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

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

11 June 2025

On 7 February 2025, Jane Hutt MS, Cabinet Secretary for Social Justice, Trefnydd and Chief Whip laid before the Senedd a Legislative Consent Memorandum (LCM) (Memorandum No.1) in respect of the Public Authorities (Fraud, Error and Recovery) Bill. On 6 March 2025, the Cabinet Secretary laid before the Senedd a Supplementary Legislative Consent Memorandum (Memorandum No. 2) in respect of the same Bill

The Senedd's Business Committee agreed the Legislation, Justice and Constitution Committee and the Public Accounts and Public Administration Committee should report on all Memoranda relating to the Bill.

The Legislation, Justice and Constitution Committee (LJCC) produced a report on 1 May 2025. This is the Welsh Government response to that report.

Introduction

The Public Authorities (Fraud, Error and Recovery) Bill ("the Bill") was introduced in the House of Lords on 22 January 2025, for the First Reading. The Bill can be found at: [Public Authorities \(Fraud, Error and Recovery\) Bill](#).

The Bill is sponsored by the Cabinet Office's Public Sector Fraud Authority (PSFA) and the Department for Work and Pensions (DWP). 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 obtained by fraud or overpaid.

The Welsh Government laid its Legislative Consent Memorandum (LCM) (Memorandum No.1) before the Senedd on 7 February 2025 in respect of clauses 1, 2, 5, 6, 7, 9, 10, 64, 65, 67 and 69 of PART 1 of the Bill, together with Schedules 1 and 2 as introduced to Parliament. Subsequently, a Supplementary LCM (Memorandum No. 2) was laid on 6 March 2025.

The Senedd's Business Committee referred Memoranda No. 1 and No.2 to the Public Accounts and Public Administration Committee and the Legislation, Justice and Constitution Committee (LJCC). The LJCC laid its report on the LCM and Supplementary LCM on 1 May 2025, arriving at two conclusions and making two recommendations for the consideration of the Cabinet Secretary for Social Justice, Trefnydd and Chief Whip. This report contains the Cabinet Secretary's response to these recommendations.

Since the laying of the previous Memoranda, a second Supplementary LCM (Memorandum No. 3) has been laid by the Cabinet Secretary, on 7 May 2025. The Business Committee has commissioned further scrutiny of this Supplementary LCM. However, the report on this further scrutiny has yet to be laid and this response addresses only the LJCC Report on the initial LCM and first Supplementary LCM.

Response to issues raised by the Committee

This response addresses the two conclusions and two recommendations of the LJCC Report laid on 7 February 2025 and uses the section numbering found in the Bill as introduced to the House of Commons on 22 January 2025.

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.

No response required.

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.

No response required.

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.

Response: Accept

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.

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.

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.

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.

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.

Response: Accept

Whilst there might be benefits in Welsh Ministers holding powers to undertake investigations and to deploy civil recovery powers as alternatives to the higher bar applicable in criminal proceedings, the Welsh Government has not requested equivalent powers in the Bill for the Welsh Ministers.

In the view of the Cabinet Secretary, the need for these powers in Wales is not equivalent to the need in England. The Welsh Government is not immune to both opportunistic and targeted fraud but the fraud risk carried by the UK Government is substantially and proportionately greater due to the much larger budget spent and the nature of that expenditure (such as benefit payments) which puts it at greater risk. Considering the difference in fraud risk profiles, together with potential diseconomies of scale and the difficulties of maintaining the specialist skills required which Wales would experience as a much smaller administration, the Cabinet Secretary is of the view the inclusion of access to the PSFA for DWAs within the provisions of the Bill provides a sufficient, effective, cost-efficient and proportionate option.

As a centre of counter fraud excellence, Welsh Ministers will be able to access and benefit from the collective expert skills and specialisms employed by the PSFA, as well as its considerable fraud intelligence and the investment it will be able to make in new counter fraud tools and techniques. In particular, 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 in their commission of fraud crimes.

The PSFA is leading on the professionalisation of counter fraud services within the UK Civil Service and this leadership will also serve to ensure consistent, high-quality investigative services are freely available for the Welsh Government's use. Therefore, the Welsh Government's policy objectives are to support the UK Government to create a fraud investigation and enforcement agency that is consistent and coherent. This is considered important given the nature of fraud and the recognised benefits for public bodies in it being pursued effectively.
