

## Agenda Supplement – Legislation, Justice and Constitution Committee

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Meeting Venue:	For further information contact:
Hybrid – Committee Room 2, Senedd and Video Conference via Zoom	P Gareth Williams Committee Clerk
Meeting date: 11 March 2024	0300 200 6565
Meeting time: 10.00	<a href="mailto:SeneddLJC@senedd.wales">SeneddLJC@senedd.wales</a>

### Hybrid – Supplementary Pack

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

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

(10.50 – 10.55)

#### 3.2 SL(6)462 – The Regulated Services (Service Providers and Responsible Individuals) (Wales) (Amendment) Regulations 2024

(Page 1)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-09-24 – Paper 32 – Written Statement by the Deputy Minister for  
Social Services, 8 March 2024

### 6 Inter-Institutional Relations Agreement

(11.05 – 11.10)

#### 6.1 Correspondence from the Welsh Government: Inter-Ministerial Groups

(Pages 2 – 3)



Attached Documents:

LJC(6)-09-24 – Paper 33 – Written Statement by the Deputy Minister for Arts, Sport and Tourism: Inter-Ministerial Group for Sport, 8 March 2024

LJC(6)-09-24 – Paper 34 – Letter from the Deputy Minister for Arts, Sport and Tourism: Inter-Ministerial Group for Sport, 8 March 2024

## **7 Papers to note**

(11.10 – 11.15)

### **7.5 Correspondence from the Counsel General and Minister for the Constitution: Correcting Welsh Statutory Instruments**

(Pages 4 – 10)

Attached Documents:

LJC(6)-09-24 – Paper 35 – Letter from the Counsel General and Minister for the Constitution, 7 March 2024

### **7.6 Correspondence from the First Minister: Welsh Government response to the Committee's report on the Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 3) on the Data Protection and Digital Information Bill**

(Pages 11 – 15)

Attached Documents:

LJC(6)-09-24 – Paper 36 – Letter from the First Minister, 8 March 2024

## **11 Residential Outdoor Education (Wales) Bill: Draft report**

(11.35 – 12.00)

(Pages 16 – 46)

Attached Documents:

LJC(6)-09-24 – Paper 27 – Draft report

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**WRITTEN STATEMENT  
BY  
THE WELSH GOVERNMENT**

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<b>TITLE</b>	<b>Amendments to regulations made under the Regulation and Inspection of Social Care Wales (Act) 2016</b>
<b>DATE</b>	<b>08 March 2024</b>
<b>BY</b>	<b>Julie Morgan, Deputy Minister for Social Services</b>

I consulted on proposals to amend the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017, as amended, to address two issues in the regulatory framework;

- the reconfiguration of accommodation-based services to create additional bedrooms and increase the number of registered places; and
- the emergence of intermediate care services run by local authorities which fall within the definition of a care home service.

I am bringing forward regulations to require that when any provider of an accommodation-based service reconfigures their premises to accommodate 5 or more people, any additional bedroom(s) and the communal areas of the service, must meet the higher standards required by Part 13 of the 2017 Regulations. This includes en-suite facilities and appropriate room sizes for the additional bedrooms as well as sufficient communal and accessible outdoor space. This will ensure that improvements continue to be made to the built estate over time.

I am also bringing forward regulations to exempt intermediate care services provided by a local authority from having to register as a care home service, provided that the care and support is delivered by the local authority's registered domiciliary support service, the accommodation is vested in the local authority and the service is limited to 16 weeks per individual. This will maintain a proportionate approach to the regulation of these services.

I published a [report](#) on the consultation outcome on 30 October 2023.



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## **WRITTEN STATEMENT BY THE WELSH GOVERNMENT**

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**TITLE**            **Inter-Ministerial Group for Sport in Glasgow**

**DATE**            **08 March 2024**

**BY**                **Dawn Bowden MS, Deputy Minister for Arts, Sport and Tourism**

I attended an Inter-Ministerial Group for Sport on 1 March hosted by the Scottish Government in Glasgow. The IMG brings together the four UK Sports Ministers to support co-ordination and the sharing of best practice between the devolved administrations and the UK Government.

This meeting was chaired by Maree Todd, Minister for Social Care, Mental Wellbeing and Sport, Scottish Government. Also in attendance were Rt Hon Stuart Andrews MP, Department for Digital, Culture, Media and Sport, UK Government and Gordon Lyons, Minister for Communities, Northern Ireland Executive. The meeting was supported by the chairs of four sports councils, including Baroness Tanni Grey-Thompson as Chair of Sport Wales, and UK Sport. Our discussions included safeguarding and sport integrity, inclusion and diversity in sport leadership, and preparations for this year's Olympics and Paralympics in Paris.

The trip also included a visit to Haghill School, which is part a of a community Sport Hub in the East End of Glasgow, one of Scotland's most deprived communities. The visit showcased how Sport Scotland is working with targeted local authorities, including Glasgow City Council, to take a place-based approach and bringing the community and partners together for the benefit of sport and delivering wider outcomes through sport.

Following the meeting, I was invited by the Scottish Government to attend part of the World Athletics Indoor Championships at the Emirates Arena.

Dawn Bowden AS/MS  
Dirprwy Weinidog y Celfyddydau, Chwaraeon a Thwristiaeth  
Deputy Minister for Arts, Sport and Tourism



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Welsh Government

Ein cyf/Our ref DC/DB/00078/24

Huw Irranca-Davies MS  
Chair  
Legislation, Justice and Constitution Committee  
Senedd Cymru  
[SeneddLJC@senedd.wales](mailto:SeneddLJC@senedd.wales)

8 March 2024

Dear Huw,

### **Biannual Inter-Ministerial Group for Sport Meeting**

I recently attended the biannual Inter-Ministerial Group for Sport meeting on 1 March 2024, which was hosted by the Scottish Government. I have issued a [Written Ministerial Statement](#) summarising the discussions at the meeting.

Discussions about the next Inter-Ministerial Group for Sport meeting were held and it was agreed that an Autumn date would suit. Departmental officials will coordinate this and will be chaired in line with rotating chair arrangements. I will provide a written update for the next meeting when we have confirmation of these details.

Yours sincerely,

**Dawn Bowden AS/MS**  
**Dirprwy Weinidog y Celfyddydau, Chwaraeon a Thwristiaeth**  
**Deputy Minister for Arts, Sport and Tourism**

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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.



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Ein cyf/Our ref: CG/PO/81/2024

Huw Irranca-Davies, Chair  
Legislation, Justice & Constitution Committee  
Senedd Cymru  
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7 March 2024

Dear Huw

## CORRECTING WELSH STATUTORY INSTRUMENTS

During my evidence session before the Committee on Monday, 26 February, we both agreed that clarity and transparency were important in relation to correcting Welsh Statutory Instruments.

To that end I have put in place new arrangements to ensure the Senedd is aware of corrections being made to instruments. Government responses to Committee scrutiny reports will include a table setting out any corrections to be made prior to making draft affirmative instruments. Where timings do not permit that table to be included in the Government response, Ministers will write separately with that information to the Committee. Ministers will also inform Members of the changes to be made, in the Senedd debate on the instrument.

This new arrangement has been in place since the Autumn, and was used for example in the Government's response to the *Local Elections (Principal Areas) (Single Transferable Vote) (Wales) Rules 2023*. More recently it was included in our response on the *Waste Separation Requirements (Wales) Regulations 2023*, the *Prohibition on the Incineration, or the Deposit in Landfill, of Specified Waste (Wales) Regulations 2023* and the *Prohibition on Disposal of Food Waste to Sewer (Civil Sanctions) (Wales) Order 2023*. On those later instruments that the Committee considered in November, I understand the Committee's legal advisor remarked how helpful the table was.

In the evidence session we also discussed correction slips, and you considered that these should be dealt with swiftly. Whilst I agree with the premise, I wish to ensure the Committee is aware that the SI Registrar has to prioritise the registration and publication of legislation,

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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.

so correction slips are processed by his office as time permits. It is also the case that such slips may be made in respect of legislation made at any time, including older legislation.

The Committee may wish to note that notification of correction slips appears on the “new legislation” page of legislation.gov.uk as they are published – see, by way of example, the screen shot below:

The “new legislation” page features an “Atom Feed”, which can provide the Committee with regular reports on all new legislation published on the site, including correction slips. However, as this does not provide access to historical information, I attach a table setting out all the correction slips issued in respect of Welsh Statutory Instruments made from January 2020 to the present date. My officials have asked the publication team at legislation.gov.uk if there is a way of searching the site for correction slips to aid Committee Clerks in finding this information in future.

You expressed a concern that if legislation is used to correct an error, the Committee may miss this. I am not sure I share this concern, as all legislation laid before the Senedd is seen by your Committee. However I have asked officials to ensure that when legislation is used to correct a matter in earlier legislation, a note to this effect is included in the Explanatory Memorandum laid alongside the instrument.

Yours sincerely,

**Mick Antoniw AS/MS**  
Y Cwnsler Cyffredinol a Gweinidog y Cyfansoddiad  
Counsel General and Minister for the Constitution

**CORRECTION SLIPS ISSUED ON WELSH STATUTORY INSTRUMENTS MADE FROM JANUARY 2020 TO FEBRUARY 2024**

<b>Welsh Statutory Instrument</b>		<b>Date instrument made</b>	<b>Date of correction slip</b>
2020/110 (W. 19)	The Local Authorities (Capital Finance and Accounting) (Wales) (Amendment) Regulations 2020	31/01/2020	19/02/2020
2020/220 (W. 49)	The Food Information (Wales) (Amendment) Regulations 2020	04/03/2020	25/03/2020
2020/272 (W. 64)	The Wildlife and Countryside Act 1981 (Variation of Schedule 2) (Wales) Order 2020	10/03/2020	19/05/2020
2020/353 (W. 80)	The Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020	26/03/2020	06/04/2020
2020/389 (W. 87)	Regulation and Inspection of Social Care (Wales) Act 2016 and Regulated Services (Miscellaneous Amendments) Regulations 2020	11/03/2020	03/04/2020
2020/399 (W. 88)	The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) Regulations 2020	03/04/2020	20/04/2020
2020/442 (W. 100)	The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) Regulations 2020	21/04/2020	04/06/2020
2020/452 (W. 102)	The Health Protection (Coronavirus Restrictions) (Wales) (Amendment) (No. 2) Regulations 2020	24/04/2020	04/06/2020
2020/479 (W. 110)	The Education (Admission Appeals Arrangements) (Wales) (Coronavirus) (Amendment) Regulations 2020	30/04/2020	04/06/2020
2020/555 (W. 128)	The Census (Wales) Regulations 2020	28/05/2020	19/10/2020
2020/606 (W. 140)	The Business Tenancies (Extension of Protection from Forfeiture etc.) (Wales) (Coronavirus) Regulations 2020	17/06/2020	25/02/2021



Welsh Statutory Instrument		Date instrument made	Date of correction slip
2020/624 (W. 144)	The Curriculum Requirements (Amendment of paragraph 7(5) of Schedule 17 to the Coronavirus Act 2020) (Wales) Regulations 2020	22/06/2020	03/08/2020
2020/640 (W. 147)	The Maintained Schools (Amendment of paragraph 7 of Schedule 17 to the Coronavirus Act 2020) (Wales) Regulations 2020	25/06/2020	16/07/2020
2020/752 (W. 169)	The Health Protection (Coronavirus Restrictions) (No. 2) (Wales) (Amendment) Regulations 2020	17/07/2020	05/08/2020
2020/1339 (W. 296)	The Waste (Wales) (Miscellaneous Amendments) (EU Exit) Regulations 2020	23/11/2020	<b>Pending</b>
2020/1487 (W. 317)	The Official Feed and Food Controls (Miscellaneous Amendments) (Wales) Regulations 2020	08/12/2020	09/03/2021
2020/1489 (W. 318)	The Personal Protective Equipment (Temporary Arrangements) (Coronavirus) (Wales) Regulations 2020	09/12/2020	23/02/2021
2020/1558 (W. 329)	The Senedd Cymru (Representation of the People) (Amendment) Order 2020	16/12/2020	24/06/2021
2020/1609 (W. 335)	The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) Regulations 2020	18/12/2020	07/10/2021
2020/1618 (W. 339)	The Land Transaction Tax (Tax Bands and Tax Rates) (Wales) (Amendment) Regulations 2020	21/12/2020	09/03/2021
2021/77 (W. 20)	The Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021	21/01/2021	23/04/2021
2021/373 (W. 116) (C. 12)	The Additional Learning Needs and Education Tribunal (Wales) Act 2018 (Commencement No. 2) Order 2021	22/03/2021	23/04/2021

Welsh Statutory Instrument		Date instrument made	Date of correction slip
2021/399 (W. 128)	The Countryside Access (Local Access Forums) (Wales) (Coronavirus) Regulations 2021	24/03/2021	18/05/2021
2021/502 (W. 150)	The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 8) Regulations 2021	23/04/2021	07/10/2021
2021/583 (W. 160)	The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 10) Regulations 2021	14/05/2021	18/05/2021
2021/722 (W. 183)	The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 13) Regulations 2021	18/06/2021	28/06/2021
2021/862 (W. 201)	The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 14) Regulations 2021	16/07/2021	04/08/2021
2021/1063 9W. 250)	The Health Protection (Coronavirus, International Travel and Notification) (Wales) (Miscellaneous Amendments) Regulations 2021	19/09/2021	21/10/2021
2021/1189 (W. 297)	The Development Procedure (Consultees) (Wales) (Miscellaneous Amendments) Order 2021	25/10/2021	09/11/2021
2021/1212 (W. 303)	The Health Protection (Coronavirus, Restrictions, International Travel, Notification and Public Health Information to Travellers) (Wales) (Miscellaneous Amendments) Regulations 2021	29/10/2021	10/11/2021 07/06/2022
2021/1306 (W. 335)	The Valuation for Rating (Wales) (Coronavirus) (Revocation) Regulations 2021	23/11/2021	05/01/2022
2021/1321 (W. 336)	The Health Protection (Coronavirus, International Travel) (Wales) (Amendment) (No. 12) Regulations 2021	26/11/2021	15/02/2022
2022/6 (W. 4)	The Renting Homes (Fitness for Human Habitation) (Wales) Regulations 2022	07/01/2022	12/04/2022 30/10/2023

Welsh Statutory Instrument		Date instrument made	Date of correction slip
2022/22 (W. 10)	The Renting Homes (Explanatory Information for Written Statements of Occupation Contracts) (Wales) Regulations 2022	07/01/2022	<b>Pending</b>
2022/79 (W. 28)	The Education (Student Finance) (Miscellaneous Amendments) (Wales) Regulations 2022	26/01/2022	12/04/2022
2022/126 (W. 41)	The Health Protection (Coronavirus, International Travel) (Wales) Regulations 2022	10/02/2022	12/04/2022
2022/220 (W. 70)	The Local Election Survey (Wales) (Amendment) Regulations 2022	03/03/2022	23/05/2022
2022/250 (W. 76)	The Renting Homes (Deposit Schemes) (Required Information) (Wales) Regulations 2022	08/03/2022	08/06/2022
2022/343 (W. 85)	The Firefighters' Pension Scheme (Wales) (Amendment) Regulations 2022	21/03/2022	30/06/2022
2022/517 (W. 124)	The Education (Revocation of Assessment Arrangements in the National Curriculum and Miscellaneous Amendments) (Wales) Regulations 2022	08/05/2022	17/06/2022
2022/575 (W. 133)	The Novel Foods (Authorisations) and Smoke Flavourings (Modification of Authorisations) (Wales) Regulations 2022	24/05/2022	07/07/2022
2022/722 (W. 160)	The Council Tax (Amendments Relating to Discount Disregards and Exempt Dwellings) (Wales) Regulations 2022	28/06/2022	<b>Pending</b>
2022/781 (W. 170)	The Renting Homes (Rent Determination) (Converted Contracts) (Wales) Regulations 2022	15/07/2022	09/11/2022
2022/804 (W. 180)	The Plant Health etc. (Fees) (Amendment) (Wales) (EU Exit) (No. 2) Regulations 2022	13/07/2022	20/10/2022
2022/939 (W. 203)	The Food Information (Amendment of Transitional Provisions) (Wales) Regulations 2022	05/09/2022	21/12/2022

Welsh Statutory Instrument		Date instrument made	Date of correction slip
2022/997 (W. 213)	The Town and Country Planning (General Permitted Development etc.) (Amendment) (Wales) Order 2022	26/09/2022	27/03/2023
2022/1172 (W. 242)	The Renting Homes (Wales) Act 2016 (Saving and Transitional Provisions) Regulations 2022	09/11/2022	28/06/2023
2022/1305 (W. 262)	The Water Resources (Control of Agricultural Pollution) (Wales) (Amendment) Regulations 2022	08/12/2022	21/07/2023
2023/72 (W. 13)	The Non-Domestic Rating (Multiplier) (Wales) Regulations 2023	24/01/2023	10/07/2023
2023/256 (W. 35)	The Town and Country Planning (North Wales Border Control Post) (EU Exit) Special Development Order 2023	02/03/2023	14/06/2023
2023/260 (W. 37)	The Agricultural Wages (Wales) Order 2023	02/03/2023	16/06/2023
2023/633 (W. 97)	The Education (Student Finance) (Miscellaneous Amendments) (No. 2) (Wales) Regulations 2023	12/06/2023	31/07/2023
2023/783 (W. 124)	The Traffic Signs (Amendment) (Wales) Regulations and General Directions 2023	07/07/2023	23/10/2023
2023/1349 (W. 243)	The Education (Student Finance) (Miscellaneous Amendments) (No. 3) (Wales) Regulations 2023	08/12/2023	23/02/2024
2023/1393 (W. 247)	The Water Resources (Control of Agricultural Pollution) (Wales) (Amendment) (No. 4) Regulations 2023	14/12/2023	<b>Pending</b>
2024/37 (W. 12)	The Non-Domestic Rating (Miscellaneous and Consequential Amendments to Secondary Legislation) (Wales) Regulations 2024	15/01/2024	<b>Pending</b>

Ein cyf/Our ref MA/FM/0609/24

Llywodraeth Cymru  
Welsh Government

Huw Irranca-Davies MS  
Chair of the Legislation, Justice and Constitution Committee

8 March 2024

Dear Huw

I am writing in response to the Legislation, Justice and Constitution Committee's (LJCC) report on the Supplementary Legislative Consent Memorandum (Memorandum No.3), laid in respect of the Data Protection and Digital Information Bill ('the Bill') on the 26 January.

I have reflected on the conclusions in your report and my response is set out below. To note, where I have used clause references from the Bill, these are consistent with the latest version, as brought from the Commons, dated 6 December.

### **Legislative consent**

I am pleased that the Committee is of the view that the majority of the provisions within LCM No.3 fall within the legislative competence of the Senedd under Standing Order 29, and therefore require the consent of the Senedd.

I note that the Committee remains of the view that clauses 74 and 78 (clauses 54 and 56 as introduced), and also amendments 79 and 80 which related to those clauses, do not make provision for any purpose within the legislative competence of the Senedd. However, I remain of the view that these provisions are within legislative competence, in so far as these clauses relate to devolved matters of public services, economy and business.

Indeed, on 6 February Julia Lopez MP, Minister of State for Data and Digital Infrastructure, wrote to update me on their own devolution analysis on this Part of the Bill. Previously their position had been that provisions within this Part of the Bill were reserved under the internet services reservation and therefore did not require consent of the Senedd. Her letter noted that under the Welsh Devolution Guidance Note consent should be sought when conferring or imposing reserved functions on a devolved Welsh authority. She added that as a result, whilst UKG maintain that these functions are reserved, UKG are now of the view that agreement should be sought for clause 74 and clause 78(3).

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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.

I also note the Committee's view that the amendments to the Bill relating to the National Underground Asset Register will modify the legislative competence of the Senedd. I agree with this conclusion, and you will have seen that I highlighted constitutional policy concerns in paragraph 22 within LCM No.3 around regulation making powers under section 79 of the New Roads and Street Works Act 1991 (so far as exercisable in relation to Wales) being transferred from Welsh Ministers back to the Secretary of State.

### **Quality of the LCM**

The supplementary LCM was laid as near as possible to the two week period required by Standing Order 29.2, which involved analysis of a significant number of amendments in a short period with a view to enabling timely scrutiny. I note the Committee's concerns and remain committed to enabling efficient discharge of the legislative consent process.

There is a clear tension between a two-week period and the ability to provide detailed information. I am aware of the Committee's critical view of these occasions when the Welsh Government has exceeded the two-week period to develop a more detailed response.

### **Specific clauses of the Bill, outstanding matters and the UK-EU dynamic**

I note that the remainder of the Committee's report provides comments regarding specific clauses of the Bill, matters the Committee consider to be outstanding from first report, as well as the UK-EU dynamic. The report also sets out a series of related recommendations and my response to each of these is below:

**Recommendation 1** - In line with recommendation 1 in our first report, the First Minister should provide to us, as soon as possible, the Welsh Government's assessment of the devolved implications of a UK-wide Code of Practice about the disclosure of information and the powers being provided to the Secretary of State in the Bill.

**Response:**

Clause 74 establishes a new information gateway and creates a permissive power for public authorities to share information with registered providers for the purpose of providing digital verification services. Clause 78 gives powers to the Secretary of State to publish a Code of Practice to which public authorities who decide to share information under clause 74 must have due regard.

According to UK Government, this Code will provide information about the necessary steps public authorities should undertake when sharing data through the information gateway. It will signpost relevant legislation and set out best practices for public authorities, including practical guidance on the process public authorities should follow when sharing information.

A UK-wide Code of Practice would apply to all UK public bodies, including those in Wales.

My officials continue to be in discussions with UK Government counterparts with regard to the devolved implications of these provisions.

Once these discussions have concluded, an update of the outcome will be provided through the LCM process.

**Recommendation 2.** In line with recommendation 2 in our first report, the First Minister should provide to us, as soon as possible, the Welsh Government's assessment of the devolved implications of the regulation-making powers in Part 3 of the Bill.

**Response:**

Part 3, clauses 85-107 (clauses 61-77 as introduced) makes provision about sharing customer and business information to improve data portability (Smart Data). These clauses allow for the secure sharing of data, upon the customer's request, with authorised third-party providers (ATPs), who would then use the data to provide services to the customer, including automatic account switching, personalised market comparisons and account management services. The customer can be a consumer or a business.

The clauses in Part 3 contain regulation-making powers which will enable the Secretary of State or Treasury to require suppliers (as specified in the regulations), and other relevant persons, to share customer data and business data, to introduce Smart Data schemes in markets across the economy.

As currently drafted, provisions in Part 3 would enable the Secretary of State to make regulations which would apply to the provision of Smart Data schemes within Wales. This is an area where both UK Government and Welsh Government agree devolved subject matter is involved.

**Recommendation 3.** Given the "constitutional policy concerns" regarding the National Underground Asset Register provisions in the Bill and specifically the return of powers under section 79 of the 1991 Act (so far as exercisable in relation to Wales), the First Minister should escalate this issue to Ministerial level discussions, up to and including the formal dispute resolution procedures, as opposed to discussion at official level.

**Response:**

I wrote to Julia Lopez MP, Minister of State for Data and Digital Infrastructure, on 23 January setting out our concerns around the UK Government's proposed legislative approach and the impact of the National Underground Asset Register provisions on Welsh Ministers' powers.

**Recommendation 4.** The First Minister should keep this Committee up-to-date on the discussions between the Welsh Government and the UK Government – at both official and Ministerial level – relating to the National Underground Asset Register provisions.

**Response:**

An update on the outcome of these discussions will be provided through the LCM process.

**Recommendation 5.** The First Minister should provide us with details about any action the Welsh Government considers it could take to remedy the transfer to the Secretary of State through amendment NC42 of existing delegated powers in section 79 of the 1991 Act, which are currently exercisable by the Welsh Ministers (so far as exercisable in relation to Wales). Such details should include whether the Welsh Government considers that it would be within the legislative competence of the Senedd to bring forward provisions in a Bill that would re-delegate to the Welsh Ministers the regulation-making powers under section 79 of the 1991 Act which are being transferred to the Secretary of State.

**Response:**

Legislative competence for the subject matter of Part 3 of the New Roads and Street Works Act 1991 is devolved to Wales. As the Senedd is aware, the current version of

the Bill will (under clause 141, previously amendment NC42) transfer existing executive functions of the Welsh Ministers in this area so as to be solely exercisable by the Secretary of State in relation to England and Wales.

The Welsh Government considers that it would be within the legislative competence of the Senedd to bring forward provisions in a Bill that would re-delegate to the Welsh Ministers the regulation-making powers under section 79 of the 1991 Act (which are being transferred to the Secretary of State). In that scenario, as such a provision would modify a function of a Minister of the Crown, the Welsh Ministers would need to consult the appropriate UK Minister (under paragraph 11(2) of Schedule 7B to the Government of Wales Act 2006).

**Recommendation 6.** In line with recommendation 3 in our first report, we would welcome a commitment from the First Minister that, where the Welsh Ministers do not make regulations to implement international agreements, and powers in the Bill to do so are instead exercised by the Secretary of State, in any update to the Senedd the Welsh Ministers must provide a detailed explanation in advance of such regulations being made by the Secretary of State.

**Response:**

Should this occur, the Senedd will be updated of any powers being exercised in devolved areas through the usual process.

**Recommendation 7.** In line with recommendation 4 in our first report, the First Minister should provide to us, as soon as possible, the Welsh Government's assessment of the Bill's provisions relating to interview notices.

**Response:**

Clause 41 Interview Notices (clause 38 as introduced) inserts new provisions into the Data Protection Act (DPA) 2018 which confer powers on the Information Commissioner to require certain persons to attend an interview, where non-compliance with particular requirements of the DPA 2018 are suspected.

The provision contains an exemption for the Office for Standards in Education, Children's Services and Skills (OfSTED). However, a similar exemption has not been provided for Welsh Ministers, as the regulator for the equivalent services here in Wales. This means that, as currently drafted, the Information Commissioner would be able to issue an interview notice on these matters in Wales, but not in England. This is still the subject of ongoing discussions.

An update on the outcome of discussions with UK Government in relation to this clause will be provided in due course through the LCM process.

**Recommendation 8.** The First Minister should confirm if the Welsh Government has received from the UK Government its risk assessment on the Bill and the loss of the UK's current adequacy decision. If it has been received and if the terms of sharing permit, the risk assessment should be shared with the Senedd.

**Response:**

Welsh Government has not received a copy of the UK Government's risk assessment on the potential impact of the DPDI Bill on the EU's data adequacy decision. On 1 March, the Minister of State for Data and Digital Infrastructure wrote to me, again declining our request for a copy of the UK Government risk assessment, stating that it is important for UKG officials to be able to conduct candid discussions during the policy making process.



**Recommendation 9.** The First Minister should clarify if there are circumstances in which the Welsh Government would recommend that the Senedd gives its consent to the relevant provisions in the Bill in spite of its concerns about the implications for the UK's current adequacy decision.

**Response:**

As the Committee will be aware, our recommendations are based on principles which recognise there may be sensible and advantageous circumstances for provision to be made in a UK Bill for Wales. Our final position typically involves consideration of a range of constitutional, policy, political and other factors. Our principles are applied in the context of often complex and fluid negotiations. Different factors have to be weighed up in the effort to secure our policy objectives.

**Recommendation 10.** The First Minister should confirm whether the Welsh Government is aware of any UK-EU level discussions about the Bill, in particular in relation to the UK's current adequacy decision.

**Response:**

In her letter of 1 March, the Minister of State for Data and Digital Infrastructure stated that UK Government have been engaging with the European Commission since the commencement of the Bill's consultation process. However, as adequacy is not devolved, Welsh Government has not been party to these discussions.

I am copying this letter to the Minister for Economy, Minister for Finance and Local Government, Minister for Social Justice, and the Counsel General. A copy will also be sent to the Chair of the Culture, Communications, Welsh Language, Sport, and International Relations Committee.

Yours sincerely



**MARK DRAKEFORD**

# Agenda Item 11

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

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