinate legislation surrounding the creation of the National Underground Asset Register.

LCM Recommendation 5 - The Cabinet Secretary should clarify whether the UK-EU dimensions of the Bill are being discussed at relevant intergovernmental forums, including the Interministerial Groups on UK-EU relations and on trade, and provide a summary of those discussions.

Welsh Government response

Concerns regarding the impact of the Bill on EU data adequacy have been raised with the UK Government at both Ministerial and official level.

The current EU data adequacy decision for the UK was due to expire on 27 June 2025 and the EU had started the renewal assessment process. However, on 18 March 2025, the EU Commission proposed an extension to its adequacy decisions by six months, until 27 December 2025.

The EU Commission indicated the extension is intended to provide sufficient time for it to complete its review of adequacy once the Data (Use and Access) Bill has completed its passage through the UK Parliament. This is to ensure that the EU Commission's assessment on whether to renew these decisions is based on a stable legal framework.

The UK Government have provided assurances that dedicated teams in both the Department for Science, Innovation and Technology (DSIT) and the Home Office are engaging closely with the EU Commission on the renewal process, including in respect of the Data (Use and Access) Bill, and that provisions within the Bill have been designed with EU data adequacy in mind. The UK Government have also told us that the Secretary of State DSIT has held three meetings with the former and current European Commissioner for Justice to discuss data adequacy, with the most recent meeting being with Commissioner McGrath on 29 January in Brussels. According to the UK Government, the Commissioner acknowledged the shared interest in maintaining data flows and that adequacy 'is key' to the relationship with the EU. As adequacy is not devolved, Welsh Government has not been party to these discussions.

The Committee will be aware that the Welsh Government requested a copy of the UK Government's risk assessment on the potential impact of the Bill on EU data adequacy. The UK Government have told us that they do not consider it appropriate to share their assessment with the Welsh Government, citing the importance of discretion whilst the EU Commission's review is underway to enable the adequacy decision process to be undertaken objectively and independently by the EU Commission.

Where the Welsh Government is concerned that UK Government policy or legislation may impact on UK-EU relations then we will continue to raise these concerns directly with the UK Government through the appropriate inter-governmental channels. For example, data adequacy was raised by the Cabinet Secretary for Economy, Energy, and Planning during a bilateral call with Nick Thomas-Symonds, Paymaster General and Minister for the Cabinet Office (Minister for the Constitution and European Union Relations) on 4 November 2024, and at the most recent meeting of the Inter-Ministerial Group on UK-EU Relations on 3 December 2024.

LCM Recommendation 6 - The Cabinet Secretary should outline to the Senedd the renewal process for the UK's data adequacy decision.

Welsh Government response

The responsibility for the renewal process for the UK data adequacy decisions sit with the EU Commission. On its website, the EU Commission states that the adoption of an adequacy decision for a non-EU country involves:

- a proposal from the European Commission.
- an opinion of the European Data Protection Board.
- an approval from representatives of EU countries.
- the adoption of the decision by the European Commission.

SLCM No.2 Recommendation 1 - The Cabinet Secretary should provide an updated assessment of the impact of the Bill on the UK-EU Trade and Co-operation Agreement, confirming the Welsh Government's view on whether the amendments that are the subject of Memorandum No. 2 modify its initial assessment.

Welsh Government response

The amendments which are the subject of Memorandum No.2 relate only to Part 1 – Access to Customer and Business Data - and Part 3- National Underground Register - of the DUA Bill and do not amend the UK data protection regime. As

such, these amendments do not modify the Welsh Government's assessment on the impact of the Bill on Trade and Co-operation Agreement, as set out in the assessment provided to the Senedd Committees on 5 February.

SLCM No.2 Recommendation 2 - The Cabinet Secretary should ensure that a UK-EU Trade and Co-operation Agreement assessment is included in all future memoranda for the Bill, in line with previous commitments given by the Welsh Government.

Welsh Government response

The Welsh Government's assessment of the potential impact of the Bill on the Trade and Co-operation Agreement (TCA) provided to the Senedd Committees on 5 February clarified how Welsh Ministers intend to fulfil the commitment to assessing the impact of Bills on the Trade and Co-operation Agreement.

This set out that where a Bill has a clear impact on the obligations made in the Trade and Co-operation Agreement, an assessment will be provided to Senedd Committees only in relation to the provisions which the Senedd is being asked to consent to. Further, that assessments will continue to be provided in writing, as a separate document to any LCM.

As set out above, as none of the amendments that are the subject of LCM No.2, or those amendments which are the subject of SLCM No.3 laid on 3 April 2025, impact the data protection regime, the Welsh Government's assessment of the impact of the Bill on the Trade and Co-operation Agreement assessment still stands. Should any further amendments be agreed on the Bill which do have an impact on the Trade and Co-operation Agreement, an updated assessment will be provided to the Committees.

SLCM No.2 Recommendation 3 - The Cabinet Secretary should confirm the Welsh Government's view on whether the amendments that are the subject of Memorandum No. 2 reduce or increase the likelihood of divergence between the UK and the EU on data protection.

Welsh Government response

The amendments which are the subject of Memorandum No.2 relate only to Part 1 – Access to Customer and Business Data - and Part 3- National Underground Register - of the DUA Bill and do not amend the UK data protection regime. As such, these amendments do not reduce or increase the likelihood of divergence between the UK and the EU on data protection.

SLCM No.2 Recommendation 4 - The Cabinet Secretary should respond to the recommendations in our Report on the Welsh Government's Legislative Consent Memorandum on the Data (Use and Access) Bill, and to recommendations 1 to 3 in this report, by 24 April 2025.

Welsh Government response

This response addresses the recommendations in the Committee's reports on both LCM No.1 and SLCM No.2.

Agenda Item 12

By virtue of paragraph(s) vi of Standing Order 17.42

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Agenda Item 13

By virtue of paragraph(s) vi of Standing Order 17.42

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