

**SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM  
(MEMORANDUM NO.2)**

**DATA PROTECTION AND DIGITAL INFORMATION (NO.2) BILL**

1. This 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 Senedd Cymru if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the Senedd.
2. The Data Protection and Digital Information (No.2) Bill (“the Bill”) was introduced in the House of Commons on 8 March 2023. The Bill can be found at: [Data Protection and Digital Information No.2 Bill - Parliamentary Bills - UK Parliament](#).

**Policy Objective(s)**

3. The UK Government’s stated policy objectives are to update and simplify the UK’s data protection framework with a view to reducing burdens on organisations while maintaining high data protection standards.

**Summary of the Bill**

4. A summary of the Bill was provided in the original Legislative Consent Memorandum (LCM) laid on 24 March, which remains accurate.

*Engagement with the UK Government since the original LCM*

5. UK Government officials and Welsh Government officials have continued to in regular contact and in relation to specific provisions within the Bill, as set out in paras 13-15 and 22-24 below.
6. On 17 May the Minister for Economy met with Sir John Whittingdale, Minister of State, Department for Science, Innovation and Technology to discuss the Bill and Welsh Government’s concerns.

**Update on position since the publication of the first Legislative Consent Memorandum**

7. I laid an LCM on 24 March, based on the Bill as introduced into the UK Parliament on 8 March.
8. Within the LCM I recommended that consent be given in respect of:
  - Clause 54, Part 2, Digital Verification Services; and,

- Clause 92, Part 4, Disclosure of information to improve public service delivery to undertakings.
9. However, the LCM also set out my view that it was not appropriate to recommend consent for the following provisions until further discussions have been held with UK Government in relation to the devolved implications of these provisions:
- Clause 56, Part 2, Digital Verification Services;
  - Clauses 61 to 77, Part 3, Customer Data and Business Data; and,
  - Clause 93, Part 4, Implementation of law enforcement information sharing agreements.
10. On 10 and 11 May, the UK Government tabled the following amendments that have been assessed as requiring legislative consent of the Senedd.
- Amendment NC3, Information disclosed by the Welsh Revenue Authority;
  - Amendment 46, change to clause 61 customer data and business data; and,
  - Amendments 8-16 and NC5, relating to clause 93 (Implementation of law enforcement information-sharing agreements), clause 108 (regulations), meaning of “appropriate national authority”.
11. The amendments will be considered at the Committee Stage in the House of Commons, which commenced on 10 May and which is due to conclude on 13 June.
12. Following legal analysis of the implications of these new clauses, as set out at para 10 above, I consider this supplementary LCM is required to be laid before the Senedd, for the reasons set out in paragraphs 13 to 25 below.

### **Provisions in the Bill for which consent is required**

#### *Amendment NC3 - Information disclosed by the Welsh Revenue Authority:*

13. Discussions have been held with UK Government officials with regards to Clause 55, as introduced, which sets out that information disclosed by Her Majesty’s Revenue and Customs (HMRC) for the provision of DVS must not be shared further without the consent of the Commissioners for HMRC.
14. Welsh Government officials and officials from the Welsh Revenue Authority sought similar provisions for data disclosed by the Welsh Revenue Authority (WRA), recognising the legal requirements placed on WRA around maintaining the confidentiality of ‘protected taxpayer information’ (as set out in the Tax Collection and Management (Wales)

Act 2016). Similar provisions were also sought by the Scottish Government.

15. As a result of these discussions, UK Government has now tabled amendment NC3, Information disclosed by the Welsh Revenue Authority.
16. Amendment NC3 sets out that where the Welsh Revenue Authority discloses information under clause 54, this new clause prevents further disclosure of that information without the consent of the Welsh Revenue Authority.
17. As such, these are “relevant provisions” for the purposes of SO29.

*Amendment 46 – change to clause 61 customer data and business data:*

18. Part 3, clauses 61-77, as introduced, make 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.
19. As these impose a duty on data holders to share customer and business data and they remove limitations which impede customers’ access to certain services, the purpose relates to business and economy.
20. The provisions within clauses 61-77 were therefore included within the LCM laid on the Bill on the 24 March.
21. As this amendment falls within Part 3 of the Bill, legislative consent is required, as outlined above.

*Amendments 8-16 and NC5, relating to clause 93 (Implementation of law enforcement information-sharing agreements), clause 108 (regulations), meaning of “appropriate national authority”*

22. Discussions have been held with UK Government officials in relation to Clause 93, as introduced, which confers powers on the Secretary of State to make regulations, as they deem appropriate, for the purpose of implementing an international agreement relating to sharing information for law enforcement purposes (I-LEAP).
23. Through these discussions, Welsh Government officials requested that concurrent plus powers be given to Welsh Ministers to make regulations for the purpose of implementing an international agreement relating to

sharing information for the aspects of law enforcement within the Senedd's competency.

24. As a result of these discussions, UK Government has now tabled amendments 8, 9, 10, 11, 12, 13, 14, 15, 16 along with NC5, Meaning of "appropriate national authority":
- Under amendment NC5, a new clause is to be introduced which makes provision about the exercise of the regulation-making power conferred by clause 93 on the Secretary of State, Scottish Ministers and Welsh Ministers;
  - Amendments 8, 10 and NC5 enable the regulation-making power conferred by clause 93 to be exercised concurrently by the Secretary of State and, in relation to devolved matters, by Scottish Ministers and Welsh Ministers;
  - Amendment 9 is consequential on amendment 8; and,
  - Amendments 11, 12, 13, 14, 15, 16, which amend clause 108 as introduced, are consequential on Amendments 8 and 10 and NC5.
  - Amendment 15 makes provision about the meaning of the negative resolution procedure in connection with regulations made by Scottish Ministers or Welsh Ministers. The regulation-making powers of the Welsh Ministers would be subject to the Negative resolution procedure.
25. As the regulations made under this clause could make provision for a purpose within legislative competence insofar as they relate to the implementation of international agreements in devolved areas, it is within the legislative competence of the Senedd.

### **UK Government view on the need for consent**

26. UK Government agree that legislative consent is required for Amendment 46 – change to clause 61 customer data and business data, (relating to clauses 61-77, Part 3, Customer and Business Data), and Amendments 8-16 and NC5, relating to clause 93 (Implementation of law enforcement information-sharing agreements), clause 108 (regulations), meaning of "appropriate national authority".
27. UK Government are not in agreement that Amendment NC3, Information disclosed by the Welsh Revenue Authority, requires the legislative consent of the Senedd. Rather UK Government are of the view that DVS will always involve use of the internet in some way and therefore argue, as with clause 54, the internet services reservation is relevant.

### **Welsh Government position on the Data Protection and Digital Information (No.2) Bill**

28. I am content that the majority of amendments tabled on the 10 May improve upon the position set out in the original LCM laid on this Bill on the 24 March.
29. Amendment NC3 better reflects the legal requirements placed on the Welsh Revenue Authority around maintaining the confidentiality of 'protected taxpayer information' (as set out in the Tax Collection and Management (Wales) Act 2016).
30. However, concerns remain in relation to the devolved implications of the regulation making powers being given to the Secretary of State and Treasury under Part 3, clauses 61-77 to which amendment 46 relates, as set out in the original LCM laid on 24 March.
31. Concerns also remain in relation to Clause 93 - Part 4, Implementation of law enforcement information-sharing agreements to which amendments 8-16 along with NC5 relate. Whilst these amendments were tabled by UK Government in response to our request for appropriate regulation making powers for Welsh Ministers, the amendments as currently drafted only provide Welsh Ministers with a concurrent power, with no consent mechanism in response to the potential exercise of the power by UK Government.
32. We continue to oppose the use of such concurrent powers, in line with our principles. We are continuing to engage with the UK Government on these amendments and my view is that it would not be appropriate to recommend consent to this clause without further amendments.

### **Financial implications**

33. There may be financial implications for Wales with the UK Government's Data Protection and Digital Information (No.2) Bill if Welsh Ministers choose to invoke the regulation making powers provided under clause 93 (implementation of law enforcement information-sharing agreements) and amendment NC5 'Meaning of "appropriate national authority"'. Further work would be required at the time to understand the impact, should the decision be taken to invoke any powers given.
34. There may also be financial implications in relation to clause 72 which gives powers to the Secretary of State or Treasury to give financial assistance to specified 'persons'. Work is underway to understand how this may impact Wales, and further information will be shared when possible.

### **Conclusion**

35. In my view it may be appropriate to deal with these provisions in this UK Bill, as the Bill represents the most effective way for these provisions to come into force.
36. It is my view that it is appropriate to recommend consent in respect of Amendment NC3, Information disclosed by the Welsh Revenue Authority.
37. However, it is my view that it is not appropriate to recommend consent for the following provisions until further discussions have been held with UK Government in relation to the matters outlined in paragraphs 30-32 above:
- Amendment 46 – change to clause 61 customer data and business data, (relating to clauses 61-77, Part 3, Customer and Business Data), and,
  - Amendments 8-16 and NC5, relating to clause 93 (Implementation of law enforcement information-sharing agreements), clause 108 (regulations), meaning of “appropriate national authority”.

**Mark Drakeford MS**  
**First Minister**  
**25 May 2023**