

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (Memorandum No 2)

Digital Economy Bill

1. This Supplementary Legislative Consent Memorandum is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a Legislative Consent Memorandum must be laid, and a Legislative Consent Motion may be tabled, before the National Assembly for Wales if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the National Assembly.
2. The Digital Economy Bill (the “Bill”) was introduced in the House of Commons on 5 July 2016. The Bill can be found at:
<http://services.parliament.uk/bills/2016-17/digitaleconomy.html>

Policy Objective

3. The UK Government’s stated policy objective is to make the UK a world leader in digital provision – a place where technology continually transforms the economy, society and government.

Summary of the Bill

4. The Bill is sponsored by the Department for Culture, Media and Sport.
5. The Bill contains measures on providing a broadband universal service for the United Kingdom, additional powers for Ofcom in respect of information provision, consumer switching and automatic compensation in relation to communication matters, a new Electronic Communications Code and other communications infrastructure matters, measures to introduce better controls on online pornography and to protect citizens from nuisance calls, measures related to digital intellectual property, powers to share data between public authorities and some measures relating to the BBC.
6. The Bill makes provision to:
 - give every household a legal right to request fast broadband connection;
 - give consumers and businesses better information about communication services, easier switching and compensation if things go wrong;
 - cut the costs for new infrastructure and simplify planning rules;
 - stronger enforcement of direct marketing laws, and civil penalties for online pornographers who do not verify the age of their customers;
 - remove legal barriers to digital government while reinforcing data protection laws.

Provisions in the Bill for which consent is required

7. The consent of the National Assembly for Wales is sought for provisions introduced by amendment at the House of Lords Committee and Report stages and which relate to data sharing by public authorities.
8. Part 5, Chapter 1, Public Service Delivery - Amendments were tabled by Lord Ashton of Hyde on 30 January for Lords Committee Stage relating to the disclosure of information to and by water and sewerage undertakers. These amendments appear in the Revised Marshalled list for Committee.
9. The amendments will enable water companies to be included as organisations able to receive and share data in accordance with the provisions in the Bill, so that they can better help support customers in vulnerable circumstances.
10. In accordance with the Bill, data sharing of personal information is permitted only in prescribed circumstances. The amendments provide for data sharing to support the targeting of water poverty schemes. In order for data to be shared with water and sewerage undertakers two conditions will need to be met: (i) the disclosure must be for the purposes of assisting people living in water poverty by reducing their water or sewerage costs, improving efficiency in their use of water, and improving their health or financial well-being; and (ii) the information must be disclosed with the intention it will be used by the companies to provide assistance to people under government mandated support schemes..
11. Part 5, Chapters 1, 3 and 4: Public Service Delivery; Debt Owed to the Public Sector; and Fraud Against the Public Sector – A number of amendments were tabled by Lord Ashton of Hyde on 2 March in response to the report of the Delegated Powers and Regulatory Reform Committee. Previously the persons to be enabled to share information for the purposes of chapters 1, 3 and 4 of Part 5 of the Bill were to be detailed in regulations to be made by the appropriate national authority. The amendments require these persons to be specified on the face of the Bill. However, the amendments tabled list only non-devolved bodies at this time, and it will be for the Welsh Ministers to specify in regulations (subject to the approval of the Assembly) the Welsh bodies to which the data sharing powers within the relevant chapters are to apply. The amendments also introduce additional conditions which need to be satisfied when specifying persons for the purposes of data sharing. For instance, in relation to debt owed to the public sector, persons may only be specified for the purposes of data sharing if they are a public authority, and they require information from another public authority to improve a person's ability to identify, manage or recover debt; or they have information which, if shared with another public authority, has the potential to improve the other authority's ability to identify, manage or recover debt; or they have functions of debt management or recovery the exercise of which may be improved by the disclosure of information by or to that person.

12. Part 5, Chapter 6: Disclosure of non-identifying information. Clause 70 (HL Bill 102) enables the disclosure of non-identifying information (i.e. information that does not specify the identity of an individual) by HMRC where it is considered that the disclosure would be in the public interest. An amendment tabled by Lord Ashton of Hyde on 2 March for Report Stage makes similar provision for the Welsh Revenue Authority (and Revenue Scotland) thus enabling the Welsh Revenue Authority to make the same disclosure of non-identifying information as may be made by HMRC. This gives parity across UK tax jurisdictions.
13. It is the view of the Welsh Government that consent is required for these provisions because they fall within the legislative competence of the National Assembly for Wales in so far as they relate to the subjects of education, vocational, social and physical training and the careers services (subject heading 5); environmental protection, including pollution, nuisances and hazardous substances (subject heading 6); fire and rescue services (subject heading 7); promotion of health; prevention, treatment and alleviation of disease, illness, injury, disability and mental disorder and the provision of health services, including medical, dental, ophthalmic, pharmaceutical and ancillary services and facilities (subject heading 9); housing and encouragement of home energy efficiency and conservation, otherwise than by prohibition or regulation (subject heading 1); powers and duties of local authorities and their members and officers and local government finance (subject heading 12); access to information held by open access public authorities (subject heading 14); social welfare including social services; protection and well-being of children (including adoption and fostering) and of young adults; and care of children, young adults, vulnerable persons and older persons, including care standards (subject heading 15); evolved taxes (subject heading 16A); and water quality and representation of consumers of water and sewerage services (subject heading 19) in Part 1, Schedule 7 to the Government of Wales Act 2006.

Reasons for making these provisions for Wales in the Digital Economy Bill

14. This Bill covers both devolved and non-devolved matters and the majority of the provisions in relation to data sharing will extend to England, Northern Ireland, Scotland and Wales. The amendments relate to those provisions of the Bill that will allow data sharing for specified purposes between specified public authorities (including cross border data sharing). It is considered that making these provisions for Wales in this Bill will facilitate the sharing of data between organisations across the UK, including between devolved and non-devolved agencies, which will be of benefit to Wales. In terms of coherence it is considered that legislating via a UK wide Bill (to include making amendments to that Bill) is the most effective way of proceeding with this matter, as ensuring that there is consistent legislation would minimise the risk of unnecessary barriers being put in place by organisations.

Financial implications

15. There are no significant financial implications for Welsh Government. Data sharing between public service organisations may result in efficiency savings.

Conclusion

16. It is the view of the Welsh Government that it is appropriate to deal with the data sharing provisions, and amendments to those provisions, in this UK Bill as it represents the most practicable and proportionate legislative vehicle to provide a UK wide approach to ensure consistency for data-sharing.

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March 2017